



# CEE

YEAR 3, ISSUE 5  
OCTOBER 2016

# LEGAL MATTERS

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

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CEE Conference**

28<sup>th</sup> & 29<sup>th</sup> November 2016

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in Central and Eastern Europe

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SUEK

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Igor Biryukov,  
SME Bank Moscow

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Marco Rigatti,  
RBI

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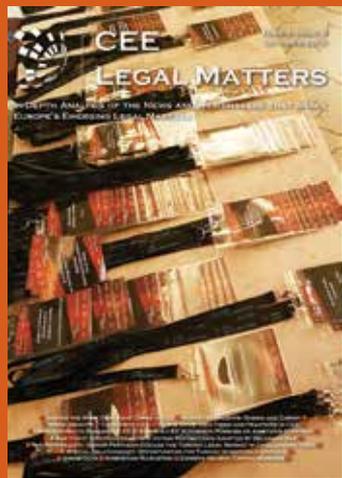
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If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:

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# Editorial: Not Enough Months in the Year



It's not so much that we are over-ambitious in our planning as it is that the calendar is too small.

We've found ourselves working a lot of overtime to prepare this issue, as – and if you don't already know

this then shame on you (or you're a new reader, in which case welcome!) – it comes the same month as the second annual GC Summit, which just concluded a few weeks ago in Istanbul. If coordinating those two incredibly time-intensive commitments simultaneously wasn't enough, we also spent untold hours migrating the content from the older (and wonderful) CEE Legal Matters website to the brand new (and even wonderful) site, we announced the 2017 Knowledge Partnerships, conducted an aggressive sales campaign, and put together our schedule and plan for 2017.

It's been a draining month.

Still, who's complaining? The fact is, each of the items on that list represents growth. New platforms, increasing popularity, more readers, greater opportunities, and – for us, at least – more excitement. So you'll forgive me if I spend just a couple paragraphs explaining them in greater detail.

First, this issue. This October 2016 issue of the CEE Legal Matters magazine features Market Spotlights on Russia and Turkey – especially timely, given the dramatic events of this past summer – along with articles about the ambitions of CEE Attorneys, the introduction of Marketing Marketing (our new feature focusing on the law firm marketing and BD specialists helping the firms across CEE), guest editorials from Jonathan Marks of Slaughter & May, Okan Demirkan of Kolcuoglu Demirkan Kocakli, and Natalia Belova from InchCape, an Experts Review focus on Capital Markets across CEE, and much more.

Next, the GC Summit. This year's event was even bigger than last year's, with some 174 registered delegates, seven law firm sponsors, and two days of instructive and entertaining presentations and valuable socializing and networking opportuni-

ties. There's a fair amount of coverage of the GC Summit in this issue, in fact, including a full transcript of a fascinating panel conversation with a number of leading Turkish lawyers. A formal announcement about next year's event will come soon – so stay tuned.

Have you seen the new CEE Legal Matters website at [www.ccelegalmatters.com](http://www.ccelegalmatters.com)? Explored the Thought Leadership and Knowledge Partner firms whose banners scroll across the homepage? Played with its new features – including the comprehensive law firm directory and thorough Briefings section? Articles both new (in the form of our ongoing coverage of the deals reported by law firms in CEE) and old (as we continue to migrate from the old site) are being added every day, contributing to our ever-growing reputation as the primary source of information for and about law firms and lawyers in the region.

Sales is always a problematic issue, for us as it is for every publication in the region. We of course encourage firms to take advantage of our readership and reputation – both in print and online – by presenting their competencies and capabilities either in brand-awareness campaigns or by the creation and promotion of valuable content. But we have limited time to make the necessary calls, take the necessary meetings, and engage with the necessary individuals, on top of everything else we do. So if you know someone with good English skills, personal skills, and salesmanship who would like to be part of our growing company, let us know. In the meantime, if you're at a law firm you would like to promote via one or more of our many platforms, drop us a line. We'd be happy to talk.

Finally, our plan for next year. This is fun. First and most significantly, starting January the CEE Legal Matters magazine will be published on a **monthly** basis, with eight regular issues and four special issues dedicated to our annual end of year Expert Summit, a special Woman in Law issue, an issue dedicated to the 2017 GC Summit, and an issue in the form of the 2017 Corporate Counsel Handbook. We're a bit nervous about the amount of work involved to grow from six issues to 12, but also tremendously excited. We hope you are as well.

So you can see: there's a lot going on at CEE Legal Matters. Now, if we can just get someone to add a few months to the calendar ...

David Stuckey

# Guest Editorial: Reflections on the CEE Legal Scene



Looking back over the last 25 years, I'm struck by what an extraordinary period this has been.

My first exposure to the region was as an Associate working on some of the early syndicated loans as the Czech legal market began to open up and then following that up with work on various corporate transactions over the years as a Partner.

On a personal level, I'm thrilled that in addition to getting to work with other people and firms across the region I am still working with some of the same people at these firms. And that those firms from the early days have continued to do well despite everything that has been thrown at them in the meantime.

It has and continues to be something of a rollercoaster ride.

Some jurisdictions – like Poland, the Czech Republic, Romania, and Turkey – are beginning to emerge as comparatively safe and stable locations for investment, with particularly good prospects for those countries with growing populations and improving infrastructure. As we see things, Central and Eastern Europe offers attractive opportunities to both domestic and foreign investors.

However, the region still has the scope for political surprises (not that the UK doesn't too, as we discovered this June!).

But the political situation continues to be difficult in certain jurisdictions, with dramatic events in recent years in both

Ukraine and Turkey. And new governments in Poland and Hungary are driving changes which have proved controversial.

"Compliance" issues continue to be a concern, with significant challenges for clients and lawyers alike and the potential for significant liability if US or UK extra-territorial anti-corruption laws are breached.

Concerns also remain about the legal infrastructure, the independence and integrity of the judiciary, and the ability to bring valid claims in the courts of certain countries. This risks impacting on confidence in the jurisdictions concerned, both from a commercial point of view and also by indicating a lack of respect for the rule of law. The flip side is parties looking to have their cases heard elsewhere, such as in the English Commercial Court or arbitration in London.

From my perspective as a Partner at Slaughter and May, it has been interesting to see how the legal markets have developed in the CEE countries. I am full of admiration that some firms have grown in a few years to a size that it took our firm decades to achieve.

We have stuck with our strategy of looking to work with the best independent law firms in each jurisdiction wherever we can. Of course, our approach is client-led, and there will be occasions when the client has opted to make a different choice.

Some of our international competitors

have followed a different route, opening across the region. As I see things, the results have been mixed. Some international firms have stuck with their strategy for the longer term and are well established; others have not been willing to take the financial pain of what can be relatively high costs in ferociously competitive markets.

Relative profitability has been a particular challenge, I think, for lock-step firms, given the different rewards available between jurisdictions. More positively, even where international firms have upped the stakes, these local firms have tended to continue adding to the numbers of independent firms and, in some cases, contributing further to the development of pan-regional firms.

And what about our plans for working in the region?

I hope that we can continue to raise our profile. I really enjoyed participating in the CEE Legal Matters GC Summit at the beginning of October along with Slaughter and May dispute resolution Partner Jonathan Clark and finance Partner Richard Jones.

It was a fantastic opportunity to connect with representatives of some of the leading Turkish law firms, meet members of the CEE in-house teams from major international clients like Diageo, Inchcape, Philips, and Shell, and meet representatives of a host of other leading Turkish, regional, and international groups.

I see us continuing to work with some of the best independent firms and supporting our clients in investing and working in the region. I would also like to see us develop our relationships with leading businesses as they look to expand outside the region, issue IPOs or raise debt on the London or Asian capital markets, or participate in arbitration or other proceedings in London or elsewhere.

*Jonathan Marks, Partner,  
Slaughter & May*



Turkey

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# Legal Ticker: Summary of Deals and Cases

Full information available at: [www.ceelegalmatters.com](http://www.ceelegalmatters.com)

Period Covered: August 19, 2016 - October 17, 2016

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
29-Aug	Fellner Wratzfeld & Partner	Acting on behalf of the Vienna Hospital Association, Fellner Wratzfeld & Partner organized a public private partnership model to procure the design, construction, and facility management of radiation therapy centers to be established at various locations.	EUR 85 million	Austria
14-Sep	Fellner Wratzfeld & Partner	Fellner Wratzfeld & Partners reported that the Austrian Supreme Court had issued a final ruling on a long-running dispute involving the City of Vienna's attempt to evict general leaseholder Norbert Weber from the "Copa Cagrana" stretch of bars and restaurants in the city. FWP represented the City of Vienna throughout the dispute.	N/A	Austria
14-Sep	Binder Groesswang	Binder Groesswang advised Volksbank Kufstein-Kitzbuehl, Volksbank Landeck, and Volksbank Tirol Innsbruck-Schwarz in connection with the merger of the banking operations of the three banks to build Volksbank Tirol AG.	N/A	Austria
16-Sep	CMS; Hausmaninger Kletter; Linklaters; Schoenherr; Skadden, Arps, Slate, Meagher & Flom; Wolf Theiss	Schoenherr advised the Republic of Austria on the Austrian Finance Minister's agreement to finance a public offer by Karntner Ausgleichszahlungs-Fonds (KAF) to HETA creditors pursuant to § 2a of the Austrian Financial Market Stability Act. Wolf Theiss advised a number of international creditors, while many banks were advised on Austrian law by CMS and internationally by Linklaters. Wolf Theiss advised a large number of international creditors, the Province of Carinthia was advised by Skadden, Arps, Slate, Meagher & Flom and as to Austrian law by Attorney Norbert Abel and the Hausmaninger Kletter Law Firm.	EUR 1.2 billion	Austria
19-Sep	CMS	CMS reported that, based on an amicable agreement with the majority shareholder of NV, which CMS advised, Uniqa and Raiffeisen-Holding NO-Wien have sold back their minority stakes in NV.	N/A	Austria
26-Sep	Binder Groesswang; Cerha Hempel Spiegelfeld Hlawati; Gowling; Starlinger Mayer; Wolf Theiss	CHSH Cerha Hempel Spiegelfeld Hlawati Rechtsanwälte advised OMV in connection with the sale of a 49% stake in Gas Connect Austria GmbH to a consortium formed by the German Allianz Group and Snam, Italy's gas infrastructure operator. Binder Groesswang – working with the Italian firm Bonelli Erede – advised Snam on the deal, with Wolf Theiss advising Allianz – which also consulted Starlinger Mayer Rechtsanwälte for the preparation of the due diligence.	N/A	Austria
27-Sep	Cerha Hempel Spiegelfeld Hlawati; Dorda Brugger Jordis	CHSH Cerha Hempel Spiegelfeld Hlawati advised IC Development on its sale of the new DENK 3 office complex in Vienna to ARE Austria Real Estate GmbH, a subsidiary of Bundesimmobiliengesellschaft GmbH. Dorda Brugger Jordis advised ARE on the deal.	N/A	Austria
12-Oct	Schoenherr	Schoenherr advised Altstoff Recycling Austria AG (ARA) in proceedings before the European Commission regarding an alleged infringement of Article 102 of the Treaty on the Functioning of the European Union (TFEU), which prohibits any abuse of a dominant position within the internal market which may affect trade between EU Member States. ARA agreed to settle its affair with the Commission – the first settlement ever in an Article 102 TFEU case.	N/A	Austria
13-Oct	bpv (Hugel); Fellner Wratzfeld & Partner; Freshfields; Grohs Hofer	Freshfields and Fellner Wratzfeld & Partner advised UniCredit S.p.A. (Italy) on its takeover of the CEE business of its subsidiary UniCredit Bank Austria AG. Apart from shareholdings in 13 banks in Southern Europe and CEE, a loan portfolio in the amount of about EUR six billion also passed to the parent company in Milan. Grohs Hofer advised the works council and bpv Hugel advised Bank Austria's retired employees.	EUR 6 billion	Austria
14-Oct	Cerha Hempel Spiegelfeld Hlawati; Clifford Chance; Drude; Freshfields; Pinheiro Guimaraes	Cerha Hempel Spiegelfeld Hlawati advised RHI AG on Austrian matters related to its merger with Brazil's Magnesita Refratarios S.A. (MR) with a view to creating a leading provider of refractory products. The new company will be named RHI Magnesita. Also advising RHI AG were Drude, Freshfields Bruckhaus Deringer, and Pinheiro Guimaraes. Clifford Chance advised GP Investments and Rhone Capital, MR's controlling shareholders, on the deal.	EUR 222.6 million	Austria
4-Oct	Schoenherr	Schoenherr, working with the Swiss firm Bar & Karrer as lead counsel, advised OVS S.p.A., a leading Italian clothing retailer, and Sempione Retail AG, in connection with Sempione Retail's cash tender offer for all publicly held bearer shares of Swiss company Charles Vogele Holding AG in Austria, Hungary, Slovenia, and Poland. The Swiss Homburger firm advised Charles Vogele.	N/A	Austria; Hungary; Poland; Slovenia
12-Sep	Sorainen	Sorainen advised Finland's OpusCapita Group Oy on Belarusian aspects of its acquisition of all shares in jCatalog Software AG (Dortmund, Germany) from its shareholders.	N/A	Belarus
23-Aug	Sajic	Sajic represented Tarkett SEE doo Backa Palanka - Branch Office Banja Luka on the establishment of a Personal Data Collection with the Agency for Personal Data Protection in Bosnia and Herzegovina.	N/A	Bosnia & Herzegovina
9-Sep	Sajic	Sajic converted the open joint stock company Fabrika duvana a.d. Banja Luka to a closed joint stock company, now owned by Bulgartabac Holding AD Sofia, Bulgaria.	N/A	Bulgaria
14-Sep	Clifford Chance; Kinstellar	Kinstellar provided local law advice in Bulgaria, Romania, Turkey, and Ukraine to Arkema SA on its acquisition of the Dutch sealant-and-adhesives maker Den Braven from Egeria, a Benelux buyout house. Clifford Chance was involved in the vendor due diligence.	EUR 485 million	Bulgaria; Romania; Turkey; Ukraine
24-Aug	Clifford Chance; Dentons; White & Case	Dentons advised Mezzanine Capital on its first two financing transactions: (1) A EUR 12.5 million mezzanine loan to Medicon Group to fund the acquisition of ProNatal Medical Business, and (2) a EUR 26 million mezzanine loan in connection with the recapitalization of Nolloth S.A. and its subsidiary VUES Brno. Clifford Chance advised UniCredit on both loans, while Nolloth/VUES was advised by White & Case.	EUR 37.5 million	Czech Republic
25-Aug	Kocian Solc Balastik	Kocian Solc Balastik advised Air Canada and China Eastern Airlines on their entry into the Czech aviation market.	N/A	Czech Republic

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
2-Sep	PwC Legal;	PwC Legal represented Specialized Bicycle Components Inc., an American manufacturer of high performance bicycles, bicycle components, and related products, in connection with the sale of its retail sales division in the Czech Republic to Velocentrum Volesky s.r.o.	N/A	Czech Republic
2-Sep	Clifford Chance; Vostarek & Komeiserova	Clifford Chance advised Ceska Sportelna, a.s., on financing provided to Roth Industries GmbH & Co. KG., a manufacturer of glass and complete showers, for a leveraged buy-out of 100% interest in Roltechnik a.s., a Czech supplier of shower enclosures, trays, bath tubs, and jacuzzis. Vostarek & Komeiserova advised Roth Industries on the financing.	N/A	Czech Republic
16-Sep	Balcar, Polansky & Spol; Eversheds; Moore Blatch; Pokorny, Wagner & Partneri	Balcar, Polansky & Spol. – working alongside global counsel Eversheds – advised Hotel Properties Limited on its sale of the five-star Mandarin Oriental hotel in Prague to CEFC Group (Europe) Company. Pokorny, Wagner & Partneri advised the buyers, with support from England's Moore Blatch firm.	N/A	Czech Republic
19-Sep	DRV Legal; Randa Havel Legal	Randa Havel Legal represented the Dutch company Bronswerk Heat Transfer Holding B.V. in the sale of its Czech subsidiary Bronswerk Heat Transfer spol. s.r.o. to PBS Industry. The DRV Legal firm advised PBS – which is owned by the Jet Investment investment fund – on the deal.	N/A	Czech Republic
21-Sep	DRV Legal	DRV Legal successfully carried CP Praha, s.r.o. (a development project of Central Park Praha) through insolvency proceedings.	N/A	Czech Republic
11-Oct	Linklaters; Slaughter and May; Weil Gotshal & Manges	Slaughter and May advised GE Capital International Holdings Limited (GECIHL) on its sale of approximately 24.5% of the share capital of Moneta Money Bank, a.s., which raised gross proceeds of approximately CZK 9.4 billion. Weil, Gotshal & Manges advised GECIHL on Czech matters, and Linklaters advised joint global bookrunners Citi, Goldman, and JP Morgan.	CZK 9.4 billion	Czech Republic
13-Oct	Kocian Solc Balastik	Kocian Solc Balastik obtained a successful result for the Preol biofuel company in an invalid immediate employment termination case before the Czech Supreme Court.	N/A	Czech Republic
17-Oct	Kinstellar; Milbank; Orrick; White & Case	Kinstellar, working with Milbank, successfully advised Credit Suisse International, Jefferies, UBS, Bank of America and Societe Generale as joint lead arrangers and joint book-runners for the senior secured credit facilities in connection with Avast Software's USD 1.4 billion acquisition of AVG Technologies. White & Case advised Avast on the debt financing and the underlying acquisition. Orrick advised AVG Technologies on the acquisition, which was structured as an all-cash tender offer for the outstanding ordinary shares of AVG, with the initial offer period closing on September 30.	USD 1.4 billion	Czech Republic
10-Oct	Baker & McKenzie; CMS	CMS advised Komercni Banka, a subsidiary of the Societe Generale Group, on the agreement it recently completed with Worldline – a European payment and transactional services provider – to develop product and services for Czech and Slovakian merchants.	EUR 27 million	Czech Republic; Slovakia
19-Aug	Sorainen	Sorainen Estonia assisted DT Group Finland in divesting 100% of Puukeskus shares in a management buy-out to Atso Matsalu, the long term CEO of the company.	N/A	Estonia
22-Aug	Ellex (Raidla)	Raidla Ellex advised DataMe OU, an Estonian fintech company, on the creation of a new credit register to be used for processing of credit data of private individuals.	N/A	Estonia
23-Aug	Ellex (Raidla)	Raidla Ellex successfully represented Estonian citizen Reet Raukas in her successful application for revocation of the detailed plan for the erection of new wind turbines in her community.	N/A	Estonia
23-Aug	Ellex (Raidla); Vilgerts	Raidla Ellex advised Estonian printing house Vaba Maa AS on its acquisition of 100% of the Printon printing house. Vilgerts advises the seller on the deal.	N/A	Estonia
25-Aug	Baker & McKenzie; Eversheds	Estonia's Eversheds Ots & Co advised Wellman OU and Snegovik OU on the sale of 80% of the shares in the issued share capital of Friendly Finance OU to Tirona Limited, which was advised by Baker & McKenzie.	N/A	Estonia
2-Sep	Glimstedt	Glimstedt successfully assisted Estonian work management software startup Scoro in securing a EUR 1.7 million seed funding round. The round was led by SmartCap, the investment arm of the Estonian Development Fund, Inventure, and Alchemist Accelerator.	EUR 1.7 million	Estonia
14-Sep	Derling; Njord	Derling advised Navirail OU on the sale of the freight and passenger route between Paldiski (Estonia) and Hanko (Finland) to DFDS – which was advised by Njord.	N/A	Estonia
16-Sep	Derling	Derling advised the shareholders of Nortal on their buy-back of 50% of the Group's shares from the Enterprise Investors investment fund and LHV Pension Funds, regaining full ownership of the company.	EUR 15 million	Estonia
16-Sep	Deloitte Legal; Primus	Primus advised Skeleton Technologies on EUR 13 million in new investment it received from FirstFloor Capital, a Malaysian venture capital investment firm specializing in funding high-growth technology companies. Deloitte Legal advised FirstFloor Capital.	EUR 13 million	Estonia
16-Sep	Sorainen	Sorainen advised the Estonian Development Fund (EDF), a public institution established by the Estonian Parliament to support improvements in the Estonian economy through investment in knowledge- and technology-intensive Estonian business in the start-up phase, and SmartCap, a venture capital fund management company established by the EDF to manage venture capital Early Fund II to restructure their direct investment portfolio.	N/A	Estonia
27-Sep	Tark Grunte Sukiene	Tark Grunte Sukiene advised the Avia Solutions Group, a Lithuanian capital-based aviation holding corporation, on its acquisition of Estonian tour operator GoAdventure from GoBaltic.	EUR 2.6 million	Estonia
29-Sep	Cobalt; Primus	Cobalt advised the AS Ekspress Grupp on its acquisition of a 49% holding in Babahh Media OU, an Estonian company that engages in video production, media solutions, and the sale of video related infrastructure solutions, from Tomarek Invest OU and Heeringas OU. Primus advised the sellers on the deal.	N/A	Estonia
12-Oct	Cobalt	Cobalt Estonia advised BPM Mezzanine Fund SICAV-SIF, SCA on matters related to the financing of AS Eskaro.	N/A	Estonia
5-Sep	Cobalt	Cobalt advised AS TMB, a major manufacturer of pre-cast reinforced concrete elements, on its acquisition of the Betonimestarit-Group from its shareholders.	N/A	Estonia; Latvia
25-Aug	Cobalt; Sorainen	Cobalt advised DNB Bank and Sorainen is advising Nordea on the agreement between the two to combine their operations in Estonia, Latvia, and Lithuania. DNB's and Nordea's Baltic operations have EUR 5 billion and EUR 8 billion in assets, respectively.	N/A	Estonia; Latvia; Lithuania

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
9-Sep	Primus	Primus advised BaltCap-backed FCR Media Group on its expansion to Belgium via an acquisition of the Belgium digital media agency that operates the goudengids.be and pagesdor.be websites.	N/A	Estonia; Latvia; Lithuania
22-Sep	Cerha Hempel Spiegelfeld Hlawati; Gowling; Dentons	CHSH Cerha Hempel Spiegelfeld Hlawati advised CA Immo on the acquisition of Budapest's Millennium Towers office complex from TriGranit and an affiliate of Heitman LLC. Dentons advised the sellers on the deal.	EUR 175 million	Hungary
17-Oct	Baker & McKenzie; Kapolyi Law Firm	The Kapolyi Law Firm provided legal assistance to the Magyar Posta Takarek Real Estate Fund, represented by Diofa Asset Management, during the acquisition of the 15,000 square meter Infopark G building from Magyar Telekom Telecommunications Public Limited Company. Baker & McKenzie advised the sellers on the deal.	N/A	Hungary
1-Sep	Eversheds (Bitans)	Eversheds Bitans advised Scorpio Services Holding Limited on its acquisition of a 60% stake in SIA Astor Shipmanagement, a Latvia based company providing crewing services for different types of vessels world-wide.	N/A	Latvia
5-Sep	Fort	Fort advised Hansabuss on its acquisition of a majority shareholding in Tukuma Auto SIA – a Latvian provider of bus transport services.	N/A	Latvia
26-Sep	Glimstedt	Glimstedt reported that it advised Plaza Centers and the New York-registered New Century Holding investment fund on their September, 2016 sale of the Riga Plaza shopping and entertainment center to an unnamed global investment fund.	EUR 93.4 million	Latvia
13-Sep	Ellex (Valiunas)	Valiunas Ellex provided legal advice to the City of Vilnius in preparing concession tender conditions for the Lithuanian National Stadium.	N/A	Lithuania
14-Sep	Sorainen; Tark Grunte Sutkiene	Sorainen advised Betsson on the acquisition by its wholly-owned subsidiaries of gaming operator Losimu Strategine Grupe (LSG), which trades as TonyBet in Lithuania. LSG was advised by Tark Grunte Sutkiene on the deal, which is expected to close within a month.	EUR 4 million	Lithuania
23-Sep	Sorainen	Sorainen advised Lenndy, one of the first crowdfunding platforms in Lithuania, on its launch.	N/A	Lithuania
26-Sep	Sorainen	Sorainen assisted the Lithuanian Ministry of Finance in successfully pricing an offer of EUR 450 million (nominal value) Eurobonds that will be consolidated to form a single series of 20-year Eurobonds issued last year.	EUR 450 million	Lithuania
10-Oct	Glimstedt	Glimstedt advised AB Klaipedos Nafta on the sale of 33.33 % of its shareholding in UAB Litgas to UAB Lietuvos Energija.	N/A	Lithuania
11-Oct	Cobalt	Cobalt advised UAB Bite Lietuva, one of the largest mobile operators in Lithuania, on its application for and receipt of a limited-purpose license to operate as an electronic money institution.	N/A	Lithuania
12-Oct	Sorainen	Sorainen advised a subsidiary of Lords LB Special Fund I, a fund belonging to investment management company Lords LB Asset Management, on its conclusion of a hotel management contract with operator Carlson Rezidor regarding hotel opening and further activity in Vilnius under the Radisson RED name.	N/A	Lithuania
14-Oct	Glimstedt	Glimstedt advised Linstow AS on the crossborder sale of its stake in UAB Baltijos Parkai, which holds Park Inn hotels in Vilnius and Klaipeda, to UAB Green Hotel.	N/A	Lithuania
17-Oct	Glimstedt	Glimstedt advised UAB Marina Nida on its entrance into a deal with Carlson Rezidor, a top international hotel operator, to open a five-star Radisson Blu Hotel & Spa Nida Marina on the Curonian Spit. The hotel is expected to open its doors by the end of 2019.	N/A	Lithuania
10-Oct	BDK Advokati; Harrison Solicitors	On September 14, 2016, a consortium of Eni (Italy) and Novatek (Russia) signed a Concession Contract for the Production of Hydrocarbons with the Montenegrin Government. BDK Advokati advised Eni and Harrison Solicitors advised Novatek on the deal.	N/A	Montenegro
22-Aug	CMS	CMS advised PKN Orlen on an investment in a new metathesis unit for the production of polymer-grade propylene.	PLN 400 million	Poland
23-Aug	Domanski Zakrzewski Palinka	DZP advised WGE Development on the restructuring of liabilities under ten bond series vis-a-vis 120 bondholders in accelerated arrangement proceedings. The case is being heard by the restructuring court in Warsaw.	N/A	Poland
23-Aug	Danilowicz Jurcewicz Biedeki i Wspolnicy	Danilowicz Jurcewicz Biedeki i Wspolnicy advised Saybolt Holding BV in connection with its acquisition of 100% of the shares in Baltic Marine Surveyors – a company providing cargo and technical surveys and consultancy services.	N/A	Poland
23-Aug	Domanski Zakrzewski Palinka	DZP and Poland's State Treasury General Solicitor's Office represented the Republic of Poland in a case brought by Norwegian investors Geir and Kristian Almas under the Polish-Norwegian BIT.	PLN 100 million	Poland
24-Aug	BSWW Legal & Tax	BSWW Legal & Tax advised Polnord S.A. on a series O bond issue with a total nominal value of PLN 20 million.	PLN 20 million	Poland
31-Aug	Allen & Overy; Global Law Office; Zhong Lun Law Firm	Allen & Overy was international counsel to the Ministry of Finance of the Republic of Poland on its issue of RMB 3 billion panda bonds, underwritten by Bank of China Limited and HSBC Bank (China) Company Limited. China's Zhong Lun Law Firm was Chinese counsel to the Ministry of Finance, and the Global Law Office advised the banks.	EUR 405 million	Poland
31-Aug	Dentons; Wolf Theiss	Dentons advised Polish Enterprise Fund VII, a private equity fund managed by Enterprise Investors, on the EUR 170 million sale of a 100% stake in the Scitec Nutrition sports nutrition producer to Ascendis Health, a South African publicly listed health and care brands company. Ascendis Health was advised by Wolf Theiss.	EUR 170 million	Poland
12-Sep	CMS; Wiercinski Kwiecinski Baehr	CMS advised Qualia Development – a development company belonging to the PKO Bank Polski group – on the sale of land in Warsaw and at the Jurata seaside resort. Wiercinski Kwiecinski Baehr advised the buyers on the Warsaw deal.	N/A	Poland
16-Sep	Greenberg Traurig; SRC Law Firm	Greenberg Traurig advised HB Reavis Group on the sale of an A class office building to Golden Star Estate. The SRC Law Firm advised the buyers on the deal.	EUR 120 million	Poland

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
21-Sep	Crido Legal; Dentons	Crido Legal advised the Plaza Centers Group on negotiating the debt restructuring documentation of a company from the group's portfolio that owned the Zgorzelec Plaza Shopping Center, one step of which involved the sale of 100% of its shares in the shopping center to Equity House Sp. z o.o. Dentons advised Bank Zachodni WBK S.A. on the deal.	N/A	Poland
26-Sep	Gessel	Gessel advised Polska Grupa Odlewnicza in Katowice on the issue of A1 series bonds worth PLN 42.2 million.	PLN 42.2 million	Poland
28-Sep	CMS	CMS was chosen by the Warsaw Stock Exchange as its legal advisor for a long-term bond issue designed to repurchase series A and B floating interest rate bonds scheduled to expire on January 2, 2017.	PLN 120 million	Poland
29-Sep	Dentons; Greenberg Traurig	Greenberg Traurig advised Rockcastle Global Real Estate, a property company specializing in retail centers in CEE, on the acquisition of Krakow's Bonarka City Center from TriGranit. Dentons advised TriGranit on the transaction.	EUR 361 million	Poland
4-Oct	Chajec, Don-Siemion & Zyto; Werner & Partners	Chajec, Don-Siemion & Zyto advised two funds managed by TFI Capital Partners S.A. (a subsidiary of Capital Partners S.A.) – CP Closed Investment Fund (with the CP Private Equity and CP Absolute Return sub-funds) and Capital Partners Investment I FIZ. – on assuming shares in Orbitvu Sp. z o.o. Werner & Partners advised the sellers on the deal.	N/A	Poland
4-Oct	Allen & Overy	Allen & Overy advised PKO Bank Hipoteczny on its establishment of a EUR 4 billion international mortgage covered bonds program – the first international mortgage covered bonds program to be established by a Polish mortgage bank.	N/A	Poland
5-Oct	Danilowicz Jurcewicz Biedeki i Wspolnicy	DJBW Danilowicz Jurcewicz Biedeki i Wspolnicy advised Vivid Games S.A. on the process of the company's admission and introduction of shares to trading on the regulated market operated by the Warsaw Stock Exchange.	N/A	Poland
10-Oct	Clifford Chance; Deloitte Legal; Dentons	Clifford Chance Warsaw advised Bank Zachodni WBK S.A. and ING Bank Slaski S.A. on the financing of the acquisition of the Krosno S.A. glasswork in liquidation bankruptcy by Krosno Glass sp. z o.o., a Warsaw company set up by Coast2Coast Capital, an investment fund from the Republic of South Africa. Dentons advised Coast2Coast on the financing, with Deloitte Legal advising it on the actual M&A.	EUR 27.5 million	Poland
10-Oct	Hogan Lovells; Kochanski Zieba & Partners; Weil Gotshal & Manges	Kochanski Zieba & Partners advised Echo Polska Properties N.V. (EPP) – a leading fund operating as a REIT – and Echo Investment S.A., the largest Polish developer, on their joint agreement to buy a real property at ul. Towarowa 22 in Warsaw from Griffin Real Estate group, Poland's leading real estate fund, and to jointly execute an investment project on the property. Echo Investment S.A. was represented by Weil Gotshal & Manges, while Griffin Real Estate was supported by Hogan Lovells.	EUR 120 million	Poland
12-Oct	CMS; Crido Legal	CMS advised the owners of Allcom sp. z o.o., a family-owned Polish freight forwarding company, on joining Hili Company. Crido Legal advised Hili Company on the deal.	N/A	Poland
12-Oct	Gessel	Gessel advised First Private Equity Fund FIZAN, managed by Vestor Dom Maklerski S.A., on the restructuring of the fund's financial involvement in Gwarant Grupa Kapitalowa S.A., in Katowice.	PLN 12.4 million	Poland
5-Sep	Leaua & Asociatii; Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii advised Direct One on its acquisition of the underground telecom infrastructure of Bucharest, called Netcity, from UTI Netcity Investment BV and UTI Grup SA for an undisclosed sum. Leaua & Asociatii advised UTI on the deal.	N/A	Romania
13-Sep	D&B David and Baias; Schoenherr	The Bucharest office of Schoenherr is assisting the BraasMonier group in acquiring the Elpreco concrete tile plant in the southern Romanian city of Craiova from the CRH group. D&B David and Baias advised the sellers on the transaction, which is valued at RON 33 million (approximately EUR 8 million).	EUR 8 million	Romania
14-Sep	Allen & Overy; Eversheds	RTPR Allen & Overy advised private equity fund Catalyst Romania on its investment in the SmartDreamers S.R.L. online recruitment platform. Eversheds Lina & Guia advised SmartDreamers on the investment.	N/A	Romania
16-Sep	Biris Goran	Biris Goran advised Romanian property manager Adval Asset Management on the successful restructuring and refinancing of the Cascade Office building in Bucharest.	EUR 6 million	Romania
16-Sep	Biris Goran	Biris Goran announced that it advised Dacris, a stationery and office supplies provider in Romania, in its acquisition of Echo Plus, an office supplies company specializing in telesales.	N/A	Romania
9-Sep	Allen & Overy; Eversheds; Kolcuoglu Demirkan Kocakli	RTPR Allen & Overy advised the South Eastern European Fund on the sale of Total Soft S.A. to Turkish company Logo Yazilim, which is owned by the Mediterra Capital Partners private equity fund. Logo Yazilim was advised by Kolcuoglu Demirkan Kocakli in Turkey and Lina & Guia Eversheds in Romania on the deal.	N/A	Romania; Turkey
22-Aug	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners successfully defended the interests of Yandex, Russia's largest IT company, in a dispute with Google at the Russian Court of Appeal.	N/A	Russia
29-Aug	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners represented American international paint and coatings manufacturer Valspar before Russia's Federal Antimonopoly Service regarding Sherwin-Williams USD 11.3 billion acquisition of the company.	USD 11.3 billion	Russia
1-Sep	Eterna Law	The Moscow office of Eterna Law successfully acted for European insurance company Credimundi NVSA – a member of the Credendo group – in a dispute involving Credimundi's claim for subrogation by JSC Southern Kuzbass Coal Company on an insurance payment related to non-payment of an amount due for the supply of goods.	USD 987,550	Russia
14-Sep	CMS; Dentons	CMS advised the Coalco Development real estate developer on its sale of 90% of the Tsar Square (Tsarskaya Ploshad), Presnya City, and Basmanny 5 projects to VTB Real Estate for construction of business class residential complexes in Moscow. Dentons advised VTB on the deal.	N/A	Russia
14-Sep	Debevoise & Plimpton;	The Moscow and Paris offices of Debevoise & Plimpton advised the Vladimir Potanin Foundation on the organization of an exhibition of Soviet and Russian contemporary art at the Centre Pompidou in Paris.	N/A	Russia
16-Sep	Ilyashev & Partners	Ilyashev & Partners reported that it successfully defended the interests of the State Enterprise Antonov in a court dispute with JSC Aviacor-Aviation Plant in the Arbitration Court of the Samara Region in a case involving payment of remuneration for use of its trademark during the manufacture and sale of aircraft.	USD 2.9 million	Russia

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
27-Sep	Liniya Prava	Liniya Prava reported that it advised MTS on the September 20, 2016 acquisition by its subsidiary LLC Telecom Povolzhye of 100% of the shares of mobile operator JSC SMARTS-Yoshkar-Ola in the Russian Republic of Mari El.	RUB 41 million	Russia
29-Sep	Liniya Prava	Liniya Prava reported that it supported the placement of non-convertible interest-bearing certificated bonds classes A1 and B of LLC Transportation Concession Company (TCC) – a consortium established by the LSR Group and Management Company Leader – which took place on Moscow's Interbank Currency Exchange on September 27th, 2016.	N/A	Russia
12-Oct	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised on the fourth mortgage asset securitization transaction for Absolut Bank.	RUB 4.9 billion	Russia
14-Oct	Lex Borealis	Lex Borealis advised TSP LLC, a Russian subsidiary of Frutarom, on its acquisition of a 4,500+ square meter office building and a lease of parking places in the city of Mytischy, in the Moscow Region.	N/A	Russia
26-Aug	DLA Piper; Gecic Law; Karanovic & Nikolic	Gecic Law and DLA Piper assisted Air Serbia in a European Commission investigation related to Etihad Airways' investment in the Serbian Airline. According to Air Serbia, Karanovic & Nikolic was also involved in the first year of the process.	N/A	Serbia
12-Sep	Zivkovic Samardzic	Zivkovic Samardzic advised the Austrian Development Agency on the rehabilitation of flood protection infrastructure in Serbia.	N/A	Serbia
19-Aug	Dentons; Relevans	Dentons advised Tatra Banka, a member of the Raiffeisen Group, on a syndicated loan of EUR 250 million to Eurovea A.S. to refinance the Eurovea multifunctional complex in Bratislava. The Relevans law firm advised Eurovea on the loan.	N/A	Slovakia
9-Sep	Maple & Fish; Schoenherr	Schoenherr Bratislava advised the Albea group on the acquisition of 100% of the shares in Scandolaria TUB-EST, s.r.o., a Slovak subsidiary of the Italian Scandolaria Group. The Scandolaria Group was represented by Studio Legale D'urso-Zena e Associati and the Slovak law firm Maple & Fish.	N/A	Slovakia
12-Oct	Barger Prekop; Taylor Wessing	Taylor Wessing advised the Gima family – shareholders of Slovakian food producer Ryba Kosice and its distribution company Calmar – in the divestiture of their shareholding in the companies to Slovak meat-processing group Tauris, a member of Eco-Invest group. Barger Prekop advised the buyers on the deal.	N/A	Slovakia
30-Sep	Wolf Theiss; Zdolsek Attorneys at Law	Wolf Theiss Ljubljana advised Societa' Italiana Acetilene e Derivati, which already owned 49% of Istrabenz Plini d.o.o., on its successful acquisition of the remaining 51% share from Istrabenz d.d. Slovenia's Zdolsek Attorneys at Law advised the sellers on the transaction.	N/A	Slovenia
23-Aug	Baker & McKenzie (Esin Attorney Partnership)	The Esin Attorney Partnership advised the Islamic Corporation for Development of the Private Sector on the extension of a USD 20 million murabaha facility to Aktif Yatirim Bankasi.	USD 20 million	Turkey
29-Aug	Dentons (Balcioglu Selcuk Akman Keki Attorney Partnership)	Balcioglu Selcuk Akman Keki Attorney Partnership advised the EBRD on its investment in Aksa Enerji Uretim A.S.'s Turkish lira-denominated bonds of 3 years maturity.	EUR 30 million	Turkey
1-Sep	Dentons (Balcioglu Selcuk Akman Keki Attorney Partnership); White & Case	Balcioglu Selcuk Akman Keki Attorney Partnership advised the EBRD on its equity subscription in TFI TAB Gida Yatirimlari A.S. – one of the largest global restaurant operators in Turkey, and the world's largest Burger King master franchisee. White & Case advised TFI TAB Gida on the deal.	EUR 200 million	Turkey
2-Sep	Goksu Safi Isik Attorney Partnership; Herguner Bilge Ozeke; Linklaters; Slaughter and May; White & Case	Linklaters and Herguner Bilge Ozeke advised beIN Media Group on its successful acquisition of Digiturk, the leading pay-TV operator in Turkey, from the Cukurova Group and funds controlled by Providence Equity Partners. White & Case advised the Cukurova Group and Slaughter & May and GSI advised Providence Equity Partners on the deal.	N/A	Turkey
9-Sep	Erdem & Erdem	Erdem & Erdem advised the shareholders of Camis Ambalaj Sanayi A.S. – an affiliate of the Sisecam Group – on the sale of its corrugated cardboard manufacturing business to Mosburger GmbH, a subsidiary of Prinzhorn Holding operating under the name Dunapack Packaging.	N/A	Turkey
9-Sep	CMS; Kocian Solc Balastik	Kocian Solc Balastik advised ENERGO-PRO on financing provided by Akbank for the construction of a hydro power plant in Karakurt, Turkey. Akbank was advised by CMS.	N/A	Turkey
12-Sep	Dentons; Freshfields Herguner Bilgen Ozeke; Paksoy	Paksoy, working with global counsel Freshfields Bruckhaus Deringer, provided local Turkish advice to the lenders on a EUR 120 million facility granted to Luxembourg Investment Company 43 S.a r.l and OnlinePizza Norden AB, affiliates of Delivery Hero. Dentons and Herguner Bilgen Ozeke advised the borrowers on the deal.	EUR 120 million	Turkey
19-Sep	Akin Law Office; Paksoy	Paksoy advised Klockner Pentaplast on its acquisition of Farmamak from Gozde Girism, which is owned by Yildiz Holding. The Akin Law Office advised Yildiz on the deal.	N/A	Turkey
20-Sep	Pelister Atayilmaz Enkur Law Office; Turunc	Turunc advised Taxim Capital on its acquisition of a 40% stake in the Turkish casual dining chain Big Chefs from current shareholders Gamze Cizreli and Saruhan Tan, each of whom had their 50% shares in the company diluted. The Pelister Atayilmaz Enkur Law Office advised the sellers on the deal.	N/A	Turkey
22-Sep	Baker & McKenzie (Esin Attorney Partnership); Cakmak-Gokce; White & Case	The Esin Attorney Partnership, a member firm of Baker & McKenzie International, and Baker & McKenzie's Paris office represented Gama Enerji A.S. and its subsidiary Kremna Enerji Uretim ve Ticaret A.S. (Kremna), on a USD 132 million secured senior acquisition finance facility extended to it by the Industrial and Commercial Bank of China (ICBC), the EBRD, and the IFC for the acquisition of the Karacaoren 1 and Karacaoren 2 hydroelectric power plants from the Turkish Privatization Administration (TPA). White & Case and its Turkish arm, the Cakmak-Gokce law firm, advised the ICBC, EBRD, the IFC, and the TPA on the privatization, which will be conducted through a Transfer-of-Operating-Rights method.	USD 132 million	Turkey
11-Oct	Paksoy	Paksoy advised the Turkish subsidiary of Metalsa, part of the Mexican Proeza Group, on the sale of its manufacturing plant in Aksaray to Mercedes-Benz Turkey.	N/A	Turkey
19-Aug	Eterna Law	Eterna Law advised Swarovski AG on resolving an unauthorized use of its trademarks and intellectual property.	N/A	Ukraine

Date covered	Firms Involved	Deal/Litigation	Deal Value	Country
23-Aug	Sayenko Kharenko	Sayenko Kharenko represented Vita Polymers Poland in a safeguard investigation related to imports into Ukraine of plates, blocks, and sheets of flexible foam initiated by the Interdepartmental Commission on International Trade.	N/A	Ukraine
23-Aug	Aequo	Aequo advised the EBRD on Ukrainian law matters related to its granting of a USD 20 million loan to Astarta Group.	USD 20 million	Ukraine
24-Aug	Integrites	Integrites advised Delphi Automotive on the enlargement of its production capabilities in Ukraine.	N/A	Ukraine
25-Aug	Vasil Kisil and Partners	Vasil Kisil and Partners successfully represented Shell Exploration & Production Ukraine Investments (IV) B.V. in a tax dispute.	N/A	Ukraine
31-Aug	Sayenko Kharenko	Sayenko Kharenko represented shipping company V.F. Tanker in its successful challenge to special sanctions requiring the temporary suspension of its foreign economic activity in Ukraine applied by the Ministry of Economic Development and Trade of Ukraine upon the request of the Security Service of Ukraine.	N/A	Ukraine
2-Sep	Vasil Kisil and Partners	Vasil Kisil & Partners advised Epicenter on its acquisition of a group of buildings of the former Alta Center Shopping Mall in Kyiv.	N/A	Ukraine
5-Sep	Axon Partners	Axon Partners worked with the administrator of Ukraine's state-owned ProZorro public procurement electronic system, which the firm reports is "being transformed into an IT company implementing innovative projects in Ukraine."	N/A	Ukraine
9-Sep	Avellum; Latham & Watkins	Avellum advised Altran, a provider of innovation and high-tech engineering consulting, on Ukrainian matters related to its acquisition of the Lohika software engineering services firm. Latham & Watkins acted as the global legal advisor to Altran.	N/A	Ukraine
14-Sep	Avellum; Baker & McKenzie	Avellum advised Custos Invest & Finance Inc. on its sale of shares in independent Ukrainian telecom operator Datagroup to Horizon Capital, providing Horizon Capital with over 70% of the shares in Datagroup and operational control of the company. Baker & McKenzie advised Horizon Capital on the deal.	N/A	Ukraine
16-Sep	Aequo; Baker & McKenzie	Aequo advised Dragon Capital Investments Limited on its acquisition of the Pyramid Shopping Mall in Kyiv from a group of American and British investors. The investors were advised by Baker & McKenzie.	N/A	Ukraine
16-Sep	Sayenko Kharenko	Sayenko Kharenko advised the EBRD on the development of a draft law introducing the concepts of bondholder meeting and "collective representative" (trustee) into the Ukrainian Securities Market Law (officially known as the Law of Ukraine "On Securities and the Stock Market" No. 3480-IV).	N/A	Ukraine
16-Sep	Asters	Asters assisted Quinn Emanuel Urquhart & Sullivan, the lead counsel to JSC Oschadbank, on issues of Ukrainian law and factual developments related to the restoration of JSC Oschadbank's Crimea-related rights and interests through an international investment protection mechanism.	USD 1 billion	Ukraine
22-Sep	Sayenko Kharenko	Sayenko Kharenko acted as legal counsel to the EBRD on its provision of a USD 20 million loan to the subsidiaries of the Industrial Milk Company, a Ukrainian agricultural holding listed on the Warsaw Stock Exchange.	USD 20 million	Ukraine
23-Sep	Vasil Kisil and Partners	Vasil Kisil & Partners successfully represented the UNIQA Insurance Company in a dispute over payment of an insurance indemnity in connection with a low crop yield caused by drought.	N/A	Ukraine
27-Sep	Magnusson	Magnusson advised the Oxygen Group on obtaining financing from unnamed private investment funds.	N/A	Ukraine
27-Sep	Asters	Asters advised VTB Bank Ukraine on the settlement of the loan debt of Incom.	N/A	Ukraine
29-Sep	Doubinsky & Osharova	Doubinsky & Osharova (D&O) reported that, on September 21, 2016, the Kyiv Economic Court of Appeal rejected PJSC Sberbank's argument that D&O's client PJSC Oschadbank's certificate for the use of the "Sberbank" sign for goods and services should be terminated. The appeal followed the earlier decision of the Economic Court of Kyiv and the State Intellectual Property Service of Ukraine, both of which had also found for Oschadbank.	N/A	Ukraine
5-Oct	Redcliffe Partners	Redcliffe Partners advised Landesbank Berlin on the restructuring of EUR 244 million financing provided to Wind Power, a Ukrainian operating asset of the DTEK Renewables Group. The financing was backed by a guarantee of EKF, the Danish export credit agency.	EUR 244 million	Ukraine
10-Oct	Aequo	Aequo represented Forbes Media on a number of issues related to its American Arbitration Association arbitration proceeding against United Media Holding N.V. (UMH), Forbes' former licensee in Ukraine, regarding the termination of its license agreement.	N/A	Ukraine
12-Oct	Arendt & Medernach; Avellum; Harneys; Montanios & Montanios; Norton Rose Fulbright	Avellum advised ING Bank N.V. on Ukrainian matters related to USD 100 million secured pre-export revolving loan facility it and Credit Agricole Corporate and Investment Bank provided to Myronivsky Hliboproduct Group. ING Bank N.V. was also advised by Norton Rose Fulbright on English law, Arendt & Medernach on Luxembourg law, Montanios & Montanios on Cyprus law, and Harneys on BVI law.	USD 100 million	Ukraine
12-Oct	Eterna Law	Eterna Law provided pro bono advice as a partner to the Run For Peace organization in its online "Go_UA_Glory" exhibition, organized at the request of the Ministry of Foreign Affairs of Ukraine.	N/A	Ukraine

Full information available at: [www.ceelegalmatters.com](http://www.ceelegalmatters.com)

Period Covered: August 19, 2016 - October 17, 2016

## Did We Miss Something?

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

# On the Move: New Homes and Friends

## New Alliances and Members

### Vasil Kisil & Partners Becomes Ukrainian Member of Cathay Associates



Vasil Kisil & Partners (VKP) has become a member of Cathay Associates, the China-based global legal service network of law firms.

The Cathay Associates network was launched by China's Kejie Law Office in September 20015, and it announced its first nine CEE members shortly thereafter.

According to a VKP statement, "the mission of the network is to provide cross-jurisdictional legal services to Chinese enterprises with ambitious global expansion strategies, as well as international companies from other countries seeking to do business with China, and to be a bridge between China and the rest of the world. Launched late in 2015 the network already aggregates more than 31 offices and continues to grow rapidly."

VKP reports that Ukraine has become a growing target for Chinese direct investment and is expected to gain a significant amount of attention from Chinese companies. In 2015, the overall turnover between China and Ukraine was over USD 7 billion, and the China Exim Bank has extended a USD 3 billion loan facility to Ukraine's agriculture. In addition, VKP reports, "Chinese private and state companies already participate in various private projects in Ukraine, including agriculture, silo operation, and port facilities," and the firm claims that "notably, in the agricultural industry, Ukraine has become the largest exporter of corn to China, and Chinese-Ukrainian agricultural trade has increased by 56% since 2014."

VKP Partner Alexander Borodkin, who serves as Cathay Associates' main point of contact at the firm, said: "The requisite capacity and established leading market position helped Vasil Kisil and Partners to become one-stop-shop advisor for Chinese investors in Ukraine. The latest meetings in Shanghai and Beijing proved high investor interest in Ukraine and we are looking forward to enhance this collaboration, making our input into growing Ukraine's economy."

Rupert Varnai, the Global Chief Executive Officer of Cathay Associates, said: "Now that we are present in Ukraine and China, we can work seamlessly between the two countries to eliminate the headaches that can occur when Ukrainian companies are seeking out Chinese investors and also when Chinese businesses are looking to do business in Ukraine. Cross-cultural issues can be daunting, as well as the full magnitude of the different legal and business aspects [that] can be time consuming for investors. Now we have leading legal counsels [to] tap into, simultaneously, in both countries."

## New Adrialia Law Firm Alliance in the Balkans



Serbia's Bojanovic & Partners announced the October 1, 2016, launch of a new alliance of nine leading independent law firms across the Balkans. The new Adrialia Alliance of Balkan Legal Experts consists of the following firms:

- Baros Law Office, Banja Luka, Bosnia and Herzegovina;
- Baros & Bicakcic Law Office, Sarajevo, Bosnia and Herzegovina;
- Bojanovic & Partners Law Office, Belgrade, Serbia;
- Law Firm Kavcic, Rogl in Bracun, Ljubljana, Slovenia;
- Law Firm Knezovic & Associates, Skopje, Republic of Macedonia;
- Law Firm Madirazza & Partners, Zagreb, Croatia;
- Prelevic Law Firm, Podgorica, Montenegro;
- Spasov & Bratanov Lawyers' Partnership, Sofia, Bulgaria; and
- Tashko Pustina – Attorneys at Law, Tirana, Albania.

According to Vladimir Bojanovic, the Managing Partner of Bojanovic & Partners, Adrialia is "one of very few existing alliances that cover the former Yugoslavia, plus Albania and Bulgaria." Bojanovic explains that "the cooperation is established with the aim

to be responsive and capable of handling international projects which have touch-points in multiple markets. It is established only with the purpose to be reactive and responsive in handling this specific type of project, while ensuring the quality of legal assistance.”

Bojanovic insists that the alliance not be confused with a partnership or “conglomerate law firm,” noting that “we did not create a legal entity,” and that “we remain local independent lawyers who advise only under the local laws where we are qualified.” Instead, he repeats, “this is a simple cooperation of independent premium law firms and law offices from these jurisdictions, and each firm will keep its own integrity and individuality – this very quality after all makes us who we are, and we believe that this is just an added value.”

## SELA Legal Alliance in Balkans



Adriala isn't the only new alliance in the region.

Three well-known law firms in the former Yugoslavia have announced the creation of the new South East Legal Alliance (SELA) – which they describe as “a formal regional network of independent law firms advising clients on their operations across South East Europe.”

The alliance consists of Dimitrijevic & Partners in Bosnia and Herzegovina (which split off from Karanovic & Nikolic in February of this year), Zurić i Partneri in Croatia, and Bojovic & Partners in Serbia/Montenegro. According to a statement released by the members of the alliance, “SELA's member firms are carefully selected for their reputation and track record of success, as well as for their in-depth knowledge of local laws and business environments, enabling us to help clients successfully navigate the regional legal and business terrain. In addition, our members have broad experience across a range of industries and attorneys with diverse international educational backgrounds.”

## Romanian Firm Joins CEE Attorneys



Romania's Boanta, Gidei si Asociatii has officially joined CEE Attorneys, the Central and Eastern European law firm with existing offices in the Czech Republic, Poland, the Slovak Republic, and Lithuania.

“By joining CEE Attorneys we become a part of the ambitious and rapidly expanding international law firm, and we are positive to share our experience and knowledge with the aim to offer truly the best services to our clients,” commented BG&A Partner Sergiu Gidei in a statement released by the firm. “Today a significant part of clients' business activities is cross-border, and a lot of companies follow the trend of globalization, so I believe it is very important to keep pace.”

Lukas Petr, Partner in CEE Attorneys' Prague office, said: “Romania is one of the fastest growing economies in the EU, with increasing amounts of foreign investments and a large presence of major international companies. Therefore, the decision to expand to the Romanian market was absolutely consistent for the firm and we are pleased to welcome our new colleagues.”

Finally, CEE Attorneys Poland Partner Andrzej Szmigiel commented: “Being international is a demanding organizational task and increased responsibility; however, we strongly believe that presence in ultimately all CEE jurisdictions shall bring significant benefits to our clients seeking not only reliable legal support within their international activities, but also new business opportunities on other European markets.”

For more information about CEE Attorneys, see our extended feature on the firm on page 28.

## New Practices

### Arzinger Creates Bankruptcy Practice

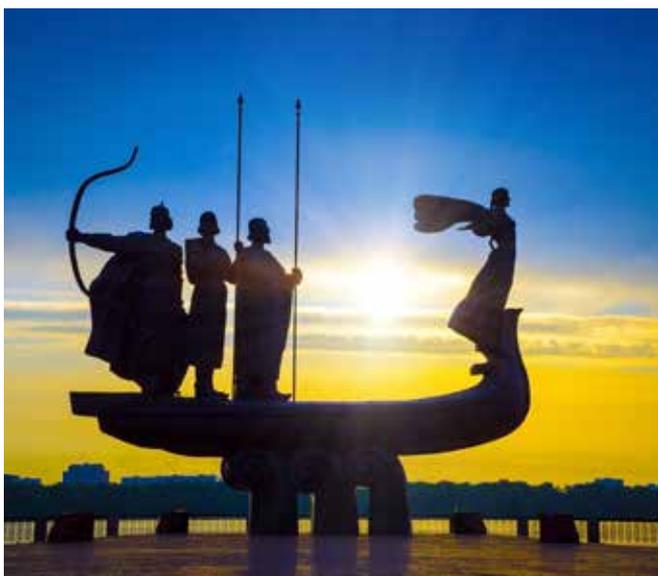
Ukraine's Arzinger has announced that, “responding to the emerging needs of the market,” it has created a bankruptcy practice within the firm's existing dispute resolution practice. The practice will be led by Partner Markiyany Malsky and headed by Senior Associate Anton Molchanov, who has ten years of experience in commercial dispute resolution in Ukrainian and foreign courts.

According to Arzinger, “the main services of the practice are con-

sulting in the field of bankruptcy and crisis management, a full range of services related to the accompaniment of bankruptcy cases, the return of misappropriated assets, and complex support of the debtor's assets alienation procedures (tenders, competitions, auctions, direct sales, debt/debt forgiveness)."

Finally, the firm reports, "along with the practice of criminal law and white-collar crime the bankruptcy practice has a particular emphasis on risk management and representation of clients in the matters of responsibility for bringing bankruptcy and fraudulent bankruptcy. One of the exclusive services is a support of selective sale of debtors' assets in clients' favor – potential buyers who are not involved in bankruptcy cases."

### Eterna Law Establishes Lobbying & Government Relations Practice



Eterna Law has announced the establishment of a Lobbying & GR Practice, to be headed by new Partner Philip Griffin. Eterna Law describes the Lobbying & GR Practice as the first in Ukraine "which adheres to and complies with all American legal practices and standards."

According to a statement released by Eterna, the decision to create the new practice "resulted out of the needs of businesses in Ukraine for professional classical lobbying services, the success of which depends on the actions and decisions taken by elected officials and government and public authorities. One of the priority client segments the practice is to cover includes companies that attach strategic importance to growing their business in the West or that already operate or plan to start a business in the United States."

The firm describes Griffin as having "knowledge and experience and ... government contacts in the United States and Ukraine [which] are a valuable asset for the GR Practice.

"It was a conscious decision to appoint a United States citizen with substantial experience in government relations within and outside the CIS region," said Partner Oleh Malskyy, the firm's Head of Corporate and M&A. "The United States is the birthplace of

classical lobbying techniques, and we want to implement its best practices in the Ukrainian market to achieve compliance with international ethical and professional standards."

According to Eterna Law, "having a US citizen join Eterna Law as a Partner is a logical step in the successful and coherent global development of our firm."

### Pepeliaev Group Starts Family and Inheritance Law Practice Group



Russia's Pepeliaev Group has announced the launch of a Family and Inheritance Law Practice Group, led by Partner Julia Borozdna, designed to "provide advice on property and non-property related personal issues in relation to any family relationships, including when people are planning to marry."

In its announcement, the firm explained that "we hope that our clients will enjoy harmony in their family lives, but, if necessary, we are ready to provide advice and support in litigation concerning the dissolution of a marriage, the award and payment of alimony, [and] the division of property, as well as issues arising in relation to rights of access or custody for a parent and to paternity." The Family and Inheritance Law Practice Group will also advise on and assist in enforcing inheritance rights, providing support during the subsequent disposal of inherited property, and providing legal support in any inheritance disputes.

"Family is one of the most important aspects in the life of almost every person," said Practice Group Head Borozdna. "That is why, following requests from our clients, we are delighted to open this new division. Our goal is to ensure that we exercise the maximum care in our approach to resolving the most delicate family problems. We provide support to our clients in search of a constructive solution to complex family and inheritance disputes, while at the same time providing our customary excellent level of client service."

## Taylor Wessing Establishes CEE Tax Practice with New Partner



Michaela Petritz-Klar, 39, former Head of the Tax Team of Schoenherr, has joined Taylor Wessing as a Partner and will head the firm's newly-established CEE Tax Practice Group.

Petritz-Klar focuses on tax aspects of M&A transactions, private equity, capital markets, restructurings, corporate tax planning, project finance, high net worth individuals, and funds. According to Taylor Wessing, "with her many years of experience in tax law – besides Schoenherr she was also a member of the Tax practices of Freshfields and Wolf Theiss – Michaela is one of the renowned tax experts of Austria."

According to Petritz-Klar, "after years of being active in tax law and after heading a team in Austria, I now very much look forward to building up and heading an international team."

Taylor Wessing CEE Managing Partner Raimund Cancola added: "With those CEE lawyers who have in the past offered tax advice to clients and with Michaela as a renowned tax expert joining us, we are now in a very good position to implement a CEE-wide Tax Practice Group with Michaela leading it. We also plan to enlarge the team in the near future."

## Arrivals and Departures

### Magnusson Expands Polish Energy Practice with New Team



Former Kochanski Zieba & Partners Partner Magdalena Mitas has joined Magnusson's Warsaw office with her team.

Mitas, who focuses on energy, natural resources, infrastructure, construction, public procurement, and environmental law, will head Magnusson's energy practice in Poland. According to a statement released by Magnusson, "for more than 10 years Magdalena has been advising large domestic and international corporations, including listed companies. Her experience includes advice on all issues related to infrastructure and industrial projects; renewable and conventional energy investments; coal, coke, and conventional gas plants, [and] production facilities in a variety of sectors. Magdalena also represented clients in a wide range of regulatory, competition, and antimonopoly proceedings, as well as in commercial arbitration cases."

Prior to joining Magnusson in September 2016, Mitas was a Partner and head of the energy practice at KZP. Before joining that firm in March 2011, Mitas worked for almost four years at DeBenedetti Majewski Szczesniak, for three years at the Andrzej Sikora law office, and for a year at the Sobolewski Szuwara law firm.

"I am delighted to welcome a Partner and practice head of Magdalena's calibre," said Magnusson's Poland Managing Partner Agnieszka Pytlas-Skwierczynska. "Together with her team, we add another dimension to our practice in Poland and in the region."

"Magnusson is a great platform for further growth, based on an impressive entrepreneurial culture focused on team work and exploration of both new opportunities and synergies between practices," stated Magdalena Mitas.

This has been a busy year for Magnusson in Poland. The hire of Mitas and her team follows shortly after the news that new Dispute Resolution head Daniel Klementewicz had joined from Wolf Theiss in April and that former Chadbourne & Parke Partner Marek Krol had joined the firm in June.

### Nektorov, Saveliev & Partners Splits into Two Associated Parts



Nektorov, Saveliev & Partners has announced the restructuring of its business and its division into two areas of practice under separate brands in the framework of a common association.

One part of the firm will continue to operate under the Nektorov, Saveliev & Partners brand and be headed by Partners Alexander Nektorov and Marat Davletbaev. This part will focus on providing corporate investment services and transactional work under Russian and English law. The practice will also be supported by L&DR services and tax advice.

The other part, led by Partners Sergey Saveliev and Egor Batanov, will operate under the new Saveliev, Batanov & Partners brand. This team will concentrate its efforts on complex high-value litigation, corporate conflicts, and dispute resolution matters.

“I believe that I, Sergey, and the partners have created an outstanding firm,” said Alexander Nektorov in a statement released by Nektorov, Saveliev & Partners. “So why not give the market more and create two outstanding firms? Two brands will help us be more flexible in our decision-making, react more quickly to our clients’ changing needs, and attract and retain the best talent.”

“We concluded that the two strongest areas of our joint firm require slightly different development strategies and that the best solution is an association with separate brands,” added Sergey Saveliev. “Our teams have worked together extensively. We remain friendly firms and will continue to collaborate on joint projects when it is in a client’s interests.”

In that same statement, Dmitry Timofeev, legal and corporate affairs executive with Rosvodokanal Group and a client of the firm, expressed his approval. “Alexander and Sergey are real market leaders, and I’m pleasantly surprised to hear of their new initiative. For me, as a client, a law firm has to have a clear focus. I prefer to do business with firms whose teams are most concentrated on their product. So I’m in favor of the new format and wish my colleagues success in implementing the idea.”

Finally, competitor Andrey Korelskiy, Managing Partner of Korelskiy, Ischuk, Astafiev & Partners also expressed his best wishes: “I’m very glad to see that Alexander and Sergey have found a new formula for developing their business that keeps their teams intact and also preserves the good relations within the collective. I hope they can become a positive and successful example for the entire market to follow and that they are able to realize their potential under the new format.”

### Yazicioglu Attorneys at Law Opens Doors in Turkey



Calling itself “a new player in the Turkish TMT legal market,” a new boutique – Yazicioglu Attorneys at Law – has begun serving clients in Istanbul.

An announcement distributed by the new firm describes it as having a strong focus on Technology, Media, and Telecommunications and reports that it “also has a solid expertise in several areas of law, including Corporate/Commercial, M&A, Dispute Resolution, Real estate, Data Protection, and Consumer Law.”

Bora Yazicioglu, who founded the new boutique, began his career at the Yarsuvat & Yarsuvat law firm before joining Denton Wilde Sapte (now Dentons) in 2006, then moving as a Partner to the Gokce Attorney Partnership in 2010.

### Arrival of Zorlu Holding Pair Transforms Kececiler into Kececiler & Partners



Former Zorlu Holding lawyers Pinar Aksakal Aydin and Ece Kok Sen have left the Turkish company to go into private practice, joining with Murat Kececiler to form Kececiler & Partners in Istanbul.

According to Pinar Aydin, the firm focuses on “energy law, project finance, M&As, public and/or private partnerships, litigation, banking and finance and sports law,” and Aydin says that she and her colleagues intend to add more lawyers and trainees soon.

Kececiler – the son of a famous former Turkish minister – has been practicing since 2005 as the Kececiler Law Firm. Pinar Aksakal Aydin informs CEE Legal Matters that Kececiler “has intense litigation, insurance, labour, corporate and commercial law and M&A experience,” while she Ece Kok Sen have “a corporate background ... and [are] experienced on factoring and corporate commercial law issues.”

In joining Kececiler, Aydin, who led the 11-person legal team at Zorlu Energy and reported directly to Zorlu Holding’s Head of Legal, returns to private practice, where she spent the first two years of her career (in 2007 with the Salih Zeki Bayten Law Firm and in 2008 with Eryurekli & Fidan). She joined Zorlu Holding in February 2009, and – with the exception of a brief period at Avea Iletisim Hizmetleri in 2012 – has been there since. She explained to CEE Legal Matters that, “The main reason for me to make this move is my willingness to be on the field. After a long period of in house counsel experience, I felt like I was making no progress in terms of my career objectives and I had the sense that I should take a private practice path to be on the field instead of backstage. While I was thinking of going solo to realize my desire, thanks to Ece I met with Murat who was in private practice and had run an office for about ten years. After our meeting we decided to combine our experiences in different areas by cofounding a partnership.”

Ece Sen began her career with four years as a Compliance Officer-MLRO and Senior Lawyer with ING Faktoring A.S before moving over to Zorlu Holding in early 2014.

## White & Case Closes Ankara Office



White & Case has confirmed that it has concluded its formal relationship with Cakmak Avukatlik Burosu in Ankara and, after 31

years, now no longer has an official presence in Turkey’s capital.

White & Case opened its office in Ankara in 1985, making it the first international firm with a base in Turkey. The White Shoe firm became associated with the Cakmak firm in 1993.

White & Case Partner Asli Basgoz, in Istanbul, confirmed that White & Case’s relationship with the Ankara firm has changed, calling it “less organic,” but she emphasized that Cakmak Avukatlik Burosu continues to operate normally, independently of its former international counterpart, and insisted that the change “has had no functional impact on the clients.”

Zeynep Cakmak, Managing Partner at the Cakmak-Gokce Avukatlik Burosu, the Turkish firm associated with White & Case in Istanbul, agreed. Cakmak, who was Managing Partner at Cakmak Avukatlik Burosu in Ankara from April 1994 to September 2015, describes the new relationship between her former firm and White & Case as “a best friends’ alliance.”

## Thank You To Our Country Knowledge Partners For Their Invaluable Input and Support

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Romania

**ODI** Law

Slovenia

**AVELLUM**  
INTERNATIONALLY  
UKRAINIAN

Ukraine

## Summary Of Partner Lateral Moves

Date covered	Name	Practice(s)	Joining	Moving From	Country
1-Sep	Clemens Barenthaler	Real Estate	Taylor Wessing	DLA Piper	Austria
5-Oct	Michaela Petritz-Klar	Tax	Taylor Wessing	Schoenherr	Austria
18-Aug	Jennifer Foss	Real Estate	BADOKH	Dentons (Of Counsel)	Czech Republic
9-Sep	Barbora Rovenska	IP/TMT	Rovenska & Partners	White & Case	Czech Republic
9-Sep	Petr Topka	IP/TMT	Rovenska & Partners	White & Case	Czech Republic
9-Sep	David Padysak	Real Estate	Rovenska & Partners	White & Case	Czech Republic
9-Sep	Jan Dziama	Corporate/M&A	Rovenska & Partners	White & Case	Czech Republic
16-Sep	Ants Mailend	Dispute Resoluition	Sorainen	Varul	Estonia
20-Oct	Kadri Kallas	Corporate/M&A	Varul	Sorainen	Estonia
12-Sep	Peter Voros	Competition	Baker & McKenzie	Kinstellar	Hungary
12-Oct	Marton Horanyi	Competition	Baker & McKenzie	EY Law	Hungary
1-Sep	Magdalena Mitas	Energy	Magnusson	Kochanski Zieba & Partners	Poland
17-Oct	Pawel Gruszecki	IP/TMT	Kochanski Zieba & Partners	TML-Gruszecki Law Firm	Poland
20-Oct	Maciej Gawronski	IP/TMT	Bird & Bird	Maruta Wachta	Poland
19-Oct	Leontin Trifa	Banking/Finance	Stratulat Albulescu	Reff & Associates	Romania
19-Oct	Ioana Bratu	Environmental	Stratulat Albulescu	Ene Bratu & Partners	Romania
17-Aug	Sergey Milanov	Banking/Finance	Goltsblat BLP	K&L Gates	Russia
22-Sep	Ivan Marisin	Dispute Resolution / Litigation	Baker Botts	Quinn Emanuel	Russia
22-Sep	Vasily Kuznetsov	Dispute Resolution / Litigation	Baker Botts	Quinn Emanuel	Russia

Full information available at: [www.ceelegalmatters.com](http://www.ceelegalmatters.com)

Period Covered: August 18, 2016 - October 20, 2016

## Helpful Tips

If you have any information about major acquisitions, lateral moves, office closings, or other developments of significance in a CEE legal market, please contact us at [press@ceelm.com](mailto:press@ceelm.com).

Confidentiality is guaranteed.

## Summary Of New Partner Appointments

Date Covered	Name	Practice(s)	Firm	Country
14-Oct	Stefan Adametz	Litigation; Banking/Finance	Fellner Wratzfeld & Partner	Austria
14-Oct	Patrick Andrieu	Litigation	Fellner Wratzfeld & Partner	Austria
14-Oct	Veronika Seronova	Labor; Banking/Finance; Dispute Resolution	Fellner Wratzfeld & Partner	Austria
5-Oct	Katerina Gramatikova	Competition/Energy	Dobrev & Lyutskanov	Bulgaria
20-Oct	Jan Linda	Banking/Finance	White & Case	Czech Republic
14-Sep	Saule Dagilyte	Tax	Sorainen	Lithuania
12-Oct	Marcin Smolarek	Banking/Finance	Wiercinski, Kwiecinski, Baehr	Poland
20-Oct	Michal Subocz	Litigation	White & Case	Poland
14-Oct	Olga Vorozhbyt	Litigation	DLA Piper	Ukraine

## Summary Of In-House Appointments And Moves

Date covered	Name	Company	Moving From	Country
16-Aug	Marianna Erdei	Ernst & Young / Head of General Counsel's Office	EGIS Pharmaceuticals	Hungary
17-Oct	Paulina Lasocka-Wysoczanska	Medicover / Head Legal Counsel	CMS / Senior Associate	Poland
19-Oct	Otilia Petrescu	Stratulat Albulescu / Partner	Louise Delhaize Group / General Counsel	Romania
16-Aug	Can Akcaoglu	Tupras / Chief Legal Officer	Mapfre Genel Sigorta A.S	Turkey
19-Oct	Pinar Aksakal Aydin	Kececiler & Partners / Partner	Zorlu Holding	Turkey
19-Oct	Ece Kok Sen	Kececiler & Partners / Partner	Zorlu Holding	Turkey

## Other Appointments

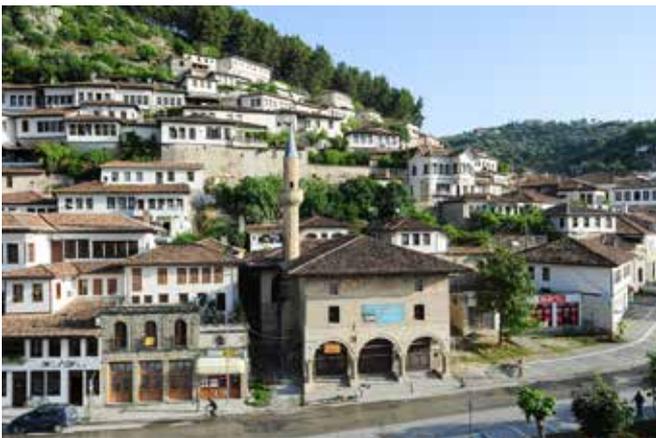
Date Covered	Name	Firm	Appointed to	Country
11-Oct	Michael Lagler	Schoenherr	Managing Partner	Austria
29-Aug	Arthur Braun	BPV Braun Partners	Managing Partner	Czech Republic; Slovakia
29-Sep	Atanas Politov	Dentons	Europe Director of Pro Bono	Hungary
20-Sep	Anna Halas-Krawczyk	Greenberg Traurig	Head of the Labor Law	Poland
23-Sep	Andrey Zelenin	Lidings	Head of Dispute Resolution	Russia
23-Sep	Sergey Kislov	Lidings	Managing Partner	Russia
21-Sep	Petr Malecek	Spenser & Kauffmann	Head of Central European Desk	Ukraine
20-Sep	Ivanna Dorichenko	Integrites	Head of London Office	United Kingdom

# Legal Matters: The Buzz

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

## Albania (October 20)

*Judicial reform remains on top of the agenda*



“The big news in Albania,” says Besnik Duraj, Partner at Drakopoulos, “not just in the legal market, but in the social and economic areas as well, is the ongoing struggle with judicial reform.”

“The country,” Duraj reports, “has been dealing with these problems almost since the beginning of Democracy.” Even this current push towards reform is sliding towards failure, and Duraj’s frustration with the inevitable delays, finger-pointing, and politicizing of the process is palpable. “This is not a really a new thing,” he says with a sigh. “We’ve been struggling with this current process for at least two years now.” According to Duraj, the country’s reputation for judicial corruption, lack of transparency, and lack of predictability is the biggest obstacle to moving talks about potential EU membership forward, and the market risks and inconsistent (and unreliable) law enforcement is the reason foreign investment in the country continues to lag. “So this is our country’s number one priority,” he says.

Still, and despite its importance, the actual process of addressing the necessary reform remains, unfortunately, highly politicized, which Duraj describes as “the no-

1 problem.” Indeed, he notes that the Constitutional amendments alone took 18 months to pass – and even that only came after substantial international pressure. In addition, he reports, “what started as a technical matter, day by day turned into a political matter.” The result, he said, is unsurprisingly muddy. “We know it’s not very clear when lawyers draft – you can imagine how bad it gets when politicians do it!”

Staying on the topic, Duraj also pointed to a shocking lack of transparency in the process, with the actual draft laws being debated very difficult to find. “Lawyers should be part of the solution,” he says, unhappily, “but we are often seen by society as part of the problem. We have a passive role in the process, and it’s a pity.”

“If even the constitutional process took 18 months ...” he says, trailing off, before picking up with a combination of black humor and frustration: “And we still have 40 laws to debate! And we’re still discussing only the first seven!”

All of this, he says, delays the foreign investments the country so desperately needs. “And this is what bothers me,” he says, “because this country has a lot to offer, and we are waiting for serious Western investors. And they are waiting for the country to be able to provide a secure market, financially and legally.”

Otherwise, he says, there’s nothing really new to report. He’s not seeing so much M&A in the country, but he describes the energy sector as extremely busy, as the country’s Central Bank has reported that about 60% of all foreign investments in Q2 2016 were concentrated in major energy projects – 24% more than the same period a year ago. Mainly concession projects, Duraj reports, but also some privatizations and capital injection in building up hydro-power plants and putting the necessary infrastructure into place, as “the country is not yet at the stage where it’s all built up and energy can be sold.”

There are some other industries going well too, he says, pointing towards exports in the garment and footwear industry, compared to the extracting industry, which has had a drastic decrease in investment recently. Client service, call centers, joint centers for data processing, technology information services are all strong as well, he reports, and “all seem not to be too affected by the crisis or the other political issues we’re facing.”

“But also litigation,” he says with a laugh. “I don’t think there’s ever a period where litigators aren’t busy.”

## Bulgaria (September 23)

### *A lack of leadership in Bulgaria*



“The overall situation in the country – political, financial, social, and so on, which largely determines business (and thus our business),” says Sergey Penev, the Managing Partner of Penev LLP, “may be considered ‘terrible’ for much of Europe, but in Bulgaria it’s pretty stable.” The country is in the top three or four in terms of GDP to debt ratio, he says, so in fact things are not as bad as some claim.

The biggest problem, he says, is that wages are still low, and people are not happy. Penev notes that “the cost of living is not too far from Prague or Germany, for example, but wages are not catching up.”

Penev, who’s also the Counsel of Monaco to Bulgaria, does not mince his words describing Bulgaria’s leadership, asserting that “the governments since 2000 could not have done a worse job in terms of capturing business,” and claiming that “the governments owe a big debt to the Bulgarian people.” The economy “does not function well,” he said, “and the only work involves utilization of EU money. Infrastructure, roads, etc. The Bulgarian economy runs more than 80% of EU money,” he says, “and when that is gone, it will struggle.” He sighs. “No effort is being made to make the lives of businesses – SMEs in particular – easier.”

In addition, Penev says, Bulgaria has also suffered as a result of the sanctions imposed on Russia – traditionally one of Bulgaria’s largest trading partners. Finally, he sighs, there’s still a large level of corruption – though he reports that “Bulgaria is not as corrupt as is often said,” and insisting that “I don’t think that we are any more corrupt than any other regional country. Of course there is corruption, but the image far outweighs the reality.” Still, he concedes, “the judicial system, they still need to prove to people, to

investors, that their money is safe, and that the rule of law controls.”

The legal market depends heavily on direct foreign investment for business, Penev reports, with the top tier of law firms finding almost all of their work coming from foreign investors. The first problem facing firms in the market, Penev reports, “is that because the economy runs around the EU funds and government-related businesses, the established firms struggle to get that business, because they’re not close to the government. “It’s very difficult for firms like ours to get public procurement work from municipalities,” he explains, “because we’ve always been on the other side – and we’re still at the stage where you have to work very closely with the ministries to get that business.” When asked which firms do get that business, Penev rolls his eyes, explaining that it’s difficult even to name them, not because of any sensitivity, but “because they’re often fly-by-night firms that appear quickly just to get that work, based on previous connections.”

“The other element is simply that the way we do business is hostile to the environment we work in,” as “if you’re not part of the establishment you’re outside the circle.” He elaborates. “Contrary to what the government says, the amount of FDI coming to Bulgaria is low compared to neighboring countries. The strong industries that do exist – automotive, IP/IT, outsourcing, etc. – come from the companies themselves, not because of government assistance or support. So outside FDI is still low.”

As a result, perhaps, Penev reports that the number of companies needing “high end legal services” is decreasing. He explains that Bulgaria in particular attracts companies because it’s “so cheap,” and those same companies therefore are taken aback when the legal fees proposed to them are similar to those in other countries. “They even balk at fees 20% less than elsewhere in CEE,” Penev sighs, “so it’s hard for bigger firms to survive. They still think they’re being taken for a ride.”

Despite all this, Penev describes himself as “an optimist,” nothing that “more and more we’re called the Silicon Valley of the Balkans because of the rapid growth of the IT industry,” which he reports has created more than 30,000 jobs in the country in recent years. “We’ve also become a European leader in the outsourcing industry, and as a host for shared services. Also as a model site for start-ups, in large part because of the highly entrepreneurial spirit of the Bulgarian people.”

Indeed, he sees a pick-up in some other areas of the economy as well, saying, “we’ve started witnessing in Bulgaria some consolidation of businesses, and some picking up, particularly in Real Estate. More and more we see work on

various Real Estate projects, and banks extending mortgage loans and business start-up loans.”

He reiterates his optimism. “I really think that EU money should not be so important, and more and more efforts are being put towards increasing competencies.”

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### Czech Republic (October 21)

*Entrepreneurs in the Czech Republic face an increasingly burdensome environment*



Jiri Buchvaldek, Partner at Hruby & Buchvaldek in the Czech Republic, is flabbergasted at the amount of new regulations being thrown at small businesses and entrepreneurs in the country. “It’s just freakish what’s going on,” he says, shaking his head.

“I recently found out about an ‘improvement’ to the Czech Republic’s AML [anti-money laundering] law,” he says of a law currently passed by the Senate. The new law, which should become effective on January 1, 2017, would require lawyers and everyone who provides escrow services (“it applies to all real estate agents as well,” Buchvaldek notes, “though not everyone knows about it”) to perform even more thorough checks of the sources of the funds being placed in escrow. The law also establishes a new register of real or ultimate owners/beneficiaries of businesses, which is to be kept by the Courts. Although not completely public, the registry will be open to all major authorities including the newly Financial Analytical Bureau, newly separated from the Ministry. All legal entities will be required to keep record of their ultimate owners / beneficiaries and record them in this register.

Even the current AML law, according to Buchvaldek, is “burdensome and complicated,” and this new obligation goes even further. Buchvaldek suggests that many clients

have legitimate reasons for keeping a low profile and for staying out of the public eye, “but this makes it easier for everybody to know everybody’s business.” In his opinion, the over-riding principle is that “nothing is private anymore.”

Buchvaldek then turns to the new law on consumer loans scheduled to come into effect on December 1, which will require the 50,000 entities currently providing consumer loans in the country to obtain licenses from the Central Bank. The licensing requirement and the minimum capital requirements of the law aim to scale down the numbers of providers and increase consumer protection, shifting the risks and burdens to the providers. Despite the laudable goals of the regulation, Buchvaldek calls it “another new market regulation – another piece of the puzzle.”

At this point he’s on a roll. Buchvaldek points to the new amendment to the country’s Capital Gains/Income Tax, empowering the Czech tax authorities to investigate the sources of income when they encounter discrepancies between income and expenditures of anything beyond “quite a low” 5 million Czech crowns. The law, which was in the works in one form or another for about 10 years before finally passing, “increases their ability to levy massive taxes on those who can’t account for the discrepancy to their satisfaction.”

Buchvaldek is wide-eyed. “Sometimes I think this is incredible. What will happen next??”

Finally, he turns to the new Czech law on Public Tenders which came into effect on October 1st and which allows public authorities to exclude Joint Stock Companies with shares in paper rather than electronic form from participation in public tenders. Buchvaldek calls it “gross discrimination,” and says that “it solves absolutely nothing, and again burdens the entrepreneurs with another costly burden.” Buchvaldek sighs, explaining that converting from paper to electronic shares just to satisfy this law will cost “a minimum of EUR 2000 plus annual costs, because shareholders will have to have electronic accounts, pay fees, etc.” For Buchvaldek, the obvious question “Why?” has a similarly obvious answer: “I think this is yet another attempt to eliminate “anonymous“ joint stock companies.”

Again, as before, Buchvaldek explains, “they use the word ‘transparency,’ but from my perspective as a lawyer they may be damaging to individuals who may have legitimate reasons for wanting to stay private.” Ultimately, he says, “it’s all about taxes, and an effort to keep everyone under their thumb.”

## Hungary (September 19)

*Long-awaited licensing scheme for renewables on the way in Hungary*



When asked what news he is paying the most attention to, Zoltan Faludi, the Managing Partner of Wolf Theiss's Budapest office and Chairman of the Energy Arbitration Court in Hungary, says, "I would have to point to my original profession: Energy."

Faludi reports that the Hungarian government is finally putting together a new licensing scheme for solar and wind projects, for which the industry has been waiting for many years. The last tender was cancelled suddenly in 2010, and since then nothing has happened.

Faludi describes the draft legislation – which is expected to be passed and come into force in the next few weeks – as operating on a "First Come/First Served" basis, with subsidies given to those companies that apply first "from the basket ... until the basket is empty." He describes the process as "strange stuff," and worries that it is designed to provide access to the subsidies to a favored group of individuals while excluding those foreign investors that need more time to review and familiarize themselves with the new regulatory environment. "That's just a guess," he admits, conceding that "at this point you can't say it's all about politics." But when it's suggested that he doesn't sound impressed, Faludi laughs. "I'm not impressed, and I'm not surprised."

Faludi refers to the current EU talks about penalizing Hungary for its treatment of immigrants in conceding that the proposed energy licensing scheme is, by comparison, "a much smaller scale issue." Nonetheless, he says, "for the energy sector this is something new, because in the renewable sector in the past seven years nothing has happened – no new licenses, no new regulatory regime,

and no new feed-in tariffs. So now, it's a big step." He says, "I just hope that it's done on an equal treatment basis and on a transparent basis. I hope that the process will be transparent and fair."

Otherwise, Faludi reports, business is good, and getting better. He reports a "positive trend" in M&A in Hungary, describing the deals coming in the door almost every day as "more and more and bigger and bigger." He also reports a real uptick in disputes and arbitrations handled by his team, though he says that's probably a function of their own increased specialization and capacity rather than reflecting an increase in disputes across the market.

## Macedonia (September 26)

*Ongoing political crisis in Macedonia*



The strike of Skopje court administration employees that began in May ended in mid-August, according to Biljana Joanidis, the Managing Partner of Law Firm Joanidis – but only, perhaps, temporarily. Joanidis reports that the employees have agreed to return to work until the December 11 national elections – after which they'll consider and, potentially, walk out once again.

The elections reflect a significant political crisis in the country, Joanidis says. "I want to be realistic," she sighs. "In general, in Macedonia, the main problem is the political crisis, which is present in every core of society, including the judiciary, as the governing political party elects and dismisses judges." The country's court system struggles through other unique challenges as well, according to Joanidis, including the recent attempts to introduce Common Law elements into the traditionally Continental system. "A little bit of confusion" exists as a result, she says, noting that there have also been 26 changes to the Panel (Criminal) Court in the last eight years, and that, at the moment, there are two different laws of criminal procedure.

“The situation is confusing here,” Joanidis repeats, “but we’re optimistic. We hope that after the elections it will get better.” Still, she says, “for the time being, it is what it is.”

Joanidis reports that the attorneys in the country feel somewhat under attack as well. “A lot of work has been taken away from attorneys and given to notaries, to executors, etc.,” causing attorneys to “feel marginalized.” Unfortunately, she says, “the political parties in Macedonia see attorneys as being on the opposite side, as attorneys are for protection of rights, so they don’t want to empower us or give us full rights.”

She returns to the guiding theme of the conversation, noting that “political influence is everywhere. It’s in the courts, attorneys, government, everywhere.” As a result, she says, “everyone’s interested in the elections.”

Finally, she’s asked how business is. “Our law firm business is ok,” she reports, “but we’re not a good indicator, as we’ve been around for 30 years. We have work – I’m not complaining. But in general work is down. There’s a lot of uncertainty. It’s only the top 10-15 firms or so in the country that are thriving, “and everybody else is on the edge, struggling to stay alive.”

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## Poland (September 19)

*Business is good and optimism is high in Poland*



“My impression,” says Marcin Aslanowicz, Partner at Wolf Theiss in Warsaw, “is that the Polish market is changing rapidly.”

Several of the largest law firms in the market, including Dentons, SK&S, Wardynski & Partners, and DZP – all of which boast well over 100 lawyers – seem to be pursuing an aggressive growth strategy, while firms in the 50-70 lawyer range, like Wolf Theiss, seem to be comfortable at

that level. Regardless, Aslanowicz reports that business is good across the board, and he reports a number of significant M&As and disputes ongoing in his own office as evidence.

Turning to the subject of legislation, Aslanowicz refers first and foremost to the changes to the Code of Civil Procedure that went into effect on August 1, 2016, including the introduction of electronic filings, among other things. Aslanowicz describes these changes as “quite significant, but it’s not something that’s overwhelming in its scope.” He also referred to the potential modifications to the Code of Commercial Companies, which are expected to include a simplified form of Joint Stock Companies – which should enable shareholders to establish and operate a JSC with limited obligations and at a cheaper cost. As discussions regarding these modifications are ongoing, it’s not clear yet, Aslanowicz says, when they’ll be implemented in full.

Otherwise the biggest change, Aslanowicz reports, is the “total change of structure of the Polish Civil Courts” being seriously discussed by the government. Aslanowicz explains that, as proposed, the district courts will probably be wholly eliminated, with the Regional Courts taking over their competencies. Nobody knows yet for sure when this will happen, or even if, but Aslanowicz says that if it does happen this will constitute “the most significant change in the last decade.” Reports suggest the Minister of Justice is hoping to implement the plan in the next 12 months, but Aslanowicz suggests that, as the formal plan hasn’t even been published yet, and in light of the dramatic change this would entail, he thinks it will “probably be a bit later.” The plan is expected to increase the efficiency of the court, though Aslanowicz himself is slightly skeptical.

Business is good, Aslanowicz reiterates, noting that he himself never really share the fears expressed by many others about investors fleeing Poland in response to the elections in 2015, and indeed, he says, now almost 12 months on, “it looks like it’s not going to happen.” Similarly, while many were anxious about the possible consequences of the Brexit, no real negative consequences have been seen so far – and, if anything, Aslanowicz believes, the country could stand to gain by picking up some of the large financial institutions that may leave London, should the Brexit actually come to pass.

Ultimately, optimism is high – and increasing. The unemployment level – already among the lowest in Europe at between 6.5% and 7% – continues to drop, and many experts expect it to level out at about 5.5%, which would put the country in rarefied air.

## Russia (August 30)

### *A resilient market in sanction-laden Russia*



According to Leonid Zubarev, Senior Partner at CMS, Russia, the economy in Russia continues to suffer from the wave of sanctions imposed on the country by the West in 2014 – an effect only exacerbated by the simultaneously plummeting price of oil and depreciation of the ruble. As a result, he reports, “clients are thinking twice,” and international law firms in Moscow are “fiercely competing” for work. The problem is especially potent, he believes, for firms without diverse practices, while those with the capacity to refocus on bankruptcy, restructuring, and other contentious practices are in a bit better position.

Indeed, Zubarev maintains, the crisis has affected ILFs more than locals, who are less focused on foreign clients and able to work with Russian clients who may be on sanction lists. The international law firms, at the very least, are required to do more due diligence before taking on a client matter. Although Zubarev is unaware of any international law firms closing aside from K&L Gates (which closed its smaller Moscow office back in December 2015 (as reported by CEE Legal Matters on January 7, 2016), he reports that most firms have sent most of their expatriate lawyers back to their home countries.

Nonetheless, Zubarev insists, the situation is hardly bleak. Some transactions are continuing to take place, and disputes and other matters continue to generate revenue. As the leader of CMS’s Insurance Group in CEE, Zubarev reports that his own practice remains fairly active, with various claims and disputes between and among insureds, insurers and reinsurers, regulatory issues, and so on. Ultimately, 2015 was “not as bad as expected,” Zubarev says: “Not good – but not disastrous.” General corporate and competition work, disputes, etc., remain active, though he concedes that some are fairly dormant – the infrastructure practice in particular. In 2015 - 2016, according to Zubarev, CMS’s M&A practice has been picking up as

well, primarily as a result of new Russian clients

Turning to the subject of legislation, Zubarev notes that the most significant recent development is a set of the anti-terrorism laws enacted at the end of July that, among other things, requires all Internet and telecom providers to keep records of all correspondence and Internet traffic. This “very controversial law,” which will come into full force in July 2018, is contested by Rostelecom and other providers who face what Zubarev describes as “the incredible costs” of installing the necessary technologies required for compliance.

Zubarev also refers to the trend for “import substitution” or “localization” – pushing investors to open plants and factories rather than importing goods into Russia. He says the project has had mixed success, but it’s growing, especially in the “core industries” of Pharma, Agriculture, and Automotive sectors (not only in terms of car manufacturing plants, but also in manufacturing of components). As a result of the State initiative, there are a number of transactions in these areas, relating – as examples – not only in terms of opening new plants, but also in joint ventures, the construction of new factories, repackaging, and so on. The end result allows the application of “Made in Russia” tags, which helps in public procurement processes. Zubarev reports that “this is quite interesting for us, and also where we’re quite busy.”

Zubarev refers to ongoing changes to the Russian Civil Code last year and this, which he describes as “a continuous reform of the Russian Civil Law.” He says that “was, and still is, a challenge every day, because the Court practice hasn’t caught up.” Another factor continuing to affect Court practice, Zubarev says, is that the August 2014 contraction of the Russian Supreme Court from two separate supreme courts (one dealing with simple civil law disputes and criminal law matters, and another dealing with commercial disputes between companies) into one has resulted in a Court practice “getting more and more difficult”, as the Court is less concerned with freedom of contract, and more interested in exploring the actual intent of the parties, and protecting the weaker party. Courts are getting more and more eager to get involved and inject themselves into the relationship between the parties.

Talks are also ongoing to formalize a regulation of the legal profession in Russia, which to this point has been haphazard, at best. The Government, primarily acting through the Ministry of Justice, has been working to introduce such regulations, especially on non-criminal law attorneys (i.e., the commercial lawyers), but Zubarev describes the process as a “bumpy road,” as many lawyers in the country resist it. He

doesn't expect it to happen soon – at least before the 2018 elections. Afterwards, however, Zubarev says, “anything can happen.”

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### Slovakia (October 20)

*Slovakia modernizes on lawyers and law*



One of the four announced priorities of the Slovakian presidency is the “modern single market,” according to Squire Patton Boggs Partner Jana Pagacova. Part of this, she explains, is the aim to develop unifying projects such as an energy union and the digital single market. And a “big rush in the legal environment” that makes up a significant part of the digital single market process, she explains, is to create an “electronic mailbox” system for all individuals and legal entities in the country through which they will receive all statutory communications from the court.

This “electronic mailbox” takes the form of a central government portal which all businesses, and therefore also lawyers, will need to access. Unfortunately, Pagacova says, not everyone activated their mailboxes by the original July 1st deadline, so a new deadline has been set for December 31st, 2016. The new system should, Pagacova believes, make things easier if it works as intended – but she sees that’s a fairly big “if”, as technical problems and some uncertainties about how the system would work for non-Slovak internationals who don’t have the state-provided identification required to obtain the chips necessary to activate their mailboxes remain.

Turning to other matters, Pagacova says the biggest news is the July 1st entry into effect of three new Civil Procedure Codes to replace the one Communist-era Code that existed previously. These codes – the Civil Dispute

Procedure Code, the Civil Non-Dispute Procedure Code and the Administrative Procedure Code – are currently the primary subject of conversation in the legal community, especially as neither judges nor practitioners have much experience with them yet. Both attorneys and judges are going through lots of intense internal and external trainings, Pagacova reports, to come up to speed, but she thinks it may be another two years before the market has fully adapted to all significant changes, which are perhaps most notable in the changing responsibility for judges (who are now much more limited to ruling based on the submissions of the parties) and in the various preliminary proceedings judges are empowered to encourage the parties to pursue to find possible solutions to disputes before trial.

The new electronic mailbox system, Pagacova points out, is among the many new procedures set out.

Ultimately Pagacova believes the new Codes are a “good idea,” but “all new laws require a working out of kinks in practice, so we’ll have to see how it plays out.” She points to some uncertainty in the market about the new Codes, and repeats that it will take a few years to really begin working as planned.

Another newly-enacted law of significance is the Act on Criminal Liability of Legal Persons, Pagacova says, which also came into effect on July 1st. This law calls for the imposition of criminal liability on corporations and other legal entities, and Pagacova claims it’s extremely significant “on the corporate governance rules for Boards of Directors to avoid company’s criminal actions and liability imposed as a result of actions of employees.” She reports that she and her colleagues are kept busy at the moment by preparing presentations and trainings to various boards, so they can “see when potential risks may arise.” She has no doubt of the importance of the issue, noting, “I think that all boards should deal with this.”

In part because of the increasing number of regulatory and legislative changes, including also for example the risk of criminal liability, Pagacova says more General Counsels are on Boards of Directors than ever before, and “the trend is for them to develop strong in-house legal departments.” As a result, she says, the market is becoming ever-more competitive, and private practitioners have to specialize more to ensure they’re providing valuable expertise, insight, and advice. In addition, making sure they are and stay familiar with the industry and the sector, so they don’t have to bill for the process of educating themselves before advising the client, is also a requirement of the modern legal market.

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## Ukraine (October 18)

### *Delayed privatizations and long-awaited judicial reform in Ukraine*



Things are “fairly busy” in Kyiv these days, according to Avellum Managing Partner Mykola Stetsenko, but he concedes that “we expected it to be busier.”

The chief culprit, he reports, is the various big-ticket privatizations promised by the government for 2016 that have been put on hold. The major energy privatization – that of CenterEnergo – has been postponed so the government can complete the necessary pre-privatization processes, which can take some time.

Also delayed is the “famous privatization” of the PSC Odessa Port Plant chemical company, which was initially set for summer 2016, but the initial asking price was too high, and a new initial tender has been pushed back until December. “But I wouldn’t count on it,” he says.

Turning to happier subjects, Stetsenko refers to the long-awaited kick-off of the country’s judicial reform, which took effect on September 30th and resulted in the dismissal of some 500 judges by Parliament and the initi-

ation of the process for replacing them. The new system is expected to limit at least petty corruption at the judicial level by providing for significant salary increases – for some positions as much as 10 times – and creating more independence (including lifetime appointments) for judges. Although its success in achieving its goals remains to be seen, Mykola admits that, “yes, we’re hopeful.”

When asked whether the dismissal of so many judges would be a problem, Stetsenko says no, pointing out that the nation as a whole has some 10,000 judges, and while there might be a slight and temporary effect, “we’re not known for having the fastest system anyway, so it shouldn’t be that noticeable.” Stetsenko is quick to point out to his American interviewer that the country’s judicial system is, regardless, faster than that of the United States.

Stetsenko reports that the Ukrainian Parliament has also created more legislation for the country’s energy regulatory authority – a major requirement of the IMF and other Western investors – while the Pension and land market reforms are actively discussed in the Parliament. In addition, Stetsenko reports, the National Bank is continuing to decrease the discount rate – the benchmark rate at which the National Bank lends to commercial banks in the country. It’s now down to 15% – still high, Stetsenko concedes, but a marked improvement from the 30% it was at several years ago. It’s still continuing to drop, he says, which is a very good sign, and the National Bank is slowly opening the market and increasing capital flows. He expects to see more commercial acquisitions as a result sometime in the spring of next year.

The legal market is fairly stable, Stetsenko reports, and he points to AstapovLawyers’ transformation into Eterna Law and the recent defection from CMS to DLA of dispute resolution Partner Olga Vorozhbyt as the only recent developments of note.

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# From Estonia to Bulgaria CEE Attorneys Pursues an Ambitious Strategy



Zdenek Tomicek and his colleagues at CEE Attorneys believe their new firm's structure and style are the key to its rapid growth across CEE.



For Zdenek Tomicek the goal was always clear. From the day in March 2015 his eponymous law firm in Prague announced that it had tied up with Slovakia's Fox Martens to create CEE Attorneys, his plan – as declared at the time – was “to provide superior legal services to its clients in the whole Central European region through a group of cooperating law firms.”

A year and half later Tomicek and CEE Attorneys are well on their way to reaching that goal, with member firms now in five countries and more on the way.

### Humble Beginnings

Tomicek began his career in DLA Piper's Prague office, where he spent his first six years focusing on international arbitration. He was seconded to DLA's London office for six months in 2011 and says that, after returning to his native Prague, he began to feel constrained. DLA, he reports, was less interested in the new ideas he had picked up abroad than he had hoped, “so I decided to change the environment.” He moved to PWC, he says, “because I was always interested in doing more than just law, but also business and tax.”

Despite this interest, he didn't spend much time at PWC, he admits with a smile, conceding that, “after a year I decided to start my own practice.” Still his time in the Big Four bore fruit, as six months later fellow PWC lawyers Jiri Kocik and Lukas Petr joined him at Tomicek Legal.

Surprisingly, in light of its status only a few years later, that smaller Czech firm didn't begin with pan-CEE ambitions. “Our plan wasn't originally to be international,” Tomicek says, “but we got more and more requests to do work in Slovakia.” Deciding they needed a dedicated relationship firm in that neighboring country, he got a list of potential partner firms from a former DLA Piper colleague. “We shortlisted two,” he recalls, “and from those two we decided to start working with one of them.”

Michal Martinak – the Managing Partner of that firm, the former Fox Martens – describes the proposition Zdenek made

## In This Article



Zdenek Tomicek



Michal Martinak



Daina Senapediene



Sergiu Gidei



Andrzej Szmigiel

best to convince Zdenek that I'm the right person. And thanks maybe to my enthusiasm – and I had organized everything, and had a client with me from a big real estate corporation – and Zdenek thought that maybe I'm a good guy.”

The announcement that the former SPP Legal had joined the new CEE Attorneys network was made in mid-June, 2015.

The momentum was obvious now, and in its press release announcing its new member, CEE Attorneys reported that “intense negotiations about cooperation in other countries are under way.” Sure enough, in November 2015 Lithuania's SKV Law firm became the firm's first Baltic member, following the recommendation from CEE Attorneys' client Europateka. According to Daina Senapediene in Vilnius, SKV Law joined CEE Attorneys because “a lot of our clients are international, not just local. And we've already been working with other countries for many years. When we thought about our strategy, we understood that we could not become part of a German law office, because we have a lot of differences, like prices and economic situations. And therefore we thought that all these Central and Eastern European countries are similar, and we can have the same rules and prices for our clients. And after a year I can see that this is working, and our clients are very happy.”

Most recently, on September 1, 2016, the firm announced its fifth member, Romania's Boanta, Gidei si Asociatii, which – like CEE Attorneys' first member – has its roots in the Big Four. “Most of us gained our experience in the correspondent law firm of PwC Romania,” says Romanian Partner Sergiu Gidei. “We worked there for many years, then in 2011 we decided to start our own law firm.” Although they didn't know Tomicek at the time, a common friend put them in touch with Andrzej Szmigiel, and when everyone met, “we found the necessary chemistry between them and ourselves, and the fact that Zdenek was in PwC and we were in PwC provided some chemistry.”

Gidei explains why they joined the young firm. “It was nice for us to do what we want, but working in this way we reached a limit, and to surpass this limit we need-

ed to join forces with a company from abroad. It's not just in terms of clients, because we have clients here, but also because of brand visibility. In terms of experience exchange, it's important also for people resources; when you are part of some kind of regional network it's much easier to attract talented people. Right now we are some kind of spin-off from a big firm, with a small name. If you want to have talented junior people, they want to be part of a brand. Putting all these things together, it was the perspective that after five years we needed to enter a new phase in our development.”

Szmigiel, in Poland, says of his new Romanian colleagues that “they are really really, really great people, with the same philosophy and point of view as us.”

### A Productive Model

Tomicek and his colleagues believe that CEE Attorneys offers the ideal model for firms, allowing each office to maintain its independence while sharing those costs and marketing opportunities where economies of scale and centralized decision making make the most sense.

Unlike the firm itself, the various CEE Attorneys offices have no plans to grow substantially. According to Tomicek, for instance, although he hopes to grow his office to 15 lawyers in time (it now has eight), he has no desire to get bigger than that. “Our plan isn't to be another Havel, Holasek,” he says, referring to the Czech Republic's largest firm. “It's not our plan; it's not our goal.” Similarly, Daina Senapediene reports that her office in Vilnius has seven lawyers (up from the five they had when they joined last year), and Sergiu Gidei says his office in Bucharest has eight lawyers. Andrzej Szmigiel's office in Poland is the firm's largest with some 15 lawyers.

Tomicek believes the size of the offices is an advantage. “Clients say, ‘with you we know we're be a big focus, but with the major firms we'd be one out of hundreds.’”

All five CEE Attorneys offices stipulate that each client will pay the same fees across all network offices, regardless of which firm is doing the work and which

jurisdictions are involved. “As far as I know,” Tomicek says, “we’re the only firm that does that.”

Still, there is no profit sharing within the firm. This, Tomicek insists, is a critical element of the appeal. “The most important thing for them is we are not taking their independence. They are still the owners of the firm they built, they can still decide about the people they want to hire, about the companies they want to work with in the local market, and so on. This is really, I think, the most important thing. And this is why the Polish and Lithuanian and Romanian offices joined us. They had built their offices in those markets, and they didn’t want to lose their independence in joining us.”

Martinak, in Slovakia, agrees. “We like the fact that we retain our independence; the Slovakian market is our own, and we are still the same Partners.”

Despite their distinct financial and operational independence, the now five member offices of CEE Attorneys have agreed to abandon their former names and operate exclusively under their shared brand. For Tomicek, this is the second critical part of the CEE Attorneys strategy. “I met a firm once which is not now part of CEE Attorneys,” he recalls, “and it was a typical law firm, very strict and conservative. And the partner said, ‘we’ve been working under our brand for five, ten years, and it’s going well. Let’s work together, let’s cooperate, but let’s keep our own brand. And I knew this was something I didn’t want. Because then you’re not creating your own law firm, but administering a network.’”

Tomicek and his counterparts in CEE Attorneys’ various offices are committed, at this point, to a genuine egalitarianism. They don’t use the term Managing Partner, preferring instead only to select one Partner from each office to serve, when necessary, as “Decision-Making Partner.” Beyond that, the senior lawyers at CEE Attorneys insist they are uniquely accessible and available to their clients. “We are partners because we own the law firms,” Tomicek says, “but we are not senior partners like at the major law firms, where it can be difficult to get to them.”

And Tomicek is enthusiastic about his colleagues. “I actually believe this feeling is more important than any references and stuff like that. Of course all of that, and client feedback, is very important as well. But you don’t want to cooperate with someone you don’t like.”

Andrzej Szmigiel, in Warsaw, shares Tomicek’s commitment to a strong social bond with his colleagues, calling it “a great idea, and a great pleasure, and a great advantage, to work with people from other offices, from other countries, from other mentalities, cooperating together and building something together.” Szmigiel says, “it’s really perfect synergy to build something. It’s really an amazing thing that I have friends 700 km from Warsaw and 1500 km from Warsaw, in Bucharest, and all of us each day are thinking how to build something and in common to develop something.”

Gidei, in Bucharest, sums up the ethos of the network nicely: “So this is the natural path to growth. A network of small to medium law firms having the same philosophy, less bureaucracy, willing to provide best services, to undertake complex and sound projects, to be close to clients, and so on. That’s the philosophy.”

In short, Tomicek explains, the ultimate decision for firms invited to join CEE Attorneys is simple. “The main thing they have to consider is if they are ready to lose their identity and use the CEE Attorneys identity. If they are ready for that, then there’s a lot of advantages for them, because they will become international. They will get new clients, and have a better opportunity to hire better lawyers.”

## A Successful First Year

Although CEE Attorneys has only been in existence for a little more than 18 months – with several of its members joining only in the past year – the results have been impressive. Tomicek claims that the Prague office has seen a 150% increase in clients over the past two years, from 98 in 2014 to 255 now.

“I think it’s been even more successful than I expected,” says Szmigiel. “I have always relied on myself, so my point of

view was that I would try to do my best to help my friends develop, and I would use this network to improve myself in Poland. I didn’t expect to get something from them. But it appeared that, thanks to Zdenek Tomicek – his mentality and his business acumen – I get a lot of clients and business opportunities. And so definitely I got more than I expected from the network.”

Martinak, in Slovakia, shares the sentiment: “Otherwise it would be very hard for a mid-sized law firm from Slovakia to approach Polish clients if we didn’t have the ability to communicate in Polish, or have this kind of one-network offer. So clients are quite glad they can communicate in their language with the local office and manage the affairs from there.”

And though Gidei and his Romanian colleagues have only just joined the network, Senapediene, in Vilnius, has already seen the benefits. “I’m very happy about Romania joining us, because it looks like Romania has a very similar attitude to Lithuania, and we’ve already found a lot of the same and interesting projects, and we’re already working on some projects.”

Having now whetted their taste for expanding the firm across CEE, the Partners at CEE Attorneys are now going full speed ahead. Tomicek says that the firm now has two plans for growth. The first, which he expects to be complete within the next two years, involves the opening of offices in Estonia, Hungary, Bulgaria, and Latvia. The second, running simultaneously but with a looser time frame, involves Ukraine and Russia. But their expansion plans are hardly written in stone, Tomicek says, and he and his colleagues remain open to other proposals or suggestions as well.

As the legal markets of CEE transform, with more international firms departing and more regional firms taking their place, there is, at the moment, no firm outside the Big Four covering the region “from Estonia to Bulgaria.” If the growth of CEE Attorneys in its first 18 months is any indication, that may not be true for much longer.

David Stuckey

# Marketing Marketing: Those Three Extra Hours

In our new Marketing Marketing feature, introduced in this issue, we ask our law firm marketing and business development friends across CEE to share their experience and perspectives on their profession. The premier question is a simple one: If you had three more hours in the day at work, what one part of your job would you prioritize in that extra time?

## Jan Posvar, Independent Law Firm Marketing Specialist



If I had more time in my job, my absolute top priority would be to focus on communicating with all lawyers on a deeper level; to be able to concentrate more fully on their individual needs and profiles. Achieving this would, of course, require that everyone concerned had more time as well. In my view, hav-

ing more time to discuss the specifics (as well as general aspects) of the firm's market positioning, for all levels of seniority, is crucial. Ideally these discussions would go beyond those related to regular business.

## Polina Kulikova, Marketing & BD Executive, CEE Attorneys



If I had three more working hours a day I would spend them planning marketing activities and determining marketing strategy. I believe defining the right direction of activities from the very beginning to be critical for future results and the success of the company in general.

First, I would prepare a brief executive summary of our office and describe our mission and vision, then I would conduct market research to find out trends and needs. That would help to create a strong competitive brand for the company. Furthermore, I would do SWOT analysis, specify

the competition and point out marketing and financial objectives. As the most important part of a marketing plan, I see electing respectable publications, online and printed magazines, rating agencies, and business events we want to be involved in during the year. On that basis it is significant to prepare a clear marketing expense budget.

## Germanas Kavalskis, Public Relations Manager, Tark Grunte Sutkiene



Spend more time on the firm's strategic planning. I would like to spend more time or become more involved in the strategic planning of the firm, because that would help me to prepare a more precise and concrete annual action plan for PR & marketing. Currently, I am swamped with routine work. and I

have little time to consider strategic questions of where the firm should move in the next three to five years.

## Stefan Laszczyk, Business Development Assistant, Hogan Lovells

I love to think and imagine things and then discuss them with people. That's why I'm so fond of brainstorming. Unfortunately, each day there is little time to do so. If I had three more hours in the day at work, I would definitely spend them on brainstorming. I'd gather all my colleagues, present all the possibilities and opportunities there are for our business and, finally, talk them through.

**Gina-Maria Tondolo, Marketing Director, Schoenherr Attorneys at Law**



More time – any time please! For coffee breaks and lunches, but not alone – instead with younger partners, counsels, and attorneys, to sit down with them and discuss marketing and business development ideas. They often have a lot to say and to contribute to the marketing department and our initiatives. In

addition, at this stage they want to gain more visibility, sharpen their profiles, and build their practices. It is great to discuss marketing and business development ideas with them. In my experience these types of informal meetings result in fresh ideas, especially since they provide a different slant on legal industry promotion.

**Alexandra Yoshida, Business Development Director, Karanovic & Nikolic**



I would prefer having more time to spend with our clients, so that I could get to know them even better. Even though we actively conduct client listening as part of our client care program, I still think it would be beneficial if I was to have a higher level of personal involvement with them on a more frequent basis.

**Marietta Vidali, Corporate Communications Manager, Drakopoulos**



It is sound sense that one of the things most marketers point to as a big challenge in their job is time. There is never enough time. Time is pivotal for the launching of a new campaign or the reaction to a corporate affairs crisis. If I had some more hours in the day at work, I would certainly spend them honing

my business development skills. Business development is becoming a law firm imperative amid tighter competition, which is being converted into a renewed sense of urgency.

As business development has been elevated to an important strategic pillar for our firm – a “key performance indicator, a platform for higher ROI” – so I would opt for putting more effort and time to mesh marketing with it.

To be more precise, an initiative would be to organize professional trainings for our Partners and Associates, as finding new business for law firms has evolved into an industry by itself. Such skills may also be developed through internal processes, meetings, contacts with important stakeholders, corporate presentations, and the like.

**Katarzyna Buczkiewicz, Marketing & Business Development Manager, FKA Furtek Komosa Aleksandrowicz**



We work for and with clients – so it is necessary to know their actual needs, challenges, and problems. I wish I had more time to develop our CRM system, to improve the quality of the information, to collect more data, and teach people how to manage the insights and translate them into relationships

with clients. I enjoy personal relationships, so I regret not having enough time to spend on meeting journalists, chambers of commerce, organizations, and others. Emails and text messages are sometimes not enough.

**Klaudia Sheveliyuk, COO, Vasil Kisol & Partners**



If I had three more hours a day I would spend them in conversations with colleagues about life, to help them grow internally through life and career coaching. Internal personal growth is often underestimated in the legal business; thus, helping colleagues to open new horizons and expand their insights

and ideas can often help to enhance business strategies by sustaining core business targets. Frank talk to colleagues is crucial in my humble opinion for the success of a team and the sustainability of a business.

**Sanda Lapinska, Marketing and Business Development Manager, Eversheds Bitans**



I would dedicate time to the Raising of the Unicorns (the young practitioners of law), helping them meet the new challenges that are coming for law firms and think about how, through culture and management, we can adapt to the new needs of the market and the business environment.

First, I would concentrate on our internal culture, to create an environment of creativity and development for young Unicorns to prosper. Second, I would try to imagine what magic the new Unicorns will need. What business development tools will be necessary tomorrow? What will the methods and means of communication and service development be? Third, I would try to consider how to help them get to the end of the rainbow. Where are their new clients, what are their business values and goals?

This would be my ambition – raising Unicorns who can shape the future by preparing the ground today.

# A Bar Fight: Controversial New Voting Restrictions Adopted by Belgrade Bar

On September 24 the Belgrade Bar adopted a new bylaw, controversial both in its effect and in the manner by which it was adopted, limiting the voting and participation rights of lawyers at major commercial law firms in favor of criminal lawyers and solo practitioners. Leading commercial lawyers in Belgrade are, unsurprisingly, not happy.



### Background of the Bylaw

Speaking several months ago when the bylaw was still in draft form, Karanovic & Nikolic Senior Partner Rastko Petakovic described it as problematic: “If you are a member of a large law firm you will no longer have the right to vote, and if you want to nominate anyone to take a leadership position in the Bar in the future from such a firm you will only be able to nominate one lawyer.” In Petakovic’s opinion, the law would discriminate against lawyers in firms in favor of lawyers who operate as solo practitioners.

“There are ongoing disputes between the Boards of the Serbian Bar and the Belgrade Bar,” according to Karanovic & Nikolic Founding Partner Dragan Karanovic, “which saw long campaigns carried out by the Belgrade Bar trying to impede the progress of the legal practice.” Karanovic believes that the Belgrade Bar is animated by bias against business lawyers. “[The Bar Board Members] simply do not recognize that the nature of firms has evolved and there are commercial lawyers in the market now as well who are just as much legal professionals as criminal lawyers.” Indeed, he maintained that his controversial August 1, 2016, removal from the table of lawyers at the Belgrade Bar was politically motivated, noting that “I am not personally targeted as much as I think this is more about what we stand for”.

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*“We simply don’t want to see a Bar that is owned by a handful of firms.”*

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Nicola Jankovic, Senior Partner at JPM Jankovic Popovic Mitic, believes that the voting limitation bylaw reflects a Bar threatened by the appearance in the city of larger and more successful law firms. “With the rise of the business lawyer – with us launching in ’91, Karanovic & Nikolic in ’95, and a good number that

followed,” he said, “those currently running the Belgrade Bar realize that between the largest 10-15 law firms, there are enough lawyers to amass considerable voting power.”

And that voting power alarms Aleksandar Cvejic, Board Member and Secretary of the Board of the Belgrade Bar Association, who said of the controversial new bylaw before the September 24 vote that “we simply don’t want to see a Bar that is owned by a handful of firms.” Instead, Cvejic said, the draft bylaw was designed to control the ability of large firms to push their own interests over the objections of others. “The voting limitation is meant to counterbalance the risk that huge law offices might privatize the board and end up in a situation where a few law offices retain power within it. They have 200-300 lawyers who can vote, which amounts to a considerable say in terms of who ends up in the Board, which could be problematic.” The Bar’s Board’s concern was, he said, shared by “other lawyers as well.”

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*“We have here an issue of two worlds, one representing an old, conservative, closed society of vested interests and another, new, young, modern, transparent, aspiring, and willing to embrace new trends on the legal market.”*

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In defense of the bylaw, Cvejic insisted that lawyers working under employment contracts at firms are, in reality, a different beast: “We [the Bar Association Board] are of the opinion that those lawyers under employment are not lawyers anymore – they are employed by lawyers and have lost their independence as a result.” He noted that this loss of independence “is not in accordance with our law,” and added, “our position is that if lawyers are Partners, that is fine, but if they are not

and are simply employed by a firm, they are not independent, and we believe that is essential to the vote.”

Jankovic dismissed the underlying assumption that he and his peers “can, or would, influence [their] younger lawyers as to how to vote.” He added: “We should, but we are not really interested in this. I don’t want to lose time, energy, and money coordinating these things.” Jankovic conceded that the actual impact of the bylaw might be limited as, “in reality, most young lawyers in Serbia, if they work for a larger firm, will likely not do so under an employment contract – rather a contract of mutual cooperation.” Nonetheless, he agreed that the voting restriction is “highly discriminatory towards big law firms,” as, in addition to limiting the votes of attorneys employed by a law firm, “all unlimited partnerships [are] allowed only one member on the [Bar’s] Management Board, Supervisory Board, Disciplinary Prosecutor’s Office, and Disciplinary Arbitrator’s Office.”

Overall, Jankovic believed the proposed bylaw reflects an unfortunate conservatism: “We have here an issue of two worlds, one representing an old, conservative, closed society of vested interests and another, new, young, modern, transparent, aspiring, and willing to embrace new trends on the legal market.”

### **Expectations for Modification Leading Up to The Vote**

It appears that not all members of the commission that worked on the draft bylaw agree on the propriety of the voting restriction. One member of the commission, requesting anonymity, told CEE Legal Matters prior to the vote that “the Governing Board of the Belgrade Bar will present a draft proposal of the statute that, as I believe, does not provide effective mechanisms for fair election procedure. There are no guarantees for transparency of the election process, and it limits voting rights.” He reported having proposed a number of amendments to the draft bylaw “in order to establish grounds for a fair election process, based on effective tools for supervising elections and unlimited voting rights for all members of the Bar,” and he insisted that “we will have open discussion on Assembly meeting where I will present

my standings and arguments.”

A number of commercial lawyers expressed a similar confidence that amendments would be made to the bylaw before its adoption. Views on the initial draft were “rather divided,” Stankovic reported before the vote, and he noted even within the “conservative” side, it appeared that only a few members were pushing for passage without amendment. Jankovic agreed that he did not expect the initial version to go through without modification.

And leading up to the vote, there was considerable effort to mobilize the lawyers of the city into joining the September 24 assembly and making their voices heard. As part of this movement, one group of Belgrade attorneys reached out to about 400 colleagues employed in commercial law firms with a call to action using the email address “boljaadvokatura@gmail.com”, claiming in its subject line that “it is time for better standards in the Serbian legal profession!” (That email is reprinted in full on page 37).

### **The “Unprecedented” Vote**

Nonetheless, despite the expectations of Jankovic and Stankovic and the call to action which saw some 490 lawyers participate at the September 24 assembly, the bylaw was adopted without significant amendment. Karanovic, for one, was outraged. “The President of the Board presided over the General Assembly in a manner many consider scandalous. In a violation of due procedure, after the General Assembly adopted the initial draft in principle while announcing [its intention] to discuss and vote every single proposed amendment afterwards, the President announced the end of the session and proclaimed the statute adopted without discussing the amendments and despite the outcry of the lawyers present at the meeting.”

While insisting that the situation would not impact JPM Jankovic Popovic Mitic, “as we neither need to nor intend to become involved in work of the Belgrade Bar Association,” Jankovic agreed that the procedure of the assembly was “unprecedented,” and he reported that several groups of lawyers had already called

## Call To Action E-mail Sent To Belgrade Attorneys

We are inviting Belgrade attorneys to show up in great numbers and attend the meeting of the Bar Association of Belgrade (BAB) Assembly on Saturday, 24 September 2016.

As you already know, the Managing Board of the BAB, which is inevitably about to face the end of its mandate, is still not able today, just as it has not been able throughout its entire mandate, to respect the will of Belgrade attorneys.

The Managing Board, contrary to the explicit decision of the BAB Assembly held on 23 April, 2016, changed the established date of the Assembly meeting which was scheduled for 17 September 2016, in order to present its own draft Statute to the Parliament instead of presenting the draft Statute of the Working Group which was formed by the Assembly precisely to draft the Statute that needed to be addressed on 17 September 2016.

Today, the Chairman of the BAB, Mr. Slobodan Soskic, when publicly addressing Belgrade attorneys, goes so far in spreading untruths that he even openly insults his colleagues of opposing understandings by labelling them a “militant group” that has the goal of taking away voting rights from their fellow attorneys.

Chairman Soskic is the one to advocate for the Statute denying voting rights to about 400 Belgrade attorneys who are members of commercial law firms.

Chairman Soskic is the one to advocate for restrictive criteria when it comes to the right to stand for election to the bodies of the BAB.

Chairman Soskic is the one to lead the BAB for six years without a Statute, without control, and without any responsibility towards the function he occupies.

We want to change that. We want to reform the legal profession.

We want to throw out the “blank ballot” from the legal profession.

We want to ensure democratic elections in the BAB.

We want to establish the responsibility of the Chairman and the Board before the Assembly and the members of the BAB.

We want to restore the reputation of the legal profession that has been systematically collapsing because of internal conflicts and litigations in the courts, where the Managing Board and the Chairmen were alternating on the basis of court rulings.

We believe it is enough. It is time to have a better legal profession!

The Managing Board of the BAB, which, through its final decisions, just trampled upon the decision of the Assembly of BAB made on April 23, now invites the attorneys to come to the Assembly meeting and defend the voting rights of each attorney, while simultaneously spreading lies and insulting their colleagues without any reason.

Precisely through their decisions and actions, the Chairman of the BAB, Mr. Soskic, and the Managing Board he leads, have proved that it is not sufficient for the Belgrade legal profession to have just any Statute. We need a Statute that would enable the reform of the BAB and hold the elected executive branch accountable for their actions.

We do not need just any election. We need a fair election.

We do not need just any kind of leadership, but leadership that will be supported by the majority of attorneys and execute the will of the that majority.

If you believe that we deserve a better legal profession, a responsible leadership, and a Bar Association that serves the interests of its attorneys, and if you, like us, have had enough of the arbitrariness and the leadership of the BAB from which we have not seen any benefits, join us on Saturday, 24 September at 11.00am in Sava Centar and attend the meeting of the Assembly. Invite your colleagues. We are counting on you!

upon the Constitutional Court of Serbia to decide on the constitutionality and legality of the voting restriction. “To be precise, due to the conduct of the Belgrade Bar Association president, none of the Agenda, Minutes, and Amendments to the statute were discussed, clearly in violation of the required procedural rules.”

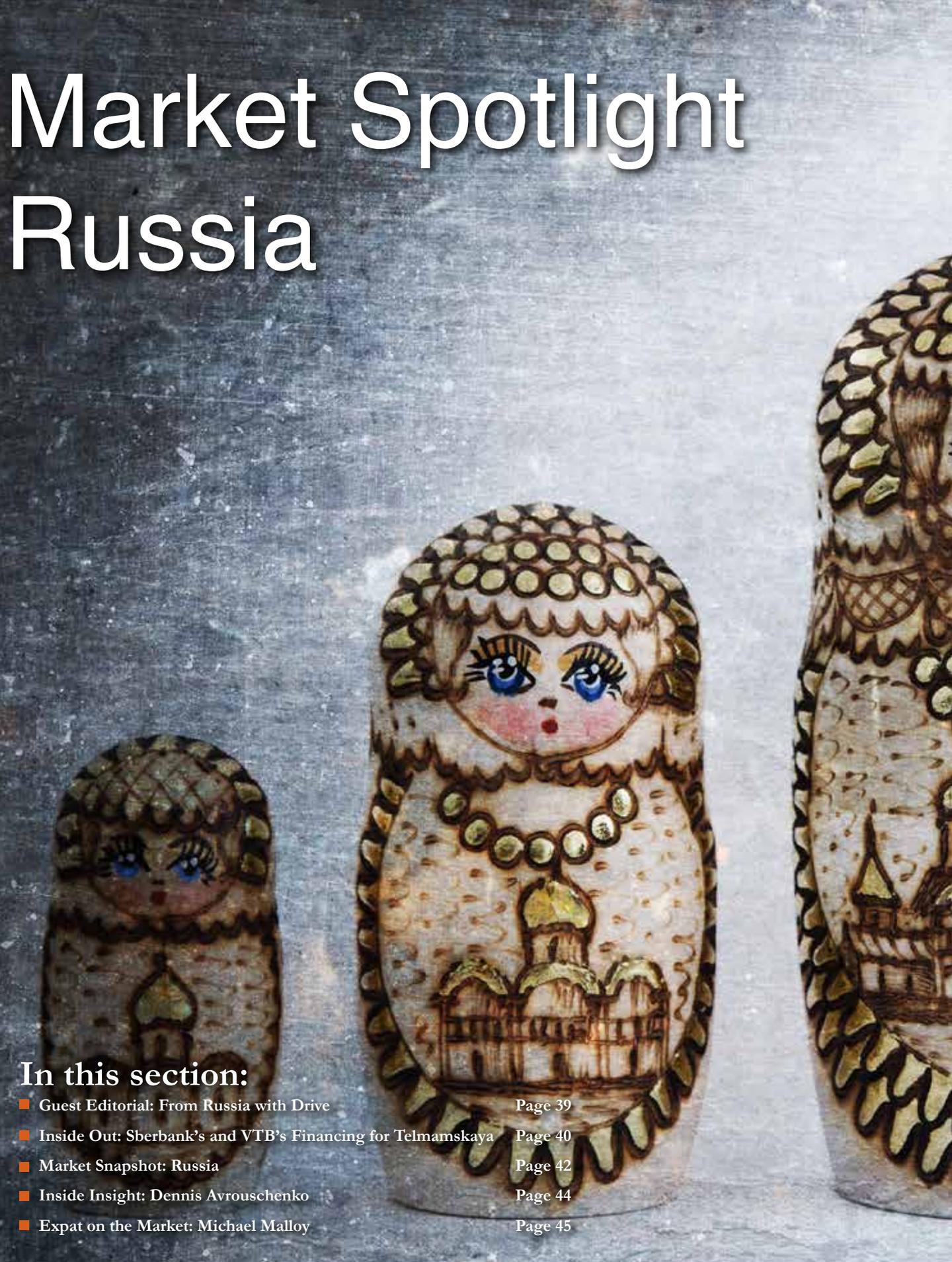
It is not only the procedure by which the new bylaw was adopted that is being challenged. One Managing Partner of a leading law firm insisted that “limiting the right of an attorney at law to vote in the assembly of the Bar Association of Belgrade solely based on her/his membership in a partnership (established in accordance with the Attorneys at Law Act for providing legal services), represents an unjustified criteria for limiting statutory rights and is evidently in breach of the principles of the Constitution of the Republic of Serbia as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms.”

Nonetheless, Karanovic said, the upcoming elections for the new Belgrade Bar Association Board scheduled for December 3 this year (after being postponed from the original date of October 29), will, in all likelihood, be conducted under the provisions of the newly-adopted bylaw. “The current Board will try to organize and hold these elections under the new ‘statute’ as they see it adopted,” he explained, “prohibiting the lawyers working in law firms from voting.”

Many are expecting a contentious next few years. “We are likely to have a legal battle going on for years with no real resolution in sight,” Jankovic sighed. “Unfortunately, many Belgrade colleagues still have a significant knowledge gap regarding the legal services market. This is to some extent fueled by an irrational fear of competition and an inability to adjust to prevailing trends and partly due to an inadequate professional grasp of foreign languages and legal systems. It appears that years will pass until an average lawyer in Belgrade becomes fully aware of implications that business and communication flows bring to the legal services market – opportunities and challenges alike.”

Radu Cotarcea

# Market Spotlight Russia



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# Guest Editorial: From Russia with Drive



I was born in the USSR – a country that has not existed for almost 25 years. The legal system in Russia before the USSR had been in place since the 10th century. Russia after the USSR, it seems, began its path practically from scratch.

My last years at school came at the moment when the USSR ceased to exist, along with the criminal punishment for currency transactions, the small-family tax on men over 18 years old, the absence of private property and, as a final note, the Iron Curtain.

Russia got the opportunity to use the West's practices. As an example, the first version of the Russian Civil Code was almost fully adopted from the German one. New definitions appeared in the law, in custom, and in conscience – including private property and the necessity to protect it, economic competition (replacing the state monopoly of previous years), arbitration of disputes among commercial entities (along with the legitimate existence of commercial companies themselves in the first place), and a banking system with foreign investment.

Looking at the legislative reforms shows that we live in a phenomenal time. We are creating the legal sphere for the development of the economic market by seven-league steps.

Lawyering in the USSR as a profession was far from prestigious. But, as the expression goes, demand breeds supply. While building the new country, individuals were required who could translate texts from legalese to normal language. A little bit later international law firms began to dominate the market, following the belief of most people at the time that “foreign is best.” About ten years ago, however, a new dynamic appeared: local law firms grew up and began taking their place among the best in the country, taking advantage of their dynamism and better understanding of Russian reality and

mentality.

In-house lawyering also evolved, from lawyers who knew the laws and could say “yes” or “no” to lawyers who became an essential part of business.

For the past two years we have been in a state of economic sanctions, including a ban on direct relations with a list of countries. A new phrase – “import-substitute” – appeared, and the level of patriotism significantly increased towards all locally-produced goods. Lucky are the companies that have property here, because they receive preferential treatment over other competitors.

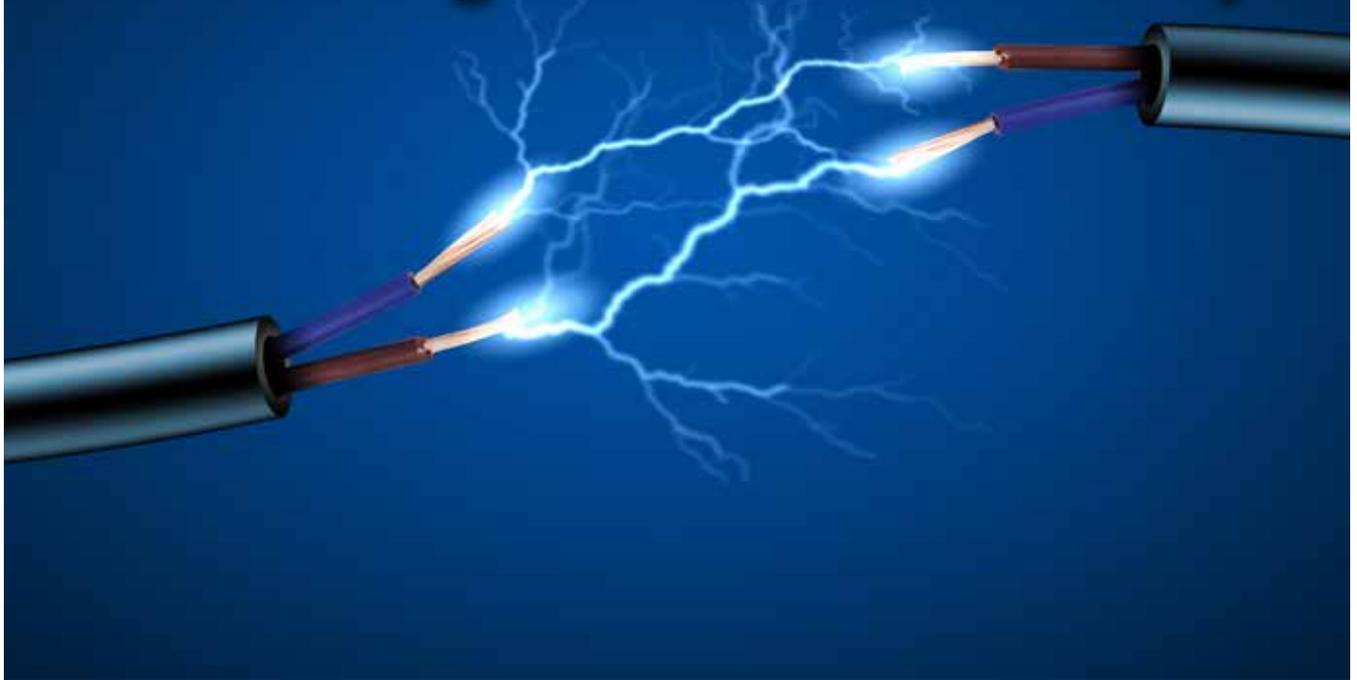
Major changes in the banking sphere are expected in the near future. For the past three years the government, working together with the Central Bank of the Russian Federation, has worked to improve the banking sector, recalling the licenses of those banks that operate improperly. It is expected that 1,000 banks will be decreased to 300, consolidating more than 95% of all assets. In addition, of course, this does not exclude further consolidation through commercial M&A.

This year a new bill (known as the “Yarovaya Package,” following the name of its primary author, Irina Yarovaya) was presented to the Government and adopted in a very short period of time. The law was directed at antiterrorist activity and directed communication providers to keep metadata for three years or risk potential criminal punishment. This bill triggered controversy among businesses, politicians, economists, and lawyers, because it affected the interests of all market players. Similar requirements exist in some other countries. Russian providers have calculated that the cost of implementing the necessary systems would be about 34 billion dollars – which would be approximately 7.5 billion dollars more than the industry earned, combined, in 2015.

Recently a reform of the Russian court system has also taken place. The Supreme Court (along with the lower courts where disputes between individuals are considered) and the Supreme Arbitration Court (with lower courts where all disputes among legal entities are considered) were combined. This consolidation represented an attempt to create a unified system to consider different issues and legal questions. In addition, an additional instance (the second cassation) was added. In the lower courts the unification is not very remarkable so far, as their traditional approach – more rights to the consumer and the employee than to the merchant and the employer – should remain. But, of course, only two years have passed. Time will tell.

*Natalia Belova, Head of Legal,  
Inchcape, Russia*

# Inside Out: Sberbank's and VTB's Financing for Telmamskaya



## The Deal:

On June 27, 2016, CEE Legal Matters reported that Orrick had advised Sberbank and VTB on RUB 70 billion in financing for Telmamskaya HPP LLC (a subsidiary of EuroSibEnergo Group, which itself is part of the En+ Group energy and natural resources industrial conglomerate). Baker Botts advised Telmamskaya HPP on the deal.

The loan financed Telmamskaya's RUB 70 billion acquisition of 40.29% of Irkutskenergo PJSC, a company that operates several hydroelectric power plants, thermal plants, and electric networks, from Inter RAO Group.

## The Players

- **Dmitry Gubarev, Partner, Orrick**
- **Konstantin Garmonin, Partner, Baker Botts (answering select questions)**

**CEELM:** How did you become involved in this matter, Dmitry? How were you selected as external counsel by the banks?

**D.G.:** For the past few years we have represented both Sberbank and VTB on various other financings, including several Russian law-governed syndicated loans, and I believe that our experience was the reason for sending us the RFP and choosing our team to work on that transaction. We were approached by both banks in early April 2016. As the timing of the closing of that transaction was rather limited, we were selected very quickly after we provided our proposal.

**CEELM:** What, exactly, was your mandate when you were retained for the financing?

**D.G.:** The security structure and certain terms of the financing were changing in the course of our work during the transaction. However, in general our mandate did not



Dmitry Gubarev, Partner,  
Orrick

change: we were responsible for drafting all the financing documents, issuing necessary legal opinions, collecting condition-precedent documents, and negotiating the financing documents on behalf of the banks.

**CEELM:** Who were the members of your teams, and what were their individ-



Konstantin Garmonin, Partner, Baker Botts (answering select questions)

#### ual responsibilities?

**D.G.:** The team consisted of myself, my Partner Konstantin Kroll, Associates Svetlana Gareeva, Maria Illarionova, and Victoria Bryxa, and legal assistant Diana Tsaprilova. Svetlana, Maria and I were primarily responsible for the drafting and negotiating of the financing documents. Konstantin focused on corporate aspects of the transaction. Diana was responsible for assisting with collecting the CP documents.

**K.G.:** The Baker Botts' core team consisted of senior members of our Russian finance practice, including me and Finance Associate Kira Gladkobodova, both based in Moscow. The team was also able to draw upon expertise from our other European offices on matters requiring specialist input.

**CEELM: Please describe the final deal in as much detail as possible – in other words, how was the financing structured, why was it structured in that way, and how did you help it get there?**

**D.G.:** The financing was used for payment for the acquisition of 40.29% of shares in PAO Irkutskenergo (a major energy company in Eastern Siberia). PAO InterRAO was the seller and the borrower – OOO Telmanskaya GES, which belongs to EN+ Group – was the buyer.

The facility agreement was based on the standard form that was recently developed by the Association of Russian Regional Banks. The standard form was the product of a major collaboration by a group of experts, including both lawyers and bankers. I am proud to be a part of that team, and therefore was particularly excited about doing another financing on the basis of that form.

Since this standard form is rather new (Or-rick has done three transactions on the ba-

sis of that form, though overall there have been fewer than ten), a lot of provisions of the facility agreement required more time for negotiations compared to LMA-based financings. However, the parties did their best to achieve a successful closing in a very limited time frame.

**K.G.:** A transaction of this size and complexity was successfully closed in a very ambitious time scale thanks to an exceptional level of commitment that all parties and their counsel devoted to the transaction.

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

**D.G.:** The financing banks had to follow a very tight acquisition schedule. That ambitious timing was the biggest challenge. It took us six or seven working weeks to draft and negotiate all the documentation and to achieve a successful closing. We had to work at night and on the weekends. Both teams were under a lot of pressure in order to get the deal done within such a limited time-frame.

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

**D.G.:** We had very professional counterparts on the other side – Baker Botts – and although they did a great job in defending their client's interests, I believe we understood each other very well throughout the negotiation process, which was helpful given the complexity of the deal.

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

**D.G.:** Certain details of the deal structure changed, but generally the structure was the one that had been initially anticipated.

**CEELM: What individuals at Sberbank and VTB directed you, Dmitry, and how would you describe your working relationship with your clients?**

**D.G.:** We represented both banks equally and received directions and answered to both of them. There were large teams involved from Sberbank and VTB, but primarily we were instructed by Marina Matveeva from Sberbank and Mikhail Tamaev and Anton Loginov from VTB. Most of the discussions and conference calls involved both banks and, therefore, we managed to work

out decisions that were acceptable to both our clients.

**CEELM: How would you describe the working relationship with your counterparts?**

**D.G.:** The Baker Botts team is very professional and a pleasure to work with.

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

**D.G.:** I believe the deal is very significant for Russia. First of all, these days there are not so many financings of that size in Russia (70 billion rubles is more than USD 1 billion). Secondly, this deal demonstrates that the new standard documentation developed for syndicated financings under Russian law is and will be used in Russia, particularly for large domestic syndicated deals. I believe each Russian law-syndicated financing increases the sophistication of the market.

This transaction – along with a few similar deals we have recently worked on – demonstrate that the changes to the Russian Civil Code that were introduced last year have created a legal basis for structuring complicated financings purely under Russian law (with complex covenant packages, reps and warranties, sophisticated security structures, etc.). Deals like this show that the domestic Russian market is becoming more and more mature, notwithstanding the decline in cross-border financings involving Russia for the past two years.

I am also glad that I and my team members who over the years have been working on the formation of the standard financing documentation can now use it in practice. I am sure there will be more and more complex Russian law syndicated financings involving a large number of banks.

**K.G.:** This transaction proved to be one of a select few syndicated financings to date in Russia fully done under Russian law to the best international standards for such transactions.

Our team is seeing a marked demand for using Russian law in complex lending transactions, which reflects several factors, including a trend of “de-offshoring” the corporate structures used in the Russian debt market. This is driven by Russian tax law developments and sanctions concerns, as well as a number of positive developments in Russian law which are helping to facilitate such structures.

David Stuckey

# Market Snapshot: Russia

## Pharmaceutical and Medical Devices Market in Russia: Trends and Developments



Dmitri Nikiforov,  
Partner,  
Debevoise

In 2015-2016 the main trends and developments in the Russian pharmaceutical market were: (i) the establishment of the common pharmaceutical and medical devices (MDs) market of the Eurasian Economic Union (the “EEU”), (ii) the development of best practices in the pharmaceutical market through self-regulation, and (iii) preferences for pharmaceuticals and MDs of

EEU origin.

### Common Pharmaceutical and MDs Market of the EEU

The EEU is an economic union between Russia, Belarus, Kazakhstan, Armenia, and Kyrgyzstan. The Treaty on the EEU came into force on January 1, 2015 and declared as one of its main goals the unification of economic policy in certain branches of the member states’ economies. At the end of 2014, the member states signed a number of agreements aimed at the unification of the rules of circulation of pharmaceuticals and MDs in the territory of the member states, which have been in effect since the beginning of 2016. These agreements provide, inter alia, for a unified registration of pharmaceuticals and MDs, eliminating their state registration in each EEU state, mutual recognition of pre-clinical and clinical trials and tests, unified best practices, unified databases (e.g. unified registers of pharmaceuticals and MDs) and sharing of information on the safety and efficacy of products and the identification of fake and counterfeit goods.

The launch of the common pharmaceutical and MDs market takes time as it requires the adoption of a series of by-laws and is currently expected to take place by the end of 2016. By this time, the Eurasian Economic Commission should adopt all regulations for the implementation of the unifying agreements.

### Development of Best Practices in the Pharmaceutical Market

In 2015, the Federal Antimonopoly Service of Russia initiated the development of the code of pharmaceutical manufacturers as an instrument for self-regulation of relations between pharmaceutical manufacturers and distributors. The code was drafted by market participants and presented as the Code of Good Practice in the Pharmaceutical Industry (the “Code”) in April 2016. It is open for voluntary participation by both Russian and foreign pharmaceutical manufacturers.

The Code mainly covers issues arising from or connected with arrangements with distributors, including their selection. Ac-

ording to the Code, generally, pharmaceutical manufacturers are free to determine the criteria for selection of a distributor in compliance with applicable law and best practices. For example, while assessing compliance by the distributor of these requirements, the manufacturer may take into account international, Russian and foreign anticorruption laws, including provisions of the FCPA and UKBA. However, all such selection criteria should be economically and technologically justified and be disclosed to all the distributors in the commercial policies of manufacturers.



Anna Maximenko,  
Senior Associate,  
Debevoise

### Preferences for Pharmaceuticals and MDs of EEU Origin

Starting from 2015, Russian state tenders for supply of pharmaceuticals and MDs are affected by the so called “odd-man-out” rule. Bids for the supply of certain MDs or vital and essential drugs not originating from the EEU will not be considered if there are two or more bids which offer the supply of MDs/pharmaceuticals originating from the EEU and do not offer the supply of pharmaceuticals of the same producer or from producers of the same group. Generally, products are considered to be of EEU origin if they were fully produced in the EEU from materials of EEU or other CIS countries’ origin or have gone through sufficient processing. Generally, processing is considered sufficient if as its result the first four digits of the product code for Foreign Trade Classification changes. Vital and essential drugs which have gone through primary and secondary or only secondary packing in the EEU will be considered to be of EEU origin till December 31, 2016.

Additionally, the EEU member states are discussing legalization of parallel import of goods to the EEU. If this initiative moves forward a rights owner of a trademark will not be allowed to prohibit importation of products legally circulated abroad unless it localized the production of the relevant products in the EEU.

Going forward, the Russian pharmaceutical and MDs market is still developing and trying to match international standards. Among the amendments being discussed are the introduction of a drug tracing system, legalization of online drugs sales, and compulsory licenses for pharmaceuticals.

By Dmitri Nikiforov, Partner, Anna Maximenko, Senior Associate, and Elena Klutchareva, Associate, Debevoise

## Russian Antitrust Authority Pays Particular Attention to IT, Software, and Pharmaceutical Markets



Stefan Weber,  
Partner,  
Noerr

In 2015-2016, we saw the Russian antitrust authority (the Federal Antimonopoly Service, or FAS) paying particular attention to the IT, software, and pharmaceutical markets.

A remarkable example of this involved Google. In 2015, the FAS initiated a case of abuse of dominant market position against Google, which had offered

pre-loaded apps for installation on mobile devices controlled by Android OS. Abuse of a dominant position in various forms is prohibited by Article 10 of Russia's Federal Law On Protection of Competition. The FAS found that Google offered its Google Play Store to mobile devices manufacturers only if they agreed to pre-load other Google apps and the Google search engine and place them in a priority position on the device screen. As a result, the manufacturers of mobile devices refused to pre-load competing apps and services offered by other vendors onto mobile devices. The FAS investigation was initiated following a claim filed by Yandex, Google's main competitor in search services, which reported that three manufacturers of mobile devices had refused to pre-load its search engine onto their devices due to agreements with Google.

In 2015, the court of first instance confirmed Google's violation. In 2016, Google sought to have the decision of the court of first instance overturned at two higher instances, but both appeals were unsuccessful. The FAS issued a fine for Google in the amount of RUB 438 million (USD 6.7 million) – an enormous fine for Russia. More critical for Google, however, was the FAS's request that all contracts with vendors of mobile devices be amended to remove restraints connected with access to Google Play Store and to allow free pre-loading of competing apps.

In August 2016, the FAS announced that it had started proceedings against another international giant, Apple. The FAS suspects Apple of coordinating the prices of iPhones sold by Russian resellers. Coordination falls under the prohibition in Article 11 Part 5 of the Federal Law On Protection of Competition. An FAS investigation showed that, since the launch of official sales of the iPhone 6s and iPhone 6s Plus in Russia in October 2015, most retailers have set and maintained identical prices for these smartphone models. In the FAS's view such a coincidence in price can be explained by Apple coordinating the pricing policy of the resellers, who accepted

“recommended” prices as mandatory. Price recommendations can often trigger antitrust concerns, in particular where resellers actually keep to the recommended prices.

Another area of particular FAS attention is the pharmaceuticals market. Since the FAS tends to a narrow market definition, pharmaceutical enterprises face a risk

of being accused of abusing a dominant market position for a particular medicine. A dominant company must, among other things, ensure that it does not discriminate against its distributors by refusing to enter into an agreement with a new distributor or by terminating existing contractual relations. In 2013, the FAS held that Teva had abused its dominant market position when it withdrew from a long-term agreement with its Russian distributor. Teva argued that the distributor refused to undergo anti-corruption procedures under the US FCPA, but both the FAS and the courts rejected this justification. Teva paid a fine, but, more critically, also RUB 408 million (USD 11.9 million) in damages to its counterparty. This shows how important it is for dominant companies to consider antitrust risks in their contractual relations with distributors.

One instrument for ensuring compliance with the antitrust requirements is the development of a trade policy. A trade policy must be approved by the FAS to fully ensure that it is in compliance with the FAS's requirements. The trade policy must address, among other things, the process for selecting partners and the process of ongoing work with partners, including determination of prices, discounts, bonuses, and the reasons for and process of terminating work with partners.

Nowadays the FAS strongly encourages companies to develop trade policies, and we have already seen a number of companies making use of this opportunity. This development is in our view a positive change and an opportunity for businesses to obtain clarity on permitted contractual conditions and reduce antitrust risks.

By Stefan Weber, Partner, and Tatiana Dovgan, Associate,  
Noerr



Tatiana Dovgan,  
Associate,  
Noerr



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# Inside Insight: Dennis Avrouschenko

## Head of Legal & Compliance, CIS & East Europe at DHL



*Dennis Avrouschenko is the recently appointed Head of Legal & Compliance, CIS & East Europe at DHL. Previously, he worked for Gazprombank, where he was a Business Support Head / Capital Markets. Earlier still, he was the Head of Legal & Compliance at ZAO Standard Bank, a Legal Adviser with Deutsche Bank, and the Head of Corporate and HR Department with RAO UES. Before moving in-house, he worked with Allen & Overy Legal Services in Moscow.*

### **CEELM: As a warm up, please tell our readers a few words about your career leading up to DHL.**

D.A.: I graduated from Moscow State University in 1997. Early in my career, I spent about a year and a half with the international law firm Allen & Overy, where I focused mostly on capital markets and banking. As you might know, 1998 was a crisis year here in Russia and A&O reduced their practice in capital markets, which meant that, unfortunately, most of us in the team had to leave. This marked the beginning of my in-house life, which I have spent mostly with large banking institution such as Deutsche, South African Standard Bank, and Gazprombank, where I stayed for more than seven years.

As to my current role, I'd say simply that one meeting with my predecessor here changed my life, as he made me consider changing my focus from the financial sector to something absolutely different in DHL and coming back to a purely legal and compliance role, which I had missed during my life with Gazprombank. To clarify, with Gazprombank I spent a lot of time on the administration and business side of things. That included some compliance work, some corporate governance, and so on, but not really any pure legal

work. Missing that area is the main reason I agreed to talk to DHL at the initial stage. If I am completely honest, the fact that I didn't see any prospects for me personally at the bank also played a part – in part because of the lack of future interesting projects in the banking sector for various reasons. Putting the two together, I thought it'd be a great opportunity to join DHL, and I am highly appreciative towards the DHL management, who gave me the opportunity to come in and strengthen the legal function here.

### **CEELM: Your previous role with Gazprombank is indeed not the typical one we see for in-house counsel. Can you elaborate for our readers what role you played as a lawyer in – as you describe it on LinkedIn – “developing capital markets business for the bank.”**

D.A.: At the time I joined the bank there was a drive to hire lawyers in various departments – such as in capital markets but also in some of the general banking areas – not to act as legal advisers but to focus mostly on deals and day-to-day transactions. We were focused on brokerage, sales, and trading, establishing new entities and setting up intergroup structures within the capital markets team, and our legal expertise was useful in

that exercise. We'd of course push matters towards the legal team when necessary.

As the business support head I also focused on the administration of different affiliated companies established in Russia and abroad. For example, we arranged and started up the Hong Kong presence – a rather difficult project in light of the sanctions in place.

### **CEELM: Why did the sanctions impact that particular project?**

D.A.: When we're talking about China, which does not support any of the sanctions applied by the EU or US, there is a sense that the general environment is not particularly welcoming when it comes to entering. There is a general feeling that people do not really trust you in terms of what is being introduced and whether you are trying to breach the sanctions imposed on you. Even outside the list of countries that agreed to the sanctions, all are rather suspicious of Russian businesses.

I should stress that Gazprombank was never aiming to breach the sanctions in place. It was simply looking to expand its presence – which is only normal for a large institution and natural, since China is an interesting and promising market in general.

### **CEELM: You only spent a relatively brief period in private practice. What made you stay in-house since 1998?**

D.A.: Indeed, as I mentioned, I started with A&O, which is a very good experience for anybody coming in from university benches. We were exposed to different fields of law: oil and gas, corporate, etc., which means you can try different areas and explore what you would want to go deeper into. I spent a lot of time with lawyers who were a lot more senior than me, and that helped me learn a lot about the banking world – that's when I gained my understanding of the industry: Not just out of books but first-hand experience in the industry, working with the biggest names.

As I mentioned, the crisis made the decision for me and eventually I had to move on. I can say now that I prefer staying on the corporate side – I understand it much more by now and to be an external lawyer, again, you should (in a higher position of course) spend a lot of time on administration stuff which is not law at all. Such administration

concerns are rarer on the corporate side. For example, you don't need to worry about attracting various clients – you have just the one and you can focus on its legal needs.

**CEELM: In our interview with your predecessor, Sergei Stefanishin, in the April 2016 issue of the CEE Legal Matters magazine, he talked about the extensive process of getting to know the company when he first joined. Almost two months into that same role, now, how settled in do you feel?**

D.A.: Keep in mind I changed roles dramatically. I came to a field where the applicable law is rather unfamiliar to me (not capital markets and not banking at all). Sure, the general rules and environment in Russia is more or less common but the specifics are, of course, quite different. I am now trying to understand the business from different angles. I do enjoy seeing another industry.

I have known Sergey for quite a long period. The team that is in place, as I can see now, is very tight – the members of the team have been together for a long time and are now very experienced. Most of them have been here for over five years, and they've helped me understand how things work around here. With that in mind, I can't see any big

changes in terms of the team here. If it's not broken, don't fix it!

**CEELM: Looking towards the future, what is the next big project for your legal team?**

D.A.: Looking at the current set-up, I think there are several types of risks in terms of the changes in the Russian legislation related to post services and freight forwarding, and I would like to focus on that and generate various scenarios as to how we'll need to move forward. The new rules don't appear to apply to us, in theory, but if it turns out they will apply to DHL we'll need to spend quite a lot resources to comply. At the moment we are not regulated as much, and if we are, we'd need to address many areas. Again, officially we shouldn't have to, but we may need to be proactive on it to manage the risk.

**CEELM: Turning our attention to the Russian market, how is the climate these days both in terms of the economy as a whole and your own business?**

D.A.: I've had a lot of internal meetings, and the general impression I got is that business is going very well. The news here is a bit surprising, because in general the Russian econ-

omy is not in a great place. The ruble value for the last two years is very unfriendly to a lot of people and most have slowed down in spending.

In terms of the market in general, we're still struggling with the sanctions because providing even some services as an international company we need to always control and be in line with the sanctions in place. We are very careful here because I would say even our business is affected.

**CEELM: On the lighter side, looking back at your career, what was the funniest moment in the workplace?**

D.A.: Not a lot of funny stories to share really. One that I can recall is from about ten years ago. It was an April Fool's Day joke: We had quite a lot of foreigners in Moscow, and we circulated a message that the Russian Government decided to implement a rule based on which they'd need pass exams on the Russian language, the history of the Russian banking system, etc., to be able to work in the management of a bank. They all scrambled and a few hours later they had all even written to HQ asking for a budget line for the needed courses.

Radu Cotarcea

## Expat on The Market: Michael Malloy

### Partner at DLA Piper



*Michael Malloy, the Head of Intellectual Property and Technology for Russia at DLA Piper, first came to Russia in 1990, and he moved there for good in 1994. At DLA, where Malloy has been since 2008, he specializes in intellectual property and technology issues, and his work includes franchising, corporate law, media law, and technology transfers.*

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

M.M.: I am an American lawyer originally from Florida. I had an obsession with crafting an international career and started my legal career in Washington, DC. I started out in insurance litigation with a great firm in DC. I knew I needed to develop good lawyering skills and working on huge case litigation in a big firm was a great way to get started. Keeping my eyes on my goal of international practice, after a couple of years at that first firm, I jumped ship to another DC firm with more of an international focus.

This was back in the early 1990s when a lot of American law firms were looking to expand internationally and specifically into Russia and Eastern Europe, so there was a lot of interest in this part of the world, but few people knew what to do here! Bill Clinton came along in 1992 and ruined my job at

that firm – he appointed my boss to a prestigious ambassadorial post and with that, the firm's budding Russian practice ended. Faced with going back to domestic practice if I were to have stayed, I realized that the time was right to get over to Russia.

I started out managing a small consultancy in Moscow to get my foot in the door of the market and later went back to legal practice, this time with KPMG and Arthur Andersen where I focused on tax, corporate law, and market entry. There were two important trends at that time: the expansion of international businesses into Russia and the prospect of the big accounting firms taking on legal practice. At the time it made a lot of sense and I wanted to be on the cutting edge. I was recruited as a "real lawyer" into the Arthur Andersen legal practice and for over six years was involved. Andersen was a first rate organization and was developing a very good legal business, but then Enron came along and ruined everything.

This was actually a great thing for me. It inspired me to think out of the box about where to take my legal practice. I had noticed something interesting (this is back in 2001): IP and technology were certainly the most promising things going on commercially, but it seemed that technical specialists and commercial people had some trouble understanding each other. This applied to IP lawyers and commercial lawyers as well. It seemed that yet again I had noticed an opportunity and I decided that having been a commercial lawyer, getting into IP and Technology would be a really interesting direction for my career.

Taking this strategy forward, I joined the Moscow office of an excellent Canadian IP powerhouse: Gowlings. In the years with Gowlings, I learned a tremendous amount about IP and how to handle IP in a commercial context, but as my skills grew, I wanted to find a platform for a broader client base.

While doing a hotel franchise deal opposite the DLA Piper team, I realized that DLA Piper very well could be exactly the platform I was looking for, with technical excellence and a genuine global reach. I gave DLA a call and they shared the vision – an IP and technology practice with a commercial accent. I joined DLA Piper to lead the Intellectual Property and Technology practice group in 2008 and have been here since!

**CEELM: Was it always your goal to work abroad?**

M.M.: It has always been my goal to have an international practice. I initially expected that I would work outside of the US for a few years and bring that experience home for an international practice, but things didn't work out that way. I came to Russia more than 20 years ago and am still here!

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

I have a really broad practice involving intellectual property, technology, and a lot of commercial work and negotiation. This negotiation aspect of the practice goes beyond the usual negotiation one might expect on a deal-by-deal basis. We have a significant number of clients who, after trying to finalize their transactions in Russia, call us in to close the deals.

In building up my practice, I have followed two principles: first, recruit and develop great

people – nobody can do this alone, especially as a foreign guy in a foreign land; and second, never say no – there are too many lawyers in Russia who just say “it cannot be done” (the Dr. No Syndrome), but I have always tried to find ways to make things work.

I have considered practice development as a long-term strategy: 1) build the team; 2) build capability; and 3) build reputation. It all has to be based upon substance and built from the ground up.

**CEELM: Do you find Russian clients enthusiastic about working with foreign lawyers, or – all things considered (and especially in the current climate) – do they prefer working with local lawyers?**

M.M.: This will depend upon the client and what they need, but as a general matter, if it is purely domestic work for a Russian client, it is almost always better to have one of our Russian lawyers lead the project. Generally speaking, though, as almost all of my Russian clients have some international activity or prospects, they are generally more than happy to work with foreign lawyers – provided that the foreign lawyers actually add value. In some ways, with Russian clients, I feel that as a foreign lawyer, I need to meet a higher standard to really add value.

**CEELM: Following up on that, how has the current political climate affected your practice, or your life in Moscow outside the office?**

M.M.: The effect of the political climate has



had nearly no effect on my life in Moscow other than the food imports. The quality of pepperoni on pizzas has suffered due to the sanctions.

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

M.M.: I could (and still may) write a book on this question, but I will focus on three things.

First, Americans have a deep obsession with

documentation. For the same transaction, an American might bring a 100-page agreement while the Russian party expects something around ten pages. My experience has been that Americans expect to have everything under the sun nailed down in a document so that the document is the embodiment of the agreement.

Russians, however, seem to rely more upon the relationship and what has been actually discussed and agreed between the parties. I have found over the years that Russians are very reliable when it comes to issues which have been discussed and agreed in the relationship while Americans tend to rely upon what has been written in an agreement document.

Here's an example from franchise deals: Many franchise deals have a development schedule where the parties agree that the franchisee will open a number of units over a period of time. To an American, the development schedule is a rock solid binding obligation, so if the franchisee opens 11 units when 12 are written in the development schedule, the franchisee is in material breach of the agreement. To the Russian side, though, the development schedule is a goal to be strived for, but they realize that sometimes things don't work out as planned. The Russian is looking at the relationship – "we are in this together" – rather than numbers written on a schedule.

I have seen this come up many times where the American side (usually the franchisor) is frustrated by a "material breach" while the Russian side (usually the franchisee) does not see it that way. In discussions, the Russians will often remark that it was never actually discussed that the development schedule was a critical part of the deal while the Americans point at the (usually very long and complicated) agreement.

The most important advice I can give to international people doing business in Russia is to respect the relationship and actually discuss every important issue – you cannot rely upon things "hidden" in the agreements.

Second, Americans and Europeans often have too great an expectation of certainty or specificity in the rules. We need to keep in mind that Russian legislation, the legal profession, and enforcement mechanisms have only been in place for a short time – since the end of the Soviet Union. Because of this, legislation is not always perfected, so the rules may not be written as well as they

will be, and practices and precedents have not been fully established yet. In working with Russian law, one must accept that there is a different level of uncertainty than you can expect in more mature systems. This is temporary, of course, but building a legal system takes time.

Third is that enforcement of rights through the legal system is difficult. Americans expect a legal system where it is possible to achieve effective enforcement of rights through court actions (although it can be expensive and can take time), but that is not really the case for many commercial disputes (especially for breach of contract) in Russia. While claims move through the Russian courts more quickly than they do in the US, the process is radically different, and evidentiary rules place a very heavy burden on a claimant to the extent that cases which might be easy wins in the US are frustratingly difficult in Russia. I often have to counsel American clients that having something in the agreement document does not really mean that it will be easy to enforce. I tell them to go back to my first point that the best enforcement is avoiding the problem and that can be done only through the relationship.

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

M.M.: Russia is a deceptive place for a lot of foreigners coming from the US and Europe. At first glance, Russia seems to run pretty much the same way one might expect in the USA or Europe – the cars, buildings, fashions, etc., all look a bit different but well within the norms one would expect. Business people act like they do in Europe, and many Russians have excellent foreign language skills, so initial interactions are also within the expected norms. This leads Americans and Europeans to expect that Russians think and operate just like "we" do and that there is no significant cultural difference to worry about.

That's a big mistake. Russia has a very distinct culture and ways of doing things, and it is important to understand that.

My personal favorite difference between Russian and American culture is that we have different axioms. Every culture has its own unproven beliefs upon which a lot is invested. Russians have their own, too, but they don't share those of the Americans. Being in Russia and with Russians has required me to question and consider these American

axioms.

Here's an example. In the US, we have deeply rooted belief that democracy is "good" and we don't even question it. We take it as a universal truth. In fact, we justify a lot of actions on defending, promoting, or expanding democracy at home and abroad based upon this axiom. Russians, however, are not conditioned into this axiom and are mentally and emotionally able to earnestly question whether democracy is "good."

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

M.M.: There should be three things a senior expatriate lawyer adds to the firm and its clients: 1) Cross-cultural understanding – the ability to help international clients understand how things are done in Russia in terms that they can understand – and the mirror opposite: helping Russians understand international counterparts; 2) Technical skill and judgment – this is probably applicable for any senior lawyer, but there is the added twist of the international component to be able to expand that judgment from experience in the local market and from abroad; and 3) Translating – not language so much as concepts and approaches. While there are lots of Dr. No lawyers who say things cannot be done in Russia, my experience is that with appropriate flexibility and by working together, it is possible to effect nearly (not all) everything parties want to achieve in a relationship. The key to this is to understand where each side is coming from.

I often view my role as being a bridge – I have to understand both sides of the river and find a way to bring people from each side to the other.

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

M.M.: Czech Republic. I love the architecture and vibe of Prague.

#### **CEELM: What's your favorite place in Moscow?**

M.M.: There is a groovy café called Ukuleleshnaya on Pokrovka. It is a café and club which also sells ukuleles. They also have great live music events. I have a band in Moscow and we play there often, so I like this place from a customer's and performer's point of view!

David Stuckey

# Market Spotlight Turkey

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# Guest Editorial: As Always: The Turks Come Back



In a short summary, perhaps we can divide Turkey's past decade into two halves: The first half a seemingly flourishing economy with impressive growth rates, and the second half a consistent headline in all main international newspapers of mass protests, terror bombings,

and coup d'état attempts. While the first half clearly created an excellent environment for law firms, the second half has been a challenge. So far, most Turkish law firms seem to be surviving that challenge. In the long run, we may well see that what does not kill these law firms will make them stronger. Ironically, the same challenging years have probably been a useful tool for international firms operating in Turkey, in that they could not otherwise have experienced a better "Getting used to business in Turkey" course in such a short period of time.

A few weeks ago, I heard one of the best descriptions of how Turks operate from a Turkish chairman. He said that Turkey may not be known to be the greatest in any particular sector, but that one should always "beware of Turks!" The strength of this statement is proven in our market: you might read very tragic news about Turkey on the first page of the Financial Times, but when you turn over a few pages you will read about multi-billion dollar infrastructure projects, a new arbitration center aiming to become a regional dispute resolution hub, and an energy transit platform between Europe, the Middle East, Russia, and the Caspian.

Despite the country formally being in a "state of emergency" following the attempted coup d'état in July 2016, privatizations are still pending, including that of TP Petroleum Distribution Company, the national lottery, and several state-owned power plants. Likewise, infrastructure projects such as the Eurasia Tunnel, the Gebze-Halkali commuter train link in Istanbul, the Ovit tunnel in Northeastern Anatolia, Istanbul's third airport, and the Baku-Tbilisi-Kars Railway have not stopped. After four very important elections in less than two years, many of us expected a very difficult 2016, and these expectations were inflated by the attempted coup d'état in July 2016, but our workload has not been affected as badly as we expected.

It would, however, be fair to say that the M&A market has been affected in recent years. The aggregate volume of M&A transactions in Turkey was USD 21 billion in 2014. This fell to USD 16.4 billion in 2015. On the other hand, the total foreign direct investment keeps growing, from USD 5.2 billion in 2013, to USD 8 billion in 2014 and USD 11.5 billion in 2015. Still, there have been some significant M&A deals in 2016. In June 2016, Mars Cinema Group was sold to CJ Group of Korea for a total of USD 800 million. The sale of Turkish satellite platform Digiturk to the Qatari-based beIN Media Group was completed

in August 2016. (Although the purchase price was not disclosed by the Turkish Savings Deposit Insurance Fund, media reports suggest it was close to USD 1.5 billion.)

Turkish outbound investment has hit record highs, reaching a total deal value of USD 10 billion in 2014 and 2015. In 2016, a few Turkish law firms – including ours – had the privilege of handling outbound investment transactions, such as the acquisition by Logo Yazilim of the Romanian software company Total-Soft. There are also pending negotiations for a Turkish group's investment in a bio-tech business in Korea. Africa is naturally a good target for Turkish construction companies, and some law firms – again, including ours – have been active in these cross-border deals in the past few years.

A few years ago, when many large international law firms set up offices in Istanbul, we expected a major impact in the market, both quality-wise and in terms of legal fees. The presence of these international players has matured the Turkish legal market, also earning us lawyers a more established role in the operations and investments of mid-size and large Turkish companies, which are increasingly becoming more used to utilizing legal advisors.

One key development for law firms has been the establishment of the Istanbul Arbitration Centre (ISTAC), which started its operations in 2015. ISTAC's existence is bound to make an impact. I see ISTAC's establishment as a free marketing tool for the promotion of arbitration in this country. Practitioners have welcomed the establishment of the institution, because clients are now reading about what arbitration is and its possible advantages. Until recently, the concept of arbitration was only known to law firms and in-house counsel, but now more businesspeople are familiar with it. All this will have a very positive effect for Turkey's talented arbitration lawyers.

Another growing practice area is compliance. Having received tremendous foreign investment in the past decade, Turkish businesses are becoming increasingly more alert to the possible consequences of international rules, as well as extra-territorial laws such as the FCPA and the UKBA. Moreover, the criminal courts are developing strong precedent on white-collar crime. Many law firms have played a very important role in raising awareness on ethics rules and strict compliance standards. Their efforts are now bearing fruit, with more internal investigations being conducted in large corporations.

All in all, the Turkish legal market is surviving. While our focuses may have slightly changed, the total workload seems to be more or less the same. The law firms that learn the most from these difficult political times will ultimately benefit more from a more stable and secure climate in the near future. As our founder Mustafa Kemal Atatürk said: "There is no such thing as hopeless circumstances; it is only people that can be hopeless."

*Okan Demirkan, Partner,  
Kolcuoglu Demirkan Kocakli*

# In Pictures: 2016 CEE Legal Matters General Counsel Summit



*Byzantium. Lygos. The Queen of Cities. Constantinople. The Sublime Porte. Stamboul. The Abode of Felicity.*

Istanbul is and has always been known by many names, and we were delighted, on October 6 and 7, to add another to the list: The Site of the 2016 General Counsel Summit.

Senior in-house counsel provide the critical directions, suggestions, and guidance necessary for companies operating in the region to navigate the choppy waters of these challenging times. Their role is increasingly important, and the annual GC Summit is designed specifically to provide useful information to help them succeed.

Of course, in addition to the carefully structured presentations and panels, the ability to socialize, network, and share information with peers on a one-to-one basis is critical, and the event was designed with multiple breaks, a cocktail reception and dinner, and other opportunities for personal interaction.

These photos provide a brief feel of the event, and some of the 170 attendees. Still, the only way to really get the whole experience is to attend, so we hope to see you in June 2017 in Warsaw, at next year's GC Summit!



Ismail Esin, Partner at Esin Attorney Partnership and Chairman of Day 1, opens the 2nd Annual GC Summit in Istanbul



Ismail Esin welcomes Roswitha Reisinger, Eli Lilly's General Counsel Saudi Arabia, Egypt, Middle East, MEA, who delivered the keynote of day 1 on leadership in today's changing environment



Nataliya Belova, Head of Legal at Inchcape, Russia, shares her experience in achieving efficiency through technology



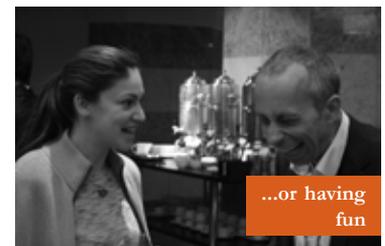
Kutay Yayin, Country Legal Counsel at Google offers a case study on how technology aids the in-house legal function. Did you know that the world's first artificial intelligence lawyer has already been hired at a law firm?



"All powered by the cloud," says Jochen Engelhard, Legal Director of Central and Eastern Europe looking at legal considerations for cloud services



Coffee breaks - the best time for networking



...or having fun



Halil Ibrahim Kardicali, 3M's General Counsel, moderated the panel on innovation. Panel members (from left to right): Asli Orhon (HPE Turkey Country Counsel), Bahar Yenerer (Atos General Counsel), Julijana Mihajloska (Nextsense Head of Legal), and Inan Danyal (AIG General Counsel)



Gonenc Gurkaynak, Managing Partner of ELIG, Attorneys-at-Law, talks about anti-corruption sensitivities for multinational players in emerging markets



Igor Mate, Group Data Protection Manager at Sapa Group, speaks about data privacy compliance



Tobiasz Adam Kowalczyk, Head of Legal at Samsung, addresses supply chain compliance



Stathis Mihos, Legal Director, Greece, Cyprus & Malta at Pfizer, provides tips for GCs on crisis management



Jonathan Clarks, Partner at Slaughter and May, moderates a Crisis Management panel that includes Dino Aganovic, Head of Legal and Compliance at HETA; Stathis Mihos, Pfizer Legal Director; and Tobiasz Adam Kowalczyk, Samsung Head of Legal



Day 1 concludes with a panel on Building an In-house Legal Team, moderated by Josef Holzschuster, Philips Head of Legal Affairs for CEE, and including Asli Orhon, HPE Country Counsel; Altug Ozgun, Sandoz Head of Legal; and Nataliya Belova, Incheape Head of Legal



Jonathan Marks, Partner at Slaughter and May and Chairman of Day 2, greets participants on Day 2



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Day 2 keynote address delivered by Josef Holzschuster, Philips Head of Legal Affairs for CEE: “Chaos (In-house) Theory”



European M&A and financing trends presented by Day 2 Chairman, Jonathan Marks of Slaughter and May



Ismail Esin, Partner at Esin Attorney Partnership, suggests how to improve daily operations with arbitration



Aleksandar Ickovski, Head of Legal at ONE-Telekom Slovenije Group/ ONE.VIP, delivers a presentation on litigation risk implications on financial reports



Emel Nakay, Accenture Country Legal Lead, moderates the panel on risk assessment. Members: Gokce Turkoglu (General Counsel at Marsh), Aleksandar Ickovski (Head of Legal at ONE-Telekom Slovenije Group), Irem Cansu Atikcan (Legal Manager at Roche), Kerem Turunc (Partner at Turunc)

Ensuring Improved Service by External Counsel panel moderated by Vefa Resat Moral, Partner at Moral. Members: Ahmet Ilker Dogan (VP-General Counsel at Anagold Madencilik A.S.), Nadia Cansun (General Counsel at JJK Oil & Gas), Nesteren Caliscan (Legal Counsel at Burgan Bank), and Roswitha Reisinger (General Counsel Saudi Arabia, Egypt, Middle East, MEA at Eli Lilly Regional Operations)



CEELM Executive Editor David Stuckey moderates the special Partners Panel on the New Reality in Turkey. Members: Vefa Resat Moral, Erin Kursun, Kerem Turunc, Jonathan Marks, and Okan Demirkan

## EVENT SPONSORS



# Market Snapshot: Turkey

## Postponement of Bankruptcy in Turkey



Sena Apek,  
Partner,  
Gur Law Firm

Under the Code of Enforcement and Bankruptcy dated June 9, 1932 and numbered 2004 (the “Code”), the companies established under the Turkish Commercial Code dated January 13, 2011 numbered 6102 (the “TCC”) and persons who are bound by the provisions for the tradesmen of the TCC are subject to bankruptcy when their debts exceed their assets. In such an event, declaration of bankruptcy should be requested from the court by those

who are authorized representatives of such persons or entities (e.g., the board of directors for joint stock companies).

The Code allows those who face financial difficulties prior to a declaration of bankruptcy a temporary grace period, referred to as a “postponement of bankruptcy.” By its most widely accepted legal definition, postponement of bankruptcy is a stipulation enabling an insolvent company or person to avoid declaring bankruptcy if and to the extent that its financial situation is improvable. According to Article 179 of the Code, parties may submit an outline of a proposed project for improvement in the financial situation of the company to the court, along with a request for postponement of bankruptcy. The court may accept this request and grant the postponement should the proposed project be deemed as critical and compelling. As implied by this condition, evaluation of the project would be undertaken by the court, which has full discretion to determine its criticality and cogency. Companies should prepare their projects with valid and enforceable measures for recovery of their situation and financial resources (e.g., for equity companies, an injection of cash capital from a viable resource). Moreover, another criterion to be considered during evaluation of the project is the expected benefit to the creditors, since, according to the provisions of the Code, the plan should protect them.

If the court finds the company insolvent but the submitted project critical and compelling, it may grant the postponement. In such a case, no execution proceedings can be pursued against the company/

cooperative, and the pending proceedings would stop. The maximum period of postponement is one year – though that period can, at the end of that year, be extended at the discretion of the court. In any case, the period of postponement cannot exceed a total of four years.

Under the State of Emergency regime approved by the Parliament of the Republic of Turkey on July 21, 2016, some laws and regulations have been amended, and Article 179 of the Code regarding the procedure of postponement of bankruptcy has been set out in more detail. Furthermore, pursuant to the statutory decree adopted on July 31, 2016 with number 669 (the “Decree”), requests for postponement of bankruptcy during the State of Emergency regime will be denied by the court, meaning that this relief is, for the time being, not available to companies and cooperatives. However, a similar (though not identical) procedure, referred to as concordatum (i.e., arrangement of bankruptcy) is outlined in detail under the Code, although in practice it has not been used for a long time, due to a prevailing preference for postponement of bankruptcy procedures. Briefly, concordatum is a means of settlement between an insolvent company/cooperative and its creditors, which is arranged by way of a payment schedule and is available where the party has settled with two thirds of its creditors, paid at least fifty per cent of its debts, and prepared a payment schedule for the remaining amount.

Currently, no decree under the State of Emergency regime has been issued regarding concordatum, and therefore some applications are being made as an alternative by companies in financial difficulties.

Most likely, depending on the regulations under the State of Emergency regime, the final status and practice of these procedures will become clearer and better outlined in the coming months.

By Sena Apek, Partner, and Selen Tan, Associate, Gur Law Firm



Selen Tan,  
Associate,  
Gur Law Firm

## Importance of Compliance in M&A Transactions

### The Increasing Interest of Foreign Investors in the Turkish Market

While the volume of M&A transactions in Turkey decreased in 2015 (approximately USD 16.4 billion in 2015 compared to approximately USD 18 billion the year before), foreign investors’ interest has steadily increased. According to Deloitte’s 2015 Mergers & Acquisitions Report, foreign investors were responsible for 70% of M&A transactions in 2015, a spike from 30% and 44% in 2013 and 2014, respectively. Foreign investing benefits both foreign and local counterparts: Overseas companies diversify their investment opportunities while Turkish companies address their financial needs and find a place in the international markets.

As a natural result of the increasing foreign direct investment into Turkey, compliance due diligence has begun to play an essential role in both the pre-acquisition and post-acquisition periods. Possessing a

strong compliance program positively affects a company’s valuation, the sustainability of the business, and the transaction’s overall ease, often expediting and facilitating the negotiations. Foreign investors in particular place great importance on compliance due to the US Foreign Corrupt Practices Act (FCPA) and the UK Bribery Act’s extraterritorial effects and severe fines. Many other countries have followed suit by introducing their own compliance rules, causing foreign investors to be more vigilant and selective in their foreign investment transactions.

### UK Bribery Act and FCPA are Worth Considering When Investing in Turkey

According to the UK Bribery Act and the FCPA, bribing foreign officials, whether directly or indirectly through intermediaries, is strictly prohibited. Both the UK Bribery Act and the FCPA have extraterritorial effects, meaning that the UK and the US governments can exercise their authority beyond their borders. Generally speaking, a company or

an individual may be subject to these codes due to a business relationship with the UK and US, or due to links between shareholders and the countries, even if the company is not established in these countries or the individual does not hold citizenship of either country. Considering the extensive effect of these codes, foreign investors pay close attention to the compliance-related risks of investing in Turkey.

Moreover, Turkish companies have been slow to adopt and develop higher standards of compliance, as evidenced by Turkey's corruption ranking in Transparency International's Corruption Perception Index. In scoring only 50 points in the Index (100 points means a country is very clean; 0 means it is highly corrupt), a score denoting considerable compliance risks and little enforcement, Turkey ranked 66th among 168 countries in 2015; 64th among 175 countries in 2014; and 53rd among 177 countries in 2013. Considering the general lack of compliance culture in local companies in Turkey, the extensive compliance risks of the country and its region, and the inherent risks associated with M&A transactions, it is crucial to conduct proficient compliance due diligence before any share acquisition process to identify risk areas which may cause liability of the purchaser after the share acquisition. Furthermore, conducting compliance due diligence will minimize the purchaser's liabilities if an earlier misconduct is revealed after the share

transfer, if they can show that best efforts to reveal a compliance concern were made beforehand. Failure to conduct compliance due diligence during an M&A transaction can cause the foreign investor to inherit liabilities arising from the seller's misconduct, even if the violation of anti-corruption regulation was committed prior to the share transfer and the foreign investor was unaware of the breach.

Reviewing the identified red flags will allow purchasers to decide whether they need to walk away from a transaction due to the potential for serious consequences or carve out a particularly risky part of the business. If a company decides to proceed with the transaction, a tailor-made compliance program, employee compliance trainings, and periodical internal compliance audits will allow them to minimize the compliance-related risks in the post-acquisition period.

The Turkish market is ripe with opportunities and profit, as evidenced by foreign investors' appetite for it. Although compliance risks may be intimidating, these can be easily mitigated by conducting a compliance due diligence and establishing a bespoke compliance program.

By Eren Kursun and Birturk Aydin, Partners, and Sertac Kokenek, Senior Associate, Esin Attorney Partnership

## Workplace Privacy and Employee Monitoring under the New Turkish Data Protection Law

Workplace privacy issues, especially those relating to the privacy of employees' communications, have been a major issue for both employment and privacy law practitioners. Recently, concerns have become exacerbated by the ubiquitous use of electronic communication technologies and initiatives such as "Bring Your Own Device" policies which allow employees to use their own electronic devices for work. The operational requirements of multinational organizations which force them to transfer data to overseas entities can magnify the problems. These developments and requirements have significantly increased employers' access to their employees' personal data, whether intentional or unintentional. As a result, employers have increasingly had the opportunity, and at times the misfortune, to collect and process their employees' personal data.

Until recently, Turkey only had a limited number of laws directly applicable to workplace privacy issues. These laws were unclear and dispersed among various codes and regulations, making them inconsistent and sometimes incoherent. Thus, they fell short of addressing the legal questions that the employers' practices posed. In most cases, it was the Turkish Supreme Court which filled in this gap. In fact, for many years the decisions handed down by the chambers of the Supreme Court in charge of labor disputes have proved to be the only useful guidance for workplace privacy questions. With the April 7, 2016, adoption and October 7, 2016, entry into force of the Law on the Protection of Personal Data (LPPD), however, things will undoubtedly start to change.

Like the Turkish Constitution, the LPPD requires organizations to obtain the explicit consent of individuals before they can process those individuals' data. Obtaining explicit consent, however, is easier said than done. This is because consent is valid only if it is given freely, which is hard to achieve in the context of workplace privacy. Luckily for employers, and similar to EU legislation, the LPPD provides certain exceptions on which employers can rely to process employees' personal data for which they were unable to collect explicit consent or where the consent that was collected may be deemed invalid.

The first and foremost exception many employers rely on is where processing is permitted by law. Employment legislation will therefore be

an important source for processing activities. Employment contracts and other legal obligations of employers will also likely be popular exceptions for employers. Likewise, one of the exceptions for processing data in the absence of explicit consent that will be most commonly used will allow data controllers to process data for their own legitimate interests. A hindrance is that these exceptions apply only to the processing of non-sensitive personal data. To process sensitive personal data, such as criminal history and genetic and biometric data, employers are required either to obtain the explicit consent of employees or to base their processing activities on a specific law. Obviously, this will be highly impracticable and nearly impossible for some employers.

In addition to those related to consent, there are other rules which employers must observe in their processing operations. These include notifying employees of processing activities and maintaining a mechanism through which employees can exercise their rights of access to their personal data. These are also expected to give rise to significant issues, such as how notifications will be made and how employees can exercise their rights during an internal investigation conducted for compliance purposes.

As is evident, the LPPD creates more questions than it answers. At this stage, it is uncertain how the LPPD will mesh with requirements under other laws. Moreover, since the LPPD only sets forth the general rules, it will be necessary to consider the case law in Turkey – the approach of the Turkish Constitutional Court and the Supreme Court in particular – in order to decide how employers must comply with these rules in practice. In this scope, the main issue is how employers will create a balance between business management judgment and the right to privacy and freedom of communication which are guaranteed under the Constitution of the Republic of Turkey. The striking of this balance will mitigate the risk of violation of these fundamental rights and place employers on the safe side.

By Nuri Bodur, Head of Employment, Hakki Can Yildiz, Head of Data Privacy, and Can Sozer, Senior Associates, Esin Attorney Partnership

# Inside Out: Burgan Bank's Multi-Tranche Loan Agreement in Turkey



## The Deal:

On August 15, 2016, CEE Legal Matters reported that the Esin Attorney Partnership (a member firm of Baker & McKenzie International), Hogan Lovells, and Paksoy had advised on Burgan Bank's USD 87 million and EUR 57 million syndicated multi-tranche term loan agreement with 13 banks from 8 countries. The banks were led by HSBC, acting as coordinator, Arab Banking Corporation (B.S.C.), acting as agent, and Commerzbank Aktiengesellschaft, Filiale Luxemburg, HSBC Bank Middle East Limited, and Mashreqbank PSC acting as initial mandated lead arrangers and bookrunners.

## The Players

■ **Muhsin Keskin, Partner, Esin Attorney Partnership, a member firm of Baker & McKenzie International**

■ **Sera Somay, Partner, Paksoy**

■ **Rahail Ali, Partner, Hogan Lovells (Dubai)**

**CEELM:** How did you each become involved in this matter? How, why, and when were you selected as external counsel?

**M.K.:** We were mandated by Burgan Bank to advise them in relation to their inaugural annual syndicated borrowing in 2015 and

since then we have been their counsel for banking transactions. [At the time] they reached out to us directly.

**S.S.:** Paksoy was mandated in June 2016 through Hogan Lovells (Middle East) LLP, the Dubai branch of Hogan Lovells.

**R.A.:** We have worked on numerous Turkish conventional and Islamic financing transactions with HSBC.

**CEELM:** What, exactly, was your mandate when you were retained for this particular project (as compared to the final result)?

**M.K.:** The mandate was to advise them, both English and Turkish law input, for the

finance documents, which I think 100% matches to the end result. We were involved from the beginning, the term sheet stage. As this was a repeat deal, the structure was almost in place.

**R.A.:** My mandate on this transaction was quite comprehensive. I was involved in the transaction from the very beginning. Following our formal mandate, my team started working on the preparation and negotiation of the mandate letter and the term sheet. Immediately after the finalization of these documents, my team set about preparing all the loan documentation and participated in the intense negotiation thereof among the lenders and Burgan Bank. My team supported the lenders as to the satisfaction of the drawdown conditions and led this important process carefully.

My task was very well defined at the outset of the transaction. There was therefore no difference between the initial mandate and final result.

**S.S.:** Paksoy was mandated to review the agreements from a Turkish law perspective, collect the Turkish law condition precedent documents by directly contacting Burgan Bank, and issue an enforceability and capacity Turkish legal opinion. The final result was in line with the initial mandate.

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

**M.K.:** I and Michael Foundethakis (the EMEA head of Baker & McKenzie's banking team) were the Partners in charge. Serenay Cinki in Istanbul and Nicholas Macheras in Paris helped us with the documentation.

**S.S.:** [In addition to me], the Paksoy team members were Ozlem Barut (Senior Associate in the banking & finance department) and Soner Dagli (Associate in the banking & finance department). I was responsible for overall supervision. Ozlem Barut was responsible for drafting and Soner Dagli was responsible for the conditions precedent.

**R.A.:** I led the transaction as the supervising partner. Ahmet Kalafat, a Senior Associate in our finance team in Dubai, was front and center in our deal team and undertook the day-to-day running of the transaction with support from trainee Lucy Kelly.

**CEELM: Please describe the final deal in as much detail as possible – in other words, how was the financing structured, why was it structured in that way, and how did you help it get there?**

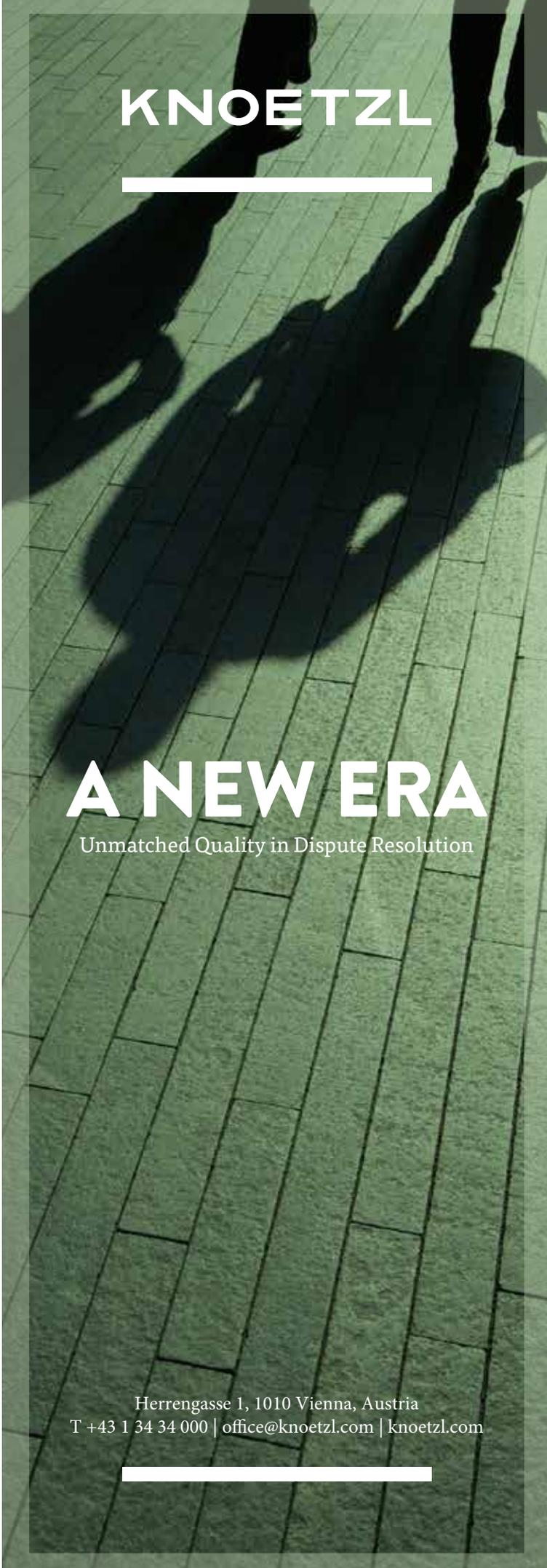
**R.A.:** The financing needs of Burgan Bank and the regulatory considerations determined the structure of the facility. The facility was structured as a dual-currency facility comprising Euro and Dollar tranches. In order to reduce cost of funding each tranche was split into two, with one having a 364-day maturity and the other 367-day maturity.

**M.K.:** This was a typical multi-tranche syndicated facility for a financial institution. There were 13 lenders on board.

**S.S.:** Paksoy did not contribute to the structure of the deal as this was a repeating deal of the previous syndicated loan extended to Burgan Bank in June 2015. The deal was structured as a syndicated facility provided by various banks and the documentation was in LMA format.



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Muhsin Keskin, Partner,  
Esin Attorney Partnership

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

**M.K.:** The challenging part was the timeline. The deal closed more or less in two weeks, so everyone had to be more efficient than usual. Everyone knew the closing date from the beginning – this was basically a roll-over deal, so there was not much time or need to lengthy negotiations.

**R.A.:** Burgan Bank is a well-known financial institution to international financial institutions and has a successfully run banking business in Turkey. As Burgan Bank approaches the market for similar deals on a regular basis, Burgan Bank and the lenders have developed an efficient working relationship on this kind of transactions. Therefore, there was no unusual or extraordinary challenge or setback in the process.

**S.S.:** In general, the deal was smooth and the parties were cooperative.

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

**M.K.:** Other than the speed, this was a smooth process. All parties were reputable financial institutions knowing what they are doing very well and there were not any last minute surprises.

**S.S.:** In general, the deal was smooth, but the collection of the condition precedent documents process was unusually easy/smooth as Burgan Bank timely delivered all the documents and was cooperative.

**R.A.:** No.

**CEELM:** Did the final result match your initial mandate, or did it change/transform somehow from what was ini-

tially anticipated?

**M.K.:** The end result totally matched the mandate.

**S.S.:** There was no surprise in the deal and therefore it can be easily said that the final result matched our initial mandate.

**R.A.:** Yes, it did.



Sera Somay, Partner,  
Paksoy

**CEELM:** What individuals at Burgan Bank directed you, Muhsin, and what individuals at the banks advised you, Sera and Rahail – and how would you both describe your working relationship with them?

**M.K.:** We were guided and directed by Sehnaz Gunay (Department Head, Financial Institutions) and Nesteren Caliskan (Legal Counsel). We spoke almost every day. We managed the talks with the lenders through their counsel and made sure the common understanding was reflected into the finance documents.

**R.A.:** We have an established working relationship with various teams of HSBC. On this specific transaction, HSBC's Leveraged and Acquisition Finance team instructed us.

**S.S.:** We were instructed by the syndication banks through Hogan Lovells (Middle East) LLP. We are an independent law firm. We collaborate with different international law firms on a project basis. We worked on various similar deals with Hogan Lovells (Middle East) LLP in the past.

**CEELM:** How would you describe the working relationship with your counterparts at Paksoy and Hogan Lovells on the deal, Muhsin, and yours with the Esin Attorney Partnership, Sera?

**M.K.:** We were dealing with Hogan Lovells. There was a friendly and cooperative environment which made things easier for both counsel. No travels were involved. They were in Dubai. Phone calls and emails were sufficient to get to the closing.

**R.A.:** They were professional and responsive.

**S.S.:** We never directly contacted our counterparts at the Esin Attorney Partnership.

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

**M.K.:** The importance of the deal was the fact that it closed right after the coup attempt and S&P's downgrading with no delays at all. I think it is an excellent indicator of international financial institutions' trust in the Turkish economy and banking system.

**S.S.:** The fact that 13 banks from 8 countries took part in this deal proves the confidence which investors have in the Turkish economy and banking system.



Rahail Ali, Partner,  
Hogan Lovells

**R.A.:** After lenders and Burgan Bank agreed but before signing the mandate letter and term sheet, a coup attempt took place in Turkey on July 15, 2016. This extraordinary event did not have any negative impact on the transaction. After a few days of internal discussion, the lenders made the decision to continue with the transaction.

This demonstrated that Turkey has a strong banking system in which international financial institutions have great confidence and that we will continue to see similar deals in the Turkish market despite this extraordinary incident.

David Stuckey



# C/M/S/

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# A Special Relationship A Round Table on Turkish Investment Opportunities in Ukraine

On October 5, 2016, representatives from the Ukrainian and Turkish business communities, from the Ukrainian Consulate-General in Istanbul, and from the co-hosting Gun + Partners and Vasil Ksil & Partners law firms met at the Gun + Partners office in Istanbul for a round table discussion, moderated by CEE Legal Matters, on the opportunities in Ukraine for Turkish investors. “We wanted to share with the Turkish business community our own and our guest firm’s knowledge and expertise on doing business in Ukraine, as Ukraine is both a close neighbor and an important trade and economic partner for Turkey,” explained Gun + Partners Managing Partner Mehmet Gun. “We hope that discussions about opportunities, prospects, and challenges from the Turkish and Ukrainian investors’ perspectives will help build closer economic ties between our countries.”

The Round Table opened with a keynote speech by Ukraine Istanbul Trade Consultant Maksym Vdovychenko, who, as the representative of the Ukrainian Consulate-General in Istanbul, spoke about the collaboration between the governments of the two countries in recent years. He described Turkey as “friends, and reliable friends at that,” and expressed gratitude

for Turkey’s “clear stance against Russia and its implication in Crimea” – pointing out that Ukraine, in return, had supported Turkey after the failed July 15 coup attempt. Vdovychenko explained that the main basis of the relationship was the bilateral agreements signed in 1992, 2004, and 2011, all leading up to a “strategic partnership,” currently supported by 105 bilateral agreements in total. “We strive to develop cooperation in all spheres as we share similar directions,” he commented, “as both countries plan to join the EU or get closer to the EU and strengthen democracy.”

The relationship between the two countries is underpinned by considerable commercial activity as well. Vdovychenko pointed out that over 600 Turkish companies do business in Ukraine: “Turkish Airlines is among Ukraine’s top airlines, Turkcell is one of the top mobile brands, and many other notable companies run activities in our country. As a result, Turkey is currently in the top three trade partners of Ukraine.” Vdovychenko also spoke enthusiastically about the ongoing talks on eliminating double-taxation agreements and the “critical issue” of a free trade agreement between the two countries. “A lot of work has been covered already at a ministerial level, and we look forward to signing the

actual agreement this year or early in 2017,” he said. “I am convinced this will increase trade into Turkey and vice-versa.”

Burak Pehlivan, Chairman of the International Turkish Ukrainian Businessmen Association, echoed Vdovychenko’s positive outlook on the relationship between the two countries, describing it initially as a “golden age” before insisting that even that term may not be sufficient, “because it does not reflect the potential of cooperation between the two countries.”

Pehlivan noted that Ukraine had become an unfortunate example of poor management since the end of communism, “but this situation is changing now after the Maidan revolution, with Ukrainian leadership, and, more importantly, the Ukrainian nation, realizing that implementing reforms is not a choice, but a necessity.” He conceded that despite finalizing important trade agreements with the EU and with Canada the country had yet to see a lot of business as a result, due to lingering doubts about the rule of law, corruption, and political instability. “While I do not agree with these perceptions, since a lot of reforms were implemented in the last two years – indeed, more than in the whole 20 years before – I note they are present,” Pehlivan

added. Still, he said, “Turkey is a key partner for us, since investors from here are less discouraged by such perception.”

In light of this, Pehlivan claimed that concluding the free trade negotiations with Turkey is critical for Ukraine, as “it will play a huge role in attracting Turkish investments on top of the current benefits that Ukraine offers: free trade agreement with the EU, borders to four different EU countries, a very educated workforce, and a low cost one at that.”

Andriy Stelmashchuk, Managing Partner at Ukraine’s Vasil Kisił & Partners law firm, emphasized the progress that Ukraine has made towards the necessary reforms, pointing in particular to the changes implemented in the judicial system. Stelmashchuk also noted that, from a political perspective, Ukraine’s president was elected only two and a half years ago (meaning he will stay for at least two and a half more) and the country’s parliament also should stay in office for two more years – all of which, he said, should help address foreign concerns about political instability. “Of course, from a geopolitical perspective, we have a war in the East which scares off investors, so we are certainly thankful for Turkish investors who are less put off by this,” he added.

One major development, according to the VKP Managing Partner, is the recently “enhanced” tax system which, he said, facilitates reimbursements and has led to the positive sign of a slowdown in tax and VAT disputes. Stelmashchuk’s colleague, VKP Partner Oksana Voynarovska, also expressed a hope that Ukraine’s “Soviet-rooted” and “overly-protectionist” Labor Code will soon be revamped. “It is really funny, because we’ve been in a process of liberalization for over 15 years now,” she said. “I’ve been part of the working groups at various stages, but it is a never-ending story and not much has evolved towards resolving it. When clients ask when we can expect a new Labor Code I jokingly say I will not live long enough to see it [in] place.” In Voynarovska’s opinion, the delay in making the necessary liberalizations to the Code – allowing employers to terminate unsatisfactory employees more easily – “is all about politics really.” She explained: “If you have elections – a national sport in Ukraine – of course you need to be careful if you want to pass unpopular laws.” She sighed. “By this point, this draft of a ‘new’ code is actually old – it’s been 15 years and has not passed yet. But we’re optimistic,” she added, and expressed hopes that the code will be passed this fall.

Finally, Pelin Baysal, Partner at Gun + Partners, pointed out another positive development. Baysal explained that when it comes to disputes – “one of the least pleasant subjects for investors” – one problem that Turkish investors had encountered was that of enforceability of judgments. This problem was addressed recently, she said, both by a new agreement between Turkey and Ukraine designed to enhance enforceability and by the establishment of the Istanbul Arbitration Centre in 2015.

Though much work still needs to be done in Ukraine to enhance its attractiveness to foreign investment, Stelmashchuk pointed out that Ukraine is expecting a GDP increase of 2% – “small but a start to growth” – and the reality on the ground is that it is “a good time to invest in Ukraine, since the market is so cheap now in terms of assets, labor, etc.” Turkish investors, the consensus was, seem positioned to take particular advantage of the opportunity.

Radu Cotarcea



# The New Reality: Senior Partners Discuss the Turkish Legal Market in Challenging Times



On July 15, 2016, the streets of Istanbul and Ankara erupted in violence during a surprise – and ultimately unsuccessful – coup d’etat attempt against the Turkish government and Turkish President Recep Tayyip Erdogan. By the time the coup had been put down, over 300 people had been killed and more than 2,100 were injured.

In the weeks and months that followed the coup, over 40,000 people were arrested – including at least 10,000 soldiers and 2,745 judges.

On July 20, 2016, President Erdogan declared a state of emergency in the country, an act subsequently approved by the Turkish parliament. On October 3 he announced that the initial three-month state of emergency would be extended by another three months, to officially begin on October 19.

On October 7, 2016, as the concluding event of the 2016 General Counsel Summit in Istanbul, Partners from a number of the law firms sponsoring the event took the stage to share their thoughts about the significance of the coup attempt – and the current situation in Turkey in general – for their clients, practices, and businesses as part of a unique panel conversation.

## The Players

- **Vefa Resat Moral, Managing Partner, Moral Hukuk Burosu**
- **Eren Kursun, Partner, Esin Attorney Partnership**
- **Kerem Turunc, Partner, Turunc**
- **Jonathan Marks, Partner, Slaughter & May**
- **Okan Demirkan, Partner, Kolcuoglu Demirkan Kocakli**

## CEELM: Simple Question: What’s happening?

**Moral:** Many Turkish companies, and even law firms, in relation with the businessmen who were arrested after the coup attempt, are in shock. Their fingers are on a trigger, and they don’t know what to do. This is the current business and legal market. Still, although there is a lot of uncertainty, normalization has started somehow, and even though the state of emergency has been extended for an additional 90 days, we are still optimistic. In addition, the government, by implementing essential sanctions and by calling for business leaders to be sustainable on the financial market, has, in my opinion, managed the current economic situation very well.

**Kursun:** On Monday after the coup attempt I got a call from a private equity cli-

ent looking at a new deal, and you know how PE guys are when they’re looking at a new deal: they’re like a boy looking at a new pair of Air Jordan shoes – they’re excited. He said, “Eren, I’m going to ask you a personal question, not a legal one: There’s this deal, and I really want to go forward, to sponsor it, but I feel it would be inappropriate.” I said to him, “You know what, that’s exactly the way I’m feeling.” Because I had a couple of follow-up calls for a couple of pitches, and I just didn’t feel like it. I thought it would be really awkward to call someone for business – all I would call someone for is to say, “Are you okay? Is everyone okay?” So that was the environment, it was a shock, and for a little while nobody cared about business. We cared about more fundamental things. But there comes a point when you realize life goes on, and everyone realizes that point.

I don’t know if my colleagues would agree, but things got slower between the two elections last year. And now, even after the coup, they are not slower than they were last year, at least from what we’ve seen. So, from my perspective, this is simply an emerging market with ups and downs. We were expecting much worse, knock on wood.

Another point – I was having lunch with an investment banker last week, and he said,



“we were holding 13 projects to see what would happen. But now we feel better and we will be going forward with all of them.” So it’s coming back. About the investment grades. [Following the coup attempt, Moody’s Investors Service cut the country’s sovereign rating to junk – ed.] I was an Associate at White and Case when Turkey got the investment grade. We hadn’t had it before then for 20 years – it’s only been the past few years that we had investment grades. And as an Associate I was very afraid, because the workload was going to increase a lot. Of course, that attitude has changed since I became a Partner.

So I was very afraid about the effect of the junk rating, but in fact things didn’t change much. There wasn’t an incredible increase then, and I don’t think there’s going to be an incredible decrease now, because people coming for FDI, they are not coming for the investment grades, except for a few. They look at the young population. They look at whether it’s a stable situation, but they don’t say, “oh, well, Moody’s is not big on this country.” For them, a young population and consumption is much more important than the investment grade.

And the last point I’d like to stress is, Turkey has been a very hot market. I was in Dubai a few years ago, talking to a PE

guy, and I said, “I’ve never seen you doing a deal in Turkey, why is that?” He said, “there’s so much competition that we don’t think we can get a deal.” So sellers in Turkey have been spoiled. And one of the reasons for that is because most of them are family businesses, and all of them think their business is Apple or Google, which is not the case. These are times when people become more realistic with their expectations. Having said all of this, I have no idea how it will be in the next few months. We’ll see.

**Turunc:** My memory isn’t as sharp as either Eren’s or Resat’s, so I don’t remember who called me on the Monday morning after the coup, but I do know that I could go to the corner store and buy bread. And I say that because I think most countries wouldn’t have been able to cope with it the way this country did. And I think we sometimes underestimate how resilient this economy and Turks generally are, and I don’t think we’d be able to hold this conference here in most countries, had they gone through a similar experience, and I think the crackdown would have been the straw that broke the camel’s back, if you will. And that didn’t happen; the camel’s still standing. So I think we shouldn’t underestimate that this is a real, functioning economy, with, as Eren said, a lot of young people who are willing to consume and become an integral part of Western society. Deals are going on. I think at the end of the year, when we look at statistics, maybe we’ll see fewer deals than last year or the year before, but I don’t think that would be unthinkable even if none of this had happened. There are ups and downs, and that’s bound to happen in any emerging market.

**CEELM:** Jonathan, coming from London, you have an unusual foreign perspective on the situation here.

**Marks:** It’s been really interesting. We were a little bit worried, ahead of coming to the GC Summit, whether the whole thing was going to work, and we’ve felt very welcome. There’s a degree of concern outside of Turkey about certain developments this year including reports of large numbers of judges being dismissed, that sort of thing. All that could have a slowing effect on confidence, potentially on investment. Equally, my perspective is that this point that has already been made about Turkey’s young and dynamic economy is correct and that you can’t hold people back. Time will heal,

if things don’t get worse, and then there’s some stability. That dynamism and that growing economy should help. And, from a UK perspective, we’re going to be looking as a country to make friends with other countries as Brexit comes about – Turkey is not looking like it is going to be joining the EU anytime soon, and we essentially will be in the same boat, so I think that, from a British-Turkey perspective, there’s an optimistic angle as well.

**CEELM:** Several of you said it could get worse, and I wonder if that means just by the natural course of things or whether there’s a fragility that if something else big happens it could cause a more major problem.

**Demirkan:** Yes, it could get worse indeed, but there’s no reason to be pessimistic. It doesn’t help to be pessimistic. We Turks are not the best in any particular sector. We’re not the best construction people, we’re not the best engineers in the world or the best sportsmen or the best scientists, but we are known for having good comebacks. We have that spirit. We’ve had that spirit for centuries. And as our founder Atatürk said, well, there is no such thing as a hopeless situation, there are only hopeless people. And we in our blood, in our DNA, we don’t have pessimism too much, we’re just used to managing crises. I think we’re just good at it. It’s the one thing we’re good at.

**CEELM:** You’re experienced at it.

**Demirkan:** Yes, we’re experienced at managing crises. It could get worse. If it does, we’ll just have to get over it. Two very short stories about the 15th and 18th of July. Both are probably reasons to be optimistic. One is, on the 15th of July, on the Friday, I was in Germany for a pitch for an energy project, and I thought I got the job that day. “They said, we’ll just make a few revisions in your proposal and come back to you on Monday.” Before lunchtime on Monday – after the coup – I received a call saying that the project was cancelled. So yes, I didn’t have a smile on my face at the time, but then, a couple of days ago – this week, actually – they called and said that the same project is going to start next week. So in three months’ time, things are picking back up.

**Question from the Room:** As law firms, do you think you have an institutional role to help the country survive a crisis like that in any way?

**Kursun:** I think we are in a unique position to do that, because we work with a lot of investors. When you are outsiders, before you react to something, you will observe the reactions of people who are actually in the situation first. If they are panicking, you will panic; if they are calm, you'll stay calm. So I think we are all ambassadors in that sense, and I'll tell you one thing we are doing: The minute the state of emergency was declared, we set up a hotline where our clients can call 24/7 if they have any questions, and we've been sending emails every time there's a new emergency decree. We inform our clients on that – and friends of the firm, not only clients.

But let me also tell you what I've seen from some others. It was a news release from another law firm, and it was forwarded to me by a client, and it was right after the state of emergency. The content was the following: "A state of emergency has been declared." They copied the entire constitution. Their message said that now there may be a ban to go outside, business may be stopped, etc. But in the form of reassurance they said, "But these rights will prevail, and the rights are: right not to be tortured, right to life," and things like that. And the last paragraph said, "If you have force majeure and materially adverse provisions in your contract, please consider exercising them." Now ... I mean, this is selling panic, this is benefiting from it. That's one thing that lawyers are very tempted to

do, but we should not do. We should not be over-optimistic, of course – I mean nobody's fooling anyone – but as I said, our reactions and our attitude, our signals for the rest of [the] people ... I think we have a unique role to play there.

**CEELM:** Are the traditional Turkish firms able to compete in the modern marketplace?

**Turunc:** When I was a baby Associate in New York I used to instruct local counsel in Turkey as well as in other jurisdictions, and the shortlist of Turkish firms that we had then looked very different from the shortlist of Turkish firms that my colleagues back in New York would be using right now. Very different, although of course some of the individuals are still the same. And I think the Turkish legal market is going through growing pains. I think a lot of us have seen this – in markets like Romania, Poland to a certain extent, Italy for sure – and there are two aspects to development of the legal market here as far as I can see. One is, if you rely on anything other than your lawyering skills and your business development skills for work, then you're bound to fail at some point. It doesn't matter which party is in power. It doesn't matter. That's number one. Number two is, I think Turkish law firms need to seriously start thinking about institutionalizing their practices. And I think, Eren, you guys have obviously done this more successfully because you have the benefit

of being part of an international network. But unless lawyers stop looking at their businesses as their practices and start looking at them as real Anglo-American-type partnerships, they're bound to fail. And I think very few, if any, Turkish law firms have done that successfully. At the end of the day, it doesn't matter whose name is on the door, as far as I'm concerned. If it's a true partnership, it's going to survive. If you think it's your shop and it's going to be your shop forever and you run the show, you're not going to survive.

**CEELM:** Why is that?

**Turunc:** Turkey's now a market where in-house counsel have the same demands and the same needs as those in the West. That wasn't the case 20 years ago. And in order to be able to service those needs properly you need multiple partners with deep teams with experience who can provide the kind of seamless experience that these in-house counsel need and deserve. That, or you need to be a specialist. But you can no longer be a three-person shop that claims to provide full service in this market. That's just not the name of the game anymore.

**CEELM:** So you think it's just a more sophisticated market than before.

**Turunc:** It's a more sophisticated market. On the flip side I think some international firms are going to find it more difficult to operate here as well. If you're relying on either finance work only or if you're only



relying on the growth of the market, then you're not going to survive either. You have to look at the long play here.

**Moral:** I agree, our profession has been transforming. Our firms today, with the internal corporate governance, institutionalism, is a different character from when we were young Associates. Of course, I do not believe that my firm or other firms in Turkey will have a hundred partners with a thousand associates. But the Turkish legal market has made that transformation very well, in my opinion, because of the country's emerging market position. Despite this positive development, legal legislation lags far behind, unfortunately. Firms, like ours, recruiting 30, 40, 50 people, and well-qualified people, face bureaucratic and legislative obstacles where systems are not supporting the transformed industry. Also, at the end, there's still the reality of corruption, unfortunately. From our GC colleagues, or from board members, I hear a lot of corruption stories unfortunately. In order to have a clean, well-respected market, we, as the industry leaders, should all contribute to improve and sustain several aspects of the legal market.

**Demirkan:** Fifteen years ago, Eren and I were trainees working on deals on opposite sides of the table. At the time, I had just moved to Turkey from the UK, and I was unique because I actually was fluent in English. I was one of the handful of trainees that had that talent. Nowadays we receive 80 to 100 CVs every week, and their English level is not worse than mine. So the market has definitely changed.

One thing that really attracted my attention when Resat was speaking was, before our generation we had Partners and Managing Partners who were born Partners. They were never Associates. They never worked in the kitchen. Now, all of the Turkish lawyers you see on the panel have worked for many years in the kitchen, so we know what the Associates' problems are, we can understand them, and we know what the other firms' problems are. I don't think that before our generation Partners came together to talk about their problems, or that they had ever even mentioned gentlemen's agreements. I think we've come a long way, and I think this shows. As you said, if you think about the Turkish legal market as a car, leaving aside the traffic and the problems that may be caused by the traffic, I think we've shifted gears in the

past five or six years.

**Kursun:** I think there's going to be a consolidation in the legal market in the future. Those of us who do the right things will grow, and those of us who don't will disappear. And that goes for internationals as well, because when you talk about an international law firm, one important thing is their costs are high. And when you go for big discounts to get market share, that's not sustainable. So they are going to be supported by headquarters for some time, but at some point headquarters will say, enough is enough. I think it's going to get worse before it gets better in terms of pricing. But at some point when the consolidation happens I think it's going to be a better market, a healthier market. As I say that, I couldn't agree more with what Kerem and my fellow panel members said. Okan put it very nicely, they were born Partners. All of the firms who disappeared from the map, their bosses thought they were immortal. When we get more corporate, when we get more modest, when ... in Turkey we say, "when we rely on nothing but the strength of our wrists," then it will be a better environment.

**CEELM: We have, in the three years of CEE Legal Matters, reported on only one firm merger here, when Davutoglu merged with Bener. Do you expect to see more of that happening, do you expect to start seeing some firms coming together in that way?**

**Kursun:** I don't know whether it will be in the form of mergers or people disappearing or people going away, but there's one fact. We are not charity businesses. We must make profits. We must make profits to invest, to get a better workforce, to do better marketing. There's no other way. None of us are charities. So if you postpone making money, you won't survive. That's a fact of life, couldn't be simpler. So this will happen, because when you look at pricing, you know how it is done, but the thing is, when you decrease the prices, you have to get more and more work to survive. When you do that, the quality drops, and then you have to decrease the prices even further because your quality's even worse, and then at some point you're done. It takes time. Cheap prices are sticky. Some of the law firms will go through that, because once you start, you can't stop that. I don't know what you call it, merger, disappearance, failures, whatever, but it will

happen.

**Marks:** Maybe just a few additional thoughts from me, reflective of our experience in London, and however many years working with firms in other CEE countries. The emphasis on quality is absolutely crucial, as is the emphasis on integrity. I think that it's the road to ruin once you go down any other route. We had an experience in another jurisdiction a few years ago, when someone suggested that we think about getting involved in something inappropriate as part of a pitch and we've not done anything with them since.

The point about succession – it's not a secret, you don't, at Slaughter and May, pay anything for the goodwill when you go in and you don't get anything back for the goodwill when you go. I think that having more institutionalized relationships is a good idea. We share client relationships. For example, we try very carefully not to concentrate client relationships with a single partner because actually clients don't generally like it. They might be happy to have a focal point, but they don't want to feel that they're stuck with X regardless, whether or not they're the right person to deal with a particular individual or job.

What we've seen in the rest of the CEE that has really encouraged us is that independent firms have thrived, and equally the more committed of the international firms have also done okay. That's what we've always said for our model: we can carry on as an independent firm, and if other people want to go the one-stop route, and it works for them, that's fantastic too. If you look at various of the jurisdictions, we've seen Linklaters invest heavily in a number of jurisdictions, and then spin off Kinstellar, and we've also seen Freshfields do much the same, and in fact a succession of firms have done that across a number of CEE jurisdictions. If someone's just got a name on the door and a few Partners and Associates with very high costs, particularly if the partners have got substantial equity in the firm, and you hit a few years of hard times, or even just less good times, are they going to stick it out? That in some ways is encouraging for people who are really committed to Turkey. I think that only the international firms that are really committed will stick it out and that in the end that will also benefit the most successful independent firms.

David Stuckey

# Inside Insight: Bora Kaya Managing Legal Counsel at Gama



*Based in Ankara, Bora Kaya is the Managing Legal Counsel at Gama Power Systems Engineering and Contracting, a company that he first joined in March 2015. Prior to that he was the Head of Legal at Ronisans Holding from October 2012 to December 2014. Earlier still, he worked for Eregli Iron and Steel Works Co. as the Assistant to the Head of Legal Department.*

**CEELM:** Please tell us a bit about your career up to this point.

B.K.: Putting aside my personal history in academic life, which will hopefully shift to a slower pace when I complete my PhD at the end of this year, before being appointed as the General Counsel to Gama Power Systems Engineering and Contracting Co. I was the Head of Legal at a multi-national, Russia-originated company called Renaissance Holding for two and a half years, which was after my almost six year-long service for publicly owned Eregli Iron and Steel Works JSC as the Assistant Lawyer to the General Counsel.

**CEELM:** How large is your team at Gama Power, and how is it structured?

B.K.: The GC office consists of 10 colleagues in two separate departments: the legal department and the contracts and claims management department. The latter has both engineers from various disciplines and people with legal qualifications from other countries such as Belarus. We assign one or two contracts and claim managers to individual projects, and of course we also liaise with external local law firms and/or counsels wherever our projects are, as a standard practice.

**CEELM:** What does a “normal” day in the office look like for you? What types of work end up taking most of your time?

B.K.: Various kinds of meetings consume most of my time, and even though we discussed at the GC Summit in 2015 that GCs should allocate their time to more strategic and high-level issues I sometimes unfortunately end up drafting letters, notices, contracts, etc., all day. Of course they are somewhat more important than the ones being prepared daily within the company, but nevertheless, spending time on these deprives me of the chance to pursue some other management duties.

**CEELM:** What would you describe as the most challenging project you worked on with Gama, and what were the main lessons you learned from it?

B.K.: Getting ready for a negotiation or an arbitration requires a huge amount of paperwork to be done for substantiation purposes, and it cannot be done easily three or four years after the completion of the project. We learned this the hard way, and afterwards we designed a check list for the documents to be collected monthly while the project is ongoing and described how we require them to be recorded and reported so that even long after the completion of the project we can have access to any information that might be necessary.

**CEELM:** When you need to externalize legal work, what are the main criteria you use to select what law firms you’ll be working with?

B.K.: We acknowledge the fact that the Partners of the external law firms we work with do not always have the time to deal with our daily questions and requests, so evaluating the experience and qualifications of the Associates that are proposed to work for us is of vital importance. The second important thing is the budget, of course. Since we are working with most of the well-known international law firms we know the market very well in terms of hourly rates and payment schemes, so the firm’s approach in offering blended or discounted rates and fixed or capped fees tells us a lot about what we may face in the

future. We very much value different and flexible approaches to fee structures in long-term relationships. Local reputation, recognition, and personal traits are also important. That’s why we prefer to meet in person with the people we plan to work with before signing any engagement letters.

**CEELM:** If you need to hire a new person for your in-house legal team, what are the main traits you look out for?

B.K.: It changes depending on the position. For junior positions all I look for is a bright mind with a bit of curiosity about the profession in the eyes. For senior positions I look for relevant experience, management skills, and profound reasoning abilities on complex legal issues. I prefer outgoing personalities rather than introverts because an in-house counsel has to team up with others most of the time to be able to fulfill his/her tasks.

**CEELM:** Looking at the market overall, how has the current climate in Turkey impacted your company and the work of your legal team?

B.K.: Gama Power, with its almost 60 years of history, is like a huge cargo ship out in the ocean. I believe very few things can really have a negative material impact on the business (knock on wood). Gama Power as an international EPC contractor has most of its projects outside of Turkey. Therefore, aside from the massive workload arising from tracking recent enactments or amendments in local legislation, the work of the legal team has not changed considerably.

**CEELM:** On the lighter side, what was the favorite corporate team building exercise you attended?

B.K.: We are currently discussing the possibility of organizing a sailing event for team building purposes; that’s what I am looking forward to impatiently. The company is also promoting some cultural events and sports organizations as well.

Radu Cotarcea

# Expat on the Market: Ivan Nechvatal

## Corporate Governance Advisor - Turkey at CEZ



*Czech lawyer Ivan Nechvatal has spent the past five years at CEZ, becoming a Corporate Governance Advisor - Turkey in July of this year. Based in Istanbul, Nechvatal participated in the 2016 General Counsel Summit in the city and was kind enough to share his thoughts on working in the Queen of Cities.*

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

I.N.: Shortly after graduating from law school, I joined CEZ, International Division and its program for talented graduates, CEZ Potentials. During my studies, I also worked for E.ON Czech Republic and Energy Regulatory Authority, which shows my close relations with the energy business. Having worked in the International Division of one of the biggest European utilities and dealing with cross-border legal matters and projects for last five years, it was a natural step for me to go abroad and utilize the experience gained at HQ at

the local level in one of the CEZ Group subsidiaries. Graduating from the Faculty of Economics [at the Masaryk University Brno] and hence gaining an understanding of the business needs of companies also helps me to function in the foreign environment.

**CEELM:** Was it always your goal to work abroad?

I.N.: Actually no, but having the above-mentioned background it was an interesting option.

**CEELM:** Do you find Turks enthusiastic about working with foreign lawyers, or do they prefer working with local lawyers?

I.N.: It is everywhere the same, local lawyers perceive both pros and cons while working with foreign lawyers. On one hand, foreign lawyers do not know the local law, which obviously can cause more work for the local in-house legal counsels. On the other hand, local counsel in my opinion also perceives the high added value of having the different perspective foreign lawyers can bring.

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

I.N.: Actually, Czech and Turkish legal systems are surprisingly close to each other as they are both based on German legal tradition. Taking this into consideration, it is much more simple to function in this legal

environment than it would be if I had a common law background.

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

I.N.: Turks are flexible and excellent businessmen. Like those from other nations of the Mediterranean, Turks live more in the present than in the future. This generally results in a highly business results-oriented environment with lesser accent for risks, detail, and structured corporate governance then cultures influenced by the German tradition.

**CEELM:** What particular value do you think a senior expatriate lawyer in your role adds?

I.N.: I bring an impartial, different, and international perspective to various legal matters and issues. The transferable experience relies especially in contracting and corporate governance, while impartiality is especially important from the perspective of the shareholders.

**CEELM:** What's your favorite place to take guests in Istanbul?

I.N.: The Istanbul Museum of Modern Art. It's an excellent museum with a restaurant serving delicious meals with astonishing views in the background. Good food, a great view over the Bosphorus, and world class art – apart from history, everything Istanbul can offer in one place.

David Stuckey

Next Issue's  
Market Spotlights

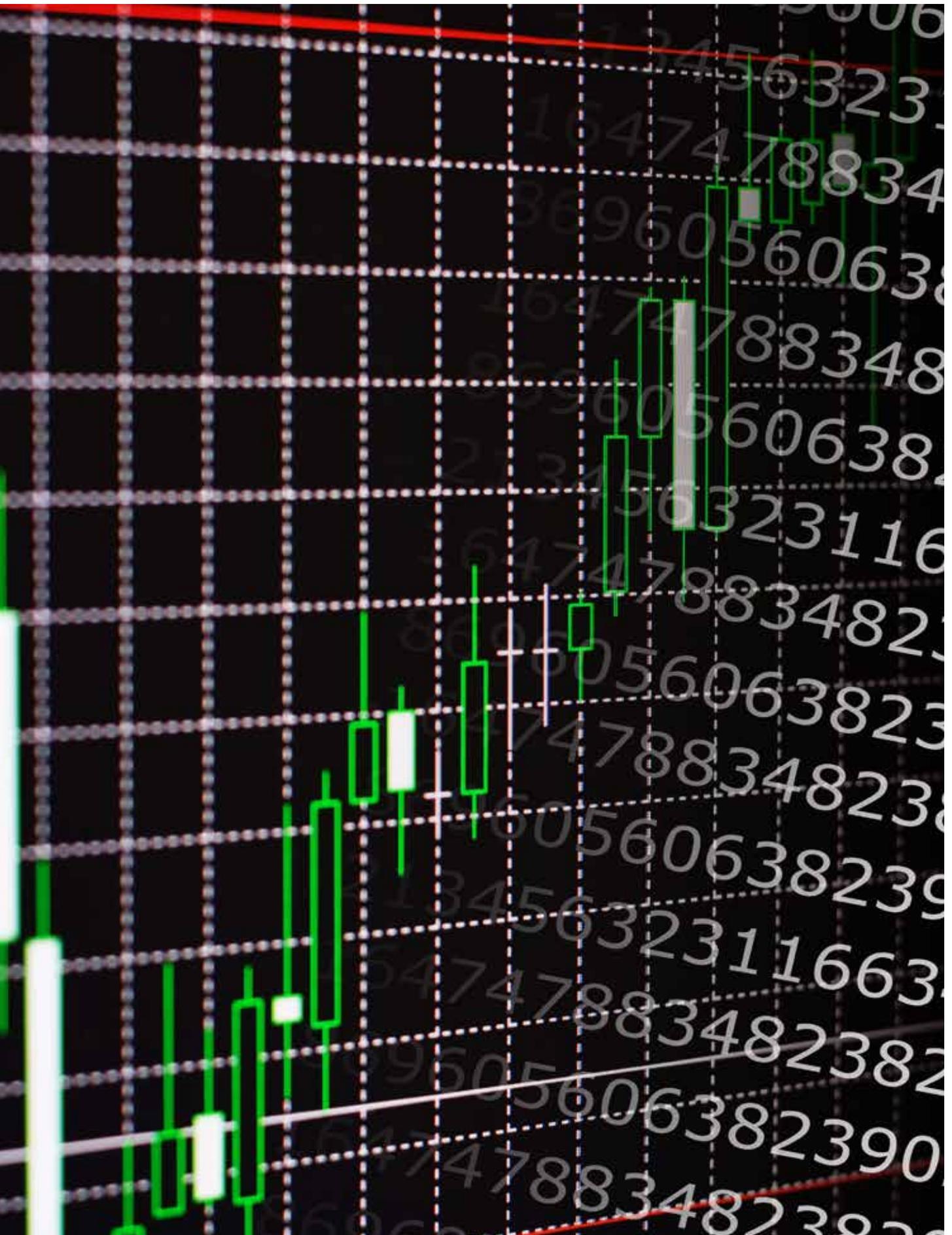
Poland

Czech Republic

# Experts Review: Capital Markets

Experts Review this issue focuses on Capital Markets, and the articles are presented in order of average height of women over 18, according to Our World in Data, at [www.averageheight.co](http://www.averageheight.co). Thus, the article from Austria – the represented country with the tallest women – comes first, while the Romania article, where women are shortest (from those represented in the feature) comes last. Quick notes: Our World in Data doesn't list the average height of Latvian women, so as a best guess we're placing them next to Lithuania (even though another source claims that Latvian women are the tallest in the world). Also, because one of our Editors – not the Romanian one, he wants it noted – erred, we have two Russian Experts Review articles this time.

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## Austria

### Crowd Investing: The New Investment Possibility in Austria



Christoph Urbanek

Compared to its popularity in Anglo-American countries, crowd investing – which enables broad groups of investors to fund start-up companies and small businesses in return for equity – is still very young in Europe. If a crowd-invested business succeeds, then its value increases, as does the value of a share in that business. Nei-

ther banks, venture capitalists, angel investors, or other resources can fill the financing needs of start-up companies. Crowd investing can help to bridge this substantial financing gap.

Three years ago, the Austrian legislator changed the national securities law (KMG) and raised the threshold value for issues without a prospectus from EUR 100,000 to 250,000. Following this, the first crowd investing opportunity was offered to investors by a portal named 1000x1000, with the first issuer raising a total of EUR 170,500 after a nearly eight-week funding period. The amount clearly exceeded the initial threshold of the critical value for issues without a prospectus, indicating that issuers would have been constrained under the earlier regulation. Austria then adapted a new regulatory scheme and allowed issues of up to EUR 5 million without requesting a prospectus from the issuer. Austria then introduced another new law in 2015 (AltFG), which specifically regulates crowd investing and other alternative forms of investment. The law is meant to set a clear legal framework for crowd investing, making it more accessible to entrepreneurs and improving the protection for investors. As a result, in 2015 crowd investing platforms were able to generate USD 9 million for 44 start-up projects.

What benefit can crowd investing offer for smaller firms in Austria? To answer that question, it is important to note that information plays a crucial role in each financial market transaction. Information is however distributed asymmetrically between the contracting parties, with those who need capital having better information about their chances to succeed and repay than those who provide it. Due to this, the financial sector is subject to many laws and regulations designed to protect investors. Unfortunately, these rules impose high costs on companies, and complying with them can make a financial transaction too expensive for smaller firms, especially the obligation to prepare the costly capital market prospectus, along with other investor protections. Crowd investing paves the way around these rules and costs, offering start-up companies and small businesses a chance to join the market.

Another benefit of crowd investing over other forms of entrepreneurial finance is that it makes use of the “wisdom of the crowd.” The participation of many individuals can, in aggregate, generate information that often cannot be obtained from

a single individual or investor. In the case of crowd investing, this crowd has also been known to make investment decisions rather than consumption decisions, which can be particularly useful. Furthermore, it gives investors an opportunity for high returns and a profitable enterprise value, while at the same time allowing individual investors to carry only a part of the business risk. If the company is not successful or becomes bankrupt, funders lose their investment but have no repayment obligation. (As a result, it may be prudent for investors to support several different projects, so that returns from other companies can compensate for a single failure).

Crowd investing platforms – which can only be operated with a concession from the financial market supervisory authority or a business license – support businesses by providing the necessary know-how for investors who want to provide financial support for a specific project. These platforms are obliged to disclose all details of the businesses, including the legal form and location, as well as information about the owner and other shareholders with a minimum of 25% participation. In addition, they also have to publish the business registry number, the corporate purpose, and the current financial status. The disclosure obligation also includes publishing the selection criteria for the admission of the businesses to the platforms, as well as the nature, frequency, and amount of payments made by investors and issuers. Furthermore, crowd-investing platforms have to mention the risk of a lack of success. This indication must be set before the very first investment is made and must be confirmed by the issuers. Consumers also have the right to step back from the contract and recoup their investment within a two-week period.

To summarize, crowd investing in Austria not only offers an opportunity for start-up companies and small businesses to grow but also gives investors the chance to support them and receive the benefit for low risk.

*Christoph Urbanek, Partner, DLA Piper Weiss-Tessbach*

## Lithuania

### Consider Structuring an Investment Company (Fund)? Why Not Do This in Lithuania?



Vidmantas Drizga

Following the global financial crisis of 2008, the Government of Lithuania started considering measures that would create effective alternatives to banking financing. This was crucial to small and medium businesses, to which banking financing quite often was not available. One of these measures was the promotion of special collective investment undertakings (private capital, alternative, real estate, etc.), designated for professional and well-informed investors (the “Specialized CIUs”).

After Commission Directive 85/611/EEC of December 20, 1985 on the coordination of laws, regulations, and administrative



Mantas Gofmanas

provisions relating to undertakings for collective investment in transferable securities (as amended; the “UCITS Directive”) and other related EU legislation was transposed to the Lithuanian legal system, only a few Specialized CIUs were found in Lithuania. This was due to the fact that the absolute majority of investors in

Lithuania were non-professional investors, to which the highest level of protection had to be ensured, which in turn resulted in the highest level of obligations to intermediaries, providing investment services to such investors. Thus, when structuring the Specialized CIUs the market professionals and managers of collective investment undertakings usually searched for more advantageous jurisdictions, such as Luxembourg, the Netherlands, or Sweden.

This situation started to change in 2013, when a new Law on Collective Investment Undertakings Designated for Informed Investors and other related legislation was adopted in Lithuania. As a result, a possibility was created to structure not only heavily regulated UCITS which provided a high level of protection of non-professional investors, but also Specialized CIUs, designated solely for informed investors, which do not require the same level of security. When creating a legal framework for these Specialized CIUs, the progressive regulations of other EU countries, in particular of Luxembourg (with its SIF – fonds d’investissement specialise and SICAR – societe d’investissement en capital a risque), were considered.

The main features of Specialized CIUs are as follows:

All their investors must be informed investors. Applicable laws provide a number of conditions that “informed investors” must meet. However, generally these investors include professional investors (including high net worth companies) and natural and legal persons who are not professional investors but who have confirmed in writing their status as informed investors and who undertake to invest at least EUR 125,000 into a Specialized CIU.

A wide range of legal forms of Specialized CIUs is offered. Specialized CIUs may act in the form of an investment fund (which is not a legal person and is managed by a licensed management company) or an investment company (which is a legal person and not necessarily managed by a licensed management company). The type of an investment company (fund) may be either closed-ended or open-ended.

An investment company may be established as a public limited liability company (minimum authorized capital: EUR 40,000) or a private limited liability company (minimum authorized capital: EUR 2,500). In addition, it may also be structured as a general partnership (with no authorized capital; however, all partners of the partnership (i.e., investors) must have unlimited liability for obligations of the partnership) or a limited partnership (with no authorized capital; at least one partner of the partnership must have unlimited liability (general partner) and at least one partner must be liable for obligations of the partnership solely in the

amount contributed by him or her to the partnership (limited partner)).

No strict requirements with respect to investment objects and portfolio diversification are prescribed. A general principle is that investment objects of Specialized CIUs are not limited – i.e., they may invest into all kinds of financial instruments provided that the investment portfolio is diversified to ensure a proper breakdown of investment risk. As a general rule, this means that a Specialized CIU must invest no more than 30% of its assets into a single financial instrument (object). However, this portfolio diversification requirement does not apply to Specialized CIUs, assets of which are invested solely based on the risk capital investment strategy. Such Specialized CIUs may invest in a single financial instrument.

Managers and investors have discretion to agree on conditions of investment activities and participation in a Specialized CIU. The applicable legislation provides for a high degree of discretion for managers of Specialized CIUs and their investments to agree on provisions related to establishment of net asset value, issue, acquisition, and redemption of shares (investment units), etc., discussing them in the incorporation documents of Specialized CIUs.

Relatively short terms for licensing a Specialized CIU. A license permitting the activities for a Specialized CIU and its management company is issued by the Bank of Lithuania within three months from the provision of all the necessary documents.

Taxation issues. Similarly, as with UCITS, investment income (except for dividends and other distributable profit) gained by Specialized CIUs is not subject to profit tax; only the distributed profit is taxed. General exemptions regarding distribution of dividends and capital gains are applicable in this case. Furthermore, asset management services are not subject to VAT if provided to Specialized CIUs.

To sum up, when considering an investment vehicle for informed investors which would manage its portfolio flexibly, would have no strict portfolio diversification requirements, and would benefit from tax exemptions, one should always consider Lithuania as an option.

*Vidmantas Drizga, Partner, and Mantas Gofmanas, Senior Associate, Tark Grunte Sutkiene*

## Latvia

### Capital Markets in Latvia



Edgars Lodzins

The capital market in Latvia is rather small, with limited capitalization in both the stock and bond markets. As of December 31, 2015, 26 Latvian companies’ equity securities, 42 corporate debt securities, 12 Government Treasury bill and bond issues, and 5 investment funds were listed on the only licensed stock exchange

in Latvia – Nasdaq Riga.

Nasdaq Riga was established in 1993 and commenced trading in 1995. Its major shareholder, with a 93% ownership interest, is Nasdaq Nordic Ltd. Nasdaq Riga owns the Latvian Central Depository (the LCD), which is the sole central securities depository in Latvia for public securities.

Nasdaq Riga operates four lists: The Main List, the Secondary List, the Bond List, and the Funds List. However, the LCD provides safe-custody of all publicly issued securities in Latvia and clearing and settlement services for securities trading on Nasdaq Riga, as well as managing corporate actions related to securities. The LCD assigns ISIN and CFI codes for all issues registered with it, and it has established relationships with the Estonian and Lithuanian central depositories and with Clearstream Banking, S.A., which allows LCD's participants to act as custodians of financial instruments registered with those depositories.

Both Nasdaq Riga and LCD are supervised by Latvia's Financial and Capital Markets Commission.

The main legal act governing the procedure by which securities are publicly offered in Latvia is the Financial Instruments Markets Law. This also regulates the organization and business of regulated markets, the operation of the central depository, provision of core and non-core investment services, market abuse prohibitions, the licensing requirements of investment brokerage companies, and the provision of investment services by investment companies from other EU member states within Latvia, as well as by Latvian investment companies in other EU member states.

Unfortunately, the IPO market in Latvia is totally inactive, as it recently went over a decade between issues. At the end of 2015 Citadele banka, which was set up in 2010 from "good" assets salvaged from Parex (Latvia's largest domestically-owned bank before its collapse in 2008), attempted to raise capital through an IPO with dual listings on Nasdaq Riga and the London Stock Exchange. Unfortunately, the transaction was canceled "due to the volatile situation in equity markets." The breakthrough came in July 2016, when Latvian high-tech company HansaMatrix was listed on Nasdaq Riga after the company's private placement of its shares to investors.

By contrast, the corporate bond market in Latvia is quite active. The growth of the bond market started in 2011, when a number of local Latvian banks issued their bonds. The growth accelerated when Latvenergo, the largest state-owned energy company, entered the market with its first EUR 105-million program for the issuance of bonds. Demand for Latvenergo's bonds was very high and exceeded supply by more than five times. Latvenergo returned to capital markets with its second issuance program in 2015, when it became the first state-owned company in Eastern Europe to issue so-called "green bonds," in a total amount of EUR 100-million.

In recent years there have been a number of non-bank lending companies which have issued corporate bonds, although in relatively low amounts. It should be noted that the Financial and Capital Markets Commission has expressed its view that non-

bank lending companies might be subject to banking licensing requirements if they raise money on capital markets on a continuous basis by way of public offering and use those funds for lending.

The main player in the bond market remains the Government of Latvia. Historically, domestic Government securities were used both as a financing instrument and with a view to benchmarking the development of a domestic securities market in Latvia. In 2014 the Government started to issue savings bonds, which are non-tradable financial instruments for private individuals. The savings bonds are offered with six- and twelve-month and five- and ten-year maturities.

The Government is also very active in the international capital markets. In 2013 the Government established a Global Medium Term Note program, used for issuance of public benchmark bonds and private placements in the international capital markets.

Strong capital markets and easy access to them is crucial for the sustained growth of the Latvian economy. Therefore, it is important that the relevant stakeholders put all their efforts into improving the capital markets climate in Latvia.

*Edgars Lodzins, Partner, Cobalt Latvia*

## Slovenia

### Capital Markets in Slovenia – Early Signs of a Modest Recovery



Uros Ilie

Contrary to initial negative expectations, the post-Brexit shockwaves hardly brushed upon the Slovenian capital markets, which seem to be slowly gaining momentum.

#### Current Trends and Developments

Forecasts for moderate upward trends may partly be linked with the latest report of the Institute of Macroeconomic Analysis and Development (IMAD), which raised the GDP growth anticipations for 2016 from 1.7% to 2.3%, keeping them at a rather steady level of 2.9% and 2.6% for 2017 and 2018, respectively. According to IMAD, the favorable GDP growth prognosis revolves around increased exports and domestic consumption. The buzz surrounding two of the major blue chips listed on the prime market of the Ljubljana Stock Exchange (LJSE) is therefore of little surprise. Petrol d.d. – a major regional oil and derivatives distributor – and Gorenje d.d. – one of the leading European home appliance manufacturers – have in the past two quarters recorded an increased share value of 9% and 8.3% respectively. The reduced yield of the Slovenian 10-year bonds, currently at a yearly low of 0.72%, mirrors the conservatively optimistic IMAD forecast.

Having seen the securities turnover decrease annually (totaling EUR 20.3 million in August 2016), LJSE has also record-



Tine Misic

ed an increase in the number of transactions from 3,421 to 4,144 compared to the same period the previous year. The market capitalization of securities has increased from EUR 24.28 billion to 25.57 billion, and the nominal return for the Slovene Blue Chip Index (“SBI TOP”) rose from -7.62% to 0.12% in the same period. Accordingly, the value of SBI TOP, indicating the weighted general performance of blue chip shares on LJSE, rose to 745.58 points in September 2016, its highest value since 2010. The trade of shares (Prime, Standard, and Entry Market), amounting to EUR 195.21 million in value, represents the predominant volume of LJSE-related transactions in 2016 thus far. The value of bond-related trade in the same period amounts to EUR 22.84 million, though no significant interest has been recorded regarding trade of treasury bills and commercial papers.

### Major Deals

Unsurprisingly, due to the ongoing privatization process, the major transactions have been inextricably linked with the State-owned Slovenian Sovereign Holding (SSH) and Bank Assets Management Company (BAMC). Moreover, despite the apparent signs of recovery of the LJSE market, some of the major single deals struck in 2016 include non-listed companies as well. Transactions worth mentioning in this group include the sale of 100% of shares of AHA EMMI d.o.o. by BAMC to Aluform, a subsidiary of the Polish Grupa Kety S.A., for a total value of EUR 2.5 million (ODI advised the purchaser in the transaction). Topping the transaction value chart of 2016 is the acquisition of 100% of shares of the second largest Slovenian bank Nova KBM d.d. by Apollo Global Management, LLC and the European Bank for Reconstruction and Development for a total price of EUR 250 million.

As far as announced deals are concerned, the envisaged IPO of the largest Slovenian bank, NLB, d.d., qualifies as the undisputed blockbuster. According to SSH the preparatory activities are well underway, with the recently amended 2020 NLB Group Strategy believed to be the cornerstone of the bank’s aimed performance and competitiveness improvement. SSH aims to conclude the sale of the bank, subject to a bail-in in 2013 on which the Slovenian Constitutional Court is to decide in the coming months, by the end of 2017. Other anticipated or ongoing transactions led by SSH and BAMC include, inter alia, the automotive parts producers Cimos d.d. and Unior d.d., the foundry Mariborska Livarna Maribor, d.d., and the hygienic tissues producer Paloma d.d.

### The Amended Legislation Impact

Lastly, it is also worth noting that according to the provisions of Article 48 of the new Book Entry Securities Act, adopted to enable the implementation of the Target2-Securities settlement platform, all current securities registry accounts at the Central Securities Clearing Corporation (CSCC) are to be terminated on September 30 for legal entities and on January 1, 2017, for

natural persons. The securities must be transferred from the registry to an account opened with one of the CSCC members in order to avoid a compulsory transfer of the securities to a deposit-in-court account.

*Uros Ilic, Partner, and Tine Misic, Associate, ODI Law*

## Czech Republic

### New EU Directive: A (R)evolution in the Payment Services Sector?



Petr Kasik

#### Sector Changes

Banks are normally associated with activities like executing payments and issuing payment cards, along with other payment services. Although this remains true, these days even non-bank institutions are active in the payment services sector – both regulated (e.g., credit institutions and

e-money institutions) and unregulated (e.g., payment initiation services providers or PISPs, and account information services providers or AISPs). In the last decade the world of payment services has been radically changed by modern technologies – not only electronic wallets but also cloud computing and cognitive computing. More recently still, discussion has started about how distributed ledger technology or even quantum computing can be used for payment services.

#### Legal Changes



Jan Sovar

Into this environment comes the new Payment Contact Act (the “Act”). The Act is based on Payment Services Directive 2 (PSD2). This directive sets out the basic legal framework for payment services regulation in the European Union and explicitly declares its ambition to promote technological innovation and boost competition in payment services while at the same time assuring safe and secure services for consumers. The proposed Act – already published by Czech Ministry of Finance and available online – points to a precise and “technical” transposition of this EU instrument into Czech law.

The basic impacts of the up-coming legislative changes can be divided into three groups. First, it will cover hitherto unregulated activities, such as those of PISPs and AISPs. Second, it will reduce transaction costs and introduce stricter rules on transferring costs to consumers. Third, and perhaps most significantly, it will, when certain (particularly technical) conditions are met, provide both banking and non-banking payment service providers with the right to access the payment infrastructure of European banks and other third party payment providers and to request certain information about customers.

### Broader Regulation

All entities now operating in the field of e-commerce, m-commerce, telecommunications, and information technology whose activities somehow involve payment transactions and/or other payment services must consider whether they will fall within the ambit of Act. The new regulatory system could affect institutions which issue payment instruments used only to acquire a very limited range of goods or services, or those which provide mobile services enabling a network subscriber to pay for goods or services using a mobile phone. It will certainly cover PISPs and AISPs. If these institutions are not banks, they will only be allowed to pursue their current activities if they obtain authorization to operate as a payment institution or e-money institution.

### Pressure on Costs

The Act will also limit charges for payment transactions provided within the European Union (if both the payer's and the recipient's payment service providers are located there, or if the sole payment service provider in the payment transaction is). In those circumstances the recipient can only be required to pay charges levied by his/her payment service provider, and the payer can only be charged by his/her payment service provider. Moreover, any charges applied by the payment service provider must not exceed the direct costs borne by the recipient for using the specific payment instrument. In any case, the recipient cannot be asked to pay charges for using payment instruments for which interchange fees are regulated under the EU regulations on interchange fees for card-based payment transactions or on credit transfers and direct debits in euros.

### Greater Access to Customer Information

For PISPs, AISPs, and other providers of payment services – if they are authorized to provide services under the new system – the Act opens up space to obtain payment account information. Each provider will be entitled to request that a bank or person that manages a payment account provide access to relevant information pertaining to the account and related transactions. Such access to information about the account will always be subject to the user's – the account holder's – prior consent and to the existence of a sound IT security system capable of interacting with the IT system of the provider through an appropriate application programming interface (API).

### Considering the Opportunities

Although it is hard fully to anticipate the real impact of the Act on the payment services market, it is clear that, considering both technological innovation and the legal framework in which a right to access information is embedded, both banking and non-banking entities will benefit from numerous business opportunities that will be opened up by this new piece of legislation.

*Petr Kasik, Partner, and Jan Sovar, Junior Lawyer,  
Kocian Solc Balastik*

## Croatia

### Acquisition of a Company's Own Shares via Buy-Back Programs



Danijela Simeunovic

In Croatia, acquiring a company's own shares is often a useful tool for the implementation of management and employee reward plans, employee stock ownership plans (ESOP), and various bonus policies of joint stock companies. The company would normally acquire a desired number of its own shares and distribute them to selected employees according to a reward program. EU legislation describes these programs as "buy-back programs."

EU legislation describes these programs as "buy-back programs."

Joint stock companies performing buy-back programs related to employee reward plans must follow the rules of Croatia's Company Law in acquiring their own shares. While a company would generally need to obtain approval from its general meeting to subscribe to its own shares, a resolution is not required in cases where the company's own shares are to be acquired by the employees of the company or its affiliates within a year. The volume of shares acquired in this method cannot exceed 10% of the company's share capital. Several accounting prerequisites must also be followed. The company must provide prescribed provisions for its own shares and the subscription of a company's own shares cannot result in breach of share capital maintenance principles.

A joint stock company that holds its own shares is not entitled to any benefits arising from the shareholding. These shares do not participate in the distribution of profits and they do not provide voting rights to the company as their holder.

Companies listed on the stock market are mostly concerned about the capital market laws' potential classification of a company's acquisition of its own shares as insider dealing or market manipulation, which constitute market abuse. Should the Croatian Financial Services Supervisory Agency determine market abuse, it has a handful of supervisory measures at its disposal, from a mere warning to temporary blocking of financial instruments. Criminal liability is also not excluded where trading in a company's own shares can be qualified as misuse of capital markets under the Croatian Penal Code.

In order to minimize the risks, companies issuing shares can adopt buy-back programs that are compliant with the conditions regulated in the EU legislation, notably Commission Regulation (EC) No 2273/2003 of December 22, 2003. Trading in a company's own shares will not be considered market abuse if it is based on buy-back programs intended to meet obligations arising from employee share option programs or other allocations of shares to employees of the issuer or its affiliate, and if it is carried out in accordance with the conditions laid down in the Commission Regulation.

For instance, prior to the start of trading, full details of the

program must be adequately disclosed to the public, such as the objective of the program and the conditions for trading, including maximum consideration and volume of trading. At the end of trading, the issuer must publicly disclose details of all transactions which were carried out within the program.

Transparency in the form of public disclosure of information is very valued as prevention of market abuse. Once the issuer has resolved to acquire its own shares internally and has subscribed to its own shares, the company must publish the exact number of its shares to the public within four trading days. Besides the Croatian Financial Services Supervisory Agency and the Zagreb Stock Exchange, listed joint stock companies will usually publish the acquisition of their own shares on their websites or sometimes inform the national state-owned news agency, Hina.

While the implementation of a buy-back program in accordance with the Commission Regulation rules is the most secure option, the fact that some issuers do not adopt them does not necessarily mean that the intended buy-back of own shares is in itself prohibited. The actual circumstances should be taken into account in assessing whether a company's program of trading in its own shares represents market abuse as defined in the Croatian Capital Markets Act or not.

Failure to comply with the prescribed procedures for trading in own shares can result in misdemeanor liability and high penalties for the issuer and its responsible persons. For example, failure of the issuer to disclose the number of a company's own shares acquired to the public within four trading days after each subscription or the buy-back of a company's own shares which led to serious jeopardizing of the financial market can result in a penalty equaling three to five per cent of total annual turnover of the issuer in the year in which the undisclosed transaction with a company's own shares occurred. If the issuer failed to disclose, but this failure did not jeopardize the financial market, the issuer can count on a penalty of between USD 15,000 and USD 37,500.

*Danijela Simeunovic, Partner, Kovacevic Prpic Simeunovic*

## Poland

### State of Capital Markets in Poland in 2016



Michal Pawlowski

In 2016 the Polish capital markets have been influenced by two major factors: last year's parliamentary elections, which brought the Law and Justice Party to power, and the effects of the reform of open-end pension funds (OFEs), which resulted in a reduction of the capital that OFEs could allocate to investments in shares listed on the Warsaw Stock Exchange (WSE). These factors have raised serious doubts about the future of the stock market and the institutional framework for trading in financial instruments. As a result, 2016 may be regarded as a year of reduced interest



Rafal Wozniak

from investors and a decrease in the amount of transactions concluded on the Polish capital markets. Despite this, a few successful IPOs represent an upward trend in the last quarter of 2016, and the WSE remains at the forefront of CEE bourses in terms of the number of listed companies, capitalization, and value of trading.

The year has also seen significant changes to the regulations on public disclosure of inside information. These changes resulted from the July 3 entry into force of Regulation (EU) no. 596/2014 on market abuse (MAR). One of the most important changes brought by the MAR is the end of the dualism in Polish law concerning public companies' disclosure of inside information. Before the MAR, companies were required by the Act on Trading in Financial Instruments to disclose inside information and report current information by a Decree of the Minister of Finance. The MAR also extended the scope of entities which fall under the disclosure regime. As of July 3, companies listed on alternative trading platforms and issuers of bonds are also obliged to disclose inside information in accordance with the MAR and are subject to the penalties provided by the regulation.

Most market activity in 2016 revolved around companies' transfers from NewConnect – an alternative trading system – to the WSE's main market (these included the transfer of PGS Software S.A., a Polish game developer, and Gekoplast S.A., a producer of polypropylene cellular boards). Nonetheless, a few notable transactions, of both mid and high value, have been conducted during the last couple of months. One of the biggest transactions conducted recently (with a value of approximately PLN 200 million), and one which turned out to be a great success, was the IPO of Polish online trading broker X-Trade Brokers DM S.A. Other successful debuts on the WSE included Polish housing developer i2 Development S.A. (with a value of approximately PLN 34 million). Transactions such as these indicate that there is still a place on the stock exchange for financially stable companies.

Although 2016 has not been the best year for the capital markets in the classic sense, there has been a noticeable rise of interest in debt securities. A good example is the public issuance of bonds by Alior Bank – one of the biggest banks in Poland – with a value of approximately PLN 200 million. Only the issuance of bonds by Warsaw Stock Exchange S.A. was of a similar scale on the Polish market (with a value of approximately PLN 120 million). CMS advised on this issue.

Another notable factor was rise of M&A transactions. One significant transaction was the sale of Novago (a leader in waste processing and the largest producer of alternative fuel in Poland) by private equity fund Abris Capital Partners to China Everbright International, which represents the largest single Chinese investment made in Poland so far and was the largest acquisition ever in the environmental treatment industry in Central & Eastern Europe.

In conclusion, 2016 was characterized by fewer major transactions on the WSE. However, we can see an upward trend in the debt securities area, especially in bond issuance, which seems to have become an alternative to IPO, even in the light of the changes brought by the MAR and the extension of information obligations to bond issuers listed on alternative trading platforms.

*Michal Pawlowski, Partner, and Rafal Wozniak, Counsel, CMS Poland*

## Russia

### New Aspects of Taxation of Eurobond Trading in Russia

In August 2016, the Russian Ministry of Finance issued additional explanations on the taxation of Eurobond transactions.



Anton Yakushev

Previously, from 2011-2015, Russian tax authorities had tax claims on banks' Eurobond transactions, especially if these bonds were purchased from non-residents of Russia. The tax authorities considered the accumulated coupon yields to be equal to loan interest. Therefore, applying by analog

the rules of double taxation agreements (DTA), the tax authorities requested the disclosure of the ultimate beneficiaries of the accumulated coupon yields from the banks. Banks refusing to disclose beneficiaries were considered to be the actual income receivers and charged with a 20% income tax on the accumulated coupon yield. Two major Russian banks – Gazprombank and Khanty-Mansyiskiy Bank Otkritie – suffered from decisions of the tax authorities. Subsequently, the courts supported the position of the tax authorities.

The situation with both banks was quite similar: A Russian bank purchased Eurobonds from a foreign broker. Upon further inspection, the tax authorities identified an accumulated coupon yield accrued in respect of all bonds. In fact, it was the sellers of the bonds who were responsible for paying the taxes from these amounts; however, since the banks provided no information on the counterparties' residency, they were charged instead.

According to the new explanations recently issued by the Russian Ministry of Finance, only the interest income from Russian borrowers is taxable under this scheme. In both cases mentioned above, the borrowers were foreign SPVs, i.e., the bonds were issued by foreign issuers. Hence, such coupon yields are not taxable in Russia. The same rule applies to the accumulated coupon yields arising from the acquisition of Eurobonds from foreign companies on secondary markets.

In principle, foreign securities should not be taxable in Russia. Subject to the amendments to the Tax Code implemented in 2012, Russian companies were exempt from taxes arising from foreign Eurobond issues made through SPVs. However, Russian tax authorities often concluded that SPVs should not be regarded as separate legal entities, considering them instead as

conduit companies concealing bond emissions of the Russian borrower. The tax authorities used to suggest that since there are Russian companies behind the SPVs, then the interest income should be taxable as it was for Russian taxpayers as well. The main problem is that the Tax Code has no direct definition of the term “funds source.” On the one hand, the accumulated coupon yield appeared outside of Russia in this case. On the other hand, it is payable by a Russian bank. This lack of formal determination still exists and has yet to be amended.

Additionally, it is still unclear whether the common DTA rules for loan interest taxation apply to the accumulated coupon yields as well. Russian courts tend to hold the opinion that the accumulated coupon yield is the Eurobond interest; hence, subject to OECD guidance, the ultimate beneficiary must be disclosed. If the person formally receiving the interest is not the actual owner of the profits, then that person is not subject to any incentives and preferences provided by the DTAs. The courts came to such conclusions in cases involving the quite large MDM Bank and the Capital company. The position of the courts is not logically perfect; since the interest shall formally be accrued with respect to the issuer's debt towards the bond holder only, the issuer shall not take any part in the resale of the bonds on the secondary market. Therefore, the bank as a buyer of the bond on the secondary market is not always capable of identifying the actual receiver of the income, since it is buying a bond, but not lending any money.

New explanations from the Ministry of Finance should decrease the risks of extra tax charges for bond buyers – however, they will not eliminate them completely until the Tax Code is amended accordingly.

*Anton Yakushev, Head of the Tax Practice at Peterka & Partners Russia*

### Key Trends in Russian Equity Capital Markets: Privatization and Participation of Domestic Non-State Pension Funds



Darina Lozovskiy

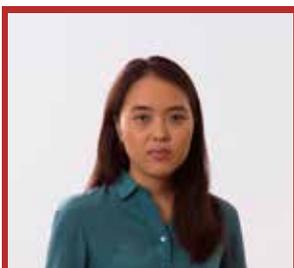
Following the relative stabilization of economic conditions globally (especially in terms of the price of oil) and in Russia (the ruble exchange rate) the Russian capital markets have shown signs of recovery. This article focuses on a couple of key aspects of the Russian equity capital markets' development this year, such as pri

vatization and the increased participation of non-state domestic pension funds in equity transactions.

#### Privatizations

In February 2016, the Russian Government announced its plans for the privatization of state-owned shares in a number of Russian companies, such as the ALROSA diamond mining company, the Bashneft and Rosneft oil companies, VTB Bank, and Sovcomflot.

Generally, Russian Privatization Law No. 178-FZ establishes



Amulang Povaeva

the regulatory framework for privatizations of Russian state and municipal property. In particular, it prescribes specific options for disposing of state property, requirements applicable to potential purchasers of state property, and extensive procedures to be followed in connection with the implementation of the relevant

option. At the same time, the Russian Privatization Law provides that its provisions shall not apply to certain types of disposals of state property, such as, for example, “disposal of state property based on the resolution of the Russian Government adopted with an aim to create conditions to attract investments, stimulate the stock market, and modernize and technologically develop the economy.”

In June 2016, the Russian Government issued resolutions: (i) approving the appointment of Sberbank CIB, VTB Capital, and Renaissance Capital as agents of the Russian Federation in connection with the privatizations of ALROSA, Bashneft, and VTB Bank, respectively, and (ii) stating that the share sales in ALROSA, Bashneft, and VTB Bank should be conducted with “an aim to create conditions to attract investments, stimulate the stock market, and modernize and technologically develop the economy.” The latter statement means that the transactions were intended to be exempt from the requirements of the Russian Privatization Law and instead carried out pursuant to resolutions of the Russian Government establishing specific requirements applicable to them. The June 2016 resolutions also approved the principal terms of the agency agreements with the selected banks. Typically, following its review of the agent’s report identifying the preferable method for privatization and consulting with the relevant authorities (such as, for example, the Ministry for Economic Development (and the Ministry of Energy for energy companies)), the Russian Government then decides on the method for privatization (for example, sale via public offering or via a private sale to strategic investor(s)). As soon as the preparation for sale is complete and the potential purchaser(s) selected (and, in the case of a shares offering, bookbuilding is complete), the Russian Government issues a resolution approving the share price and other principal terms of the share purchase agreement with the indicated purchaser(s) (in case of a share offering, one of the underwriters acts as a purchaser). Finally, the agent acting on behalf of the Russian Federation signs the agreement with the purchaser(s).

This year the Russian Government has already completed the sale of a 10.9% stake in ALROSA via a secondary public offering (July 2016 for approximately USD 820 million), and the sale of a 50.08% stake in Bashneft via a private M&A sale to Rosneft (October 2016 for approximately USD 5 billion), which was the largest Russian privatization since the 2013 IPO of ALROSA.

### Domestic Pension Fund Potential

Earlier this year the Central Bank of Russia (the CBR) amended the rules regulating the investments of pension savings made

by Russian non-state pension funds (NPFs). Further to these amendments, NPFs are now allowed to participate in privatizations, which are conducted via over-the-counter sales of the state’s or the CBR’s stakes in the companies being privatized, provided that the Russian Government or the CBR approves the purchase price and the share sale transaction is executed on a DVP basis within 10 business days from the date of that approval. Previously NPFs were allowed to participate in privatizations conducted via organized trades of the stock exchanges only.

Following these amendments, Russian NPFs participated for the first time in a privatization transaction in July 2016, when they purchased in aggregate approximately 20% of the privatized stake in ALROSA. Although currently Russian NPFs allocate over 80% of their assets to fixed income (including bank deposits), the global tendency is that as pension funds mature and their assets increase, the share of equities will become more significant.

*Darina Lozovsky, Partner, and Amulang Povaeva, Associate, White & Case*

## Hungary

### Legal Challenges of Disruptive Financial Innovations in CEE

Technological innovation in financial markets continues its inexorable advance. Alternative payment methods (such as e-money and peer-to-peer payment), alternative finance (such as peer-to-peer lending and crowdfunding), blockchain-based clearing and settlement, new insurance models, and virtual currency exchanges are only a few of the recent developments endeavoring to make the financial system more efficient.

These new forms of business will disrupt the present system of financial markets and the processes by which financial intermediaries work. Further, the underlying technologies require pioneering legal solutions to protect investors and foster innovation at the same time. In Central and Eastern Europe, banks are immersing themselves in the new challenges of the financial technology (“fintech”) industry. Hungarian banks are also conducting market research to evaluate fintech potential, but they cannot succeed in the absence of strong regulatory support.

Based on recent market practice, the following technological and regulatory improvements are shaping the agenda in financial markets.

### Peer-to-Peer Solutions

The beginning of this century has been marked by buzzwords such as sharing economy and peer-to-peer (P2P) solutions. This

latter phrase covers myriad use cases, but the two most emerging forms of peer-to-peer finance are P2P lending and P2P payment. Both financial technologies connect people and execute value transfer without interposing trusted intermediaries such as banks or clearing houses.

**P2P Lending.** Marketplace lending platforms emerged before



Balazs Szalbot

the financial crisis and rapidly spread after its conclusion. Because P2P lending is expected to emerge in CEE, including in Hungary, the legislators will have to enface regulatory challenges soon. Transparency and disclosure obligations will be of paramount importance in assessing

how marketplace lending will impact the stability of the financial sector. In addition, different prudential requirements and consumer protection regulations need to be established, depending on the service providers' reliance on the services of the banks.

**P2P Payment and Blockchain Technology.** While the end of the last decade was about the Internet of information, in the recent years a new trend has emerged: the Internet of value. Transferring value via Internet was not possible before the advent of blockchain technology, one of the most revolutionary technologies since the invention of the Internet. Blockchain is known mostly for underpinning bitcoin, but it has much wider implications than that. It is also a distributed ledger technology (DLT), enabling the transfer of digital assets without the need for trusted third parties. Prior to DLT, it was necessary to interpose a trusted third party who kept track of balances. Blockchain technology solved this problem by establishing a network of distributed ledgers that almost instantaneously records the transactions in blocks, thus building an irreversible chain and ruling out the possibility of so-called double-spending.

The most challenging legal issues around P2P payment and DLT involve the distributed nature of the system. As there is no entity that can supervise or interfere with the system, authorities will need to deal with the absence of effective regulatory supervision.

In addition to P2P payment, numerous companies are leveraging blockchain technology and its trustless nature. Without aiming to give an exhaustive list, possible applications of the DLT include clearing and settlement, new insurance models, smart contracts, crowdfunding, prediction markets, forward and futures contracts.

### Virtual Currency Exchanges

Virtual currencies are unregulated digital money, however, it is extremely hard to categorize them under existing civil and financial law definitions. In the absence of an issuer, they cannot qualify as e-money under the E-Money Directive. Although some virtual currencies have an issuer, they do not fall within

the definition of e-money according to the European Central Bank, since they are not issued upon receipt of funds.

Trading with virtual currencies also takes place outside the established financial system. In order to prevent misuse of virtual currencies for money laundering and terrorist financing purposes, the European Commission has proposed bringing virtual currency exchange platforms and custodian wallet providers under the scope of the Anti-Money Laundering Directive. Moreover, if the legislative power would like to regulate the trade of virtual currencies, it would be required to define them within the scope of existing legal categories – e.g., as financial instruments.

Companies taking advantage of the above-mentioned technologies have just begun to spread in Western Europe but they will be present in CEE soon due to the passporting of their licenses, if nothing else. This will pose an enormous challenge to the legislator to regulate those services in a way flexible enough to promote innovation but strict enough to provide an efficient level of protection for both consumers and investors.

*Andras Nemescsői, Partner, and Balazs Szalbot, Junior Associate, Horvath & Partners DLA Piper*

## Serbia

### Acquisition of a Majority Stake in a Serbian Joint Stock Company



Natasa Lalovic Maric

There are different ways to acquire a majority stake in a joint stock company, and each of them has its particularities, pros and cons. However, notwithstanding the specific acquisition method, each process requires the undergoing of stringent procedures by the acquirer, which can often be lengthy and complicated, involving dealing with various minority shareholder issues and rigid supervision by regulators. Depending on the transaction structure, a majority stake in a Serbian joint stock company may be acquired directly or indirectly, solely or by acting in concert, with the specific form likely to affect the overall duration and complexity of the acquisition process.

In this article, we will explore the acquisition of a majority stake via takeover as compared to block trading.

Pursuant to Serbia's Takeover Law, a takeover bid must be launched by a person who has acquired, directly or indirectly, solely or by acting in concert, voting shares that, together with the shares already acquired, represent more than 25% of the overall number of the target company's voting shares. In addition to a mandatory takeover bid, the Takeover Law permits launching of a voluntary takeover bid, which, unlike a mandato-

ry takeover bid, may be conditional upon acquisition of a minimum number or minimum percentage of voting shares in the target company. Following the initial acquisition of a shareholding in the target company, additional takeover bids may be required for its further increase, depending on the previous acquisition methods and/or the amount of shares acquired thereby. In the course of the process, bidders are bound by the rules on the minimum (rather than maximum) takeover price. While the obligation to launch a takeover bid in case of a direct acquisition of shares in the Serbian target arises out of the mere signing of the underlying share purchase agreement, indirect acquisitions of shares in the Serbian target company, made through the acquisition of shares of its parent, require that the launching of a takeover bid be linked to the moment of registration of the share transfer on the parent level.

An alternative to a straightforward takeover bid is block trading, especially when a direct agreement on the acquisition of a specific portion of shares may be reached with the relevant shareholder prior to initiation of the process. Block trading may thus delay launching of a mandatory takeover bid until the moment the acquirer has already become the majority shareholder of the target company (or a holder of more than 25% of the voting shares therein). Namely, while the rules applicable to block trading (i.e., Belex Rules on Operations) prescribe the minimum amount of shares that must be subject thereto or the minimum value of the relevant block-trading transaction, they do not prescribe the maximum amount of shares to be acquired thereunder. Therefore, this allows the interested acquirer to first acquire the majority stake in the target company without the participation of competitors, and then to launch a takeover bid for the remainder of shares.

However, block trading rules do impose certain trade restrictions which may, from time to time, prevent the transaction from being completed under these rules. One of the most important impediments to a block-trading transaction relates to the limitation of the discretionary power of the parties to negotiate the price under which they wish to trade shares. Namely, block-trading rules prescribe the highest permissible price deviations for the shares being traded thereunder from the reference values identified in the rules. Therefore, if shares are to be traded via block trading, parties are not free to agree in the underlying share purchase agreement on their price outside of the applicable rules and, very often, are prevented from agreeing on so-called price adjustment mechanisms, as these could result in violations of the share price rules applicable to block trading. This especially occurs in transactions involving acquisitions of shares in a group of companies on a closing date that is different than the signing date.

Accordingly, before proceeding with negotiations for an acquisition of a majority stake in a joint stock company, it is advisable to analyze all aspects of the potential transaction and structure it to best fit one's specific needs.

*Natasa Lalovic Maric, Partner, Wolf Theiss*

## Bulgaria

### Legal Aspects of the OTC Derivatives Market in Bulgaria



Tsvetan Krumov

Over the counter (OTC) derivative transactions – mainly plain vanilla FX and interest rates derivatives and to a lesser extent commodity derivatives – are becoming increasingly popular on the Bulgarian market. Market practice when only Bulgarian parties are involved is to use various local master agreements governed by

Bulgarian law. Such local agreements often follow the key principles and standards of international financial documentation, such as the 2002 ISDA Master Agreement (the “ISDA MA”), which governs all legal, operational, and credit risk aspects. For cross-border transactions, market participants normally use the ISDA MA, while taking into account certain specific aspects of Bulgarian law. The most important issue for banks in both local and cross-border OTC derivative transactions is to receive a clean opinion on the enforceability of the close-out-netting mechanism under Section 6 (e) of the ISDA MA, since the ability to net allows the banks to allocate capital only against the net figure they would have to pay on close-out rather than the gross amount under the transaction.

In this respect the International Swaps and Derivatives Association (ISDA) has obtained legal opinions (on which its members may rely) from various jurisdictions confirming the effectiveness of close-out netting in such jurisdictions updated on an annual basis. So far, however, there is no such ISDA opinion concerning close-out netting in Bulgaria. Indeed, apart from some special legislation protecting netting when the counterparty is a bank, Bulgaria has neither general netting-friendly legislation nor Supreme Court case law confirming the enforceability of close-out netting.

Nevertheless, market participants have found several methods to make their close-out netting arrangements effective. In one such method, participants in Bulgaria request the provision of financial collateral (linked to the derivative transaction), thus bringing into play the netting mechanism under the EU Financial Collateral Directive as transposed in Bulgaria. That netting mechanism may be negotiated as being applicable to any mutual obligations of the counterparties, including their obligations under the derivative with respect to which a financial collateral arrangement has been entered into. Thus, the mutual obligations under a derivative may be effectively netted in case of a termination event under the relevant derivatives agreement.

In this respect we believe it is sufficient to grant a small fixed amount as financial collateral to secure the potential (and thus uncertain) future obligation of a bank's counterparty to pay amounts (if any) under a derivative. The parties may agree that the financial collateral will be updated on certain dates to take into account fluctuations in the underlying assets (e.g., interest rates or foreign currency exchange rates) which would require

the counterparty to provide additional financial collateral if necessary. Alternatively, the parties may agree that the collateral will secure only a portion of the bank's exposure under the derivative (up to the amount of the collateral that was effectively provided) in which case there would be no need to update the amount of the financial collateral in the future.

The idea that provision of financial collateral under a derivative may effectively protect a netting arrangement is not expressly confirmed by case law. However it enjoys widespread support among Bulgarian law firms and local banks, and a growing number of derivative transactions are made in reliance on the mechanism. Especially active in this respect are the large local banks that are subsidiaries of financial institutions from other EU Member States.

Nevertheless, legislation expressly protecting the enforceability of close-out netting in case of insolvency of the banks' counterparties would certainly give more comfort to the banks. As derivatives are often used by such counterparties to hedge against important financial risks like interest rate and currency rate risks, a general statutory protection of netting, supporting the derivatives transactions, may prove beneficial for the credit and financial industry as a whole.

*Tsvetan Krumov, Attorney-at-law, Schoenherr Bulgaria*

## Romania

### Stricter Common Rules of Corporate Governance for FSA-Supervised Financial Entities



Silvana Ivan

In 2016, the Romanian Financial Supervisory Authority (FSA) has continued to harmonize the standards of integrity, transparency, and prudent management applicable to all the entities under its supervision: capital market entities (i.e., investment firms, asset management companies, undertakings for collective investment,

central depositories, market operators, clearing houses, and central counterparties), insurance/reinsurance companies, and private pension fund managers. Thus, similar legal requirements are now applicable to such entities in terms of: (i) IT operational risk management; (ii) assessment and approval of management and key staff; (iii) criteria and prudential assessment for the acquisition of shares in such entities; and (iv) corporate governance principles to be applied by the supervised entities (e.g., on management's/supervisory bodies'/key staff's duties, separation of functions, transparency/internal data communication and confidentiality, conflicts of interests, risk management, and appropriate remuneration policies).

The latest FSA Regulation, No. 2/2016, which establishes common corporate governance rules, will become applicable on January 1, 2017. It transposes the legislative improvement proposals of professional associations, and it aligns the market with the best international practices. Under this regulation, the supervised entities will be required to provide the FSA with a writ-

ten statement of compliance with its governance rules and to include in their annual reports explanatory notes on the events that occurred during the year. This new enactment is expected to have an effective impact in practice and to translate into an efficient implementation tool.

Before this new regulation, corporate governance principles were either inconsistently scattered in numerous legal enactments for different types of FSA-supervised entities (although there was no reason for the differing treatment) and partially included in the corporate governance code applicable only to issuers listed on the Bucharest Stock Exchange – or they were not formalized in regulations at all, having only a “best practice” status. Of course, the new regulation is not to be read as an exhaustive corporate governance code, as each type of FSA-supervised entity will also have to observe the particular governance framework pertaining to its scope of business.

Besides its stronger coercive force and the benefit of having codified the key governance rules applicable to numerous types of FSA-supervised entities in a single piece of legislation, the main value-added features brought by FSA Regulation No. 2/2016 to the local players on FSA-supervised markets are mentioned below.

First, the regulation defines the generally applicable key features of conflicts of interests and requires entities to set up safe internal communication channels established by whistleblowing policies. Second, it takes into account the fact that most of the supervised entities are part of financial groups covering a broader range of financial services and that it is critical to apply uniform and consistent corporate governance principles throughout the group and to consider the group's business for the purpose of risk management procedures and for the assessment and management of conflicts of interests, with FSA-supervised parent companies located in Romania encouraged to balance the interests of their subsidiaries and to consider their contribution to the long-term interests of the entire group. Third, it establishes principles for internal data flows and reporting by clarifying the core responsibility of the executive management in ensuring due and timely information of the supervisory bodies on the company's activity and appropriate FSA reporting, as well as key staff's obligation to voluntarily report whenever they deem appropriate (not only upon request or at regular time periods). Lastly, it requires a biannual review of the risk management system and the business plans for continuing operations and emergency situations.

In addition, increased responsibility is placed on the board of directors as the supervised entity's policy-drafting body, which must prepare appropriate internal procedures and regulations to transpose the corporate governance principles provided by FSA Regulation No. 2/2016.

As a final remark, the new regulation seeks to boost investor confidence in the Romanian market. Its full observance will require administrative efforts from the local FSA-supervised entities, many of which already started to set up compliant internal rules, structures, and data flows.

*Silvana Ivan, Partner, Tuca Zbarcea & Asociatii*

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