Introduction To CEE Legal Matters

The current world record for completing a marathon run is held by Wilson Kipsang (2:03:23). Chuck Engle won most marathons in history coming in first in 171 races.

Marathons represent a commemoration of the fabled run of Pheidippides, a Greek soldier and messenger of the battle of Marathon to Athens. Aside from its origins in a CEE market and that, on a personal level, our cover features a picture from the Prague International Marathon, held in a city that this authors feels is one of the most beautiful in the region and beyond, the cover spoke to us because, just like Pheidippides, our magazine will go to considerable lengths in our efforts to inform our readers of the most relevant news and newsmakers that shape the legal world in Central and Eastern Europe and we are in it for the long run!

Before looking at this issue, we need to extend a thank you to you, our readers. The feedback we received from you after our launch has been extremely supportive and engaging. We set out to become the go-to source of information for and about lawyers in CEE and are particularly thrilled that, as this issue goes to print, we are days away (if the trend continues) from reaching the landmark of 1 million unique hits to our website in less than 4 months since its launch. We can only look forward to building on this trend of growth and are excited to have you by our side in this journey.

We promised our readers in our previous editorial that our magazine would not be one thing: Static. As such, we have expanded our Frame section to analyse even more jurisdictions in this issue to offer our readers greater insight into the trends and events that are shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We promised our readers in our previous editorial that our magazine would not be one thing: Static. As such, we have expanded our Frame section to analyse even more jurisdictions in this issue to offer our readers greater insight into the trends and events that are shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets. We looked at why law firms are moving into shaping the legal industry in their markets.

With these, and many more, we take that one more step in our long run ahead.

Around the month of March, which passed between our issues, it is also fashionable for law firm to announce various gender equality initiatives or awards. As such, we decided to carry out a comprehensive survey of ranked firms in the CEE region to understand what the status-quo is with regards to women’s participation at all levels in law firms. This issue includes the first part of our report which will focus on presenting the results of the survey with analysis and comments to be covered in part two in the following issue of the magazine.

At the same time, our Market Spotlight, which focuses on Romania, includes an overview of the impact of, and reactions to, the new advertising regulations of the bar association in the country. The President of the Romanian Union of Bar Associations, Gheorghe Florea, was kind enough to comment on the changes and the rationale behind them, which, we hope, will offer our readers a great deal of insight into a market which, at the moment, is in “stand-by” mode with regards to law firm marketing efforts.

With these, and many more, we take that one more step in our long run ahead.

Preparation for the first CEE Legal Matters Qualitative Study into General Counsel Best Practices is underway. To learn more about how you can participate, pre-order, or advertise, please contact us at research@ceelm.com
Guest Editorial: CEE Status

We are certainly still close enough to the beginning of the year for a bit of productive looking back, accessing the present, and planning for the future.

Like the rest of the world, the financial crisis negatively affected the CEE and all of us who practice law within this dynamic region. The affect may have been uneven as among various countries and practice areas, but no one escaped the impact entirely.

For many of us these past few years have been the most challenging time in our careers. The legal community’s reaction to the changing circumstances has varied. Some firms withdrew or considerably downsized within the region. Others adapted more subtly to changing market conditions, allowing themselves to stay the course, maintain the most important parts of their firm cultures and, in some cases, to even grow.

And what of the “now” for CEE lawyers? There is surely recovery but it too is uneven as among various countries and practice areas. But whatever our concerns are as to the status of the real economies, and other lingering economic and political problems in our respective jurisdictions, few would question that we are seeing a return to a pre-crisis state. Although we are virtually back at our pre-crisis days. Although the real economies, and other lingering economic and political problems in our respective jurisdictions, few would question that we are seeing a return to a pre-crisis state. Although we are virtually back at our pre-crisis days. For sure, politics or economic issues of the moment are challenges but they are challenges that we need to help our clients overcome. We all have a vital role to play in moving the CEE region forward. We can’t just be spectators.

The lawyer’s role in CEE economic affairs and development is as strong or stronger than it has ever been. For sure, politics or economic issues of the moment are challenges but they are challenges that we need to help our clients overcome. We all have a vital role to play in moving the CEE region forward. We can’t just be spectators. We need to be out there helping to write the positive story of CEE.

With such a role and responsibility our profession can and should be personally fulfilling in both economic and non-economic terms. Being a lawyer is something of which we should be genuinely proud.

Make no mistake, though, none of us can expect business as usual, particularly because of the intense pricing pressure and competition that is now an absolute reality for a growing part of any firm’s book of business. Simply put, the market is constantly and relentlessly cutting away at the amount of work that is still “non-generic” enough to not be taken in-house or competitively tendered and awarded on price alone. All of us must learn to better deliver our services at a price which our increasingly sophisticated clients are willing to pay and which also meets our own standard offering. This has always been the right thing to do but now the market has made it the required thing to do.

We must also dedicate the time and resources to the training of our more junior lawyers, not as an expense and burden to our clients but as part of our own standard offering. This has always been the right thing to do but now the market has made it the required thing to do.

In my view there can be no better place in the world than CEE to address our profession’s challenges. Extra effort, individual creativity and differentiation still get you ahead in this region.

It is particularly fortuitous that CEE Legal Matters is inaugurating its operations in the here and now. It promises to be an important and vital tool to help all of us navigate the future by showcasing the best practices, knowledge, know how, successes and failures of the region’s legal community. I encourage all of you to contribute to and read the publication. The best way to raise the bar is to learn from one another.

I am particularly delighted that Co-Editor David Stuckey and Rado Covarele are part of the team launching CEE Legal Matters. We have known each other and worked together for many years. David and Rado are consummate professionals with a deep understanding of the challenges and opportunities of practicing law in the CEE. Their involvement will undoubtedly help assure this publication’s success.

Welcome to the neighborhood, CEE Legal Matters!
Legal Ticker: Selected Deals and Cases

Austria

Wolf Theiss Advises RapidMiner on Earlybird and Open Ocean Investment

In a first financing round, Wolf Theiss has advised IT company RapidMiner on taking on USD 5 million in new capital from Earlybird Venture Capital and Open Ocean Capital.

RapidMiner, founded in Germany in 2007, offers software solutions and services in the field of "predictive analytics, data and text mining." Global players such as Cisco, EADS, eBay, Intel, Lucentis, PayPal, PepsiCo, Siemens and Volkswagen are among the users of the software company that has developed, and the funds RapidMiner has obtained from Earlybird and Open Ocean, two venture capital investors specializing in high tech companies, are expected to support RapidMiner’s bid to capture the American market as well.

The Wolf Theiss team advising RapidMiner on the transaction was led by Partner Clemens Philipp Schindler, who was assisted by Partner Martin Abram, Senior Associates Mar- tina Gatterer and Katharina Schindler, and Associate Markus Taufner. RapidMiner was also advised by teams from PwC and Deloitte.

Belarus

Ostrovna Concessions Concluded Agreement with Belavia

A consortium consisting of the Baltic Raillada Lejins & Nor cous (RLN) and the Belarus Stepanovsky, Papakul and Partners (PPP) law firms, along with KPMG offices in Hungary and Belarus, was selected to attract and generate investment to several Belarus state owned enterprises.

The consortium was selected from over 30 applicants by the Ministry of the Republic of Belarus and the Belarus National Agency of Investment and Privatization. The contract authorizes and empowers the consortium to attract investment to the “Bazanovichi Reinforced Concrete Products Plant”, “Belarusskie konstruktiv – 2”, “Construction and Mounting Trust No 8”, and “Avtomostorg” open joint-stock companies.

The consortium will conduct financial, operational, and legal due diligence of the SOEs and an independent stock assessment in accordance with Belarusian and international methodological standards. They will also conduct investment risk analysis, develop strategies for attracting investors, and implement a marketing campaign. It is expected that the project will have identified and selected strategic investors by the end of 2014.

Imantas Norkus, the Managing Partner of RLN’s Lithuania Office, claimed that the project is part of the firm’s “obligation to provide highest quality services to potential investors in Belarus.” The team leader of the consortium is Tamas Simonyi, the Head of KPMG CEE Financial Institutions, M&A Advisory, and Director of Corporate Finance Advisory at KPMG in Hungary.

Schoenherr and Vavrovsky Heine Martha Advise OAVG on Sale of Financing Portfolio

The European Schoenherr law firm has advised OAVG, the owner and leading partner of London-based investment fund G2 Capital Partners, in his acquisition of 50%+1 share of Norvik Bank.

Both restructuring projects closed on December 17. Construction work on the motorways was expected to resume in early 2014 and the motorways are expected to be operational by the end of 2015.

Partner Madhavi Gosavi, who led the restructurings for Norton Rose Fullbright, said that, “the successful conclusion of these two motorway restructurings has increased investor confidence and demonstrates the Greek Government’s commitment to supporting new and existing infrastructure.”

Gosavi was assisted by Norton Rose Fullbright Partners Charles Whitney, Jeffrey Barratt and Peter Hall, and by Associates Ann Vesely, Phil Hanson, Christina MacGilp, Ben Sealy, Eleanor Cochrane, and Jessica Berthell Jones.

Latvia

Borenius Advises on Acquisition of Norvik Bank

Latvia’s Borenius Law Firm has advised Grigory Guselnikov, the owner and leading partner of London-based investment fund G2 Capital Partners, in his acquisition of 50%+1 share of Norvik Bank.

Greece

English and Greek Firms Advise on Greek Motorway Restructurings

Norton Rose Fullbright has advised on all legal aspects of two motorway restructurings in Greece with a combined value of GBP 3.1 billion, with Hogan Lovells and Linklaters across the table on the two deals.

NRF acted for project company Aegian Motorway on the restructurings of the EUR 1.3 billion Malakos-Klekidi motorway. The shareholders of Aegian Motorway are HOCHTIEF PPP Solutions, Vinci Concessions, AKTOR Concessions, J&P AVAX, AEIGEK, and Athena. The lenders were advised by Hogan Lovells, and the Koutalidis Law Firm advised on the Greek legal aspects of the restructurings.

Norton Rose Fullbright also acted for the lenders, including 26 banks and the European Investment Bank, on the restructurings of the EUR 1.8 billion Eleftheros-Metaxovos-Patras-Pyrgos-Tsikona motorway. Linklaters advised Olym pia Odos, the project company, and Kannaras and Partners advised on the Greek legal aspects of the restructurings.

Both restructurings closed on December 17. Construction work on the motorways was expected to resume in early 2014 and the motorways are expected to be operational by the end of 2015.

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Poland

White & Case Advises Play on High Yield Bond Issue and New Revolving Credit Facility

White & Case has advised Polish mobile telecommunications operator P4, which trades as Play, on its groundbreaking, inaugural EUR 870 million and PLN 130 million dual-tranche high yield bond issue and entry into a new super senior revolving credit facility.

Play is a portfolio company co-owned by Olympia Development and London based investment firm, Novator.

Romania

Gide Advises on the First Motorway PPP in Romania

Gide Loyrette Nouel has advised a consortium comprising of VINCI Concessions, STRABAG and AKTOR on a 29-year public-private partnership contract covering the Comarnic-Brasov section of the Bucharest-Brasov motorway in Romania.

The project covers the financing, design, construction, operation and maintenance of a 54 km motorway section on the A3 motorway, which crosses the Carpathian Mountains and is the main artery linking Bucharest and Transylvania with Western Europe. The work will include the construction of three major interchanges, 39 bridges, and 3 dual-tube tunnels with a total length of 19.4 km.

The consortium advised by Gide had been named as the preferred bidder by the Romanian Ministry of Transport and Infrastructure. Gide claims that the deal constitutes the first motorway PPP in the country.

The Gide team on the project was headed by Partner Stephane Vernay, and included Associates Anne Framexelle, Frederic Pia, and Pierre Bernheim in France, and former Gide Partners (see page 12) Bruno Leroy and Andrea Toma and Associates Adina Damascini, Cristina Yogan and Catalan Barb, in Bucharest.
Russia

Baker, Orrick, and Herrington & Sutcliffe Advise in Major Russian Gas Acquisition

Even in Russia, deals for (almost) 3 billion dollars don’t happen every day.

Baker & McKenzie has announced that it advised Yamal Development, a 50/50 joint venture between Novatek and Gazprom, on a USD 2.94 billion acquisition of a 60 percent stake in Artic Russia from the Italian Eni oil and gas company. The buyers of the shares were ExxonMobil and OMV, and the acquisition includes a joint venture for the production and sale of subway cars.

The two companies will invest a total of EUR 160 million in the joint venture, which will be based in the Moscow region of Russia and employ up to 800 people. The joint venture expects to participate in the tender of the Moscow Metro, which is modernizing and planning the purchase of more than 2,000 cars.

Moscow Partner Bjorn Paulsen led the Noerr team advising Siemens on the transaction. Noerr Partner Hannes Labisch and Lawyer Olga Mokhonko assisted.

Turkey

Baker & McKenzie Advises on Acquisition of Turkish Dairy

Baker & McKenzie, working primarily through the Esin Attorney Partnership, its Turkish member firm, has advised on the acquisition of a leading Turkish dairy products distributor.

The firm advised the Abraaj Group — a leading private equity investor operating in high-growth markets — in connection with the acquisition of a majority stake in Yorsan Group, a Turkish manufacturer and distributor of dairy products, including milk, cheese, and the popular Turkish Ayran. Esin advised Abraaj on (i) the acquisition financing (the lead arrangers of which were Turkiye Garanti Bankasi and Yapi Kredi), and (ii) the co-investment of the European Bank for Reconstruction and Development and the Yoruk Foundation.

The deal was closed on 16 January 2014.

Managing Partner Ismail Esin and M&A & Banking & Finance Partner Muhsin Keskin led the Esin team, while Baker & McKenzie’s Global Head of Private Equity Simon Hughes, M&A & Banking Partner Kufi Klein Wassink, and Banking & Finance Partner Fedor Tanke worked on the transaction – from due diligence to drafting and negotiating documents, and assistance in the closing of the transaction.

The Ukrainian Sayenko Kharenko law firm has advised the Dutch Nutreco International on an M&A deal in the animal feed market and establishment of a joint venture in Ukraine.

As a result of the completed transaction, Nutreco International has indirectly acquired a stake in Dutch Feed, a Ukrainian company with a large sales and distribution network throughout Ukraine.

Sayenko Kharenko provided full transactional support on the deal, including legal due diligence, general advice on multiple Ukrainian law matters, deal structuring, obtaining merger clearance from the Antimonopoly Committee of Ukraine, assistance with preparation and negotiation of transaction documents, and assistance in the closing of the transaction.

Sayenko Kharenko’s Corporate team for the transaction included Counsel Vitaly Kravchenko and Associates Oleksandr Nikolaiychuk, Daria Gulinska, and Hanna Dobrynyska. Also assisting were Sayenko Kharenko Antitrust Counsel Dmitriy Taranyk and Associate Maksym Nazarenko. Both teams worked under the supervision of Partner Vladimir Sayenko.
**Legal Ticker: Summary of Deals and Cases**

<table>
<thead>
<tr>
<th>Date Covered</th>
<th>Firms Involved</th>
<th>Deal/Litigation</th>
<th>Deal Value</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/14/14</td>
<td>Schoenherr, CMS Reisz-Rohrwage Hainz</td>
<td>Schoenherr advises Seven Mile Capital acquired the Microporous lead-aid battery separator facilities in Tennessee, in the United States, and Fristrie im Rosental, in Austria.</td>
<td>USD 120 million</td>
<td>Austria</td>
</tr>
<tr>
<td>1/14/14</td>
<td>Wolf Theiss, Pollath + Partner, Colesky</td>
<td>Wolf Theiss advises IT company RapidMiner on taking in new capital from Earlybird Venture Capital and Open Ocean Capital.</td>
<td>USD 5 million</td>
<td>Austria</td>
</tr>
<tr>
<td>1/14/14</td>
<td>Schoenherr, Vavrovsky Heine Marth, Doralt Stefan Glück</td>
<td>Schoenherr advises Österreichische Volksbanken-AG on the sale of a financing portfolio to CA Immobilien Anlagen, with assistance from the new Austrian Vavrovsky Heine Marth law firm.</td>
<td>EUR 428 million</td>
<td>Austria</td>
</tr>
<tr>
<td>2/5/14</td>
<td>CHSH Czeba Hempel Spiegelfeld Hlum</td>
<td>CHSH advises KGA1, one of Germany's largest asset managers, on its purchase of the Shopping Horn in the northern Austrian town of Horn.</td>
<td>N/A</td>
<td>Austria</td>
</tr>
<tr>
<td>2/5/14</td>
<td>Watson, Farley &amp; Williams</td>
<td>Watson, Farley &amp; Williams advise Leuchterfabrik Maschinenfabrik on a new financing agreement with European private capital fund manager Metric Capital Partners.</td>
<td>N/A</td>
<td>Austria</td>
</tr>
<tr>
<td>1/17/14</td>
<td>Specht Bohm</td>
<td>Specht Bohm represents the Nordo Tieto TT service company in its acquisition of Siemens Convergence Creators' telecom research and development division.</td>
<td>N/A</td>
<td>Cyprus</td>
</tr>
<tr>
<td>1/17/14</td>
<td>Railla Lejina &amp; Noroces, Papadul and Partners</td>
<td>Railla Lejina &amp; Noroces and Stepanovski, Papadul and Partners, along with KPMG offices in Hungary and Belarus, are selected to attract and generate investment to several Belarus state owned enterprises.</td>
<td>N/A</td>
<td>Belarus</td>
</tr>
<tr>
<td>1/10/14</td>
<td>Latham &amp; Watkins</td>
<td>Latham &amp; Watkins advises U.C.E. Système Holdings on its offer for IG Seismic Services.</td>
<td>USD 32.5 million</td>
<td>Greece</td>
</tr>
<tr>
<td>2/7/14</td>
<td>White &amp; Case</td>
<td>White &amp; Case advises Avot Software and a selling shareholder consortium on the sale of a significant minority stake to CVC Capital Partners, one of the world's leading private equity and investment advisory firms.</td>
<td>N/A</td>
<td>Republic</td>
</tr>
<tr>
<td>1/15/14</td>
<td>Pappoditis &amp; Papoditis, White &amp; Case, Van Doorne, Anderen &amp; Medendorch</td>
<td>Pappoditis &amp; Papoditis acts for York Capital Management (UK) Europe Advisors, in its acquisition of a 66% stake in NBG Pangara Real Estate Investment Company from the National Bank of Greece.</td>
<td>EUR 653 million</td>
<td>Serbia</td>
</tr>
<tr>
<td>1/21/14</td>
<td>Reed Smith, Kamnarz and Partners, Borelli Erede Pappalardo, Baker &amp; McKenzie, Sidney Austin</td>
<td>Reed Smith advises on its acquisition of a 66% stake in NBG Pangara Real Estate Investment Company from the National Bank of Greece.</td>
<td>EUR 653 million</td>
<td>Russia</td>
</tr>
<tr>
<td>1/31/14</td>
<td>Norton Rose Fullbright, Lovell, Liddell and Anderson</td>
<td>Norton Rose Fullbright advises on two motorway restructurings in Greece with Hogan Lovells and Liddellers across the table.</td>
<td>GBP 3.1 billion</td>
<td>Greece</td>
</tr>
<tr>
<td>1/30/14</td>
<td>King &amp; Wood Mallesons SJ Berwin</td>
<td>King &amp; Wood Mallesons SJ Berwin advises CEEFA Paname on acquisition of Specialty Chemical Packaging from Irving Place Capital and Outokumpu Capital Management.</td>
<td>N/A</td>
<td>Hungary</td>
</tr>
<tr>
<td>2/10/14</td>
<td>Specht Bohm</td>
<td>Specht Bohm assists in Ukrainian management buy-out of Bosch’s Hungarian subsidiary.</td>
<td>N/A</td>
<td>Hungary</td>
</tr>
<tr>
<td>1/10/14</td>
<td>Boesen</td>
<td>Boesen advises Goporty Zakład, the owner and leading partner of London-based investment fund G2 Capital Partners, in acquisition of 50%+1 share of Norvik Bank.</td>
<td>N/A</td>
<td>Poland</td>
</tr>
<tr>
<td>1/18/14</td>
<td>GESSEL</td>
<td>GESSEL advises mBank on debt financing to purchase shares of Stone Master, a leading Polish manufacturer of decorative elements and facade coverings of stone on the Polish market.</td>
<td>N/A</td>
<td>Poland</td>
</tr>
<tr>
<td>1/21/14</td>
<td>GESSEL</td>
<td>GESSEL represents Teguas in settling a dispute with PBG Energia and Bioedelwnnia Saska.</td>
<td>N/A</td>
<td>Poland</td>
</tr>
<tr>
<td>2/7/14</td>
<td>White &amp; Case</td>
<td>White &amp; Case advises Polish mobile telephones operator P4 on inaugural, dual-tranche high yield bond issue and entry into a new super senior revolving credit facility.</td>
<td>EUR 870 million and PLN 130 million</td>
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<td>Gide Loyrette Nouel</td>
<td>Gide Loyrette Nouel advises VINCI Concessions, STRABAG and AKTOR on a 29-year public-private partnership contract covering motorway in Romania.</td>
<td>N/A</td>
<td>Romania</td>
</tr>
<tr>
<td>1/8/14</td>
<td>Reiff &amp; Associates/ Deloitte</td>
<td>Reiff &amp; Associates assists New Europe Property Investments in acquisition Greek shopping centers.</td>
<td>N/A</td>
<td>Romania</td>
</tr>
<tr>
<td>1/15/14</td>
<td>Clifford Chance, Voicu &amp; Filipescu, Popovici Nita &amp; Asociatii</td>
<td>Clifford Chance, the largest hydro-energy and construction company in Romania, received a EUR 60 million credit from a bank consortium consisting of BRD-Groupe Societe Generale and Allianz-Tiriac Insurance.</td>
<td>EUR 60 million</td>
<td>Romania</td>
</tr>
</tbody>
</table>

**Country**

- **Romania**: 7
- **Greece**: 2
- **Ukraine**: 2
- **Poland**: 2
- **Serbia**: 1
- **Turkey**: 1

Full information available at: [www.ceelegalmatters.com](http://www.ceelegalmatters.com)
On the Move: Firm and Partner Moves

**Mediterranean Exarchou and Rosenberg Granted ABS License to Practice as Law Firm in England and Wales**

The Exarchou and Rosenberg International law firm announced on January 21 that it has received a license from the British Solicitors Regulation Authority to operate as an alternative business structure in the UK.

**Austrian Schoenherr Launches Full Brussels Office to be Headed by Volker Weiss**

The Austrian and Regional Schoenherr law firm announced on January 30 that it is expanding its office in Brussels and transforming it from a representative to a fully-fledged operational office.

**White & Case and Gide Loyrette Nouel Close Romanian Offices**

The list of international law firms in Romania has shrunk by two. Both White & Case and Gide Loyrette Nouel announced that they closed their offices in Bucharest as of February 1, 2014, and the former managing partners of those offices will continue to practice in Bucharest. Former Gide Managing Partner in Romania Bruno Leroy will take the helm of the new “Leroy si Asociatii” firm in Bucharest. According to Eszter Kamoesay-Berta, Partner and Co-Head of Gide’s Budapest office, the move is “in line with Gide’s strategy in South East Europe, which is to coordinate a network of independent firms from our central platform in Budapest, as we have done these past three years for Serbia.”

And White & Case will, going forward, operate in Romania through an exclusive alliance with Bondoc & Asociatii, the firm led by former co-Executive Partner of White & Case Pachi, Lucian Bondoc (Delia Pachi, the other co-Executive Partner will not be participating in the new arrangement). Of the change, Bondoc said that “The Romanian partnership has achieved healthy growth in recent years and the new relationship with White & Case will support the continued development and growth of Bondoc & Asociatii while ensuring the ongoing delivery of the high quality legal services our clients expect.” For its part, White & Case Executive Committee member Oliver Brettle insisted that the new arrangement “will have no effect on the services provided to clients in Romania, the wider CEE region, or elsewhere,” and that the firm “remains strongly committed to its clients and on-the-ground presence across Central & Eastern Europe.”

Summary Of Partner Lateral Moves

**Summary Of New Partner Appointments**

<table>
<thead>
<tr>
<th>Date Covered</th>
<th>Name</th>
<th>Practice(s)</th>
<th>Firm Moving From Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>01/15/14</td>
<td>Denis Hamer</td>
<td>Banking/Finance</td>
<td>Richards Kühbe &amp; Orbe (United Kingdom)</td>
</tr>
<tr>
<td>01/29/14</td>
<td>Janusz Fiser</td>
<td>Tax</td>
<td>GESSEL</td>
</tr>
<tr>
<td>01/07/14</td>
<td>Mikhail Semenyukov</td>
<td>Corporate/M&amp;A</td>
<td>Baker Botts</td>
</tr>
<tr>
<td>01/13/14</td>
<td>Fumio Ozawa</td>
<td>Real Estate</td>
<td>Benner Law Firm</td>
</tr>
<tr>
<td>01/24/14</td>
<td>Eren Kusun</td>
<td>Corporate/M&amp;A</td>
<td>Baker &amp; McKenzie</td>
</tr>
<tr>
<td>01/08/14</td>
<td>David Shaolea</td>
<td>Corporate/M&amp;A, Infrastructure/PPP</td>
<td>Watson, Farley &amp; Williams (a Senior Consultant)</td>
</tr>
</tbody>
</table>

Summary Of Partner Lateral Moves

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Other Appointments

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<td>Ursola Rath</td>
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<td>Ivan Lazar</td>
<td>Dentsons</td>
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<td>Indrek Leppik</td>
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Full information available at: www.ceelegalmatters.com

Period Covered: January 1, 2014 - February 11, 2014
Legal Matters: General Updates

New Law Brings Changes To Serbian Court System

Traditionally, judges have been required to preside over both basic courts and basic court units. As Milica Savic, Associate at Karanovic & Nikolic, explains, this has meant that many judges are only able to spend one or two days a week at each of the basic courts and basic court units in their jurisdictions, which is in the past led to frequent and unavoidable delays in proceedings.

Before January 1, 2014, there were 34 basic courts and 102 basic court units. Now, thanks to the new law, there are 66 basic courts and 29 basic court units. The Government’s underlying reasoning in the reform was that an improved allocation of resources would improve accessibility to courts and provide citizens with a more effective system to exercise their rights to trial. According to Lazic, as basic court units only handle civil cases, while criminal cases are exclusively heard in the basic courts, it is hoped that the increase in the number of basic courts will improve efficiency both in criminal trials and other cases.

Project to Create Three Professional Legal Tiers Dropped

On December 14, 2013, the Romanian National Bar Union Council proposed to change how the competencies of registered lawyers in Romania are defined. Under the Council’s proposal, lawyers would have been able to appear in front of a Court of Appeal only if they had three years of uninterrupted practice after final bar admission (thus qualifying as an “Avocat Definitiv”) and could only appear in front of the High Court of Justice and Cassation and the Constitutional Court of Romania after five years of experience.

Following considerable negative feedback from legal practitioners in the country, the Permanent Commission of the UNBR issued a statement on February 5, 2014, declaring that the UNBR Council will no longer pursue the changes it originally proposed.

Eversheds Study Examines the Views of Next Generation Lawyers Globally and in CEE

The international Eversheds Law Firm has published its third in a series of reports focusing on the future of the global legal market. Titled “21st Century Law Firm: Inheriting a New World”, the new report looks specifically at what the next generation of lawyers wants from their future careers and from their employers, and how they see the profession ten years from now. The firm spoke to some 1800 young lawyers (23-40 years old) around the world to take a snapshot of the sector’s future leaders.

The responses revealed a driven, ambitious, and mostly satisfied group of young professionals. While they have much in common with previous generations, the report found, there is a great deal they would like to change.

The report found that young lawyers feel the partnership model is out of step with modern business practices, and they would like to reshape the legal profession in key areas so it becomes more like a commercial business. Engaging and connecting with clients is key. In Europe, 71% of young lawyers would like to become partner, while 29% do not have this ambition. For CEE countries the number hoping to make partner rises to 78%.

On average for all regions, the majority (68%) of lawyers still want to become a partner, although there is an important gender variation: 77% of men want to make partner compared to only 57% of women.

By far the majority of negative comments were directed at law firms’ focus on billings. Many are averse to hourly billing and the pressures it creates to work longer hours, regardless of efficiency or value to the client. These negative aspects of law firm culture were also felt to hinder positive teamwork, creativity, and innovation at law firms.

Young lawyers believe innovation is needed. They are excited by how technology will transform the practice of law and help them achieve better results, more quickly, and in different ways. The report states a belief in the fact that this generation will use technology and new business models to work more smartly and more effectively for clients.

According to Krzysztof Wierzbowski, Managing Partner of Wierzbowski Eversheds in Poland, “the global trends described in the report are also observed in the CEE legal services market. Young professionals strive to manage their time in a way that allows them to combine family life, personal interests and professional career. One of the key aspects of business success is not only recruiting the best experts, but also skillful managing of human resources, such that employees can fulfill their potential in all areas. This approach results in an increase of their effectiveness and creativity at work.”

Allen & Overy Welcomes CEE Legal Matters

Allen & Overy has one of the largest and best known practices in the CEE region and is one of the few major international firms with a well-established and expanding presence. We have top tier office in five key centres: Bucharest (associated office), Bratislava, Budapest, Prague and Warsaw, and we regularly work on transactions in the wider South Eastern European region, combining our truly global experience with expert local knowledge.

“They really work as an international firm; it always uses the best individuals, irrespective of where they are located.”

Chambers Global 2013 (Central & Eastern Europe)
For every international law firm that decides to make a tactical withdrawal from or a strategic restructuring in CEE, there's another that decides the time is right to expand their presence in the region. And two American law firms, with two very different models, have recently added CEE experts to their teams and taken significant steps towards expanding their presence and capabilities in Europe’s emerging legal markets.

**Edwards Wildman Launches “Hub-and-Spoke” Strategy in CEE**

In May of 2012 Edwards Wildman adding long-time CEE expert Ted Cominos to its team. Cominos, whose expertise in and contacts throughout CEE are well-established, helped the firm open an office in Istanbul in September of last year, where it now works in strategic cooperation with the Turkish Ismen/Gunalcin law firm. Edwards Wildman thus became the first American or English firm since White & Case in 1985 (and the first since the 1989 fall of the Iron Curtain) to make its first CEE office in Istanbul, a demonstration of that market’s emergence as a regional hub.
Cominos brings a long-standing passion for CEE and extensive experience in the region to Edwards Wildman. He was Linklaters’ Head of Private Equity for Central & Eastern Europe and a leader of the firm’s famous CEE “Flying Team” based out of Bucharest in the mid-2000s, and then applied his substantial expertise and contacts for two years with CMS Cameron McKenna before joining the 600+ lawyers working at Edwards Wildman.

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And despite not having offices in other CEE markets, Cominos is emphatic about Edwards Wildman’s reach and commitment to serving clients throughout the region. He says, referring to the firm’s Istanbul office, “we’re only a few months into this office but I think over the next six months there’s going to be a big ramp-up on our regional strategy. And we want to make that point clear to everybody. It’s not just a new office in Turkey. We’re not going to compete with just Turkish law firms, we’re going in to have a good hub-and-spoke strategy here, where we can really cover a number of markets on high-end, premium cross-border deals or complex issues and service it well without big investment in other countries.”

And indeed, Cominos is excited about Edwards Wildman’s success in serving clients across the region in the almost two years since he joined the firm, noting that “last year we had deals in Greece, Romania, Serbia, Bulgaria, Turkey, etc., and this year we’ve already got deals teed up in Egypt, Romania, Bul- garia, Serbia, Moldova, Czech Republic, and a smattering of things going on in Africa and the Middle East.”

He may find himself running into a familiar face in some of those markets – one, like Cominos’, now associated with a new firm.

Richards, Kibbe & Orbe Extends Reach from London and Vienna

Whereas Edwards Wildman has over 600 lawyers working in 12 offices around the world and can trace its pedig re back to 1980, Richards Kibbe & Orbe has 90 lawyers working in 3 offices and is approximately 20 years old. But the ability to see and respond to opportunity is not only a function of size, and RK&O is confident that it has the resources to expand its reach into CEE as well.

In January 2014 Partner Denise Hamer joined RK&O, thus giving that firm a well-established CEE expert of its own as it expands its distressed debt and secondary loan space footprint. Hamer herself specializes in finance, distressed debt, financial restructuring, and special situations, with a particular focus on developing markets. She has more than two decades of practice in the region, and before joining RK&O she worked in Société Generale, Citigroup, and BAWAG. Most recently she was with regional powerhouse Schoenherr Austria.

Though Hamer will officially be based out of RK&O’s London office, she will also be using Austria as a second base to manage her CEE practice.

Richards Kibbe & Orbe founding Partner Jon Kibbe is excited about having a lawyer with Hamer’s experience and skill leading their practice in emerging markets. According to Kibbe, “we had worked with Denise obviously when she was at Citigroup and at Bawag, we knew her well, and she is the ideal candidate not only to grow the existing Western European business, but to expand our restructuring and insolvency practices and know-how to CEE.

“It started with a trickle in 2012, it’s building up in 2013, and I expect it will really start to hit the ground in 2014 – there’s been a huge interest from our clients, from in- vestors, from others in the CEE region, specifically Africa and Central and Eastern Europe. And the reason for that is it’s not as competitive a market, there’s still attractive pricing, and with the accession of so many Central and Eastern European countries into the EU, which gives an overlay of legal framework and regulation, there’s a little more comfort with the legiti- macy of the legal systems, and yet, you’re still getting enough of the return that it’s an improvement over Western Europe.”

And Hamer’s knowledge of and passion for investing in CEE was immediately obvious to Kibbe. “The thing that was exciting to us about Denise was her investment thesis on CEE,” he says. “It’s where her heart is.”

He laughs that, “when I first met her I said ‘if I had a million dollars and I was a hedge fund, where would you tell me to put that money?’ She just smiled and rolled up her sleeves and said: ‘One word: ‘Slovenia.’” Kibbe was impressed. “I did not have a track record in it and it is the answer that makes an awful lot of sense if you understand our desire to be in markets that are emerging and where legal expertise counts, and that is very attractive to many of our clients who want to be off the beaten path a little bit, in partnership with a law firm that sourcing new opportunities, ideas, and themes.”

For her part, Hamer believes Central Europe’s time in the spotlight is now. “We recognize that our clients are chasing yield, and reward is correlated to risk, and therefore, the higher risk re- gions offer the greatest opportunities for return. So there is definitely, and has been since around 2009 a focus of US investors on Europe, and most recently, since around 2011 and 2012 and 2013, there has been a focus of people investing in Central and Eastern Europe. And so being very present and seeing this, Richards Kib- be have recognized that there is a great opportunity for us as well to support our clients, and we should follow them to Europe, and with my hire, we’re fol- lowing them even beyond London.

Hamer has hit the ground running, and she helped prepare and organize a Feb- ruary “teach-in” in the firm’s New York office on distressed investing in CEE, featuring experts in the shipping, min- ing, and real estate sectors of Europe’s real estate markets. And Kibbe explains that the firm’s clients have already taken notice of their increased capability. He says that “a number of hedge fund clients have raised their hands and said ‘Eastern Europe is going to be interesting.’ We are hoping it is a solid trend … it makes a lot of sense for us.”

Of course, talk to ten different law firms, with ten different client bases, ten different internal structures, and ten different philosophies, will get you – at least – ten different strategies for how best to serve clients around the world, and – at least – ten different opinions about where best to allocate resources. But as far as Hamer is concerned, the development of CEE is where the action is. “I’m kind of a contrar- ian,” she says, “and my whole perception of the world is contrarian. And where other people see risk, I see op- portunity. And the issue is not to be afraid of the risk. It’s simply to identify the risk. And to optimize the deal in spite of the risk.”
Political stability within a market has always been at the top of the list of investor criteria. But after three months of turmoil, public protest, and sporadic violence, Ukraine’s political system is anything but calm. CEE Legal Matters reached out to Ukrainian practitioners to see how they expect the upheaval to affect their M&A practices in 2014.

Business as Usual?

According to Denis Lysenko, Partner and Head of the M&A Practice at Vasil Kisil & Partners, the last quarter of 2013 had the market buzzing over the expected signing of Ukraine’s association agreement with the EU, which was generating “substantial interest in both investments towards Ukraine and of domestic companies towards outside the country”. As the world knows, that plan was dropped unexpectedly, catching even the political and economical elite by surprise, and triggering the popular backlash that the media has been covering for the last few months.

Despite the sudden change, the month of December did not necessarily worry M&A lawyers in the country. “Until probably December the political turbulence meant business as usual in Ukraine. Political life here has never been boring, so people were accustomed to it. Granted, it was not helping much to make the country look more attractive but to some extent, businesses were not affected and it was not the key issue that investors were taking into account at the time”, states Taras Dumych, Kiev’s Office Managing Partner at Wolf Theiss.

At the same time, Vladimir Sayenko, Partner at Sayenko Kharenko, emphasizes that the situation on the ground is not really as violent as portrayed in the media. Yes, there are protests in parts of the city but “walk for 5 minutes away from it and you will find yourself in a serene environment where children are happily playing outside.”

Even taking the fish-eyed lens of the media and a not-uncommon element of political upheaval into account, however, the consensus seems to be that in January, real signs for concern appeared. The Prime Minister resigned on January 28, uncertainty with regards to the state budget and public financing for the year became apparent, and the national currency underwent a considerable drop in value. As this point most people agree that 2014 is likely to be an extremely challenging one for the M&A market in the country.
The Invisible Hand at Work

“Aggravating political instability is obviously influencing business and the investment climate in general”, explains Sayenko. He goes on to say that “we can already see that unstable Ukraine has become a lot less attractive to foreign investors. Even excessive regulatory pressures on business which we saw in the past years were a lighter investment constraint than political instability.”

According to Margarita Karpenko, DLA Piper’s Office Managing Partner in Kiev, the uncertainty in the market has resulted in potential investors either suspending transactions or revisiting the commercial terms of existing deals to accommodate for the increased risk. At the same time, the market is witnessing more and more businesses trying to pull out.

However, the current political and social turmoil makes even withdrawal difficult. Mykola Stetsenko, the Managing Partner at Avelum Partners, points to situations where a Raiffeisen Bank having a hard time identifying a buyer willing to gamble on the market at the moment.

In fact, Dumych projects that M&A in the Banking industry will be amongst the hardest hit: “Banking and all the industries where there is a strong element of foreign currency leverage are under greater pressure because investors are concerned about the national currency losing ground, which would mean that capital or long-term debt would be devaluated after the purchase.”

Another industry that stands to be heavily affected is FMCG. Stetsenko points out that during unstable times “people simply tend to save” meaning that premium FMCG companies will feel the blow. However, Sayenko argues, “it will be the small and mid-sized businesses that will be hit the worst, as they largely depend on short-term consumer behaviour and cannot wait for the market to recover”, especially since many of them target the Russian market and how that relationship will evolve is uncertain.

At the end of the day Karpenko makes the point that any deal, irrespective of industry, is driven by commercial considerations that factor in the risk level of the market and, as a result, it is likely that every M&A transaction in Ukraine in the current climate will see investors willing to pay less than before to accommodate the increased risk.

There is Always Some Form of M&A Work

However, now all potential buyers are shy-ing away from the market. For example, Lyenko points to Asian countries that tend to be far less sensitive to political conditions and are showing real interest. He does, however, explain that, while politics might play less of a role, they still “look at the macroeconomics involved and currency developments meaning they will probably be quite reluctant for a while.” He further explains that certain cash-rich domestic buyers should not be left out of the equation since they are not tied to external financing and thus less susceptible to currency fluctuations. Stetsenko further substantiates this. He expects to see a significant amount of consolidation amongst domestic players as a result of the current instability, especially in agribusiness.

Maria Orlyk, Local Partner in Ukraine’s CMS Reich-Rohrwig Hainz office, points out that investors from Russia, one of Ukraine’s largest sources of foreign investment, remain enthusiastic about the country. Sayenko agrees. He explains that “as the largest historical partner of Ukraine, Russia is likely to play an important role not only on politics in the country, but also on the business environment” and “large Russian business groups may also participate actively in M&A activity, buying distressed assets in Ukraine not only when this is economically feasible, but also when the Russian government encourages them to do so for political reasons.”

And investors from countries other than Asia and Russia may be interested as well. Graham Conlon, Global Co-Head of International Private Equity and Head of Corporate and M&A in Ukraine at CMS Cameron McKenna, explains that it really depends on the industry: “While investors are naturally keeping a close eye on the situation and things can move quickly in terms of investor confidence, arge energy companies, for example, are quite used to operating in jurisdictions like Ukraine, and hence have the risk appetite to work through crises such as these.”

Lastly, even to the extent traditional M&A slows down during and in the months immediately following the current crisis, Ukrainian lawyers expect to see an uptick in other types of work as a result of current conditions. Sayenko sees an opportunity in the larger number of distressed assets sales likely to occur, though these transactions will take place at a fraction of the value they had when those assets were originally purchased, and the question of whom the buyers will be is still unclear. At the same time, Stetsenko foresees an increase in M&A disputes as a result of potential buyers trying to revisit prices to accommodate the increased risk and having to resort to challenging along the lines of breach of warranties that the price adjustment formulas in the contract may apply. Also linked to disputes, Dumych explains that clients are paying “far more attention to force majeure clauses since people understand the chance of these occurring is relatively higher these days.”

What Will 2014 Bring?

As Conlon puts it, “nobody has a crystal ball to tell how well things will progress.” Sayenko as well, when asked what he advises clients to do in this climate, answers: “as a lawyer, I try not to give political advice.” The general consensus among all the partners we spoke with is that what the market will look like in 2014 depends almost entirely on the political class – one of the most volatile elements in the country at the moment. As a result, when we spoke with Karpenko, she admitted to being particularly uncertain at the prospect of initiating the “almost impossible task” of planning a budget for this year.

Seen from the outside, Ukraine holds a lot of potential and stands to capitalize on it immensely if it stabilizes. Conlon has a final word: “What Ukraine is currently going through is both exciting and scary at the same time. Ukraine is the last big emerging market in Europe, and it has not seen anywhere near the level of investment that has flown into other like countries in the past two decades. If this crisis results in something positive therefore, then the potential upside is unfathomable.”

We also asked these partners as to how they expect privatizations in particular will be affected by the current unrest and what the outlook is like for 2014. Here’s some of their thoughts.

Graham Conlon: “Privatizations in recent years have not always been carried out transparently, and as such international investors are cautious about participating. If the current crisis results in something positive for the country, such as Government giving a clear commitment to increase transparency and reduce corruption), then perhaps international investors will take privatizations more seriously in the future.”

Taras Dumych: “The question will be to what extent will there be a risk that privatizations carried out by the current government will end up with the new owners taking away shareholding - such as in the famous case of Kryvorizhstal. I think however, anyone looking at Ukraine for this assumes this political instability risk.”

Denis Lyessenko: “There is a substantial budget deficit meaning that the government is definitely keen to sell some assets. Timing on this, however, will be critical. If the human is published too fast, but then the current high risk will lead to minimal interest meaning little competition in the tenders and minimal valuation of those assets as a result.”

Vladimir Sayenko: “While many multinationals may be scared to invest in privatized assets, lack of competition may allow local and Russian buyers to acquire these assets cheaply, hoping that they can be resold once the economy stabilizes and the political situation clears up.”

Mykola Stetsenko: “The government already announced that more privatizations are planned for this year, especially in the energy industry. Unfortunately though, unlike in the West, where privatizations are a tool to balance a state’s books, in Ukraine it seems more like they were used in the past as a tool to redistribute state assets amongst various oligarchs leading to semi-transparent privatizations that did not generate nearly the revenues originally expected.”
Central and Eastern Europe is not as sexy as it was prior to the 1997-98 global economic crash, and it may not fully recover full momentum for quite a while. Indeed, with international law firms such as Linklaters, Garrigues, DLA Piper, Clifford Chance, Simmons & Simmons, and, most recently, White & Case and Gide Loyrette Nouel pulling out of various CEE markets (see page 12), many firms seem to feel the region – with the exception perhaps of Turkey – is less attractive than it was during the 2004-2007 boom. CEE Legal Matters sought to explore the market potential of CEE countries for international law firms considering an entry by speaking to those who will ultimately sign off on the bill: General Counsels.

We reached out to 27 country or regional General Counsels (we will use that term for ease of reference, although a number of lawyers we spoke to have a “Head of Legal” title instead) across CEE for input, in the process primarily targeting Fortune 500 companies, to offer a 20,000-foot view as to the receptiveness of potential clients to having more international firms set up shop in the region.

In order to explore the demand side of the question as to whether or not international firms should still be looking at CEE markets, we explored what the general preferences of General Counsels are, if any, regarding working with international firms or local players, the perceived unique selling points that the former have, and the importance of geographic proximity in providing superior service.
International Firms: What We Pay For

When asked whether they generally prefer to work with international or local firms, almost all General Counsels we spoke to explained that the answer depends on the nature of a given deal. Indeed, unsurprisingly, 23 out of the 27 General Counsels we asked expressed a strong preference towards working with an international firm on cross-border work. Oraz Durdyev, the Legal Director and Compliance Officer for CEE at Anheuser-Busch InBev, explained that in “international & local” or in any case with an international element we involve ILJs, “due to their helicopter view.” According to Ahmed Dogan, Vice-President and General Counsel at Anadolu in Turkey, “for cross border transactions or arbitra-

tions, an international firm is a must.”

Aside from cross-border M&A, Przemyslaw Witus, General Counsel CEDC International in Poland, also points to financial matters as ones where he generally prefers working with international firms: “On work related to bond issues, or any other type of complicated financial transactions, international banks appear in the equation meaning that international firms are generally better positioned to help.” And Antal Bocsak, the CEE Head of Legal for Turk Telecom, feels that ILJs are stronger in particularly cross-border forms of dispute resolution as well, saying that “complex international arbitration may also require the specialized knowledge that mostly international firms have.” However, one Legal Director in Russia that we spoke with, who asked not to be named, pointed out that this is not absolutely and that there are “very well experienced local law firms as well that we work together with on international projects as well.”

In contrast, local firms tend to be preferred for local dispute resolution issues. According to Cosmin Vinaturo, Legal Director at Nobil in Romania, for “local projects, conducted exclusively in Romania and especially for litigations, local firms are preferred.” Szekely Gergely, Head of Legal at Al-

legro Group in Hungary, has a similar position: “Litigation co-operation with a local legal expert is much more favorable.” Other local issues such as basic corporate matters, labor law, or debt collection were also cited as areas where General Counsels emphasized a preference for local firms.

This makes sense in light of one of the elements that always plays a part when picking external counsel: Budgets. Bocsak explains that “the more specialized knowledge is required the higher rates can be justified, which, on the other hand means, that it is necessary to make sense to engage an international firm for basic corporate or labor law work.” Marian Radu, Head of Legal at Grivco in Romania, has a similar take: “I am fully aware that many people still prefer working with an international firm just because they associate it with higher quality legal support, but, at the end of the day, a lawyer from a local firm can prove to be the better solution if you take in consideration the whole package, including the financial one.”

So what are the unique selling points of international law firms? One is implicit in the tendency to use them in international transactions. As Gergo Budai, General Counsel and Deputy CEO at Invitel, expresses it, they simply “have the ability to do complex work parallel across multiple jurisdictions.” And Vinaturo points out that, as an organization, “they have knowledge of multiple law systems and are able to combine them in the most effective way, often resulting in innovative solutions.” While this idea seems to be the main element for most of the General Counsels we spoke with, it is not irre- sponsible. According to Witas, “having offices in multiple jurisdictions defi-
nitely helps as it offers a one-stop solution but it is not an absolute must. We have had transactions where we simply coordinated the work of various local counsels in different jurisdictions ourselves. It is not ideal, but not an impossible task.”

Organizational culture was another common theme. Dordye, for exam-

ple, explains that “international firms often share the business culture of multinational companies.” And many of the General Counsels we spoke to noted that, as multinational entities themselves, international law firms may be especially attuned to the challenges faced by multinational clients, Musta-

fa Gunes, former General Counsel at Multi Development in Turkey, also explains that this has to do with “their relative closeness to the headquarters of the multinationals.” Witas also links to communication styles and explains that CEDC International’s expatriate board members find it much easier to coordinate with London based lawyers.

One of the interesting elements that some of the General Counsels we spoke with highlighted as a unique selling point of international firms was their strong brand reputation. In fact, nine of the 27 we spoke to acknowledged that international firms tended to have considerably stronger brand names, which presumably provides a safer cover when explaining the decision to retain a firm to a company’s Board of Directors.

Of course, with that “brand” recogni-
tion comes an assumption of quality. But that may not be as strong a factor as it once was. Witas asserts that, in Poland, international law firms used to at-
tract the best lawyers, but the skill gap between them and the local law firms has shrunk considerably in recent years. General Counsels in Hungary, Roma-

nia, Russia, and Serbia pointed to the same trend. Ultimately, Witas and others emphasize that in many instances, what really matters is the lawyer you are working with, not what firm’s name appears on his business card.

Still, when asked if the generally higher rates of international firms are justified by their unique selling points, 19 of the General Counsels we spoke to responded that, in general, they do. Budai did mention that, at times, “the starting rates are over the acceptable levels and need to be negotiated.” And of course higher rates generate higher expectations. As Radu notes, “in time higher rates must be justified by high quality delivery, otherwise your cli-

ents may become reluctant to pay big money for something they can have with less expenditure.” Bocsak recognizes that international firms are often too caught between a rock and a hard place: “I many times feel that interna-
tional firms are stressed because of the discounted blended rates or price caps, which maybe lower than their guideline rates. Despite this, clients do expect high quality solutions from interna-
tional firms irrespective of rebates.” On the other hand, Izabela Wisniewska, Head of Legal at Zaraz in Poland, points out that, “unfortunately there are innum-
erous examples where the high rates may only be justified by the known brand.”

Do You Need To Be On the Ground?

In working with external counsel, 11 of the General Counsels we spoke to emphasized the need to build a strong relationship based on trust. The ques-
tion then becomes, to what extent is developing that relationship possible from a distance? General Counsels in Hungary, Russia, Romania, Serbia and Turkey in particular expressed a need for frequent face-to-face meetings. As Radu describes it, “I like to be able to speak to a lawyer in person, to get to know him a little, in order to make our collaboration smoother.” He conceded, however, that “good results can also be obtained with working with somebody you never get to know” – a feeling that is shared by most General Counsels that we spoke with.

While not impossible, many point to the ease of building those relationships from a simple logistical standpoint: “to interact personally is far more produc-
tive and faster then endless conference calls,” explains Dordye. He also ex-

plains how you know that “you can rely on your Partner for a long relationship if he can be in your office in 24 hours if it is urgent.” The extent to which that is possible for a lawyer operating a CEE firm between a rock and a hard place: “I many times feel that interna-
tional firms are stressed because of the discounted blended rates or price caps, which maybe lower than their guideline rates. Despite this, clients do expect high quality solutions from interna-
tional firms irrespective of rebates.” On the other hand, Izabela Wisniewska, Head of Legal at Zaraz in Poland, points out that, “unfortunately there are innum-
erous examples where the high rates may only be justified by the known brand.”

While Witas agrees that competition is always welcomed, he points out an additional benefit for firms considering opening an office: He believes that there is potential for many elite firms to carve out market share if they are on the ground since that will allow an ad-

ditional number of potential clients to be exposed directly to their capabilities. Ultimately, of course, decisions about when and where to open are often hot-
tly contested evaluations of profit, cost, market conditions and potential, actual and potential clients, portfolios of interested partners, and personal whim. There is no simple answer that applies to all firms for all markets. But as CEE rebouds from the crisis, we look for-
ward to more market participants soon.
Interview: Adam Hornyanszky
Counsel for International Operations & Business Development at Beres Pharmaceuticals

CEELM: Let’s start by telling our readers a bit about Adam Hornyanszky and his background.

AH: While many think of me as a lawyer first and foremost, my actual first degree was in Business Administration. Only once I graduated in this field did I start law school. After receiving my law degree and passing the bar exam I worked briefly as a trainee for an international firm but quickly found out that I was missing the business side of things.

CEELM: Indeed, you were lucky to find a role that allowed you to leverage both your business and legal training with Beres Pharmaceuticals. What does your current role entail exactly?

AH: My official title is that of “Counsel for International Operations & Business Development”. Specifically, I am responsible with identifying and approaching potential partners outside of Hungary, following which, I need to use my legal training to negotiate and draft those international business development contracts. I do not consider myself a General Counsel really. I am more of a “special counsel” due to this dual nature of my role.

I have to say, I love my current role as I suspect I would get bored if I were only exposed to one of the two dimensions. When I worked as a trainee in the international law firm I mentioned, I hated not seeing the business part as well. Not being truly exposed to the clients we were advising meant I lacked the actual representative offices, such as in Romania, where we employ our own marketing and sales team on the ground. It made sense to follow this model in these two markets out of historical considerations. Because our flagship product, the Beres Drops, acts as an immune strengthener, especially useful for cancer patients undertaking chemotherapy, it became highly popular in Ukraine following the Chernobyl disaster. In Romania, the product, so popular in Hungary, gained a lot of traction due to the considerably large Hungarian minority present in the country.

The second model, and the one we use a lot more often, is a natural one in light of the fact that, despite its flagship product being an internationally recognized brand, Beres Pharmaceuticals still is a mid-sized, family-owned, Hungarian company. Since the founding family wanted to avoid international financing, we chose to expand to other countries by finding partners on the ground that have a strong track record in launching products in those markets.

This is the approach we took in a number of markets, including Russia, Belarus, Slovakia, Lithuania, Albania, Serbia, Montenegro, Macedonia, Vietnam, Mongolia, and others.

The specific nature of the partnership does vary. In some cases, we look at deals where we offer them a good wholesale price on top of which they add their margins to cover their marketing and sales costs on the ground. Others include co-branding of our products with other Pharma companies on the ground. Lastly, deals might include licensing of our products to be sold completely under the partner’s name, which may or may not include clauses to our own branded products to exist in that specific market. At the same time, the scope of the partnerships differ as well as we cannot force upon our partners our entire pallet of about 70 products, especially since it is usually they, with expertise on the ground, who will know what the market will be most receptive towards.

As to what that means for me, I am the sole person responsible for managing all of these partnerships, as I mentioned, starting from identifying the best possible partners to negotiating and closing the agreements and following up on their accurate implementation.

CEELM: I assume this is where you legal training comes in particularly useful.

AH: Yes, and no. It is definitely incredibly useful to be able to have the exploration of potential partners and the first approach under the same umbrella with negotiating the specific terms and drafting the actual contracts. In the latter, it is obviously that my knowledge of corporate and contractual law is quite useful but there are rarely other areas of law that I still use on a day-to-day basis.

There are, of course, other legal aspects that Beres needs to address from tax to debt recovery and even, on rare occasions, litigations but those tend to be outsourced to external counsels.

What is particularly useful is the dual nature of my qualification as it allows me to be at the center of both of the mentioned aspects.

CEELM: Your role entails interacting with a lot of CEE markets. Which ones do you find to be the most challenging and why?

AH: I would have to point to Ukraine on this topic. It is particularly difficult to work in the market these days due to the current unrest, but even in the past few years, the market posed quite a few challenges. Constant legislative changes are difficult to stay on top of and each new government, and there have been quite a few, likes to “pick on” the pharmaceutical industry to address any existing budget deficits. It is difficult for an international company to operate such uncertain waters, especially when you dedicate yourself to stay within the legal framework without having envelopes flying around as we do.

It also makes sense that it is one of the main markets we look at since we have an actual representative office there.

CEELM: What about jurisdictions where you are looking to set up partnerships in?

AH: Those are a different story. The challenge there is not operating in the market itself since the operational aspects of running the business are the partners’ to deal with. The challenge that we have in these instances is the same irrespective of the market we deal with, which is to identify the right partners. This is a critical aspect long before anything else since we need to identify players that we will feel comfortable building a long-term relationship with. We always look at securing such agreements for at least a five year period making the discovery of potential partners stage by far the most important one.

CEELM: As a last thought, is there any change from a legislative perspective that you would like to see implemented because it would help Beres Pharmaceuticals develop further?

AH: Since almost all of our products are registered over the counter/food supplement products, most of the regulatory frameworks under which most pharmaceutical companies operate do not affect us. Even in terms of R&D developing new products, Beres has a “well-established use” approach where we use standard active ingredients that have already been tested in different combinations. This means that, even R&D regulations generally, not just those applicable to the industry, rarely affect our daily operations.

In light of this, it is actually my business side, rather than my legal one that can see how the company can grow. I understand that, in light of our products, elements affecting us are general market factors such as supply and demand. In fact, this is also evident in the fact that, unlike most companies in the industry that employ former doctors within their marketing/sales teams for example, we tend to hire people coming from the FMCG industry.

Our partners’ business models are and I get the opportunity to develop creative business solutions that create a win-win situation for everybody, which I then translate into a legally binding agreement.

CEELM: Since you mentioned it, what is Beres Pharmaceuticals’ business model and what work does it entail for you?

AH: When it comes to our international business, we have two working models. The first is opening up representative offices, such as in Romania and Ukraine, where we employ our own marketing and sales team on the same irrespective of the market we deal

Legal Matters
Guest Editorial: Turkey Looks Back on a Decade of Remarkable Growth

Since 2002, the Turkish economy has more than doubled in size, to USD 1.3 trillion. The new Turkey has been named as a “rising star” by many analysts – a country that feels confident, and an active foreign policy, that the country has become virtually unrecognizable to long-time Turkey watchers.

The ruling AK Party has lasted longer than any other government since Turkey became a multiparty democracy in 1946. In 2011, the AK Party became the first party in Turkish history to win three consecutive elections. In the third quarter of 2013, the Turkish economy grew by a record of 4.4%, which indicated the continued success of this stability. In October 2013, Turkey’s Deputy Prime Minister Ali Babacan described the change in Turkey over the last decade as “dramatic” – with political and economic reforms, significant social reforms, and an active foreign policy, that the country is preparing for local elections to be held on March 30. The current political environment is truly unusual, as the country woke up to a corruption scandal on December 17, 2013, with Turkish police arresting the sons of three cabinet ministers and many other officials. The probe appears to represent the biggest assault on the authority of Turkey’s Prime Minister Recep Tayyip Erdogan after the “Gezi” demonstrations that began in Istanbul on May 27 of last year. The “Gezi” demonstrations are the country’s largest and most influential anti-government protest movement in decades, bringing various segments of the country’s opposition together. The corruption scandal and resulting polarization proven by the “Gezi” demonstrations led to major question marks hanging over Turkey’s political and economic landscape in 2014. Despite the unusual political environment and the rising tensions, according to recent polls, it’s very likely that the AK Party will win the local elections with a majority, though possibly some may with slightly diminished power. In case the AK Party wins the elections for the fourth consecutive time, with continuing stability in politics Turkey may well retain its attractiveness and increase its popularity with its ambitious plans and visionary projects, such as a rail tunnel under the Bosporus, the first of its kind, connecting Europe and Asia. The AK Party has many other infrastructure projects underway, which are closely monitored by foreign investors.

However, having enjoyed a decade of stability, Turkey now faces heightened domestic tension and political volatility which has raised the eyebrows of many investors and long-time Turkey watchers.

Turkey in the Run-Up to Local Elections

2014 is a crucial year for Turkey, as the country is preparing for local elections to be held on March 30. The current political environment is truly unusual, as the country woke up to a corruption scandal on December 17, 2013, with Turkish police arresting the sons of three cabinet ministers and many other officials. The probe appears to represent the biggest assault on the authority of Turkey’s Prime Minister Recep Tayyip Erdogan after the “Gezi” demonstrations that began in Istanbul on May 27 of last year. The “Gezi” demonstrations are the country’s largest and most influential anti-government protest movement in decades, bringing various segments of the country’s opposition together. The corruption scandal and resulting polarization proven by the “Gezi” demonstrations led to major question marks hanging over Turkey’s political and economic landscape in 2014. Despite the unusual political environment and the rising tensions, according to recent polls, it’s very likely that the AK Party will win the local elections with a majority, though possibly some may with slightly diminished power. In case the AK Party wins the elections for the fourth consecutive time, with continuing stability in politics Turkey may well retain its attractiveness and increase its popularity with its ambitious plans and visionary projects, such as a rail tunnel under the Bosporus, the first of its kind, connecting Europe and Asia. The AK Party has many other infrastructure projects underway, which are closely monitored by foreign investors.

These prestigious infrastructure projects are carried out through Public and Private Partnership (PPP) schemes and the government is very keen to realize further infrastructure projects in education, energy, defense, health, transportation and other public services. Also, witnessing the dramatic growth in Turkey’s demand for energy, investment opportunities for energy companies are likely to be pursued in the next ten years. What to Expect from 2014 and Beyond

Foreign investors are still very keen to seize further opportunities in Turkey as they see many attractive factors including a young population, a rapidly growing consumer class and future infrastructure needs. Most of the prospective analyses show that Turkey will keep attracting foreign direct investments (FDI) in 2014, specifically in the fields of energy, automotive, banking, insurance and finance. For instance, PricewaterhouseCoopers’s (PWC) report on Turkey’s economic landscape in 2041 indicates that Turkey will move up to the global league rankings from 16th in 2011 to 12th in 2041. The main driver of Turkey’s economic development is predicted to be the labour market with a huge potential to support a solid growth path for the Turkish economy. By 2040, Turkey’s population is expected to grow by a fifth, to 90 million. It is also noteworthy that the Turkish M&A market results were quite impressive, as Mergermarket reported recently that Turkish M&A registered the highest number of deals in 2013 since 2001. The most active sectors by value in 2013 are reported to be energy, mining and utilities sectors. It looks clear that Turkey will remain a country of significant interest to investors for some time to come.
Struggling With Success

Explosive Growth in the Turkish Legal Market is Causing Some Serious Problems

A Turkish saying has it that “thorns and roses grow on the same tree.” This appears to apply perfectly to the Turkish legal market, which in recent years has expanded rapidly in response to the country’s strengthening economy and increasing foreign investment, but which may be encountering specific problems as a result of that success. Indeed, many market participants believe that specific structural traditions inside the Turkish legal market were made the market more complex or challenging. The few law firms that had any significant visibility were led by charismatic lawyers – always men – that had any significant visibility were. The resulting problems even worse.

For most lawyers, therefore, the only path to equity and professional independence led straight through the exit. Senior lawyers wanting control over their own careers had no option but to start their own shops, and many of them did just that.

When the Turkish economy finally awoke and began to grow in the first decades of the 21st century, foreign investors multiplied, and the number of sophisticated and complex deals in Turkey exploded. The number of international law firms wanting to open shops in the market the traditional structure of Turkish law firms persevered, and fewer lawyers were promoted to management positions from within. Even lawyers at the international firms in the market – nominally more committed to rewarding merit with equity – found invitations to equity few and far between. Attorney Cem Davutoglu, who left White & Case to start his own office back in 2008, explains: “When you are in the local shop of a multi-national company, your promotions, your payment scale, etc., are in fact a reflection of how that country is doing. How much its contribution to the bigger pie is, so to speak. So the ability to promote lawyers to higher rank – when you need firm approval – has a smaller chance of being successful. Let’s say there’s only going to be 10 new partners in the new year, and there are 30 candidates all around the world. The bigger portion obviously goes to the bigger offices, where contribution to the overall revenue is much higher. So no matter how critical you think you are positioned to be a partner … you always start with, ‘yes, but Istanbul is a small office, and there are so many partners there, we can’t really make a new partner, etc.’ becomes a fairly common response you get.”

As a result, Turkish lawyers have continued to leave both leading Turkish and international law firms to start their own shops.

1. History: Turkey Goes from 0 to 60 – But The Glass Ceiling Doesn’t Budge

Until about 30 years ago, the Turkish legal market was stable, simple – and quiet. Foreign investment was limited and deals were not particularly complex or challenging. The few law firms that had any significant visibility were led by charismatic lawyers – always men – who kept all equity gripped firmly in their own hands. Then as now, there were very few real Western-style “partnerships” in Turkish law firms, and promoting lawyers from within to equity positions was almost unheard of. (A few well-known firms have claimed to be exceptions to this general rule, though their internal workings are often opaque, and the extent to which they truly follow the Western model is unclear).

Nonetheless, even during the boom, the traditional structure of Turkish law firms persevered, and fewer lawyers were promoted to management positions from within. Even lawyers at the international firms in the market – nominally more committed to rewarding merit with equity – found invitations to equity few and far between. Attorney Cem Davutoglu, who left White & Case to start his own office back in 2008, explains: “When you are in the local shop of a multi-national company, your promotions, your payment scale, etc., are in fact a reflection of how that country is doing. How much its contribution to the bigger pie is, so to speak. So the ability to promote lawyers to higher rank – when you need firm approval – has a smaller chance of being successful. Let’s say there’s only going to be 10 new partners in the new year, and there are 30 candidates all around the world. The bigger portion obviously goes to the bigger offices, where contribution to the overall revenue is much higher. So no matter how critical you think you are positioned to be a partner … you always start with, ‘yes, but Istanbul is a small office, and there are so many partners there, we can’t really make a new partner, etc.’ becomes a fairly common response you get.”

As a result, Turkish lawyers have continued to leave both leading Turkish and international law firms to start their own shops.

2. The Quality of Lawyering Improves Dramatically

Nobody suggests that Turkey was bereft of skilled, international lawyers before the flood of investors and international law firms into the country began in the early part of the 21st century. Emre Dereman at White & Case, Metin Somay returning from Arnold & Porter in the United States, Erim Benzer at Altheimer & Gray, and many other well-known lawyers at leading firms had international experience and a justified confidence in their ability to effectively advise foreign clients on a full range of projects and transactions. Nonetheless, with a dormant economy and few foreign investors and clients, the number of lawyers in Turkey trained to international standards and experienced at working on sophisticated cross-border deals was limited.

But as the economy exploded, that began to change. Gaye Spolitis, Legal Counsel at one of Turkey’s leading conglomerates, points out that “with the entrance of the foreign law firms and their affiliates in the market the quality of their work has increased significantly.” In Spoliti’s opinion, “the international firms brought with them an insight into team organization, second in specialization and management of the law firms, and client management.” As a result, Spolitis believes, while “there used to be a monoply of White & Case in Turkey for a while, because it filled a gap that was then very necessary for the Turkish economic development in the 1990s, [but now] you can find so many, it’s diversified, with lawyers and team members with great qualifications.”

Kenan Yilmaz, Chief Legal Counsel at Koc Holding, agrees that the last 15 years have seen a “huge difference” in the quality of lawyers. He explains that “I am very proud to say that, let’s say there are 15 foreign law firms, and all of them have local lawyers, here in Turkey, and there are at least another 15 local law firms that are perfectly capable of providing very high level of service on both local and international legal issues.”

Simon Cox, the Managing Partner of McGuire Woods in London, goes even further. He insists that “some Turkish lawyers are as good, if not better, than many European or US lawyers. They’re trained in the US, they’re trained in London, they’ve got an LLM, or a JD or they’ve done some sort of additional qualification in the US, and their English is excellent, and obviously their knowledge of Turkish law is fully up-to-speed.” Indeed, Cox continues, “I think in the longer term your bilingual Turkish lawyer who’s internationally educated, with some international experience, will become a better-rounded product for the local market than your head-down, English solicitor or US attorney.”

So as a result of the remarkable economic growth Turkey has seen in the past decade, the number of skilled, internationally experienced Turkish lawyers is at an all-time high. And as a result of the limited number of equity partnerships per firm, the number of law firms featuring multiple senior lawyers able to advise international clients is at an all-time high as well. There’s no sign that this phenomenon is slowing either, as new law firms populated with highly-trained and English-speaking lawyers continue to appear even as Turkey’s economic growth slows dramatically.

And while observers are uniformly enthusiastic about the quality of Turkish lawyers, they are less so about the quality of Turkish lawyering. To may observers, the continued growth of the market is less of a good thing than might be expected.
Head of Legal for Shell Companies in Turkey

How did your career end up with Shell?

MV: Actually, I am the country legal head. I do everything. From corporate, I’m the corporate secretary of the joint venture – I’m in charge of keeping everything in compliance with the law and regulations, and everything in accordance with the principles.

CEELM: The “joint ventures” are Shell and Turcas?

MV: Shell and Turcas. Turcas is the minority shareholder/local partner. This is the downstream joint venture. There are also other joint ventures. This is the reason why I tend to describe myself as a joint ventures expert. I’ve been working with joint ventures starting with Toyota for almost 17, 18 years. In a joint venture all corporate issues, decisions, you name it, need to be governed in line with the joint venture agreement’s principles. Neither the shareholders nor the expat officers know the details of it. The partners signed the contract with their lawyers, then they put it on the shelf. Therefore, when holding Board Meetings, or getting investment resolutions, I have to ensure full compliance with the joint venture agreement. For example, investments exceeding a certain limit need to be approved by the Board. So if you miss that kind of thing it may create a conflict between the shareholders, which you never want. These kinds of things are important.

CEELM: You must have the joint venture memorized by now.

MV: Not memorized, but it is a really good agreement, so you need to be careful about it. Other than this, I founded various joint ventures with different companies, for example for upstream organization, Shell established three joint ventures with a national oil company in Ankara, for an onshore unconventional project and hundreds of cases like that. This is the world, completely different.

CEELM: Okay. How would you describe your job, what you do? I know that’s a general question, but what’s your job?

MV: Actually I am the country legal head. I do everything. From corporate, I’m the corporate secretary of the joint venture – I’m in charge of keeping everything in compliance with the law and regulations, and everything in accordance with the principles.

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two conventional deep water projects. It is important to know how to negoti- ate a JV agreement, where to look in the joint venture agreements. If you know the priorities and which provi- sions you need it is easier to conclude the agreement. Each party has different priorities, discussing them openly and finding mutual solutions. The par- ties’ needs indeed brings pretty quick deal closings. So I created that kind of value, in terms of negotiations with counter-parties.

CCELM: I see. You also oversee the litigation process, right?

MV: Sure. I am the head of the litigation process; I draw up the strategy and give priorities to my colleagues who are going to follow the case. After we agree on the framework, my colleagues fol- low up the case by themselves. There is full delegation and my colleagues get the full pride of the job they are doing. Sometimes, based on the peculiarity of the case, we hire external counsel to follow the case, but it is generally done in-house. Strategy is important and sometimes you even need to chal- lenge the expert barrister following the case.

Just an example. There was a decision from the Court of Istanbul about an advertising slogan? You're being hon- est with me?

MV: It doesn't matter. What we look for more is intelligence. And working in harmony. Of course individual lawyer is much more important for me rather than the name of the law firm. In the end it is the in- dividual who does the job, not the ex- pensive firm.

CCELM: When you hire laterally, when you bring lawyers on to your team, what do you look for more? Do you look for lawyers coming from in-house, maybe even in the Oil & Gas industry, or from law firms? What's more important?

MV: It doesn't matter. What we look for is honesty, integrity, collaboration, and working in harmony: Of course intelligence is important to learn and deliver quickly.

CCELM: So does that mean an interview is more important for you than the resume?

MV: Yes. The interview is much more important. And in the interviews we give candidates a case study, where he reads something for 20 minutes, then there are questions out of the case study, so it gives the candidates legal background, ability to interpret things, his mindset and how to approach busi- ness issues. Then we can understand, this is a person we can work with.

MV: Shell is, first of all, an honest company. Honest, straightforward, re- spectful of people. You are supposed to comply with the law and regulations, in particular those against corruption. For instance you cannot provide gifts to an officer, and you cannot accept gifts from someone else – you need to do your job with honesty and integrity.

CCELM: That's too bad. No gifts for you. (laughing)

MV: No, it's really good. It's really good indeed. Sometimes people abuse it. So if you start accepting gifts – one por- chet of caviar, for example, as a New Year gift, then it starts coming with a silver mag next year (laugh). And there's no end to it. This principle of Shell is very good. Shell values people, Shell values diversity. What is important is that Shell values intelligence and opinion. So you are always free to speak your mind. You can challenge whatever your boss says. All employees feel that everybody is equal, you are free to speak your mind, you are invited to challenge, you are free to blow the whistle, and you are provided with equal opportunities to climb the career ladder.

CCELM: And you are empowered to …

MV: … to speak your mind. Even in front of the CEO of the group.

CCELM: And that's not just an ad- vertising slogan? You're being hon- est with me?

MV: Absolutely. All employees know that if someone or management does something wrong, or does not follow Shell business principles and ethics, they have the right to blow the whistle and contact the business integrity department, the complaint will surely be investigated and consequences applied. A whistle-blower's identity is always kept secret so he is never exposed. This creates trust with your employer. Hon- esty and integrity are always valued by Shell.

CCELM: But even in terms of the working environment and culture, people are encouraged to challenge and think, and … interact.

MV: Yes, indeed people are encouraged to challenge. Also the organization is flat, rather than a vertical organiza- tion. So everyone is able to speak their minds. This is embedded in the Shell culture. This is the way I like it. I did not observe same thing with most of the companies unfortunately.

CCELM: I was going to ask. You've worked enough other places. Do you think that's relatively unusual about Shell? I mean in Turkey.

MV: (nodding head): I enjoy Shell. In Turkey this is also unique. Our culture is in-between East and West. Eastern company cultures are more hierarchi- cal, more strict than our culture. You are from the West (gestures at me), and your culture is much more similar to what I am explaining here in Shell. But the Shell cultures are on the extreme. You are unable to speak your mind. It can be considered rude to speak in front of a senior person without getting permission and often only a senior guy can speak unless you are asked something. You would not feel valued under such a culture.

CCELM: And that filters down even to the Turkish offices?

MV: Everything, everything.

CCELM: And the Shell model filters down here as well.

MV: Some Eastern companies prefer to hire average persons from average uni- versities. Deliberately avoid hiring high flyers. Average people tend not to chal- lenge but follow the standard path: Fol- low the rules, follow the bureaucracy, and do not challenge the boss.

CCELM: I see. So it's the system that's going to guide that, whereas at Shell it's the personalities, intel- ligence.

MV: Exactly, exactly. Here, the intel- ligence of people is creating something. And in particular the higher levels of the Shell organization are full of high-
Interview: Cigdem Dayan
Chief Legal Counsel at ING Bank Turkey

CEELM: You started your career at Yapi ve Kredi. How did you get to ING?
CD: I started with Yapi ve Kredi in 1990, June, as a lawyer. And step by step I moved higher. And lastly I worked for Yapi Kredi as a Senior Vice President, and 2006, February, I transferred to Oyak Bank as an Executive Vice President. ING bought Oyak Bank shares, and one year later, the name was changed.

CEELM: Why did you move to Oyak Bank?
CD: Koc Group bought Yapi Kredi and the structure was not clear. And the job that Oyak Bank offered me seemed a better opportunity for me.

CEELM: You never worked in a law firm. Some people think that working in law firms provides a basic level of training and exposure to a wide range of work, and that is useful for training and experience and development. Do you regret not having that experience, or was it not so important for you?
CD: I didn’t prefer it, because in 1990, Yapi Kredi was like a school. I learned lots of things at Yapi Kredi. I had the chance to see different cases, and it is a big bank, so …

CEELM: Was it a big legal team?
CD: Yes. Working in a big bank gave me an opportunity to see interesting and different cases, and I gained a lot of experience.

CEELM: So in some ways it was like a law firm – you got to learn a lot of different things?
CD: Yes. It was like a big law firm.

CEELM: Does that mean that coming out of university you knew you wanted to work in banks? That’s all you’ve done. Did you know you wanted your career to be as a banking lawyer?
CD: When I went to university I thought I would stay in academia. My professor wanted to work with me. But I waited a long time for an open position. Nearly one year I waited. At that point I thought, “maybe I’ll try to work outside,” and I applied to banks. Yapi Kredi called me, and I accepted their offer, and six months later a position opened at the university, and my professor called me – but I said “no, I like it here. I prefer to work with the bank.” [laughs].

CEELM: So you didn’t think, “I’m going to be doing this for the next 20 years of my life”? You liked it, and …
CD: First I thought, “maybe five years will be enough for me.” [laughs]. “Five years later I’ll move.” But I couldn’t do it.

CEELM: You’re still here.
CD: Yes, I couldn’t do it. Because I do like it.

CEELM: That’s my next question. How would you describe what you do? I know you’re the Chief Legal Counsel. But what do you do? What is your role in the bank, in your own mind?
CD: I and my colleagues are interested in all cases, all law suits all litigation against the bank or by the bank and legal follow-up, labor law, and consultancy, and all branches and the head office. So we are interested in all of the bank’s legal issues. Of course sometimes we take a … oh, how can I explain … for instance, the Capital Markets Board is a very special area, and Competition Law is a very special area, and we have a consultant – an outside consultant to help with those matters.

CEELM: I want to ask a few questions about how you work with outside lawyers. How do you decide what work you keep inside the bank and what work you give to external counsel? When do you give work to external counsel?
CD: Two reasons. One is, if the subject is “specific” and requires a different expertise – for instance, as I mentioned before, matters involving the Capital Markets Board or Competition Law. These are very specialized areas, and Intellectual Property law is another one. We have external counsels to assist us on these subjects. Also for enforcement of non-performing loans, we work with outside law firms. Not counsel. Law firms. Not only in Istanbul. In different cities.

CEELM: You have law firms in these cities you work with?
CD: Yes, local law firms. We prefer to work with local law firms.

CEELM: Do you select the firms that you work with yourself?
CD: Yes, local law firms. We prefer to work with local law firms.

CEELM: Do you select the firms that you work with yourself?
CD: My colleagues – some of my colleagues – go to different cities in all over Turkey, to check the law offices we engage with, their office space, their equipment, how many people work with them.

CEELM: These are some of your colleagues?
CD: Yes, I have an investigative team.

CEELM: Really? That investigates the law firms?
CD: Yes. After we start to work with an external lawyer, for instance one year later, my colleagues make a visit plan.
The team visits the law firms we engage with, and they take information regarding the files, they go to court and review the files in the court's formal offices, and then prepare a report on the law firm's performance based on collection success ratios, i.e. how many NPLs we have sent them and how much money they collected. If the law firms are not successful enough, we warn them that their performance is not satisfactory, and if still it goes down, we finish the relationship.

CEELM: Do you work much attention to fees, or is that not as important to you as quality?

CD: We have to comply with the Turkish Bar Association announcement of minimum lawyer fees. And nobody works below that.

I might prefer other banks. If they apply to us from a different bank, of course we assess it but usually do not look for experience. I want a young lawyer that will join my team to be clever, smart, knowledgeable... If they are open to learning I prefer a non-experienced person, because we can give lots of things to them. They learn lots of things from us, and usually my colleagues were not very experienced when they came to us. They didn't have any experience. But now they are very successful lawyers. Usually we prefer to teach them here.

CEELM: Do you pay much attention to fees, or is that not as important to you as quality?

CD: Yes, very important. If they are open to learning I prefer a non-experienced person, because we can give lots of things to them. They learn lots of things from us, and usually my colleagues were not very experienced when they came to us. They didn't have any experience. But now they are very successful lawyers. Usually we prefer to teach them here.

CEELM: And the next question is the last question: What's next for you? What's in your future?

CD: First, I started in university for a Ph.D. I have a Master's Degree from Istanbul University, and now I attend Yeditepe University for a Ph.D. I take lessons every Saturday.

CEELM: And why are you doing that?

CD: I like legal issues. I like my job. So I want to learn more. For instance, last semester I took arbitration lessons. Arbitration is very interesting. A different subject. I should add something to myself. In my position, I have to develop myself. For 2-3 years later, I have to be prepared. We have a young generation in Turkey that is very well-educated, ambitious, and smart. To be a good mentor and an executive manager for the people in the team that I am leading, I have to develop myself. I don't want to fall back. I always want to stay in front. But I know that I can not sit on my chair to do that. That's the way to stay in front.

CEELM: So, how did you end up as an expatriate lawyer, traveling the world as a foreign lawyer?

DM: It's not something you plan when you go to law school; it just turned out that way. I had been a Soviet Studies major in college -- back when there was a Soviet Union -- and had considered going into the Foreign Service but I went to law school instead. Nine years later, Baker & McKenzie was looking for people to go to Moscow, and I said, "I'll go."

CEELM: So were you at Baker & McKenzie at the time?

DM: No, at the time I wasn't. Actually, I was working on a project with a law professor whose brother-in-law was a partner in Baker & McKenzie's London office. She said, "You'd be perfect for Baker & McKenzie." A couple weeks later, they called me up and asked "would you be interested in talking to us?" I said "sure."

DM: But why "sure?" You'd been in Baku for a long time. Was that a tough call, or were you ready, or...?

DM: Honestly, I was content in Baku. We built a good practice in Azerbaijan, but after that much time you sometimes ask yourself, "will my legal career end here?" I wasn't looking for a way out, but when Istanbul became an option, it didn't take long to decide.

CEELM: And when did you move to Moscow?

DM: January 95.

CEELM: And you came here in 2011, when Baker opened its office?

DM: Yeah. The office officially opened in November 2011, but I was coming here for a few months prior to that for getting everything ready.

DM: My practice is almost completely Turkish-focused now.

CEELM: Really? After 14 years, you started a new practice.

DM: Well, I still do get calls for Baku and I still have a few Baku matters where the clients want me to stay involved because I've been working with them for 10 years. Our lawyers in Baku are quite capable, so my work there is limited.

DM: Ok. So we touched on this earlier, but what do you think is the role, the significance, of an expat, in general?

DM: Well, the role of an expat lawyer has changed over the years. When I got to Russia in the mid-90s, there were lots of expat lawyers working with Russian lawyers just out of law school whose primary credential was the ability to speak English. That was just the market at the time. Over time, as those lawyers gained experience and developed their expertise, they eventually replaced most of those expat lawyers. Now, we've got only a handful of expats in Moscow and none in our St. Pete, Kiev and Baku offices. It's just the natural progression of the development of
Struggling With Success (Part 2)

In Part One, ending on page 32, it was explained that the Turkish legal market has a substantial supply of senior lawyers skilled in working with international clients … and that those lawyers often feel the only option open to them is to leave and start their own firms. In Part Two we consider the effects of that phenomenon.

3. Too Many Firms, Not Enough Work

Many observers believe that there were too many firms in the market even in better times, and point at negative consequences both for clients—who may not get the degree of attention they expect from partners distracted by financial pressure and the need to keep their businesses afloat—and lawyers, who chase ever-decreasing fees to unsustainable levels.

3.1. Are Clients Getting the Attention They Require?

A number of experts on the market think the financial pressure on law firms is forcing partners to spend too much time managing their businesses—and not enough time managing their clients’ needs. And the larger Turkish firms unaffiliated with international firms come in for the brunt of the criticism.

For almost thirty years Emet Derman has regularly interacted with the very best lawyers in the market—in his words, “the very crème de la crème of the crop.” Derman is the Managing Director of JP Morgan in Turkey—a position he took after spending a decade as the first Managing Partner of White & Case’s Istanbul office. He decrdes what he believes to be a decreased focus by Turkish partners on their clients, and he believes that “attention to detail has waned, the personal attention to clients has waned, at the very top.”

And that may, in the end, up hurting their bottom line. Derman notes that “the profession is one where you, personally, re-gard how serious you are as a partner you personally have to be very involved if you want to keep the client’s loyalty.”

Ismael Esin, the Managing Partner of the Esin Attorney Partnership – Baker & McKenzie’s member firm in Istanbul—is in full agreement. He says he sometimes comes to work as early as 2 am for clients. He’s not sure all of his competitors show the same commitment. “The partners in many cases of some law firms just disappear. I hear complaints from some clients, who say ‘we have seen partners only for the presentation of a bid, and requesting the money. Other than that we haven’t seen any partner attention.’”

Ayse Yuksel, the Managing Partner of Chadbourne & Parke’s Istanbul office, agrees that the Turkish firms “are not as institutionalized as the US firms or the UK firms, and there’s a lot of demands on the senior partners so it’s really not possible for them to do the hands-on legal work partners at large institutionalized firms can do.”

Though coming at it from a client’s perspective, Spolitis at Sabanci Holding has also recognized that firms in Turkey sometimes provide insufficient attention to client matters. In her opinion, however, the
problem is the scarcity of skilled senior associates to work directly with clients. According to Spolitis, “you do not find the good and constructive work that you need to do to your clients.”

For their part, partners at smaller firms do not believe that the change of insufficient client attention should be laid at their door. Partner Emre Ozzer, of Gen & Temizer | Ozzer, for instance, smiles at the charge. “Actually, it’s completely the opposite for us. The challenge we have is that we spend so much time on transactions that we don’t do enough admin work, or business development. We just do deal work. We just do it as if we are still working in a big law firm.” And that’s deliberate. Our perspective is that being a boutique … the only way you can differentiate is a kind of personal service. From my perspective the disadvantage of the small firm is that they never get to know the partners. Unless it’s a mega-deal. But if you’re talking about mid-size sector deal which is where most of the sector is focused in Turkey, they don’t have time to do it, to focus on it. It doesn’t have to be that you’re not charging to support this kind of a broad base of lawyers. And I don’t mean smaller deals. I mean bigger deals. In Turkey last year, I think there were only like two or three public offerings of a significant size that got completed. Maybe three. Now, that’s not an environment that’s conducive to increasing fees. You need like 10, 15 of those to be able to say, “ok, fine, we’re only going to do this if you accept our fee proposal of 1 million dollars.”

Ultimately, any conversation about the Turkish legal market inevitably turns to the subject of the incredible downward pressure on fees in the country. And unfortunately, that’s one of those factors that are never going to go away in the future. Unless there is an increase of new firms in the market competing for the biggest deals.

Emre Derman, for one, feels that the Turkish market is “over-lawyered,” and says that “there just are not enough deals in Turkey. You need more deals to support this kind of a broad base of lawyers. And I don’t mean smaller deals. I mean bigger deals.”

In any event, in Ozzer’s opinion, like it or not, the fact is that there are smaller firms that are selling firms to a client is we have done your work in the past, we’re going to do the same, but for half of the price. That is the fee pressure issue.”

His counterpart at Baker & McKenzie in Istanbul, Dan Matthews, expresses exasperation at the fee proposals he’s expected to match: “Here, you’ll come across transactions where the winning bid for an important deal — which we can’t go near for 10 times that. But there are just enough local firms out there with people who left international firms to flood tenders with these kinds of proposals.”

Aye Yuksel speaks in similar terms: “A lot of young lawyers are spinning off the market doesn’t work that way.”

And not everyone believes it’s the smaller firms that undercut the larger firms. Anyone, Gem Davutoglu, the owner of the kind of “spin-off” firm that partners at larger firms criticize, explains that “overall I would say there is already a downward fee pressure from even the bigger shops. Sometimes they give fee proposals that even in my little shop I cannot agree to. Several times I’ve had this experience. Especially when you have their own explanation as to why this happens … but it happens.”

Emre Ozzer agrees, noting that on several occasions clients have cited a specific international firm in the market who had offered fees much lower than Ozzer was able to, perhaps, he surmises, in order to get a second deal from that same client. “On one or two occasions we’ve actually given fee quotes, and the client would say, ‘well, you know, [one of the international firms] has offered half of what you’ve just asked for.’ So I’m not sure … what I’ve heard is that big firms have offered very cheap fees, where they may get a significant margin on another transaction which they can kind of then cut on another deal.”

In any event, in Ozzer’s opinion, like it or not, the fact is that there are smaller firms that are selling firms for complex deals, it’s unreasonable to suggest that lawyers should pass up that business in favor of staying in larger firms that do not provide them with equity positions.

In any event, in Ozzer’s opinion, like it or not, the fact is that there are smaller firms that are selling firms to a client is we have

“I think after the latest developments in the market, I think difficult times are approaching us. And most probably some law firms will be forced to come together, to merge, to survive. It will be a tough time. I have survived a couple of crises in this country. Turkey will overcome all these crises. I honestly believe in that. However, some traditional law firms will see that they have to give a future to the next generation, otherwise they can not survive … Because if you don’t do so, someone else will give that bright future to your team. And then, as a result, you’re going to lose your team. If you lose your team, you’re going to lose your level of quality. And if you lose your level of quality, you are in the middle of the fee pressure.”

Conceives that the phenomenon of non-equity lawyers leaving firms to compete against them for top level deals “is something you wouldn’t see in the UK market, which is solidified. You just couldn’t set up a M&A practice that could compete with the Big Four firms. There’s just no way.” But he notes that in Turkey “clients are prepared to see different alternatives,” and that he and his colleagues left White & Case to start their own explanation as to how this happens … but it happens.”

Emre Ozzer agrees, noting that on several occasions clients have cited a specific international firm in the market who had offered fees much lower than Ozzer was able to, perhaps, he surmises, in order to get a second deal from that same client. “On one or two occasions we’ve actually given fee quotes, and the client would say, ‘well, you know, [one of the international firms] has offered half of what you’ve just asked for.’ So I’m not sure … what I’ve heard is that big firms have offered very cheap fees, where they may get a significant margin on another transaction which they can kind of then cut on another deal.”

In any event, in Ozzer’s opinion, like it or not, the fact is that there are smaller firms that are selling firms to a client is we have
will be eliminated, and some of them will unite.” He elaborates: “You know, the senior associates who opened their shops ... I think eventually they will unite, and they will have larger law firms. Right now you have 3-5 lawyer teams, eventually you will grow to 10-15 lawyers teams, and eventually it will grow to larger law firms.”

Emre Derman agrees that smaller firms need to merge to create efficiencies. “If you had a bunch of these firm coming together, then you’d have one partner dealing with management, administration, etc., and all of the others would have to do something, so they’d start refocusing on their clients, actually doing the legal work at which they’re very good. As opposed to trying to run the firms – at which they’re not necessarily all that good.

Cem Davutoglu also believes that, over time, the international law firms are either going to size down, or will close, because the unexpectedly low fee levels make larger presences unsustainable. And he also believes local firms will have to adapt as well: “What I see in the future is merger of local shops. They’re inevitably going to merge at some point.”

But it’s not happening yet.

5. Conclusion

Things never go so well that one should have no fear, and never so ill that one should have no hope. (Turkish Proverb)

At the end of the day, it may be unfair to expect a market still coming into its own to do so without fits and starts. And to some extent it’s a matter of perspective and outlook – for every Turkish lawyer bemoaning what he or she believes to be a problematic element of current practices, there’s another enthusiastic about the strides Turkey’s lawyers have made in the past decade and their prospects for the future. The hope, as always, that this debate will lead to better service for clients and a stronger legal markets in the years to come.
Intellectual Property and Trademarks

Interview: Przemyslaw Witas
General Counsel at CEDC Poland

CEEKM: You’re the GC for CEDC in Poland. How much of your time is spent on IP matters?

PW: CEDC is a brand-oriented company, as is the entire Russian Standard Vodka group that we are a part of. Our brands make us unique player on what is a very competitive alcohol beverages market. This is the absolute must for me to spend time on the IP matters. They take from 30% to 60% of my time, depending on the brief. However, there are days when it is 100%. This is a very interesting development for me; I joined CEDC as the senior Corporate/M&A person. That was my main profile after many years at Clifford Chance. During recruitment, I was told that IP would be on my agenda, but initially it was not a priority, as we focused on building the in-house legal function from scratch. I joined CEDC, originally the distributor, in a transition time, as they were becoming more and more brand-oriented. CEDC was built through acquisitions, with key brands inherited from a state-owned company. When CEDC wanted to expand its business, including exports, it became clear that
trademark issues had not been attended to properly by the previous owner. This is when IP entered my agenda.

I remember that after my first few months, management asked me to sort out the payment issue with the US IP counsel in New York. I got in touch with him and started to discuss different issues, and my eyes opened wider and wider. The conclusion was: There is a lot to do to protect our brands. Apparently, the cash flow opened the IP world for me. We reviewed relations with external IP counsel regarding our trademark portfolio in different jurisdictions. Shortly, we established an in-house IP function to handle issues from regular maintenance to ad hoc litigation. This is how my IP journey started and it continues.

I do not have the comfort to attend to IP issues exclusively, but indeed, I spend a lot of time on IP, managing key projects. It is a good example that lawyers must be ready to learn new things all the time. It is a challenge, but an enjoyable one!

CEELM: Is Poland’s protection of trademarks fairly robust compared to other European markets?

PW: Yes, Poland definitely provides a robust system. The awareness of IP rights continues to grow among businesses, the courts, and other authorities. The relevant legal environment is in place. IP protection at the customs level works very well in Poland. There are both administrative and civil law regulations that provide all necessary protection if used professionally.

On the civil law track, the Court for the Community Trademarks and Designs proceeds very efficiently, rendering fact-track and well-supported decisions, which are based on both but there is also a lot of improvement. Office proceeds relatively slowly, and this is where some frustration comes from. The Patent Office tends to be more conservative, as its decisions are linked to a simple trademark similarity examination, while the civil law courts are more open to a market-orientated approach and the business context of trademark infringement. The common issue across different industries is that trademark owners’ expectations with regard to the scope of protection are wider than to the ones established under the court or authorities’ decisions.

In recent years, the trademark authorities have tended to limit the scope of protection of registered trademarks. This concerns especially the complex, non-traditional trademarks consisting of various elements (figurative, three-dimensional). New conflicting trademarks are often found dissimilar and oppositions are dismissed. This is not something specific for Poland, as it happens in other jurisdictions across Europe as well.

As we have a significant international trademark portfolio, we also face some local issues in jurisdictions outside Poland. For example, the lack of publicly-used trademark databases maintained by local Patent Offices (a particular problem in Kazakhstan, for instance) or unusually lengthy application and maintenance procedures (such as in India, where our application filed in 2006 is still pending).

The concept (established in the US and other jurisdictions) of strict trademark use as a necessary requirement to obtain and maintain a trademark registration, although based on an “open market” concept, is also a challenge since the labels evolve and change and it is sometimes difficult to correlate product launch with mandatory procedures of local trademark offices.

CEELM: Have you had any particular problems registering or protecting CEDC’s trademarks, in Poland or anywhere else?

PW: IP protection is dependent on the subjective interpretation of some general rules by the courts and authorities – and this is where some frustration comes from. The Patent Office tends to be more conservative, as its decisions are linked to a simple trademark similarity examination, while the civil law courts are more open to a market-orientated approach and the business context of trademark infringement. The common issue across different industries is that trademark owners’ expectations with regard to the scope of protection are wider than to the ones established under the court or authorities’ decisions.

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CEELM: Do you see/expect any significant changes in IP practices, regulation, or legislation coming soon?

PW: The European Commission prepared a large revision of the Trademark Directive and Trademark Regulation. When implemented, Poland would need to shift from the current system of the ex officio examination of the relative grounds for refusal of trademark protection to the system which is used by the EU trademark authority, the Office of Harmonization of Internal Market (OHIM). There would be no ex officio examination of relative grounds (just absolute ones), and this kind of examination would be possible upon opposition or cancellation only.

As far as national legislation is concerned, there is a plan to revise our main IP act – the Industrial Property Law of 2000. The legislative works are at an initial phase but the current guidelines suggest important changes, such as the long-awaited introduction of the so-called letters of consent, streamlining of the procedures at the Polish Patent Office, and improving the use of electronic communications with the Patent Office.

CEELM: What would you like to see – what would help you sleep better at night – from an IP perspective?

PW: Generally, I would like all those in the market place to focus on their own inventions and play fair. Only fair competition brings value for the business and the consumers. Unfortunately, there are still those “smart” individuals around whose main agenda is to build on others’ ideas and assets. This is why the legal function is crucial for any brand-orientated business.

We need to protect IP assets continuously, otherwise we would end up with a diluted brand of no value meaning we can close the business. This is the general belief that we implement every day. When it comes to the legal environment, despite all the improvements made by the Polish legal system in recent years, I would be happy to see even faster proceedings along with more consistent, transparent, and predictable case-law.

We also need more understanding from the authorities when it comes to protection of reputable trademarks, to find a proper balance between the interest of a reputable trademark holder and the interest of other market participants. Holders of reputable trademarks make huge investments in their brands to keep a high quality level and a sophisticated image. Due to different case law still in place, there is lack of certainty on the part of the holders of reputable trademarks as to the real borders of protection, including which trademark infringement cases can be successfully pursued.
IP in Greece: Landmark Decision Orders Greek ISPs to Block Internet Access

With its landmark Decision No. 4658/2012, the First Instance Court of Athens called on Greek telecommunication companies to impose technological measures in order to block access to certain IP addresses which contain unauthorized content. For the first time in Greece, Internet Service Providers (ISPs) were ordered by a court to intervene and take measures against unauthorized online copyright activities. Decision No. 4658/2012 constitutes a well-reasoned and important judicial precedent for similar cases of copyright infringement taking place through the Internet.

According to the facts of the case, two Internet sites hosted in foreign countries (USA and Russia, respectively) provided their subscribers access to a variety of digitized copyrighted works (musical works, cinematographic movies, books etc.) without having obtained the appropriate licenses from the authors/right-holders of said works.

The local (Greek) Collective Management Organizations of the copyright holders and the holders of related rights, acting jointly, filed for injunctions before the One-Member First Instance Court of Athens against all Greek telecommunication companies, seeking to block access to the websites by Internet users.

The Court ruled that converting a copyrighted work to digital form, uploading it, and making it available through the URL were clearly infringing activities which prejudiced the rights of the copyright holders. By simply accessing the sites, Internet users were able to download and view the particular copyrighted works. It was the Court's view that the mere possibility that Internet users may, in principle, be granted against them.

The Court held that imposing restrictions to specific webpages does not constitute a constitutional right of freedom. It was particularly taken into account that the blocking of Internet access in the case before it was not general, but applied only to specific websites and infringing actions. Therefore, the imposition of technological measures against the ISPs was regarded as necessary to minimize the negative effect of the persons affected and proportional, as the benefit would be greater than the damage caused.

The technical experts' report provided by the applicants referred to two basic techniques of blocking access to the specific websites: (1) Internet-Protocol and/or domain-name-level access blocking; and (2) DNS-level access blocking. The use of these techniques, in combination, was regarded by the Court as an appropriate and effective technical measure which is easily achievable and has no adverse effects on the functioning of the Internet in general and the quality of the services provided to Internet users.

According to the Court's decision, specific blocking measures imposed on ISPs, following the issuance of a judicial decision as required by Greek law, are not in principle disproportionate to nor incompatible with fundamental rights such as a person's right to participate in the information society.

The position of ISPs in the operation of the Internet in general is crucial since they secure and provide access for Internet users to the entire online environment. Whether such access should be restricted or not, and under which exact circumstances, is a matter that must be examined by the judicial authorities always in context. It is left to the courts to achieve, in each and every case, an appropriate balance between the fundamental rights of the opposing parties. However, the Court of First Instance of Athens, with its decision, created a significant judicial precedent in favor of copyright and related rights' protection.

Greek copyright law provides a very severe and pro-copyright legal framework, according to which unauthorized copying, reproduction, and exploitation by any means or form, wholly or partially, of an original intellectual property work constitutes a civil and criminal offense. The fine for infringement of one to ten years and pecuniary penalty of EUR 3,000-60,000.

Experts Review

Because we wish to avoid repetition in the order in which we sort country submissions, the articles will be sorted by market, by arbitrarily-selected criteria, in this issue, the annual per capita consumption of milk, as of 2007 (Don’t ask!)
Experts Review

Knowledge of Earlier Mark as Factor in Bad Faith Determination of Trademark Applications in Lithuania

In Lithuania, a trademark registration may be invalidated based on Article 7 part 3 of the Law on Trademarks of the Republic of Lithuania, which provides that a trademark registration should be declared invalid if it becomes evident that the application for the registration of a mark was made in bad faith by the applicant.

In this article we will review how the factor of knowledge is treated by Lithuanian courts and the Appellate Division of the State Patent Bureau in deciding cases involving opposition to trademark applications on the aforesaid ground.

Based on the practice of the European Court of Justice (ECJ June 11, 2009 judgment in Case C-529/07 Chocoladefabriken Lindt and Sprüngli AG), when assessing the bad faith of an applicant all factors relevant to the circumstances of the case concerned prevailing at the moment of submitting the application should be taken into account.

Furthermore, according to the Supreme Court, the mere intention to fend a third person's rights to a trademark or prior used sign. The remedy of an exclusive nature (ultima ratio) when seeking to defend a third person's rights to a trademark or prior used sign. The trademark protection instrument cannot “cover” or “include” all other trademark invalidation grounds covered by Article 7 part 1 of the Law on Trademarks. SCI June 25, 2008 (judgment in Case No. 3bk-3-160/2008 UAB “Restoramin grupė” v. AB “Ragušas”).

In this article we will review how the factor of knowledge is treated by Lithuanian courts and the Appellate Division in deciding cases involving opposition to trademark applications on the aforesaid ground.

IP in Romania: Trademark E-filing Launched in Romania

The New Year brought good news for Romanian intellectual property counselors. The Romanian State Office for Inventions and Trademarks (SOIT) introduced the trademark E-filing system. Long awaited for a long period of time.

Although during the testing phase users did face certain errors when uploading pdf files into the system or when inserting certain specific information and documents required by law (which are of course also in SOIT’s possession), the system supports gif files when providing a graphic representation of figurative / combined trademarks.

The system also involves certain limitations resulting from the application of legal provisions currently in force in Romania with respect to the trademark registration procedure and the electronic signature. Thus, to obtain an assignment or trademark filing number by using the E-filing system, applicants or their representatives must provide the Office with the specific information and documents required by law (which are of course also required if the trademark application is filed via a standard paper form). Thus, applicants must send the printed application form issued by the filing system and bearing an original signature in the Internal Market (OHIM) and is aimed at reducing the time involved in filing national Romanian trademark applications by as much as 25%.

The E-filing system was developed using feedback from its “end users” – a test group represented by a number of Romanian trade- market professionals – who were invited to test the system and provide comments and suggestions with respect to possible flaws or other aspects to be addressed when the system is fully imple- mented. The pre-testing period, which ended on December 1st, 2013, was followed by the official launch of the system among all intellectual property professionals registered with the Romanian National Patent Chamber, extending the possibility to discover potential errors and gain feedback on the system from a larger audience of informed users. As of February 1st, 2014, the Office has planned to extend the use of the E-filing system also to the Regional Patent Chambers, afterwards to further summarize the results of all the reports about the system, both from “external” and “internal” users (including SOIT employees).

The system was designed to be used by anyone who has access to the Internet. It is only available in Romanian and does not require login user credentials. Although it most likely involves certain back-office safety and data protection features, once accessed, it is designed not to go offline or disconnect even if its use is inter- rupted for a long period of time.

One of the system’s greatest benefits is its 24-hour availability, which provides applicants with the opportunity to file trademark applications at any time, irrespective of SOIT working hours. In addition, the system allows users to locally save their drafted applications onto their personal computers for future use. Similarly to the electronic filing system available on OHIM’s web- site for the filing of Community trademarks, the Romanian system allows applicants or their representatives to upload any documents they wish to provide to the authority when filing a national ap- plication by way of the E-filing system, such as a Power of Attorney, documents regarding a priority right invoked in the application, or documents certifying that the official filing and examination fees have been paid at the time of filing. However, it should be noted that the system only supports gif files when providing a graphic representation of figurative / combined trademarks.

The system also involves certain limitations resulting from the application of legal provisions currently in force in Romania with respect to the trademark registration procedure and the electronic signature. Thus, to obtain an assignment or trademark filing number by using the E-filing system, applicants or their representatives must provide the Office with the specific information and documents required by law (which are of course also required if the trademark application is filed via a standard paper form). Thus, applicants must send the printed application form issued by the filing system and bearing an original signature
Temporary Injunctions in Industrial Property Rights Disputes

Temporary injunctions in industrial property rights disputes are regulated in Slovenia by the Industrial Property Act (ZIL-1). Industrial property disputes include disputes relating to infringement and validity of patents, marks, and designs, but not copyright disputes, which are regulated separately. For issues that are not specially regulated in the sectoral law, general provisions on enforcement and security of civil claims apply.

Slovenian courts are not bound by case law, yet in practice they often refer to precedents, which tend to divide temporary injunctions into two: Security temporary injunctions (the purpose of which is to secure the possibility of future execution) and regula-

tory temporary injunctions (the purpose of which is a temporary restriction of a relation in dispute).

In practice, one has to take into account that a procedure of issuing a temporary injunction at the District Court of Ljubljana can take several months, at least in more demanding cases. Once it is issued, the alleged infringer may file an objection with the same court, and if he fails, he may file an appeal with the Higher Court of Ljubljana.

Under the reformed rules of administrative jurisdiction that took effect on January 1, 2014, the Oberster Patent and Marken- senat (OPM) – the former competent authority of final review of decisions of the Austrian Patent and Trademark Office – was dissolved. Legal review in the second instance passes now to the Higher Regional Court of Vienna (Oberlandesgericht Wien) and in the third instance to the Supreme Court (Oberster Gerichtshof). Thus, legal review of decisions of the Austrian Patent and Trademark Office is now provided in second and third instances by ordinary courts. The idea behind this solution was to avoid conflicting decisions by requiring Sings which do not contain an exact description of the goods or services in question. A sign is descriptive and thus not registrable if there is a direct relationship between the sign and the goods or services in ques-
tion to enable the relevant public to immediately perceive, without further thought, a description of the characteristics of the goods or services, but only suggest or evoke the characteristics of the goods or services in question are not descriptive, and thus registrable.

Experts Review

Marija Musec

Interim Injunctions in IP Rights Cases in Latvia

Disputes between owners of intellectual property rights and potential infringers of those rights inevitably arise because, on the one hand, the part of the IP-right holders has to take swift actions to stop potential infringement as soon as possible; in relation to the infringement of a potential infringer, as the harm that may result. But litigation proceedings can drag on for several years before a final judgment is adopted on whether the infringement of the rights of the IP owner has indeed taken place. Therefore, to ensure that right-holders can achieve immediate termination of infringement without awaiting a decision on the substance of the case, legislators in Latvia have allowed them to seek interim injunctions, whereby IP-right-holders can apply to have the court order alleged infringers to cease the alleged infringement on a provisional basis.

The interests of a rights-holder must however be balanced with those of a potential infringer. Indeed, an interim injunction is a potent legal tool which can make a potential infringer unable to market a particular product for several years. It is easy to imagine how interim injunctions could be abused to harm a legitimate competitor. Therefore, a careful balance has to be struck in the application of interim injunctions.

In Latvia, the legal concept of interim injunctions in IP cases was introduced into Latvian Civil Procedure in 2007 as part of the implementation of EU Directive 2004/48/EC into Latvian law. This law authorizes a court to apply an interim measure (interim injunctions) upon a request from a rights-holder, where there are sufficient grounds to believe that infringement has occurred or is likely. The following provisional safeguards are available to the rights-holding claimant: (1) the seizure of movable property; (2) the recall of infringing goods or services; (3) the prohibition of or against the application of the requested interim injunction. The first two limbs are assessed in accordance with the prima facie standard, whereas the third may arise if there is ambiguity as to who has earlier rights – claimant or defendant – or if the defendant has challenged the validity of the claimant's IP rights.

In relation to the third limb, the Supreme Court explained that "significant extra costs and inconvenience may arise if there is ambiguity as to who has earlier rights – claimant or defendant – or if the defendant has challenged the validity of the claimant's IP rights."

Finally, if the first three limbs have been answered in the affirmative, the fourth limb requires the courts to balance the interests of the parties and society in general. This assessment may involve taking into account the effect of the interim relief on the business of the parties, the availability of the relevant product to consumers in the market, etc.

Overall, the introduction of the four-step test for assessing whether to issue an interim injunction demonstrates that the Supreme Court in 2012 introduced a cumulative four-step test for assessing whether reference can be made to the EPC for application of interim injunctions. This test includes the following: (1) the potential harm is insignificant or arguably can be remedied by the defendant in case the claim is satisfied on the merits; (2) the harm for which the interim injunction is sought is not caused by the defendant in case the claim is satisfied on the merits; (3) whether sufficient grounds exist to believe that the claimant has the relevant intellectual property rights; (4) whether sufficient grounds exist to believe that the defendant has the relevant intellectual property rights.

Despite this, the last year Poland was one of three member states (along with Bulgaria and Romania), that refused to sign the agreement establishing the Unified Patent Court in the European Union. The Unified Patent Court is widely considered a step towards the development of a unitary patent system in the European Union, which would inevitably have a significant economic impact on the European market as a whole. Under current rules, in order to establish patent protection across the European Union, an entrepreneur can either file for patent protection in each and every member state or file for a European patent – but then must still go ahead and validate the patent in all member states. These requirements come along with significant legal and financial costs, hindering the process. The proposed Unified Patent Court, however, would be a single right applicable in the vast majority of the European Union, and thus would eliminate the time-consuming and costly procedure required today. However, the Polish government, which initially promoted the idea of a unitary patent in the European Union, came to the conclusion that as currently conceived, a unitary patent would constitute a risk for Polish entrepreneurs, who rarely can compete with their Western colleagues in terms of expertise and resources needed to defend intellectual property.
Experts Review

Bosnia and Herzegovina

Introduction of the Complaint System in Trademark Registrations

In the course of continued efforts to join the European Union and the related necessity of harmonizing its legislation with EU law, Bosnia and Herzegovina (BiH) has, since the execution of the Stabilization and Association Agreement with the EU on October 16, 2008, adopted a set of new laws. One of these laws is the Trademark Law (in force as of January 1, 2011). Prior to the adoption of the Trademark Law, trademark and other industrial property issues were regulated by the BiH Law on Industrial Property, which was not wholly consistent with EU law. One of the main novelties of the Trademark Law compared to the Law on Industrial Property was the introduction of complaints in the course of trademark registration procedures.

According to Article 4 of the Trademark Law, a trademark may protect a sign which may consist of words, including personal names, drawings, etc., “which is capable of distinguishing identical or similar goods or services in the course of trade and which may be represented graphically”. Trademarks are registered with the Institute for Intellectual Property of BiH (Institute). However, a sign shall not be registered as a trademark if there are absolute reasons, e.g. if a sign is contrary to public order or morality; if a sign may not be represented graphically; (Absolute Reasons); or relative reasons, e.g. (a sign which is identical/similar to an existing trademark for similar goods or services, etc. (Relative Reasons).

Accordingly, once it receives a trademark application, the Institute examines whether it fulfills all formal requirements and whether there are Absolute Reasons for refusal of the trademark application. If the Institute finds that the trademark application fulfills all formal requirements, the subject of the trademark application shall be published in the official gazette of the Institute. At that point any interested party (e.g., a holder of a pre-existing trademark, etc.) may submit a written opinion, arguing why the trademark application triggers Absolute Reasons, and thus should not be registered. This right expires 3 months from the day of publication of the trademark application in the official gazette. If it receives an opinion from a third party within that time, however, the Institute may forward it to the applicant and ask for a response to it. After the receipt of the trademark applicant’s response, the Institute decides on the discretion on registration or refusal of the trademark application.

The Trademark Law also grants a right to interested parties to object to the registration of a new trademark on Relative Reasons. Hence, an interested party has a right to submit a complaint (prigovor) within the same 3 month period as that applicable to Absolute Reasons. In this case, an interested party may submit a written complaint to the Institute containing an explanation – and supporting evidence, if any – why a trademark application triggers Relative Reasons. Subsequently, the Institute shall examine whether the complaint fulfills all formal requirements set out by the law. If the complaint does not fulfill these requirements the Institute shall reject the complaint. If the formal requirements are met, the Institute forwards the complaint to the trademark applicant, which must submit its response within 60 days as of the day of receipt of the complaint. Should the trademark applicant fail to submit its response, the Institute shall reject its trademark application. If the trademark application does respond, however, the Institute decides the matter by registering the trademark, rejecting the complaint (partially or in whole), or rejecting the trademark application. In any case, any interested party may file an appeal within 15 days from the day of receipt of the decision. Appeals are submitted to the Institute’s Board of Appeal.

In addition to the increasing the legal protection for trademark-holders, other developments, which also apply to EU countries, have led to a decrease in the amount of time needed for processing trademark applications. This system of complaints is already common in EU countries, and these newly-introduced changes to applicable EU trademark regulations. Although it is too soon to fully analyze impacts of the complaint system in BiH, it appears that this system has led to a decrease in the amount of time needed for registration of a trademark. Due to the increase in the number of complaints, sound practices in recent years, this may lead to fewer civil court disputes related to trademarks, and thus increased legal protection for trademark-holders.

In conclusion noting that, besides the described complaint procedure, the Trademark Law also introduced some other advances, such as provisions related to “disclaimers” (voluntary limitation of the scope of protection of the trademark), more detailed regulations on the international registration of a trademark, the procedure of registration changes, transfers, licenses, pledges, and so on.

Experts Review

Czech Republic

The New Czech Civil Code and IP Law: Any Reason for Concern?

The beginning of 2014 in the Czech Republic was marked by one of the most significant legislative changes in decades when the new Civil Code (“NCC”), Act on Business Corporations and Act on Private International Law came into force, in the process changing more than 200 laws. The NCC was adopted after several years of discussion and preparation, and is designed to extinguish the socialist basis of the former 50-year Old Code and return to the day of publication of the previous legal framework, as well as to reflect the needs of modern society. The NCC and the Act on Business Corporations change almost all aspects of the Czech Civil Law, including both Contract Law and Companies Law. This article, however, aims to look at changes the NCC brings to Czech Intellectual Property (“IP”) Law.

First, it is necessary to say that the NCC does not actually affect substantial provisions of individual IP laws. Conditions for obtaining IP rights and their validity, as well as other requirements are met, however, be certain changes in IP licensing and, where relevant, IP ownership, which we want to flag in this article.

Changes in IP Licensing

The NCC removes the old dichotomy and frequent overlaps between rules contained in the (old) Civil Code and the (old and now abolished) Commercial Code. This two-track approach plagued Czech IP law. For example, copyright licenses were governed by the Copyright Act, while licenses for almost all other IP rights were governed by the Commercial Code. From January 2014, there will be just one act applicable to all license agreements regardless of what type of IP right is involved.

That said, the NCC still contains some specific provisions dealing with the licensing of copyright, so it is fair to say that the old divergences between copyright and other IP licenses have to a large extent been preserved although the regulation is now contained in a single act.

Among the changes, it is worth mentioning that the NCC allows a license to be granted without a payment of royalties (whether actual or symbolic) was a necessary element of license agreements under the Commercial Code. The NCC further improves the position of the licensor in situations where the licence is entitled to enforce IP rights, as the NCC imposes on the licensor a general obligation to provide the licensee with necessary assistance. In the “old days”, it was the licensor who had to provide assistance to the licensor in connection with enforcement of rights. Another change that may prove particularly interesting is that authors may no longer waive their rights to equitable supplementary royalties to which they are entitled if the actual income from exploitation of the copyrighted work becomes disproportionately large.

The NCC also removes the distinction between the legal regulation of business (commercial) and non-business (civi) contracts in relation to contracts for work which are often used as the legal basis for creation and development of copyrighted works (especially software). The NCC explicitly recognizes a new type of contract, “right for work resulting in an intangible result”, which was previously missing.

General Changes in Contract Law

Despite the fact that the NCC directly relating to IP are rather limited, there are numerous changes in general Contract Law that will certainly also affect IP licensing. It is beyond the scope of this article to discuss these changes in detail, but for example the NCC now recognizes the concept of pre-contratual liability, it permits limitation of liability provisions which were previously possible only in relationships governed by the Commercial Code, and it introduces the possibility of assigning entire contracts, not just individual rights or obligations. Other changes involve slightly different compensation of damages, statutory limitation periods and other areas. The NCC sets out a number of general principles that will likely change the way in which future IP disputes will be resolved, including putting greater emphasis on the freedom of parties to contract while protecting consumers – generally the weaker contractual party – and putting less emphasis on formal requirements.

As with adoption of any new legislation, the crucial issue is what effect the NCC will have on legal relationships established before it came into force. In this regard, the NCC provides that apart from issues such as personal status, property rights, and family law, it only applies to rights and obligations established after its 2014 entry into force. The NCC will however impact on IP joint ownership, in particular on the right of first refusal over ownership. According to the NCC, the right of first refusal will cease to exist on January 1, 2015. From then on, shares in IP rights will be freely transferable.

New Approach to Unregistered IP Rights

Can but not least, we would like to emphasize that the NCC brings a new and broader meaning to the concept of a “legal thing.” Although highly theoretical, this conceptual change may bring better protection and easier handling with those non-registered or quasi-rights such as know-how, domain names, goodwill etc.

Hungary

Intellectual Property Overview

1. Copyright

The Hungarian Copyright Act (Act LXXVI of 1999 as amended) has practical importance in all categories of works as well as to subject-matters that are protected by related rights in the European Union. A work shall be either literary, scientific, or artistic. A work is entitled to copyright protection on the basis of its individuality and original nature deriving from the intellectual activity of its author. In the Hungarian system of assigning contracts, “author’s right” is to be understood as an author’s right and all other protectable subject-matters are protected under the umbrella of related rights, which in turn covers neighboring rights (the protection of performances, sound recordings, and radio and television programs) and the sui generis protection of databases.

The Copyright Act provides for a term of protection of 70 years for authorial rights and 50 years for neighboring rights (and 70 years for published sound recordings).
Economic rights of authors can be licensed, and in some cases can be assigned, during an owner’s lifetime, with regards to software, database, employee for works, and works created for and for publicity purposes, as well as collective works. Economic rights in works created for or used in a film - with some exceptions - can be and are typically assigned to the film producer.

Licenses can be granted exclusively or non-exclusively, for a definite or indefinite term, with or without any geographical restriction for specified or all modes of exploitation, with or without a right to sub-license. These permissive rules are aimed at preserving the equilibrium between parties to a licensing agreement, e. g. by providing protection against expropriation of the same legal standing as their Hungarian counterparts except for the procedural obligation that foreigners appoint a Hungarian entity on whom court documents can be served.

The Copyright Act uses the term “service works” for works created by employees in the course of their employment duties. A work qualifies as a service work if the creation of the work was an employee’s obligation, and the employee performed the work in conformity with the employee’s labor responsibilities. The invention of a patentable industrial design or a design patent applications to allow third parties to take necessary action in order to have the new design registration system operates as a defensive tool to maintain their position on the market. The current Register of Patents for Industrial Designs in Ukraine contains a huge number of humorous patents, from articles such as open-source software, to household items like bottles with medications, which have been in use worldwide for centuries and are known to every average person from their childhood, to the well-known and distinguishable designs of such items as Samsung and Apple tablets. All this has become possible due to the “user-friendly” design registration system in Ukraine, which does not provide for a substantive examination (the Patent Office does not check whether a design is registrable), and thus whether it is new and does not infringe upon a third party’s rights, and does not require publication of filed applications and decisions on grants of protection. There are also no provisions on post-grant “oppositions” and objections which can be filed by third parties during the Patent Office’s examination.

As a result, the kind of non-patentable designs described above are regularly granted protection, and the owners of these patents are granted the exclusive right to prohibit others using the design without the patent holder’s authorization, and the importation, use, and exportation. Those who suffer from such abuses can cancel these patents only in court, which is inefficient, costly, and time-consuming.

The current Intellectual Property Registration (IPR) system in Ukraine, particularly the industrial design registration system, creates a legal framework that appears to encourage - or at least does not discourage - the registration of non-patentable industrial designs and recording such patents in the customs IPR register, which enables their owners to prevent importation of competitors’ products, and provides them with valuable market information, particularly regarding competitors’ import volumes.

These aren’t the only problems stemming from the existing system. Due to the aforementioned imperfections of the design patent system, fighting with its abusers can be essentially endless. For instance, while there may be an invalidation action pending before a competent court, the owner of the challenged invalid patent may file an identical application for exactly the same design and obtain a new patent. Thus, an interested party that is seeking invalidation of the previous patent before a court will have to proceed with an entirely different court action in order to have the new patent cancelled as soon as the court renders its judgment in the previous case, and so on, ad infinitum.

The existing design registration system in Ukraine and unfair activities stemming out of it have already caused a chain reaction, in which the design patent system is used as a tool to create obstacles for other market subjects, proceed in exactly the same manner by securing knowingly invalid patent rights and registering them in the customs IPR register as a defensive tool to maintain their position on the market. Consequently, the State Register of Industrial Designs of Ukraine currently contains a whole range of identical non-novel (i.e. not novel) industrial designs which have also been recorded with customs. This undermines the very basis and purpose of the IPR registration system, as well as the main goals and objective of IPR border measures.

In our practice, we recommend that companies challenge such patents in court and present claims for damages, where applicable. Furthermore, to resolve this issue at its roots, respective revisions to the laws, rectifying the situation, have been worked out and submitted to the Ukrainian parliament, which is due to be discussed at the next session. As a result, the new Russian judicial system appears to encourage - or at least does not discourage - the registration of non-patentable industrial designs and recording such patents in the customs IPR register, which enables their owners to prevent importation of competitors’ products, and provides them with valuable market information, particularly regarding competitors’ import volumes.

It is accurate to say that IP rights holders were thrilled at the news of the Russian IP Court’s establishment, primarily as it indicated the need for formal special forum for IP dispute resolution. Observers were skeptical of the state’s ability to meet this challenge, given the need to allocate resources and select candidates for IP judges. However, the Russian state surprised and delighted pessimistic observers, and the Russian IP court has become an integral part of the Russian court system with a special role and competence in IP dispute resolution.

Currently the majority of IP disputes in Russia are heard on the merits by the Russian state commercial (“arbitrazh”) courts and courts of general jurisdiction. Simultaneously, for specific types of actions Russian administrative bodies continue to serve as appropriate forums, such as the Federal Antimonopoly Service (FAS) for unfair competition actions, and the Chamber for Patent and Trademark Disputes (Chamber) for patent and trademark invalidity actions.

The Russian IP Court’s competence currently extends to the following cases: those concerned with termination of legal protection for objects of IP rights (invalidity actions); those concerning patent holders; and those concerning early termination of trademark protection as a result of non-use.

The Russian IP Court also serves as a court of second appeal for cases considered initially by the IP court as a court of first instance (first appeals are heard in the Russian state commercial (“arbitrazh”) courts, and for IP disputes considered by the Russian state commercial courts of first and appeal instances.

Judging based on public sources for the period from July 2, 2013, to the end of January 2016, the Russian IP Court handled more than 300 of the 500 cases filed (with approximately 200 of these rulings made in its capacity as court of second appeal, and the remaining 100 in its capacity as court of first instance). About 30 of these rulings cancelled the decisions of the lower courts in instancess, while 20 others were reversed, and one or the other court validated, the decisions of the lower courts for review, and in several other instances the decisions of the lower courts were changed or reversed by the Russian IP Court itself.

When returning the cases to the lower courts, the Russian IP Court refers the cases for procedural non-compliance by the lower courts and, particularly, to improper examination of evidence or the failure to obtain additional evidence considered vital for proper case consideration. For example, in patent disputes the Russian IP
Experts Review

Kosovo

The State of Play in Kosovo

Despite being the least developed country in Europe, Kosovo, offers a decent and competitive investment environment. To enable a smooth transition from the previous economic and legal system, the Kosovo Government has implemented a number of economic, legal and institutional reforms. As a result, the World Bank rated Kosovo as the most dynamic reformer among Central and Southeast European countries in its Doing Business Index 2013 report. The Kosovo Investment Promotion Agency’s statistics show that investments, mainly in the real estate, energy, financial services, transport and telecommunication, construction, production, and mining sectors, have made Kosovo become the third country in terms of investment in the SEE region. The Kosovo Investment Promotion Agency’s statistics show that investments in Kosovo were mainly in the real estate, energy, financial services, transport and telecommunication, construction, production, and mining sectors, which make Kosovo become the third country in terms of investment in the SEE region. The Kosovo Investment Promotion Agency’s statistics show that investments in Kosovo were mainly in the real estate, energy, financial services, transport and telecommunication, construction, production, and mining sectors, which make Kosovo become the third country in terms of investment in the SEE region.

Administration of IPR

Industrial property rights in Kosovo are acquired through registration with the IP Agency. Unregistered well-known trademarks can be claimed against the registration of confusingly similar trademarks. However, enforcement of unregistered well-known trademarks before competent courts is no longer possible. Because Kosovo is not a member of the World Intellectual Property Organization (WIPO), it is not possible to extend an International Registration to Kosovo, and it is therefore strategically important that owners register their marks with the IP Agency.

Enforcement

The Kosovo Customs and the Market Inspectorate are the institutions responsible for administrative enforcement of IPR. The Market Inspectorate will review public announcements as provided by the Law on Customs Measures, acting in cases of import, export, transit, customs warehouses, inward processing of products, customs supervision, and temporary importation placed in the free customs zone. Most infringing goods, particularly counterfeiters, are imported. Thus, filing a Customs Watch Application with the Kosovo Customs is the recommended action. The Law on Customs provides a fast-track procedure for destruction of detained goods, making it worthwhile for the client to invest time and money into enforcement.

On the other hand, the Market Inspectorate has, among other things, competences to inspect Kosovo commercial and production premises in order to ensure consumer protection, industrial property rights protection, and copyright protection.

IPR-related crimes are also punishable under the Criminal Code. The Kosovo Police, the State Prosecutors’ Office, and local courts with territorial jurisdiction are responsible for enforcing IPR in cases concerning intellectual property infringement, including copyright violation. Only a small number of cases actually gets to the court, while the remaining infringement cases are settled through alternative dispute resolution mechanisms, mainly negotiations.

Looking Forward

The adoption of the IPR Strategy 2010-2014 showed that the Kosovo Government understands that weak IPR protection in IP-sensitive areas discourages FDI, and that low IPR protection leads foreign direct investors to focus on distribution rather than local manufacturing. Even though not bound by any treaty, Kosovo has established very good IPR legislation. Institutional progress was also noted and acknowledged in several international reports. However, challenges remain enforcement of IPR, the low level of public IPR awareness, building of technical and professional capacity for IPR administration and enforcement institutions (including specialized courts), revision of Kosovo’s IPR-related legislation to incorporate international standards, and ratification of IPR-related international conventions.

Overview of Moldovan IP Legislation and Procedures

The Republic of Moldova, a former USSR country, became an independent state on August 27, 1991. Subsequently, the Republic of Moldova has become a member-state of the United Nations, a member of the Commonwealth of Independent States (CIS), and a full-fledged member of the international community. Currently, the Republic of Moldova promotes the EU integration vector in its external policy, and it initiated the EU Association Agreement on November 28, 2013.

As a member of international and European societies, the Republic of Moldova has always participated in the implementation of an EU legislation, including those applying to intellectual property ("IP"). Currently, the Republic of Moldova is a party to the Paris Convention for the Protection of Industrial Property (which it signed onto in 1993), the Madrid Agreement Concerning the International Registration of Marks (1993), the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1977), and many others.

Based on its international undertakings and for the purposes of better administration and application of IP legislation, on September 13, 2004, the State Agency for Intellectual Rights Protection and the State Agency for Copyrights merged into one entity. The State Agency on Intellectual Property of the Republic of Moldova ("AEGPI") was established, which is responsible for registration, supervising, and enforcing compliance with the provisions of applicable IP legislation. In addition, AEGPI represents Moldova in its relations within the international treaties it is party to, as well as promoting and supervising the issuing of new IP legislation and any necessary changes to relevant IP laws.

Since AEGPI’s establishment, the following key IP legislation has been passed: (1) The Law on Protection of Industrial Designs no 161-XVI dated July 12, 2007. The framework piece of legislation that governs the procedure of creation, criteria of novelty, registration, and protection of industrial designs; (2) The Law on the Protection of Trademarks and Protection of Appellation of Origin no 95-L dated November 29, 2008. Providing for the criteria of existence, novelty, and the moment of apparition of a right over a trademark, their registration, the period of protection, as well as rights and obligations of a trademark owner and third parties; (3) The Law on the Protection of Inventions no 50-XVI dated March 7, 2008. Providing the criteria an invention has to comply with to be protected, the procedure, terms and conditions of registration of an invention, as well as the limitation period for an invention owner; (4) The Law on the Protection of Industrial Design no 139, dated July 2, 2010 (the most recently approved law). Transposing the provisions of EU directives governing copyright protection.

As the Republic of Moldova is a member of various international IP organizations and a party to key international IP treaties, the procedures for the registration and protection of IP in Moldova are clear, transparent, and in full compliance with applicable international standards. For example, the procedure for registering a trademark in the Republic of Moldova usually does not exceed 12 months from the date of filing, with basic registration fees of approximately EUR 450 (they vary depending on the type of trademark and classes of products); the term of protection of a trademark is for 10 years from the date of its registration, while its renewal is subject to a separate filing procedure to be initiated at least 6 months prior to the initial registration’s expiry date. The holder of an IP right may be declared a person entitled to its exercise only if he/she/it is a resident of the Republic of Moldova.

Applicants who are non-residents (i.e. foreign individuals or legal entities) may only register IP rights via authorized Moldovan
Domains with a .BY domain name have already been involved in trademark infringement cases. This is due to the fact that unauthorized trademark users who receive such messages to be sent to them. This option helps trademark owners of the trademark or by any person to whom the right to use a trademark on the Internet (including domain names) by the defendant is real. If there was a case against him, however, the koshty site was deleted. Nonetheless, the plaintiff asked the court to prohibit the defendant's use of the domain koshty. The Chamber acknowledged the infringement of trademark rights, although Trademark Law does not expressly list "use in domain name" among potentially infringing actions, but only among forms of trademark use by the owner.

The Chamber's decision was based on the similarity of services in the KOSSH trademark registration (class 35) and those offered at the websites sushi and pizza to which domain koshty was redirected, as the services coincided in purpose and use and were meant for the same consumers.

One of the most distinctive features of Belarusian trademark protection concerns registration of a domain name after it has been eliminated from the domain register. In the Internet as an additional domain name for the sites sushi.by and pizza.by that offered food delivery services (mainly sushi and pizza), the action was filed after 2010. According to Article 20.1 of the Belarusian Trademark Law, use of a domain name that is identical or confusingly similar to registered trademarks up for auction is prohibited. The technical administrator has the right not to put domain names into use. Also, the Serbian IP Office has set up an Education and Information Center which organizes a number of seminars and workshops oriented at IP professionals organized in association with the Serbian IP Office.

With regard to cases of counterfeit goods in transit, the Supreme Court clarified that use of trade mark for such purposes shall occur only if the goods are subject to commercial transactions ultimately targeting consumers in the European Union (i.e. in principle transiting countries or their fields of influence).

It was further clarified that the signs which are similar to other trade marks shall be punishable as trade mark infringement offenses under Art. 172b, i.e. criminal penalties are not limited to only cases involving signs that are identical to registered marks.

3. No trade mark infringement crime shall be committed when dealing in genuine products (e.g. in cases of parallel imports).

4. The judges clarified that in the case of “business activity” shall exist in cases where the perpetrator has used the trade mark with the purpose to obtain economic benefit from such use. The perpetrator does not necessarily need to be a registered merchant or act through registered business entity as long as the purpose of use is economic benefit.

5. Another very important clarification from a practical perspective involving the question of whether the trade mark should be held criminally liable for trade mark infringement in cases where the use (e.g. the import of counterfeit goods) was performed through a corporate entity. The Supreme Court stated that perpetrator of trade mark infringement crime in cases where the trade mark was used by an entity as a natural person who has acted on behalf of the entity in a way to perform the illegal use.

The final two points made by the Supreme Court of Cassation are probably the most important, as they are related to two major problems which trade mark holders have faced in seeking protection of their intellectual property rights in criminal cases – namely, to prove that they have suffered material damages and to justify their participation in a criminal trial as civil plaintiffs. In these respects the Supreme Court of Cassation stated that:

Bulgaria

Landmark Supreme Court Decision on Trademark Infringement Crimes in Bulgaria

On May 31, 2013, the Criminal Division of the Bulgarian Supreme Court of Cassation passed Interpretative Decision No. 1 on the application of Art. 172b of the Penal Code (the “Decision”). Article 172b is one of the few IP crime provisions in the Bulgarian Code, and it penalizes the infringement of rights involving trademarks, industrial designs, plant varieties, animal breeds, or geographical indications. More specifically, Art. 172b provides that a person who uses one of the aforementioned objects of intellectual property in his or her business activity without the consent of its holder shall be penalized by a period of imprisonment ranging from 1 to 5 years and a fine of between BGN 2,000 and BGN 5,000 (roughly between EUR 1,000 and EUR 2,500).

The Decision became necessary as a result of contradictory court practices regarding implementation of Article 172b by law enforcement authorities and the criminal courts in the past. There were many open issues and grey zone areas in its application, including which person could qualify as perpetrator where the trade mark was used by a corporate entity and not by a natural person (e.g. not the legal entity), various issues related to the awarding of damages, and others.

In its Decision the Supreme Court reached several important conclusions in relation to criminal trademark infringement. Below is a brief summary of the main points and conclusions:

1. The Supreme Court expressly confirmed that the term “use of trade mark” shall have the same definition as in the Bulgarian Marks and Geographical Indications Act. The latter definition closely follows the well-known definition of “trade mark use” under the EU Trade Marks Directive.

With regard to cases of counterfeit goods in transit, the Supreme Court clarified that use of trade mark for such purposes shall occur only if the goods are subject to commercial transactions ultimately targeting consumers in the European Union (i.e. in principle transiting countries or their fields of influence).

It was further clarified that the signs which are similar to other trade marks shall be punishable as trade mark infringement offenses under Art. 172b, i.e. criminal penalties are not limited to only cases involving signs that are identical to registered marks.

3. No trade mark infringement crime shall be committed when dealing in genuine products (e.g. in cases of parallel imports).

4. The judges clarified that in the case of “business activity” shall exist in cases where the perpetrator has used the trade mark with the purpose to obtain economic benefit from such use. The perpetrator does not necessarily need to be a registered merchant or act through registered business entity as long as the purpose of use is economic benefit.

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Serbia

The State of IP Law in Serbia

Considering the country’s geopolitical position and historical background, it is safe to say that Serbia is still the leader in Intellectual Property development and awareness in the central Balkan region. This is not surprising, as the Serbian IP Office covered the entirety of the former Yugoslavia prior to its dissolution. In the 1990s, while the IP Office was running in Belgrade, its counterparts in the other former Yugoslavia countries were only set up after they gained independence. A general overview of IP legislation in Serbia shows that the legislation is new and has been harmonized in accordance with EU legislation and practices. The Basic and Amending Intellectual Laws were adopted in 2009 and 2011, respectively, and amended in 2012 and 2013. Both Laws have proven themselves as solid foun-
Turkey

How to Register an Interior or Exterior Store Design in Turkey?

Companies wishing to obtain legal protection for their interior or exterior store designs in Turkey are faced with a choice: Whether to (1) Register the design as a trademark; or (2) Register it as an industrial design. Many jurisdictions around the world, including the United States, provide stronger trademark protection for store designs. In Turkey, however, trademark law as applied to store designs is unsatisfactory and greater protection may be found under the industrial design registration process. However, this option has some drawbacks as well, and companies should consider the relative merits of each alternative.

In Turkish law regarding the registrability and protection of non-traditional trademarks is still in flux. According to Article 5 of Trademark Decree Law No. 556, “A trademark, provided that it is capable of distinguishing the goods and services of one undertaking from the goods and services of other undertakings, may consist of all kinds of signs being represented graphically such as words, including personal names, designs, letters, numbers, shapes of the goods or their packaging and similarly descriptive means capable of being published and reproduced by printing.” Based on this provision it appears that the interior or exterior design of a store can be registered as a trademark, however, in practice many questions remain, including the level of distinctiveness required in order to obtain registration and the level of protection that needs to be provided. The distinctiveness test for three-dimensional trademarks differs from that for two-dimensional marks. In princi-

6. Trade mark holders as a rule may suffer damages as a result of the trade mark infringement and such damages are subject to compensation. With this, the questionable position taken by some law enforcement authorities and judges that companies should in each and every case prove actual damages as a result of the crime should no longer apply; and

7. It is the trademark holder who is the injured natural / legal person and who has suffered damages as a result of trade mark infringement, off course, and it is the trade mark holder who shall be entitled to participate in criminal proceedings as a civil plaintiff.

The Interpretive Decision gives mandatory guidance for application for the trade mark crime provision by law enforcement authorities and criminal judges. The issuance of that Interpretative Decision brings high expectations for improvement in the speed and results of IP crime prosecution in Bulgaria.

Macedonia

Denial of of Trademarks Registration Application for Generic Words in Macedonian

Most applications for the granting of trademarks filed in the State Office for Industrial Property in the Republic of Macedonia are for words, the generic concepts are words which do not merely distinguish one producer or performer of a product or service from another but actually describe the product or service itself, and therefore are not entitled to trademark protection.

Examples in the praxis of applications for trademarks for terms which have been determined to be “generic” and therefore not subject to protection in Macedonia include the following:

- Folic Acid is a term in Class 5 of the International Classification of Goods and Services. The State Office for Industrial Property rejected the application for trademark because it signifies only the kind of the product and does not serve to designate the kind of product and does not necessarily distinguish one producer from another and does not serve to designate the kind of product and does not necessarily distinguish one producer from another and does not serve to designate the kind of product and does not necessarily distinguish one producer from another. Decision No. 10-6477/3, on November 11, 1999.
- Plastelin is a word in Class 1 of the International Classification of Goods and Services. The State Office for Industrial Property rejected a request to trademark Plastelin because it is a generic term for a type of plastic product and does not serve to designate the kind of product and does not necessarily distinguish one producer from another. Decision No. 10-3206/3, on August 20, 2001.
- Cream Plus is a term in Class 29 of the International Classification of Goods and Services. The State Office for Industrial Property rejected the trademark application for Cream Plus because it is a generic term for a type of cosmetic product and does not serve to designate the kind of product and does not necessarily distinguish one producer from another. Decision No. 10-3206/3, on August 20, 2001.
- Yogurt Plus is a term in Class 29 of the International Classification of Goods and Services. An attempt to trademark this term was rejected by the State Office for Industrial Property because it could create confusion in the market. The appended Plus, by itself, is not sufficient as a distinctive character of the mark because it is unclear whether it refers to the fact that the products for which the protection is being sought contain more yogurt than usual. Decision No. 10-3115/4 on May 27, 2004.
- Strup Od Belog Szeja in Class 5 was denied trademark protection by the State Office for Industrial Property as this mark defines the type of product and is usual for designation of this category of products. It could not be accepted because of a lack of distinctive graphic elements for differentiation in the trade. Decision No. 10-5297/3 on 23/09/2002.

In Macedonia, a word can be registered as a trademark and offered protection of the law only if the application satisfies Article 124 of the Macedonian Law on Industrial Property (itself in compliance with Article 15(3) of the TRIPS Agreement). This law states that: each mark must be distinctive and capable of being published and reproduced by printing; the goods and services of one trade mark from the goods and services of another may be registered as a trademark.

This definition applies to words such as personal names, numbers, figurative elements and combination of colors, as well as each combination of those marks. All of these terms can be registered as trademarks in Macedonia.

However, in Macedonia as elsewhere, terms which initially are distinctive can themselves become “generic” if they become the usual or scientific name of one product, rather than of one particular maker of that product. For instance, the famous example of Bayer’s “Aspirin”, in which the United States trademark authority withdrew protection from the mark on the ground that Aspirin had become synonymous for a particular form of pain medicine, and therefore had become “generic.”

Following world trends and developments, Macedonian legislation has provided for the dispute of some trademarks to be resolved in administrative procedures, without formal Court involvement. If it is established that a disputed mark is “generic,” that mark becomes a “free mark” or “freizeichen” and is no longer entitled to legal protection.

Slovakia

Options for Responding to Brand Infringement

The value of intellectual property (IP), such as trademarks and designs, is often underestimated, even in large corporations. Especially in small markets such as Slovakia, companies often realize the value of their IP only at a late stage, when unauthorized copies of their products are already on the market.

In such cases it is not uncommon to see lawyers trying to invoke protection through their clients’ unregistered rights (which is of course more difficult when than rights, e.g., trademarks, have been registered) or by seeking to have the trademarks of their competitors which should never have been registered ruled invalid.

Imagine that you are a successful Slovakian business and you manufacture and sell your products under the brand “EXTREME”.

You also own the registered trademark “EXTREME”. Some time later, when your product has become sufficiently well-known, one of your competitors introduces a similar product and names it “X-REEM.” Not only do you see the market flooded with parasitic products but you realise that your competitor has had the courage to apply for the registration of their word mark “X-REEM”. It may also happen that your competitor’s trademark application sparked your attention and “X-REEM” already is a registered trademark. Speed in trademark infringement cases is of the essence. This is because apart from creating a financial loss, the exclusivity and uniqueness of your “EXTREME” trademark is being tarnished by the existence of a copycat. You need to remedy this as quickly as possible, because unlike a loss of profit, loss of exclusivity can be recovered only with great difficulty (if at all).
In Closing: TopSite Award

Many elements of a modern law practice would be completely foreign to practitioners from past eras. Fax machines have come and gone, as have lawyers, partners, and even tools at one time considered first revolutionary, then indispensable. In that context, trying to predict which particular elements of a modern practice are truly permanent is foolhardy. It is, however, to say the least, to imagine a successful law firm operating without a website any time soon.

Law firms wanting to present themselves as sophisticated and confident players need to have an attractive site that identifies them as such to the world. Firms should be confident enough to identify the members of their teams on their website, and aware enough of the importance of modern marketing principles to make articles and other forms of thought-leadership available. These sites should be simple and attractive, without sacrificing content and detail. Needless to say ... some respond to this challenge better than others.

At CEE Legal Matters, we know something about putting together an attractive, popular, and informative website. Thus, in a spirit of admiration and approval for a job well done, we’re going to review the websites of leading regional Corporates/MKA law firms (excluding those whose websites have a similar design to those of international firms they are affiliated with), to determine which, in our opinion, is the best in each of the 24 markets we cover, and which therefore qualifies as a CEE Legal Matters Top Site. For this first issue, we reviewed sites in Turkey and Ukraine.

First, each firm’s website will be checked for four “objective” elements that we believe every law firm that is successful, respected, and both fully confident in its business model and fully prepared to serve foreign and English-speaking clients should have: Professional and polished English, sufficient contact information, publications and newsletters are available on the website. The best website of those reviewed in Turkey was that of Cakmak Attorneys (50 points), which received an impressive 50 points, including mention on all of the objective criteria (a Dickinson stretched in Turkey by only Kolcuoglu & Demirkan and ELIG). The Cakmak website remains simple and clear, without sacrificing any necessary information, and has an impressive collection of articles and other forms of thought-leadership available for viewing. The firm also demonstrated its confidence both in the abilities and loyalty of its lawyers itself a strong demonstration of the firm’s confidence in its brand by providing contact details for the entire team, including associates. While containing few bells and whistles, the site is essentially flawless.

Partner Zuzana Hecko, Head of YP Allen & Overy:

The Achilles’ heel of administrative proceedings before the Slovak Industrial Property Office (IPO) is the way such proceedings are handled. After launching trademark opposition or trademark invalidation proceedings, the IPO asks the counter-party (the alleged infringer) to comment on the matter. Unfortunately, although the infringer is officially allocated only two months to submit its reply, in practice the IPO often allows five or six extensions of this time period. As a result, the proceedings may stand still for more than one year. Therefore, the mushrooming of intentional infringers who exploit this unfortunate situation by ‘buying time’ is not surprising at all. With knowledge of this common practice by the IPO, a perverted business strategy of artificial extension of proceedings is nothing surprising at all. With knowledge of this common practice by the IPO, a perverted business strategy of artificial extension of proceedings is a recipe for a quicker remedy.

In closing it is therefore advisable to launch court proceedings and proceedings before the IPO simultaneously. If the court grants a preliminary injunction, the remedy is immediate. Even if refused, litigation as it seems, court proceedings on the merits may still be faster than trademark opposition or invalidation proceedings at the Office. A decision from the court concludes the proceedings before the IPO, even if they are not yet finished. On the other hand, decisions from the IPO do not award damages, so a court action will still be necessary.

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Others reviewed in Turkey and Ukraine included: Second in both countries was the website of Kolcuoglu & Demirkan, which received 48 points. K&D’s website also received the maximum possible number of “objective” points. It also contains simplicity of design and detailed content (including substantial thought-leadership) as well as providing the most valuable information in a straight-forward and easy to use combination. Separate contact details were provided not only for all associates, but even for separate back office functions — one of the only websites we saw that provided this useful information.

Iryna Khymchak, Head of Sayenko Kharenko’s Marketing and BD Department, commented that the firm’s decision to identify its entire team on the website represents an acknowledgement of the contributions of each and every member makes to the firm’s success, as “it is the faces of our values and the owners of all our achievements.” And although Egan conceded that the colors on the firm’s website “are quite sober,” she explained that “they always had a hint about the way we offer our services to our clients; we do not base our marketing on the most eye-catching of legal advice to our clients while keeping our reasoning solid and transparent.”

The firm has plans to make the website even stronger soon. Egan says that, among other plans is to add an HR page, where applications can be submitted in a much more standard form, making things easier for both applicants and HR teams.

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