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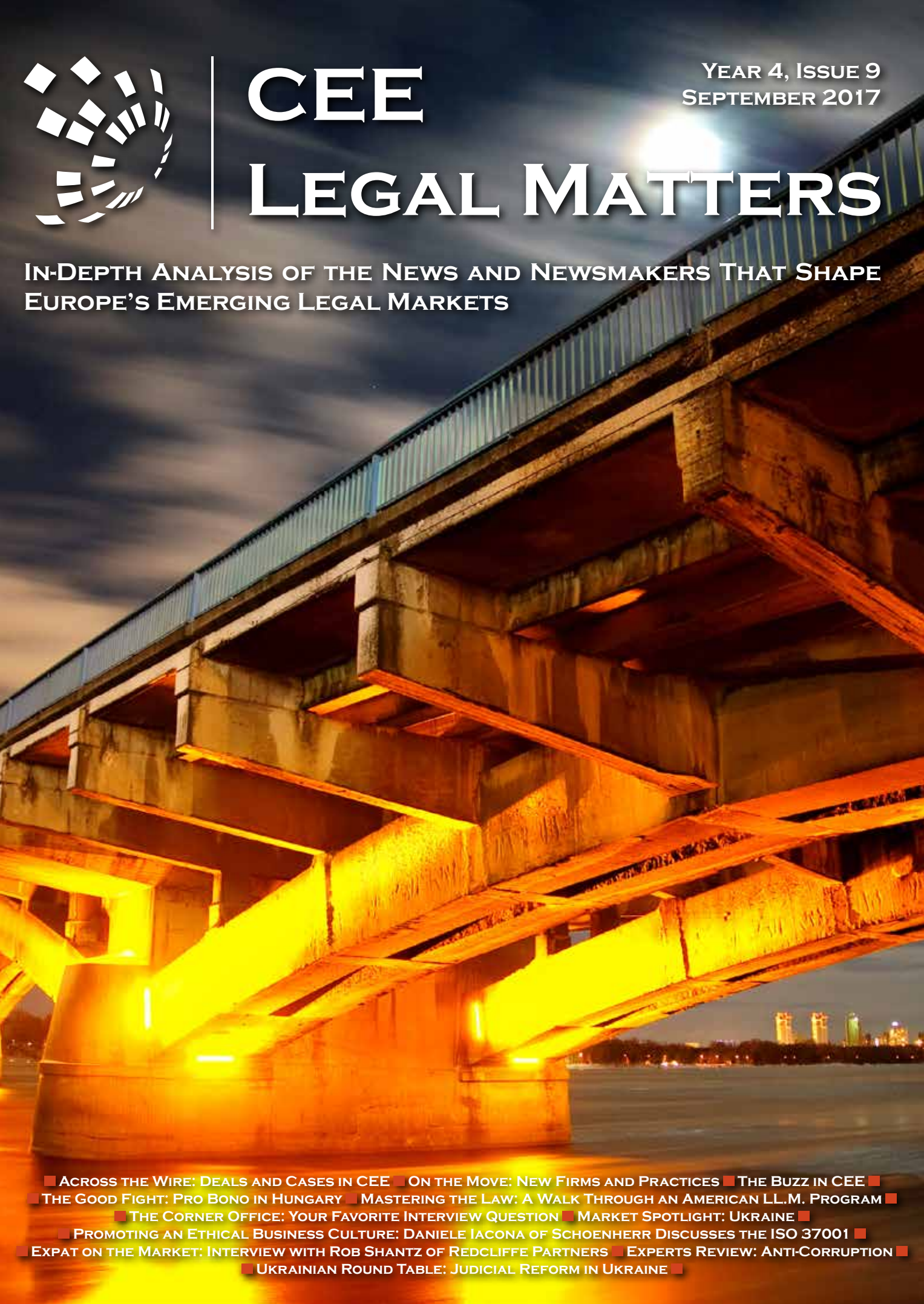
CEE Legal Matters

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



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CEE LEGAL MATTERS

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

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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: HOW AN INTERVIEW IS LIKE A MADELEINE

I received my law degree from the University of Virginia School of law, so you may not be surprised to learn that the interview I conducted with Polly Lawson, the Assistant Dean for Graduate Studies at that law school produced a flood of memories in me. What may be more surprising is how many of them are CEE-related.

In fact, my decision to attend the University of Virginia came as a result of my experiences in Central and Eastern Europe – and the law school, in turn, was a key factor in getting me back here. A pivotal experience, in all senses of the word.

This particular story begins, believe it or not, in my infancy, in Lawrence, Kansas. It was there that I was in the room when my father, studying Russian, practiced conjugating verbs at the kitchen table, and his interest in the region eventuated a Soviet and East European fellowship at the University of Michigan, leading our family to move to Ann Arbor in the late 1960s. I inevitably was affected (infected?) by his fascination with the region, and I eventually ended up studying the Russian language in high school, and then in college took a number of courses in Russian culture and literature.

In 1993, casting about for the next adventure as I prepared to move on from graduate school, I decided to apply for a position with the US Peace Corps (an organization which, perhaps coincidentally, had first been proposed by President Kennedy in Ann Arbor some thirty years earlier). This was a bigger step than it might seem, as I had, for much of my younger life, assumed I was not smart enough, hard-working enough, or brave enough to join these dedicated and remarkable young man and women doing good and important work around the world. But fortune favors the bold, I figured, and I did want an adventure, so …

So I applied, asking for a position in … Eastern Europe. And, to nobody's surprise more than mine, I was accepted!

They may have taken my request for a post in "Eastern Europe" a bit too literally, however; I was posted to the Russian Far East, on the Pacific Coast – *ten time zones away* from the cities in CEE I had been imagining. Still – after looking up Vladivostok at the library (Wikipedia and Google not yet having been invented) – I decided in for a penny, in for a pound, and agreed.

That turned out to be the right decision, as the experience changed everything about my life. I met friends – both American and Russian – I cherish to this day. I learned to learn and speak Russian, a skill for which I remain truly grateful. My mind was opened to other cultures, customs, and sensibilities – and I learned recognize the many elements of the three that we all share. And perhaps most importantly, from a personal level, I learned to embrace challenges rather than recoil from them.

I returned home to the United States in the summer of 1997, proud, Russian-speaking, and ready … and with no idea what I wanted to do next. I decided, having discovered that my youthful fears about joining the Peace Corps and my anxieties about going so far from home were baseless, to put that newfound confidence to the test and accept the other big challenge of my life I had long avoided, despite multiple recommendations from teachers in my youth: I applied for law school.

I applied to several schools, in fact, including "safety-schools," some genuinely good law schools, and as a lark, two top-tier law schools which I was aware would never, under any circumstances, accept me. While I waited, I found a job making use of my Russian language skills as a legal assistant in the Moscow office of Patterson, Belknap, Webb & Tyler, a venerable New York law firm. And it was there, in that Moscow office, in the early spring of 1998, and based heavily on an LSAT score that I remain convinced must have resulted from a computer error, that I learned I was wrong, and that one of those two top-tier law schools had indeed accepted me after all.

Continue reading on page 6.

GUEST EDITORIAL: BIG WHEEL KEEP ON TURNIN'

By Markus Piuk, Partner, Schoenherr Vienna & Bucharest

Traveling the region on legal business I sense a lot of buzz surrounding law firms in CEE. Headline transactions are numerous and deal-pipelines appear to be well-fueled. With the tailwind of news about solid economic growth in the European Union there are good chances that this trend will last. The future for law firms in the region looks brighter than ever. But there are also challenges ahead of us as the legal industry, in CEE as everywhere else, is headed for some turbulent times.

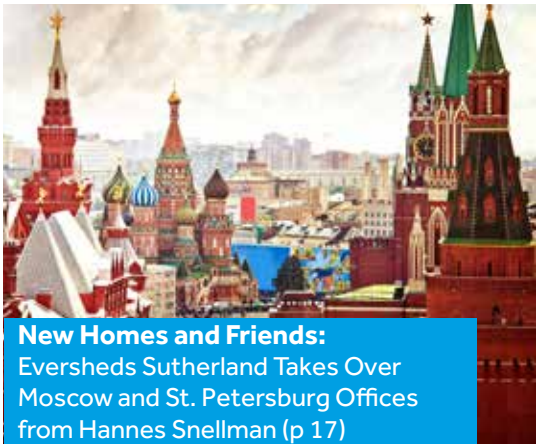
On the one hand, there is a scarcity of talent. Although law schools throughout the region continue to produce young lawyers, it seems that the number of graduates heading for law firms is declining, even though the firms, engaged as they are in a war for talent, are providing ever-more perks and incentives to attract them. This does not come as a surprise for those who have looked to Western Europe, where a similar trend has been well established for more than a decade. Will this phenomenon change anytime soon? I don't think so. Rather, we will all need to become ever more creative in the forms of "engagement" that we offer to legal talent to allow young lawyers to excel in the legal profession while pursuing their out-of-office interests.

In addition, digitalization is moving ahead quickly and M&A transactions involving start-ups are often much larger and more demanding/sophisticated than similar deals were in the old economy. Such clients expect their advisors not only to be at the forefront of digitalization themselves but also to play a proactive and expanded role in as they are often hesitant to engage financial advisors, leaving more deal work than normal with their lawyers. Tech-savvy clients expect their lawyers to employ new mobile communications, data analytics, social media, and video capabilities to fit into the clients' communications landscape. At the same time, such technologies also allow more law firms to compete for clients, forcing law firms to foster market intelligence just as more clients are moving away from appointing lawyers based on long-term personal relationships and onto formalized panel structures.

Thus, the "digital lawyer" has in fact become a reality in CEE, and while all firms strive for higher efficiency, there are far more stringent rules to comply with when accepting a mandate – KYC/AML requirements keep tightening, requiring law firms to employ dedicated resources towards satisfying them. Digitalization will be of great help in this process as well – if opening a bank account is possible in a fully digitalized process, why should contracting a lawyer not be? – but it will also require additional resources on the side of the law firms.

When depicting the "digital law firm" of the future I also wonder whether digitalization brings a risk of obsolescence for humans in the world of law. We all know of software products that not only support legal due diligence exercises – especially in the field of real estate – but in fact conduct such reviews all by themselves and produce reports free of typos. The investment of both money and time is still significant in order to make this software work at an individual firm, but the further development of such software will eventually make it more accessible for law firms of all sizes. Will digitalization further expand to transaction documentation, especially in the finance sector? I expect it will and we will all need to adapt. Will law become fully digitalized? I don't think so. In the end, I consider law to be a people business and human interaction will continue to play a pivotal role, whether in relationships with clients or with opponents in a transactional or dispute resolution setting.

It is my strong belief that law firms in CEE, a region known for a certain level of instability, which has undergone great changes relatively recently, will master these challenges particularly well. Firms are relatively young, and partners at all levels are experienced in sensing the vibes of the market and are very entrepreneurial – all promising prerequisites to keep the fire burning and to keep the big wheel turnin', despite the challenges ahead.



New Homes and Friends:
Eversheds Sutherland Takes Over Moscow and St. Petersburg Offices from Hannes Snellman (p 17)

The Good Fight:

A Consideration of Hungarian Pro Bono Culture (p 36)

Ukrainian Round Table:

Judicial Reform in Ukraine (p 44)

Experts Review:

CEE Experts Review Round-up on Anti-Corruption (p 72)

EDITORIAL: HOW AN INTERVIEW IS LIKE A MADELEINE (CONT.)

I moved to Charlottesville straight from Moscow that summer, ready – I hoped – to attend the University of Virginia School of Law. And again, as it had been with the Peace Corps, my ambition was rewarded. Indeed, before I knew it, I was comfortably ensconced in a remarkable program. The School of Law was diverse, with fellow students from across the United States and – via the graduate program that Ms. Lawson now heads – across the globe. It was challenging, with classes taught by widely-acknowledged and respected experts in their fields. It was fascinating, with epiphanies and newfound understandings an almost daily occurrence in a way I had never experienced. And it was, ultimately, rewarding, in a way nothing – except, notably, my experience in the Peace Corps (and perhaps my season tickets for Michigan football) – else ever had been.

Charlottesville, if you don't know it, is a little slice of heaven. A college town located in green Western Virginia horse country about three hours from Washington D.C., with golf courses, tennis courts, and summer picnics and barbecues sharing space and competing for time with prestigious lecture programs, world class theaters and museums, and academic programs respected across the globe. Also, at Bodo's, fantastic bagels. I loved my time there.

It's perhaps a cliché to note how little things can trigger such strong memories. Thus, as I reviewed Polly Lawson's interview about the law school and prepared it for publication in this issue, I was cast back to my father's interest in Russian and Soviet studies in the 60s and 70s, my own introductions to Russian language and culture in the 80s, and my full-on plunge into Russia itself in the 90s … as well as the confidence my immersive experience provided me, which led me to Charlottesville and the University of Virginia and then to lawyering … which led me, eventually, back to Eastern Europe.

"Life is what happens to you while you're busy making other plans," John Lennon sang, and for my life, at least, he was absolutely right. At no point, growing up, did I ever think, "I'll go to graduate school, join the Peace Corps in Eastern Europe, come back, go to the University of Virginia Law School, become a lawyer, get a job as a legal recruiter in Eastern Europe, then launch the leading legal publication and website in CEE." Until I was in my mid-20s the idea of any of those things happening would have seemed ludicrous. Maybe they were ludicrous. But I embrace the lunacy of this life. And the University of Virginia was a key part of that process.

And trust me. If you visit Charlottesville someday, stop by Bodo's.

David Stuckey

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ACROSS THE WIRE: FEATURED DEALS

Schoenherr Advises Bulgarian Eagle Airline on Bulgarian Expansion and AOC Certification

Schoenherr has advised Bulgarian Eagle airlines, the ACMI (Aircraft, Crew, Maintenance, and Insurance) carrier recently founded by the Germania Group, on its expansion into Bulgaria and on obtaining an official air operator certificate from the Bulgarian authorities, allowing the airline to use aircraft for commercial purposes. After all the necessary licenses were issued and a demonstration flight was successfully completed, the Bulgarian aviation authority cleared the new airline for take-off.

Germania is an independent German airline which was established over 30 years ago. The airline carries more than three million passengers each year on short and medium-haul flights. Germania offers connections from 20 departure airports in Europe to over 55 destinations within the continent, North Africa, and the Middle East. Germania's subsidiary, Bulgarian Eagle, was founded in November 2016.

"We are very excited to have been part of the Germania Group's expansion into Bulgaria, and to have supported Bulgarian Eagle in obtaining its community air carrier operating license"

– Stefana Tsekova, Regulatory Partner, Schoenherr

Schoenherr Sofia's team was led by Regulatory Partner Stefana Tsekova and included Attorney at Law Ivelina Vassileva.

schönherr

Maravela | Asociatii, Gleiss Lutz, Bondoc & Asociatii, and White & Case Advise on Tender by Chimcomplex to Acquire Oltchim Assets

Maravela | Asociatii is representing Chimcomplex Borzesti S.A. in a tender for the assets of Romania's Oltchim chemical company.

According to Maravela | Asociatii, "the bid for the acquisition of Oltchim's assets has been submitted and the finalization of the selection process is currently expected."

Maravela | Asociatii Partners Gelu Maravela and Dana Radulescu are assisting on the due diligence process, tender preparation, transaction document drafting, and financing, and Partner Alina Popescu and Associate Magda Grigore are assisting on competition aspects, including complex state aid analysis and merger control related aspects. Insolvency matters are coordinated for the firm by Partners Dana Radulescu and Mirela Metea, Partner Dana Radulescu and Senior Associate Daniel Alexie are assisting on environmental matters, and Managing Associate Daniel Vinerean is coordinating the firm's advice on real estate matters.

"This high-profile matter involves two of the largest chemical goods producers in the region and requires comprehensive M&A, competition and environment work. The deal equally involves complex and sophisticated senior and subordinated financing matters, including equity participation from international financing banks, financial institutions as well as domestic and overseas investors, exceeding EUR 100 million."

– Dana Radulescu, Partner, Maravela | Asociatii

According to Maravela | Asociatii, the Brussels office of Gleiss Lutz are assisting Chimcomplex "in defining the strategy as well as in the relationship and liaison with the European Commission regarding state aid."

Oltchim is being assisted by Bondoc & Asociatii and White & Case.

MARAVELA | ASOCIAȚII

Drakopoulos Advises on GDPR Compliance

Drakopoulos Greece has advised Hellenic Petroleum Group of Companies with respect to the group's compliance with the General Data Protection Regulation.

According to Drakopoulos, "the project includes thorough monitoring of the group's internal policies and procedures in order to identify potential gaps with the requirements of GDPR and meet the tight deadline of May 25, 2018 – as GDPR'S implementation date.".

"Hellenic Petroleum, a leading energy group in South East Europe, innovates once again by being one of the very first Greek companies getting themselves GDPR compliant-ready. The group's compliance project was entrusted to Drakopoulos Law Firm, which successfully managed to meet both the project's demanding nature and the looming GDPR compliance deadline."

– Panagiotis Drakopoulos, Senior Partner

The firm's team included Partner Michalis Kosmopoulos and Senior Associates Mariliza Kyparissi and Evangelos Margaritis.

DRAKOPOULOS LAW FIRM

Wolf Theiss Advises on Financing of OT Logistics Acquisition of Shares of Luka Rijeka

Wolf Theiss has advised Bank Gospodarstwa Krajowego on the financing of OT Logistics' expansion in Croatia.

The PLN 125 million (EUR 30 million) BGK loan will be used to finance BGK's acquisition of Luka Rijeka d.d., the operator of the port in Croatia. The first tranche of the facility in the amount of PLN 46.6 million will be used to acquire an 11.75% stake of shares in the target company.

OT Logistics acquired the shares on September 7, 2017 by way of a block trade transaction concluded on the Zagreb Stock Exchange after a prior selection of its bid in a tender organized by the Croatian government.

"We are excited to be a part of this pioneering project in which a Polish company has acquired a stake in the largest port in Croatia. Financing this type of transaction is also a flagship task of BGK, which is a member of the Polish Development Fund."

– Stefan Feliniak, Attorney at Law, Wolf Theiss

The Wolf Theiss team was led by Warsaw-based Attorney Stefan Feliniak and included Senior Associate Dariusz Harbaty, Associate Piotr Ziolkowski, and Klaudia Dabrowska in Warsaw, and Partner Luka Tadic-Colic, Counsel Vedrana Ivekovic, and Associate Lucia Mocibob of Wolf Theiss Zagreb.

OT Logistics was advised by Wiewiorski Legal on the deal.

WOLF THEISS

Karanovic & Nikolic Advises Elicio Financing From UniCredit for Malibunar Wind Park

Karanovic & Nikolic has advised Belgian renewable energy group Elicio NV on the EUR 9.8 million financing its wholly-owned subsidiary Electrawinds Mali WF d.o.o. received from UniCredit Bank Serbia for the development, construction, and operation of the Malibunar wind park.

UniCredit Bank Serbia is the sole lender for the project, with funds provided within its Green for Growth Fund credit line. The financing is also complemented by a short term VAT bridge financing and interest rate hedging arrangements. After the signing of the financing agreement, the first debt disbursement, in the amount of EUR 3.2 million, took place on August 31, 2017.

"Malibunar should promote more renewable energy projects and will help Serbia meet its obligations under the Energy Community Treaty to have 27 percent of energy consumption from renewable sources by 2020."

– Maja Jovancevic Setka, Partner, Karanovic & Nikolic

The construction of the wind park began in November 2016, and the total value of the investment is around EUR 14 million. The project has the temporary status of a privileged power producer, and a power purchase agreement was signed with the Serbian power utility Elektroprivreda Srbije. Elicio NV is a subsidiary of the Nethys Group – an energy and telecommunications group from Belgium.

The Karanovic & Nikolic team was led by Partner Maja Jovancevic Setka and Senior Associates Petar Mitrovic and Ivona Vuckovic.

karanovic/nikolic

Moral Advises Barcin Spor on Acquisition of Stores

The Moral Law Firm has advised Barcin Spor, a prominent Turkish sports equipment retailer, on its acquisition of nine stores from an unnamed national retailer.

According to Moral, the firm negotiated the acquisition agreement between the buyer and seller, conducted due diligence for the lease agreements at the shopping malls, advised on transfer protocols and the new lease agreements. The firm's team also advised Barcin Spor in drafting and completing corporate compliance procedures in terms of opening new branches for these stores.

Baker McKenzie Kyiv Assists Ukrenergo with Corporate Governance Reform

Baker McKenzie's Kyiv office has supported Ukrenergo in implementing a corporate governance reform to institutionalize the supervisory board and ensure that the company's upgraded management structure is in line with OECD guidelines.

Ukrenergo is a state-owned power company responsible for operational and technological control of the Integrated Power System of Ukraine and electricity transmission via trunk power grids from generating plants to distribution networks of regional electricity suppliers. The company's network includes eight regional power systems, covering the entire territory of Ukraine and employing over 13 thousand individuals.

According to Baker McKenzie, the firm's team prepared the restated charter documents and represented Ukrenergo in negotiations with the Ministry of Energy and Coal Industry of Ukraine up until the company's updated charter was adopted on September 12, 2017.

Kambourov & Partners Successful in VAT Dispute in European Court of Justice

Kambourov & Partners has successfully represented Iberdrola Inmobilaria before the European Court of Justice in a case involving the general rules for deducting VAT credit in cases of investment in public infrastructure.

According to Kambourov & Partners, "the decision is of significant importance not only for the client, but also for the general investment climate in Bulgaria. The ECJ accepted that a taxable person has the right to deduct input value added tax in the context of its economic activity, even when a third party enjoys the results of the services free of charge."

"The Bulgarian Revenue Agency has often been accused in a relatively fiscal interpretation of the legislation – sometimes fairly so, sometimes not. The ECJ rendered a decision on one of the most important recent questions, which should be of significant importance for the practice."

– Todor Todorov, Partner, Kambourov & Partners

The Kambourov & Partners team was led by Partner Todor Todorov, supported by Associate Zahari Naumov.

KAMBOUROV & PARTNERS
ATTORNEYS AT LAW

ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
23-Aug	Binder Groesswang; Fellner Wratzfeld & Partner	Fellner Wratzfeld & Partner advised Stadler on the establishment of a joint venture with OBB-Technische Services-GmbH that will be responsible for the maintenance of the KISS train fleet operated by WESTbahn Management GmbH. Binder Groesswang advised OBB-Technische Services-GmbH.	N/A	Austria
30-Aug	CHSH Cerha Hempel Spiegelfeld Hlawati	Cerha Hempel Spiegelfeld Hlawati assisted the Excellence Research Centre of the Institute of Science and Technology Austria on its establishment of an incubator for spin-offs with an unnamed international investor.	N/A	Austria
1-Sep	CHSH Cerha Hempel Spiegelfeld Hlawati	CHSH advised the Viennese business myAbility Social Enterprise GmbH on its successful conclusion of Austria's largest ever round of investment in the social business start-up sector, as, a consortium of investors from Switzerland and Germany provided growth capital to myAbility.	N/A	Austria
4-Sep	Schoenherr	Schoenherr advised real estate investment company Deka Immobilien GmbH on the acquisition of the Hoch Zwei and Plus Zwei office buildings in Vienna from S IMMO AG, which was advised by Dorda.	EUR 235 million	Austria
8-Sep	CHSH Cerha Hempel Spiegelfeld Hlawati	CHSH Cerha Hempel Spiegelfeld Hlawati acted as legal advisor to the Austrian venture capital fund Speedinvest on matters related to its joint venture ownership of iMobility GmbH, stretching from the foundation of the joint venture with partner OBB-Holding AG up to the recent acquisition by OBB-Holding of Speedinvest's shares, which leaves OBB-Holding as sole owner.	N/A	Austria
11-Sep	CHSH Cerha Hempel Spiegelfeld Hlawati	CHSH reported that, in its judgment of September 7, 2017, the Court of Justice of the European Union accepted the firm's arguments on behalf of STRABAG, issuing what the firm is calling "the first ever preliminary ruling on a question relating to the Merger Regulation."	N/A	Austria
31-Aug	Schoenherr; Willkie Farr & Gallagher	Schoenherr advised US asset manager KPS Capital Partners on its acquisition of DexKo Global's production facilities in Austria and Poland from private equity investment firm Sterling Group L.P. Harris Williams & Co. acted as special advisor to Sterling Group L.P.'s Board, and Willkie Farr & Gallagher acted as legal counsel on the acquisition.	N/A	Austria; Poland
7-Sep	Dimitrijevic & Partners	Dimitrijevic & Partners advised Altima UK Value Investments Limited on the restructuring of its indirect shareholding interest in Banjalucka Pivara ad Banjaluka.	N/A	Bosnia and Herzegovina
30-Aug	Djingov, Gouginski, Kyutchukov & Velichkov	DGKV acted for a consortium consisting of German engineering consultancy companies CDM Smith Consult GmbH, Fichtner GmbH & Co KG, and C&E Consulting und Engineering GmbH in arbitration proceedings before the Arbitration Court at the Bulgarian Chamber of Commerce against the Bulgarian Ministry of Environment and Waters.	EUR 161,000	Bulgaria
31-Aug	Djingov, Gouginski, Kyutchukov & Velichkov	DGKV successfully represented the interests of CEZ Razpredelenie Bulgaria AD in several cases before Bulgaria's Commission for Protection against Discrimination.	N/A	Bulgaria
5-Sep	Deloitte Legal; Djingov, Gouginski, Kyutchukov & Velichkov	DGKV advised AP Investments AD on the sale of 50% of Mall Galleria Varna to the Serbian-based Delta Real Estate DOO and the Cyprus-based Astatine Holdings Limited. The buyers were advised by Deloitte Legal on the deal.	N/A	Bulgaria
23-Aug	Arcliffe	Arcliffe was appointed by Sumitomo Electric Bordnetze to assist the company on labor law-related matters in various CEE jurisdictions.	N/A	Bulgaria; Czech Republic; Romania; Slovakia

Date covered	Firms Involved	Deal/Litigation	Value	Country
24-Aug	Divjak, Topic & Bahtijarevic; Mamic, Peric, Reberski Rimac	Divjak, Topic & Bahtijarevic advised Arriva on its acquisition of 78.34% of the Autotrans Group. Mamic, Peric, Reberski Rimac advised the sellers on the deal.	N/A	Croatia
11-Sep	Wiewiorski Legal; Wolf Theiss	Wolf Theiss advised Bank Gospodarstwa Krajowego on the financing of OT Logistics' expansion in Croatia. OT Logistics was advised by Wiewiorski Legal.	EUR 30 milion	Croatia; Poland
28-Aug	Taylor Wessing	Taylor Wessing Prague advised Germany's Biotest group and its subsidiary Plasma Service Europe on their acquisition of Cara Plasma s.r.o.	N/A	Czech Republic
4-Sep	Dentons	Dentons advised Investec GLL Global Special Opportunities Real Estate Fund on the EUR 19.5 million sale of the Keystone office building in the Karlin neighborhood of Prague to the Czech KB Realitni fond 2 Investicni Kapitalove Spolecnosti KB real estate fund.	EUR 19.5 million	Czech Republic
6-Sep	CMS; DSK Legal	CMS advised Indian automotive components manufacturer Pricol Ltd. on its acquisition of PMP PAL International s.r.o., a Czech company which manufactures automotive windscreen wiper parts, from PMP Auto Components (part of the Ashok Piramal Group). The sellers were advised by India's DSK Legal.	N/A	Czech Republic
8-Sep	CMS	CMS advised investment companies Miton, Enern, and In-Bridge, on their sale of Slevomat Group, a company holding deal websites in the Czech Republic and Slovakia, to UK-based travel company Secret Escapes.	N/A	Czech Republic
31-Aug	Primus	Primus advised a joint venture of Lumi Capital and LHV pension funds on their July 2017 entrance into a transaction with a joint venture of Hepsor Kinnisvara and Tolaram Group to develop and acquire two apartment buildings in the new Sitsi Ounaaed development in the Pelgulinn district of Tallinn.	N/A	Estonia
31-Aug	Cobalt	Cobalt advised AS Ekspress Grupp on its foundation of a new affiliated company, OU Kinnisvarakeskkond, which will develop a new real estate portal.	N/A	Estonia
4-Sep	Rask Attorneys at Law	Rask Attorneys-at-Law advised on the establishment of a cultural center in Narva, Estonia.	N/A	Estonia
12-Sep	Cobalt	Cobalt advised on the initial coin offering of Robot Vera.	N/A	Estonia
30-Aug	TGS Baltic	TGS Baltic's Latvia office assisted Clear Channel International BV with due diligence of Clear Channel's subsidiaries in Latvia, Estonia, and Lithuania.	N/A	Estonia; Latvia; Lithuania
8-Sep	Drakopoulos	Drakopoulos Greece advised Hellenic Petroleum Group of Companies with respect to the group's compliance with the General Data Protection Regulation.	N/A	Greece
31-Aug	BDK Advokati; Moussas & Partners; Three Crowns LLP	BDK Advokati, Three Crowns LLP, and Moussas & Partners successfully represented Greek investor Mytilineos in an investment arbitration against the Serbian state.	USD 40 million	Greece; Serbia
25-Aug	Dentons	Dentons advised German asset manager KGAL Investment Management GmbH on its EUR 60 million acquisition of the Kalvin Square and City Zen office buildings in downtown Budapest from Europa Capital.	EUR 60 million	Hungary
7-Sep	Baker McKenzie; Deloitte Legal	Baker McKenzie advised Luxembourg-based Corpus Sireo Real Estate investment fund on its EUR 53.8 million acquisition of the Eiffel Palace building from the National Bank of Hungary. The seller was represented by Deloitte Legal.	EUR 53.8 million	Hungary
8-Sep	CMS	CMS Budapest advised Belgian real estate developer Atenor on the acquisition of a 19,000 square meter plot of land on the main road corridor in Budapest connecting the city center to the airport.	N/A	Hungary
23-Aug	Legal Solutions Partners; Skrastins & Dzenis	Skrastins & Dzenis, in cooperation with Bulgaria's Legal Solutions Partners, participated in a project involving energy performance contracting in Latvia for public buildings and street lighting projects.	N/A	Latvia
23-Aug	TGS Baltic	TGS Baltic assisted HAVI Global Logistics GmbH with the buy-out of the minority shareholder of HAVI Logistics SIA.	N/A	Latvia
12-Sep	TGS Baltic	TGS Baltic assisted Benu Aptieka Latvija SIA, a chain of medicine retailers in the Baltics, on its acquisition of 100% shares SIA Cesu Vecpilsatas Aptieka, a pharmacy in Cesis, Latvia.	N/A	Latvia
25-Aug	Tvins	Tvins advised the Energy and Infrastructure SME Fund, managed by Lords LB Asset Management, on its acquisition of 100% of shares of City Parking Group S.A.	N/A	Lithuania
1-Sep	TGS Baltic	Prominent Lithuanian entrepreneur Nerijus Numavicius signed a long-term strategic partnership agreement with TGS Baltic, which will serve as his strategic adviser for legal and business management issues.	N/A	Lithuania
4-Sep	Sorainen	Sorainen advised Olympic Entertainment Group on the merger of Orakulas into the Olympic Casino Group Baltija.	N/A	Lithuania

Date covered	Firms Involved	Deal/Litigation	Value	Country
12-Sep	Sorainen	Sorainen successfully defended the interests of Eurocash1 in an eight-year dispute involving a prohibited vertical agreement.	N/A	Lithuania
31-Aug	Gessel; PwC Legal	Gessel acted as counsel to NPN II, a private equity fund managed by Krokus PE, on its sale of a 100% stake in Comfort S.A. to an entity from the Golbeck Group. PwC Legal reportedly advised the buyers on the transaction.	N/A	Poland
31-Aug	Studnicki Pleszka Cwiakalski Gorski	SPCG has won a dispute for Olesnica City in the Court of Appeal in Wroclaw against Krzysztof Golab – an administrative receiver of TIWWAL sp. z o.o. w upadlosci likwidacyjnej (in liquidation bankruptcy) – involving contractual penalties imposed on Olesnica City for the alleged non-submission of the design documentation.	N/A	Poland
6-Sep	Bird & Bird	Bird & Bird's Warsaw office advised mBank in financing the construction of photovoltaic projects carried out by a special purpose entity from the Wento capital group.	N/A	Poland
7-Sep	Domanski Zakrzewski Palinka	DZP advised Polish broadcaster TVN on the sale of 100% of shares of Mango-Media sp. z o.o. to Studio Moderna Polska sp. z o.o.	N/A	Poland
8-Sep	Allen & Overy; Clifford Chance	Clifford Chance advised the European Investment Bank on its entrance into a project agreement and a subscription agreement with Energa S.A. providing the basis for the issue of EUR 250 million hybrid bonds. Allen & Overy advised Energa on the deal.	EUR 250 million	Poland
8-Sep	Allen & Overy; Hogan Lovells	Hogan Lovells advised the Nordea Group on transferring the managing capabilities from Nordea OFE to Aegon PTE. Allen & Overy advised Aegon PTE on the transaction.	N/A	Poland
8-Sep	CMS; Noerr	CMS advised private equity fund Resource Partners on its sale of Delicpol, a manufacturer of cookies sold under private labels, to Continental Bakeries, a manufacturer of sweets owned by Goldman Sachs Merchant Baking Division and Silverfern, a private equity fund. Noerr Warsaw advised the buyers on the deal.	N/A	Poland
11-Sep	Jara Drapala & Partners	Jara Drapala & Partners obtained a judgement on behalf of Porr S.A. a against Poland's General Directorate for National Roads and Motorways for performance of works exceeding the contract scope.	PLN 11 million	Poland
11-Sep	CMS	CMS advised PKO BP on a new issue of subordinated bonds.	PLN 1.7 billion	Poland
11-Sep	Norton Rose Fulbright; White & Case	Norton Rose Fulbright advised a consortium of banks consisting of Bank Polska Kasa Opieki S.A., Bank Handlowy w Warszawie S.A., mBank S.A., and ING Bank Slaski S.A. on the grant of EUR 160 million and PLN 380 million in financing to Polish, Romanian, and German companies from the Cersanit Group and a PLN 100 million corporate bond issue placed on the Polish market. Bank Polska Kasa Opieki S.A. acted as agent and security agent. White & Case reportedly advised Cersanit on the deal.	EUR 160 million, PLN 480 million	Poland
11-Sep	CMS	CMS advised SEGRO, owner of SEGRO Logistics Park Strykow, on the lease of 30,000 square meters of warehouse space.	N/A	Poland
12-Sep	Bird & Bird	Bird & Bird's Warsaw office advised BNK Petroleum Inc., a North American oil & gas enterprise listed on the Toronto Stock Exchange, on the shutting down of its operations in Poland.	N/A	Poland
25-Aug	Bondoc & Asociatii; Maravela|Asociatii; White & Case	Maravela|Asociatii represented Chimcomplex Borzesti S.A. in a tender for the assets of Romania's Oltchim chemical company. Oltchim was assisted by Bondoc & Asociatii and White & Case.	N/A	Romania
29-Aug	Biris Goran; Noerr	Biris Goran assisted Swiss investor Philippe Jacobs and the Ibitol Group with the sale of Coresi Business Park to Immochan via a share deal. The buyers were advised by Noerr on the transaction.	N/A	Romania
1-Sep	CEE Attorneys	CEE Attorneys advised Xpediator Plc on the initial public offering of its shares on the Alternative Investment Market, a sub–market of the London Stock Exchange.	N/A	Romania
28-Aug	Clifford Chance	Clifford Chance reported that the Russian Appellate Court found the firm's arguments for Sberbank persuasive and overturned the judgment of the court of first instance in the case of Transneft vs Sberbank.	USD 1.1 billion	Russia
1-Sep	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners advised the National Media Group on the sale of shares in one of its companies to an unspecified buyer.	N/A	Russia
4-Sep	Berwin Leighton Paisner; Goltsblat BLP	Goltsblat BLP and the London office of Berwin Leighton Paisner have advised Atlant on its Initial Coin Offering.	USD 1.5 million	Russia
12-Sep	Dentons	Dentons advised Rosgosstrakh on its proposed merger with Otkritie Financial Group.	N/A	Russia
24-Aug	BDK Advokati	BDK Advokati advised regional private equity firm Blue Sea Cap on the acquisition of 100% of shares in the Dr Cvjetkovic company from Drs. Branka Cvjetkovic and Milan Cvjetkovic.	N/A	Serbia

Date covered	Firms Involved	Deal/Litigation	Value	Country
31-Aug	Schoenherr (Moravcevic Vojnovic and Partners); Zivkovic Samardzic	Zivkovic Samardzic advised the shareholders of Tim Kolos d.o.o. on the sale of 55% of shares in the company to Samsic Holding dejavnost holdingov d.o.o, the Slovenian member of French Samsic Group. Moravcevic Vojnovic and Partners in cooperation with Schoenherr advised the buyers on the deal.	N/A	Serbia
1-Sep	Karanovic & Nikolic; Schoenherr (Moravcevic Vojnovic and Partners)	Karanovic & Nikolic has advised Bulgaria's River Styxx Capital investment fund on the acquisition of 85% of the shares in Telenor Banka. Moravcevic Vojnovic and Partners in cooperation with Schoenherr) advised Telenor on the transaction, which sees the Norwegian telecommunications group keeping 15% of its shares in the online bank.	N/A	Serbia
25-Aug	Squire Patton Boggs	Squire Patton Boggs secured a victory for the Slovak Republic at the International Centre for Settlement of Investment Disputes.	N/A	Slovakia
7-Sep	Robert Esek; Taylor Wessing	Taylor Wessing's lawyers have advised investment and development company Arkon, a.s. on its acquisition of the real estate area of the former Slovenka factory in Banskaa Bystrica, Slovakia, from Dituria a.s. Attorney Robert Esek advised the sellers on the deal.	N/A	Slovakia
28-Aug	Allen & Overy; Gedik & Eraksoy; Paksoy	Paksoy provided Turkish advice to Odea Bank A.S. on its issuance of USD 300 million Basel III compliant Tier 2 bonds due 2027. Bank of America Merrill Lynch and J.P. Morgan – advised by Allen & Overy and Gedik & Eraksoy – were Joint Bookrunners and Joint Lead Managers, with Audi Investment Bank acting as the Co-Manager.	USD 300 million	Turkey
31-Aug	Dentons (BASEAK)	Balcioglu Selcuk Akman Keki Attorney Partnership advised Statkraft Enerji Anonim Sirketi on its preparation to sell the Cetin Hydroelectric Power Plant Project to potential buyers.	N/A	Turkey
31-Aug	Clifford Chance; Taboglu & Demirhan	The Yegin Ciftci Attorney Partnership advised the Japanese food giant Ajinomoto on its acquisition of the remaining 50% of Kukre Gida ve Ihtiyac Maddeleri Nakliyat ve Ozel Egitim Hizmetleri Ticaret ve Sanayi Anonim Sirketi. Taboglu & Demirhan advised the sellers on the deal.	N/A	Turkey
1-Sep	Dentons (BASEAK)	Balcioglu Selcuk Akman Keki Attorney Partnership advised LCI Education on the company's acquisition of the remaining 20% minority shares held by local shareholders in its Turkish subsidiary.	N/A	Turkey
4-Sep	Dentons (BASEAK)	Balcioglu Selcuk Akman Keki Attorney Partnership represented the founding shareholder of Grup Florence Nightingale Hastaneleri A.S. with respect to the buy-back of 50 percent of the shares of the company from Fiba Health Investments Inc., which had invested in the group back in 2014.	N/A	Turkey
8-Sep	Benzen & Partners; Ergun Law Firm; White & Case; Willkie, Farr & Gallagher	White & Case and the Ergun Law firm advised the lenders and hedging banks, including JBIC, NEXI, SMBC, MUFG, Standard Chartered Bank, Nippon Life Insurance Company, Dai-ichi Life Insurance Company, and the Iyo Bank, on the USD 1.83 billion financing of the 2,682-bed Ikitelli Hospital public private partnership in Istanbul. Willkie, Farr & Gallagher and Bezen & Partners advised the consortium leading the financing, construction, and operation of the Ikitelli Hospital campus, which includes Ronesans Health Investment and Sojitz.	USD 1.83 billion	Turkey
8-Sep	Curtis Mallet-Prevost Colt & Mosle; Egemenoglu	Egemenoglu is working alongside co-counsel Butzel Long in representing Lotus Holding Anonim Sirketi in an Energy Charter Treaty claim against Turkmenistan at ICSID involving the Turkish group's investment in two power plants and a refinery. Curtis Mallet-Prevost Colt & Mosle is representing Turkmenistan in the action, which is based on both the ECT and the 1997 Turkey-Turkmenistan bilateral investment treaty.	N/A	Turkey
8-Sep	Baker McKenzie (Esin Attorney Partnership)	The Esin Attorney Partnership advised specialty chemicals company Sika Yapi Kimyasallari A.S. on the acquisition of ABC Sealants, a leading Turkish-based manufacturer of sealants and adhesives.	N/A	Turkey
25-Aug	Axon Partners	Axon Partners advised Dao.Casino on fundraising for its project to build a new gaming industry infrastructure based on blockchain.	USD 18 million	Ukraine
29-Aug	PLP Law Group	PLP Law Group assisted Poland's Hanplast on its entrance to the Ukrainian market.	N/A	Ukraine
1-Sep	Vasil Kisil & Partners	Vasil Kisil & Partners has successfully represented Sumitec Ukraine in judicial proceedings to recover amounts owed for services rendered for repair and maintenance of equipment.	N/A	Ukraine
6-Sep	PLP Law Group	The PLP Law Group assisted Germany's Cordenka GmbH and Co. KG with its acquisition of manufacturing facilities in Ukraine.	N/A	Ukraine
11-Sep	Antika Law Firm	The Antika Law Firm advised AWT Bavaria on issues of business restructuring and construction matters in Ukraine.	N/A	Ukraine

Full information available at: www.ceelegalmatters.com

Period Covered: August 22 - September 12, 2017

ON THE MOVE: NEW HOMES AND FRIENDS

Greenberg Traurig Takes Real Estate Team from Hogan Lovells

The Warsaw office of Greenberg Traurig has added 11 members to its real estate practice in the persons of Partners Jolanta Nowakowska-Zimoch and Agata Jurek-Zbrojska, who move over from Hogan Lovells, bringing with them Local Partners Malgorzata Madej-Balcerowska and Justyna Szwech and seven Associates.

Nowakowska-Zimoch, who was the head of Hogan Lovells' Real Estate practice in Poland, takes over the now over 40-lawyer strong Greenberg Traurig practice. According to Greenberg Traurig, Nowakowska-Zimoch "brings more than 30 years of legal experience in real estate, focusing her practice on real estate transactions and financing of real estate projects. She has extensive experience in major transactions concerning commercial, office, and logistic properties and cross-border transactions. Her experience also includes arbitration proceedings in Poland."

"I have been observing with great interest the development of Greenberg Traurig's Real Estate Practice for the past two years and I know it will be a tremendously exciting experience to be a member of this team," Nowakowska-Zimoch said.

"Adding this team to our already robust and top-rate practice is a tremendous win for us and for our clients who require a firm with a dynamic real estate presence," added Lejb Fogelman, the Warsaw office's Senior Partner.

Nadmitov, Ivanov & Partners Launches Tax Practice

Russia's Nadmitov, Ivanov & Partners Law Firm has launched a tax practice and appointed Victor Arkhipov a new partner of the firm.

Prior to joining the NIP, Arkhipov worked in the tax practices of Pepeliaev Group (from 2006-2017) and FBK (from 2002-2004). He obtained his Master's in 2002 from the Russian School of Private Law after receiving his Diploma in Law in 2000 from the Faculty of Law of Moscow State University.

Eversheds Sutherland Takes Over Moscow and St. Petersburg Offices from Hannes Snellman

Eversheds Sutherland has taken over the entire Russian operation of Hannes Snellman, which entered the Russian market in 2006 by acquiring ETL Law Offices. The Russian offices will be led by former Hannes Snellman St. Petersburg Managing Partner Victoria Goldman, who is joined by four additional partners and 17 lawyers. The firm reports that "a full range of corporate law services will be offered, with a particular emphasis on real estate, litigation, corporate and M&A, and corporate crime & investigations advice." In addition, Eversheds Sutherland reported opening a new office in Luxembourg as well.

The firm describes Goldman as having "over 20 years of experience in corporate law and has successfully advised on numerous major investment projects and complex international transactions." She will be supported by Partners Yury Pugach (real estate, litigation and dispute management), Luke Wochensky (litigation and dispute management, corporate crime and investigations), Anu Mattila (corporate and M&A), and Mikhail Timonov (corporate and M&A).

Hannes Snellman Senior Partner Johan Aalto explained the decision to sell its offices and withdraw from Russia. "After more than a decade of serving esteemed clients with a very experienced and proficient team in the Russian market, it is time for Hannes Snellman to hand over the reins to Eversheds Sutherland, a firm which is more than well equipped to further develop the solid practice at hand. We are confident that both clients and staff will be pleased with the opportunities that this new chapter brings. The team in Russia is very well functioning and delivers high quality. We will recommend the team to clients going forward and look forward to co-operating on joint assignments in the future as well,"

Lee Ranson, Eversheds Sutherland Co-Chief Executive, commented: "The strategic expansion of our global platform is a key element of our 2020 vision, and one which continues to gather real momentum. Luxembourg and Russia are both a natural fit for us in terms of our client base, practice strength and geography. I'm delighted to welcome the new teams to Eversheds Sutherland."

SUMMARY OF CEE MOVES AND APPOINTMENTS

PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Appointed To	Firm	Country
7-Sep	Anna Cudna-Wagner	Dispute Resolution	Partner	CMS	Poland
5-Sep	Sergey Petrachkov	Dispute Resolution	Partner	Alrud	Russia
8-Sep	Jana Cernakova	Labor	Partner	Cechova & Partners	Slovakia

IN-HOUSE MOVES AND APPOINTMENTS

Date Covered	Name	Company/Firm	Moving From	Country
4-Sep	Zoltan Kozma	Microsoft (Legal Director)	DLA Piper	Hungary
6-Sep	Dmytro Donets	PwC Legal (Partner)	State Fiscal Service of Ukraine	Ukraine

OTHER APPOINTMENTS

Date Covered	Name	Firm	Appointed To	Country
4-Jul	Stefan Riegler	Baker McKenzie	Managing Partner	Austria
2-Mar	George Dimitrov	Dimitrov, Petrov & Co.	Supreme Bar Council	Bulgaria
13-Jul	Iliana Byanova	First Investment Bank	Chief Legal and Compliance Officer	Bulgaria
4-Jul	Karl Juhan Paadam	PwC Legal	Managing Partner	CEE
19-Jan	Tomas Rychly	Wolf Theiss	Supreme Administrative Court	Czech Republic
3-May	Mark Segall	CMS	Head of CEE Banking & Finance	Czech Republic
24-May	Zdenek Kucera	Kinstellar	Head of Dispute Resolution and TMT	Czech Republic
3-Mar	Triinu Hiob	Njord	Republic of Estonia, ICSID Panel of Arbitrators	Estonia
14-Mar	Peter Garancsi	BPV (Jadi Nemeth)	Office Leading Partner	Hungary
9-Aug	David Kozma	UNIQA	Head of Legal Affairs	Hungary
26-Jul	Aleksandr Masaliov	CEE Attorneys	Head of Labor Law	Lithuania
16-May	Tomasz Rogalski	Norton Rose Fulbright	Head of Energy and Infrastructure	Poland
12-Jun	Irina Dimitriu	Reff & Associates	Head of Real Estate	Romania
2-May	Alexandru Reff	Deloitte (Reff & Associates)	Country Managing Partner	Romania; Moldova
1-Mar	Filip Blagojevic	Bojanovic & Partners	Court of Arbitration of the Football Federation of Serbia	Serbia
18-Apr	Nikola Poznanovic	Jankovic Popovic Mitic	Head of Competition	Serbia
7-Jun	Peter Kubina	Dentons	Managing Partner	Slovakia
8-Aug	Radovan Pistek	HB Reavis	General Counsel and Member of the Senior Executive Management	Slovakia
15-Mar	Oleksandr Nagorny	Sayenko Kharenko	Deputy Chairman of the Antimonopoly Committee of Ukraine	Ukraine
15-Mar	Mykola Stetsenko	Avellum	Public Council at the Committee's Constituent	Ukraine
15-Mar	Vladimir Sayenko	Sayenko Kharenko	Public Council at the Committee's Constituent	Ukraine
19-May	Alla Kozachenko	DLA Piper	Head of Corporate and M&A	Ukraine
12-Jun	Victoria Fomenko	Integrites	Head of Tax & Customs	Ukraine

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THE BUZZ

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

CZECH REPUBLIC, AUGUST 28

Approaching Presidential and Parliamentary elections raise concerns

The Buzz in the Czech Republic at the moment, according to Barbora Rovenska, Partner at Rovenska Partners, involves "not really law but politics."

According to Rovenska, "we're facing both Parliamentary elections in October and Presidential elections in January, so the political climate is quite interesting and busy." And, she notes, many of the questions related to those elections "influence the legal environment as well." According to her, "the session of Parliament is about to end, so some laws which have been discussed for a long time, including potential amendments to the Labor Code, will not be finalized, and we'll have to start all over again when the new Parliament is established." In addition, she says, "of course there are political decisions influenced by the upcoming elections, such as the recent decision to increase the minimum salary, which will take effect in January of next year."

When asked whether the incoming government is expected to be pro-business or not, Rovenska says she isn't sure, because

"it's difficult to say what the results will be." According to Rovenska, Ano 2011, the party that's likely to win control of the government, is led by Czech businessman Andrej Babis, "who should encourage business, but ultimately it's not clear yet whether his focus will be on larger corporates or not." Either way, she notes, "I don't imagine it will be anti-business,

though of course you never know." Regardless, she says, "it's quite emotional, the political scene here at the moment, as the police has asked permission from Parliament to start criminal investigations of Babis."

Ultimately, she says, "elections always influence business, but at the moment I would not say it's effecting law firm business significantly." Indeed, Rovenska is upbeat: "The economic situation is growing, business is growing, and clients have new ideas which they come to us for help with." And signs are positive the rest of the year: "It's summer, so of course that influences things, but as far as I can see the clients are already returning from vacation and I'm already receiving new assignments."

And it's a familiar kind of business. Rovenska says "from my perspective what's very interesting is the GDPR, which of course is talked about across all of Europe." Rovenska notes that although she has read "lots of articles and seen many theoretical discussions," about the GDPR, she doesn't believe the significance of it has really hit home for many companies yet. She says, "I'm not sure how much the companies are really taking the necessary steps to prepare for the new regulations, so in my view this is something that will be really important in the second half of the year, and we will certainly be encouraging our clients to pay real attention to the matter."

Finally, Rovenska sighs, "we're still dealing with the new legislation – the Civil Code and Act on Corporations which came into effect back in 2014 – which of course is not that new anymore." She agrees that, slowly, it's becoming better understood and more useful, "but there are still many unresolved questions and many discussions about how certain provisions should be interpreted." As a result, she says, "even now it's something we have to deal with, and of course we still work with the old legislation, because it continues to govern some business relationships." In Rovenska's opinion, "I think this is the biggest challenge of the Czech legal environment in the past few years, and it remains so. We're still waiting for case law from the courts to develop, and still waiting for some decisions to be answered, but of course it takes time for cases to wind their way through the Czech court system."

TURKEY, AUGUST 30

Slowly, a return to normality

When asked what's happening in the Turkish legal market right now, Haluk Bilgic, the Managing Partner of the Bilgic Attorney Partnership, says, "in general, nothing particularly exciting."

The legal market in general appears pretty stable, Bilgic reports. "There's always gossip about some firms leaving Turkey, or expanding, or whatever," he says. "Generally they're not substantiated, but you know how gossip happens."

Haluk and his team recently became affiliated with Norton Rose Fulbright, following the firm's July merger with their former affiliated firm, Chadbourne & Parke. That merger provided additional momentum to Haluk's practice, he says, and it coincided with an uptick in law firm business in Turkey the past few months. As a result, he says, "we're busy – we have been for some time." He elaborates. "Like the rest of Turkey we faced challenges stemming from all the elections and controversy of the past couple of years. The challenging environment obviously had an effect on investment coming in, and clients, considering investments that were not urgent, tended to choose a 'wait and see" policy, which is unsurprising." This phenomenon "gave a pause to large-scale investments and the legal market," Bilgic says, "but since the Constitutional referendum in April, things have started to pick up, and we are busy with project finance, M&A and other corporate transactions." In addition, he says, "even though this affected Western investors to a larger extent, we had an influx of investment from other regions, primarily the Gulf Region and the Chinese."

And it's not as if Western investors have abandoned the market. "Western investors are more cautious in terms of making decisions about their investments," Bilgic reports, "but ultimately, regardless where they come from, if they see an opportunity they grab it. If there's a match, they want to get it – especially in certain industries which are little affected by the political news, such as Energy, Infrastructure, and PPPs in Healthcare." Bilgic says, "these industries, which are necessary to the running of the country, remain dynamic. The government is also doing its best to keep these industries and sectors vibrant and alive, with a view to mitigating the effects of the controversy."

Finally, Bilgic says there's no important legislation on the upcoming agenda. "Decree-laws are passed from time to time, and it's difficult to predict what those might entail. But otherwise, I don't expect anything significant soon."

BULGARIA, SEPTEMBER 4

Transformation of industry and data privacy drive law firm business

"Lawyers feel the pulse of the economy," says George Dimitrov, the Managing Partner of Bulgaria's Dimitrov, Petrov & Co. law firm, "so if lawyers have work that means things are going well in business." Accordingly, Dimitrov's assertion about his firm that, "we have lots of work and we're expanding our team," can only be a good sign for Bulgaria.

And indeed, according to Dimitrov, his firm is quite busy. "At present we have lots of work in several directions, including IT, privacy, and communications law, where we help companies deal with regulations like the GDPR and the Network In-

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formation Security Directive – so basically helping companies prepare and adapt to all the requirements set forth in Europe for personal data protection and cyber security." Dimitrov notes that "the EU has created new laws in this area that seriously impact businesses, and all of those businesses need to make the effort to re-engineer their internal processes."

Dimitrov is asked whether companies in Bulgaria are, at this point, sufficiently informed and aware of the upcoming May 2018 deadline for GDPR compliance. "It's true that the impact is quite underestimated," he says, "but it's also true that the biggest companies on the market, like the banks, the utilities, and the insurance companies are well aware of what's coming, and they've all started their preparations for it. These days I'd say even the smaller players are aware, more or less."

Dimitrov says that he's seeing increased M&A activity in the market as well, and "in the areas that we specialize in, we can see that companies in the pharmaceutical area and IT are facing lots of strong competition." In addition, Dimitrov notes the significant amount of legal work arising from the ongoing digitalization of industry. "A lot of companies see the need to become more digital to remain competitive," he says, "so we have an increased number of requests for our IT, privacy, and communications team from all kinds of players. To transform a business and make it more digital means you have to go paperless and introduce technologies to optimize processes. For instance, one of our clients, a bank, who by far relied heavily on branches – now has both the technological ability and the legal framework for onboarding clients without even seeing them, completely remotely. Thus it needs to evolve, and to change internal policies, from the way it onboards clients, to providing more services completely digitally, completely remotely, and to change the ways the services are provided: opening bank accounts, applying for credits, providing banking details, etc." As a result, Dimitrov says, there's a significant amount of compliance work and regulatory work related to the process, "which is about 90% legal work."

He also notes that clients aren't the only ones dealing with this process, as "law firms also need to evolve as well."

There's no major Bulgarian legislation coming down the pike anytime soon, Dimitrov reports, "beyond maybe the new concessions for the beaches, which will affect competition in the tourist sector." Dimitrov says his firm advised the government on the draft law that was published on August 29th for public discussion, "so this is something that is upcoming, because tourism is one of the key pillars of economic growth in the country – so it's very important." According to Dimitrov, "if all goes well, once the National Assembly starts its new season in September, this will probably be the first law they consider, so by end of September or by mid-October we should have something ready to go."

CROATIA, SEPTEMBER 6

Impending Agrokor collapse keeps lawyers busy

The main Buzz in Croatia, says Damir Topic, Senior Partner of Divjak, Topic & Bahtijarevic, remains the ballooning debt of Agrokor which resulted in the passage of a special law that saw the holding company placed under state administration in April of this year, and the ongoing ripple effect that crisis is having on the Croatian economy, which some predict could shrink by 10% or more as result.

"All the music stopped in April and the beginning of May," Topic says, noting that it's widely accepted by now that saving Agrokor is virtually impossible, "and that it will be a real collapse." Still, Topic says, "the Agrokor special protection law will buy us time, so that collapse won't be imminent, and it gives everyone time to prepare." He says that, at the very least, "all the companies working with them are aware they're going to have to take a big haircut."

In addition, it's become evident that a large number of Agrokor's subsidiaries – the holding company is made up of some 143 firms, employing almost 57,000 people – will have to be sold, creating significant work for M&A lawyers in the country. Add to that the Agrokor suppliers who are already in bankruptcy or pre-bankruptcy proceedings and looking for strategic investors, and it's a virtual boom for M&A and insol-

vency lawyers in the country. Topic says that "we are actually quite keen, preparing our troops for the end of this year and beginning of next year. Many of the subsidiaries are not so attractive, but some are among the best-performing Croatian companies, and we are already discussing how to be flexible and how to ensure we are available to assist on as many elements of this process as possible." Topic describes the possibility of working on "two or three parallel deals simultaneously" as "quite a challenge," but then he smiles: "but it's a nice headache to have."

Other than Agrokor, Topic says that Croatian business is doing surprisingly well, and he draws particular attention to M&A and real estate as "really vivid and growing," particularly in the tourism and shopping mall sale/resale sectors. "The only new construction is residential," Topic says, reporting that "the residential sector is revived and people are buying flats even before they're constructed." He's not too impressed, however, describing the phenomenon as "not realistic," as "the problem is that because of really really low interest rates in banks, people are investing their money in real property," which he describes as "more speculative than secure."

Still, in general, Topic says, "the economy is doing well." He reports that the country's GDP is growing and says that "unemployment is much lower than it was several years ago – though a part of this drop in unemployment is because a lot of young people have left Croatia for Germany or Ireland or other countries for work." Regardless, he says, "the mood has moved from negative to positive, and people with regards to the economy are more comfortable."

But Topic cautions against over-confidence: "It's great, but we have a very thin coalition in the government at the moment, and autumn is always the time of year where things get active on the political scene – and it's already gotten started in the summer with some stupid disagreements about removing plaques with old fascist signs or things like that." Thus, he says, "there's a real fear that the government could fall." Even that might not be too much of a catastrophe, he concedes: "We tend to do better in terms of GDP in times where there is no governing coalition and only a technical government, anyway, so I don't know what's better."

Finally, turning to the legal marketplace, Topic says he's been surprised to see a number of spin-offs appear in the market. "In contrast to other markets, where we hear about consolidation, here we have spin-offs going on. We just heard of two leading firms have lost high-profile partners." He says, "This is still surprising to me, because while the market is good, it's still not exactly El Dorado, so I honestly don't know how people think they can maintain the same level of work and incomes, but maybe they have no choice. It's strange for me that there are still so many split-offs going on."

GREECE, SEPTEMBER 13

Previous false starts breed skepticism about current recovery

Things seem to be picking up a bit in Greece, according to Drakopoulos Managing Partner Panagiotis Drakopoulos – but he knows better than to relax. "I'm much more hopeful than I was last year," he says, "but you have to adapt to the environment. You can only hear so many times that 'now things are changing.' We've heard this for three or four years, but things don't, in fact, change. The same thing happened in 2014 – things picked up a lot, and then the crisis hit again." He sighs. "We definitely have more work than last year, but I don't see a clear path to the light at the end of the tunnel, so it's hard to be too confident about how things will develop."

Still, for the moment at least, Drakopoulos reports a noticeable increase in work, driven in large part by business related to the General Data Protection Regulation. "We are doing a lot of GDPR work," Drakopoulos says, describing it as "the new thing." He says that his firm created a special team for GDPR compliance in all its four offices (in Greece, Romania, Albania, and Cyprus) at the beginning of the year, but that it in fact he and his colleagues "have been doing a lot of data protection work for the past 15 years or so, so it's something we know and don't have to invent. We know what it's all about."

The GDPR isn't the only cause for optimism. Drakopoulos says "the climate is slightly better, and there is interest in investments." He says, "we're working on some with foreign investors on potential deals – one is in real estate and the other is in agriculture – so, though no deals have been closed yet, things are moving better." In addition, he says, "real estate is active – it's starting to move. You can see that the prices that are picking up. But everyone is waiting to see what might happen. They are waiting for the economy to stabilize."

And Drakopoulos is skeptical that the government will be able to help much with that process. "They have the new incentives law for investment," he says, "but things are so volatile, that they start one thing, then they negate it with another thing. The problem we have is that we need stability and credibility. It's hard to say that the tax environment alone is enough."

Ultimately, Drakopoulos believes that, after so many years of disappointment, it's simply too soon to claim the dark days are over. "I'm reserved," he says. "We'll have to see. Things are very volatile. It depends on how the economy will evolve."

ROMANIA, SEPTEMBER 18

A smaller and colder pie ... grows warmer and bigger

"Romania is in a good shape right now," says Gabriel Zbarcea, Managing Partner at Tuca Zbarcea & Asociatii. "It's one of the fastest growing countries in the region. Estimated real GDP growth in 2016 was five percent, according to the IMF, which is huge, and it's 4.2% in 2017. The unemployment rate was 5.9% last year, well below the EU average. And we're a very good market for investors, because of relatively inexpensive labor and a relatively diversified industry."

Business for law firms in Romania is growing, Zbarcea says, but it's not exactly booming. "It depends on what you're comparing it to," he says. "It's not better than it was in 2009 and 2012, but it's definitely better than 2014 and 2015. It's better and it's increasing. A slow margin, but definitely increasing." He considers. "The legal market, it's like a pie. In the last four years it has become a smaller and colder pie. Smaller, because there are not so many projects anymore. And colder, because there are many players all competing with ridiculous fees in order to win a new client. But now, in terms of what's going on in the market, in terms of real estate, for instance, and in agriculture, it's very active, with several projects worth over EUR 100 million. Activity levels as regards the banking sector have also increased during these past few years, in terms of the sale of large portfolios of non-performing loans, the sale of certain branches of international banks operating here, and the restructuring of their operations locally. In addition, the GDPR is also creating work for lawyers, namely as regards helping companies comply with the new rules on data protection and privacy. So we're busy. Maybe the fees are not as high as they were eight or nine years ago. Back then the fees were higher, in terms of the hourly rates, but in terms of turnover we're doing better every year. And this year is showing even a minor plus over last year.

Zbarcea is asked whether it's safe to say that lawyers are satisfied and enthusiastic. "People are content," he says. "Lawyers are earning money. Maybe they were pessimistic four years ago, but now the market is growing. Everybody can see it. And there's room for all kinds of law firms. In the past two years everyone's been content."

As a result of the ruling party's majority in government, Zbarcea says, the political situation in the country is stable. "And in terms of legislation, we passed a new Civil Code, Criminal Code, and Criminal Procedure Code in 2016, which represented a dramatic change in the legislation, and an update of the old Napoleonic Codes from the 19th century." He's asked whether, with some time now allowing for perspective, those codes achieved their aims. "I'll be very honest," he says. "In terms of impact on the business environment they proved to be quite effective, but there still are issues to solve." In addition, he says, "the new Tax Code went into force on January 1, 2016." Ultimately, good or bad, Zbarcea says the key is allowing the system to adapt to and evolve around these new codes.

KOSOVO, SEPTEMBER 21

Problems with Kosovo judiciary necessitate reform

The primary Buzz in Kosovo at the moment, according to Kujtim Kervishi, Managing Partner at the Judex Law Firm in Pristina, relates to the increasing prospect of a new "vetting" of judges and prosecutors in the country.

According to Kervishi, this vetting – the country's second, he reports, with a previous process carried out from 2006 to 2011 – is necessary "due to the fact that the community, the institutions, and the legal community are not very happy with the lack of accountability of the judiciary in Kosovo in general." He reports participating in the first such process ten years ago, "and now I'm feeling that this is necessary again, because it's highly crucial for the future of Kosovo that the country

strengthens the judiciary, and in particular builds a judiciary that's accountable to the future process of Kosovo."

The Judex Law Firm Managing Partner says that "throughout the years the hiring of judges and prosecutors has involved a lot of people who, while not being formally or officially investigated, have been linked to a number of other serious corruption-related investigations." In his opinion, "Kosovo needs to clear the judges and prosecutors who are connected to particular groups, as well as evaluate their accountability to ensure they are both respected and professional." Indeed, he reports, a system review is necessary, as the country's attempts to "clear the net" of incompetent or corrupt officials is patently not working. "We see every day that most of the cases in public are losing," he says. "In around 80% of the cases involving high officials – cases related to corruption and abuse of public duty – the prosecutions have failed. In my mind there are only three possible explanations: (1) the prosecutors are making indictments without sufficient evidence; (2) or the court is unusually critical in deciding those cases on the merits … or (3) the courts are influenced by groups and the prosecutors are losing cases despite sufficient evidence." He says, "this is obvious."

Kervishi isn't naive about the results. "I'm not 100% sure that the vetting of judges and prosecutors will clean the entire net," he says, "but I strongly believe that it will increase accountability and it will clear some of the structures that do not deserve a mandate in the judiciary, as well as easing the Kosovo process towards the European Union, and simply serving the interests of justice."

And corruption isn't the only problem, of course. According to Kervishi. "In the Kosovo judiciary, sometimes you win a case which you did not even imagine you could win, and sometimes you lose a case that was effectively a slam dunk." He explains: "This is not because of the preparation of the parties involved. This is mostly because of the deciding force – a court that mostly lacks sufficient knowledge in the relevant area of law."

"And the reason you got to court is that you have no other way of settling the dispute," he sighs. "We still have the culture of sending cases to court, even though we know that there is a high degree of uncertainty, and there is also a great reason to pursue the case to the very end – which can last ten years." According to Kervishi, "in Pristina, for instance, a case filed today may come to trial after three years. And it can easily last one year in trial. Then in the court of appeals we'll wait another one to two years until the decision is issued. Thus," he says, "in most civil cases, until you have a final binding court decision from the court of appeals, you may wait from five to seven years. And justice delayed is justice denied."

Not just delayed, of course. The consequences of this delay can alter the balance of risks of taking the case to court in

the first place. "If we include the fees, and what we call the 'penalty interest' of 8%," he says, "imagine how much the risk can increase if you wait for seven years!"

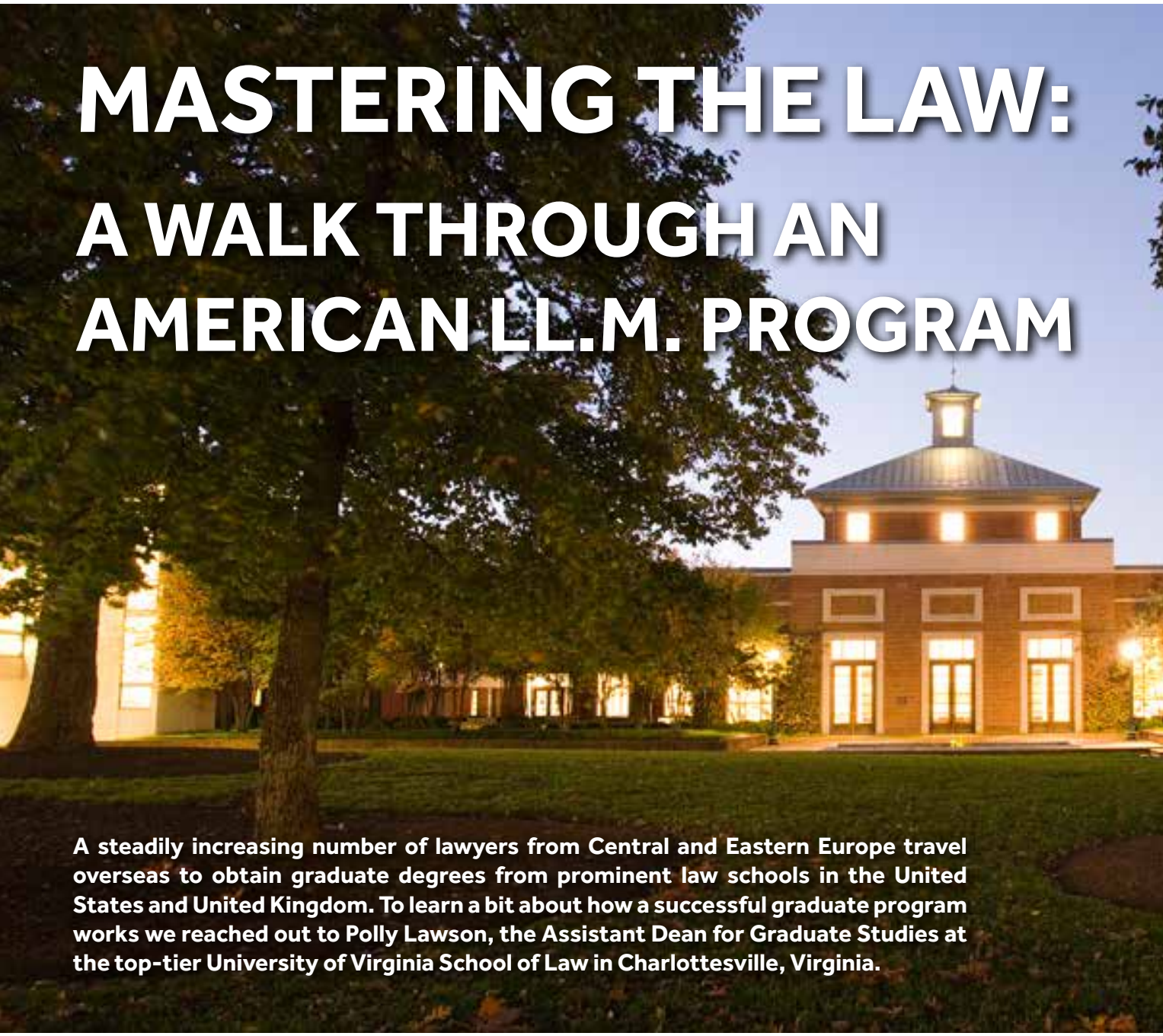
Kervishi points to another problem with Kosovar courts as well. "In addition, we are still lacking experience in the civil and administrative courts. As a result, the caseload is increasing, even though we have a notary system and a private bailiff system in place. And mediation as well as arbitration, both highly effective. Nonetheless, even with all these ADR mechanisms, the backlog is still increasing. Something is wrong with the system."

"This society and community has been living and working with these courts," Kervishi says, his frustration apparent. "But moving forward requires capacities which are capable of running and managing a court case quickly and with professionalism." No formal decision has been made yet, Kervishi reports, as the need – and the methodology – is still under discussion. Still, Kervishi expects the process to involve "an international body of experts [who] will examine the professional capacity of the judges and prosecutors as well as their wealth, because in Kosovo there is a process of declaration for wealth for all judges and prosecutions, which remains available to the public at the anti-corruption agency." And he says, politicians in the country are now speaking about it, so "it may happen very soon." Kervishi says, unsurprisingly, "I personally strongly support it."

He's asked why he thinks the second vetting, if it happens, will be more effective than the first. "A couple of details can be done better than the last time," he says. "Last time happened very fast, and the commission that time was starting from scratch. I believe this time we have a lot of know-how, and I believe whoever is in charge of this can look at examples in Albania and elsewhere in the region to build a vetting process that will give us the results which society desperately needs for a fast and professional judiciary."

MASTERING THE LAW:

A WALK THROUGH AN AMERICAN LL.M. PROGRAM



A steadily increasing number of lawyers from Central and Eastern Europe travel overseas to obtain graduate degrees from prominent law schools in the United States and United Kingdom. To learn a bit about how a successful graduate program works we reached out to Polly Lawson, the Assistant Dean for Graduate Studies at the top-tier University of Virginia School of Law in Charlottesville, Virginia.

CEELM: Can you describe the UVA LL.M. program for our readers?

P.L.: Our Graduate Studies program provides an American legal education to lawyers who have obtained their first law degree in their home countries. Virginia's LL.M. offers both a broad introduction to American law and legal theory and advanced training in specialized areas of the law relevant to the student's career in private practice, academia, or public service. By maintaining a small and highly selective program of about 50 students, we ensure a supportive atmosphere. Unlike most LL.M. programs, our candidates take classes alongside J.D. students, allowing participants to fully engage in the community. Because Virginia offers more than 250 courses each year in an array of topics, students in the program also have wide latitude to plan courses of study that are tailored to their individual interests and career objectives.

CEELM: In what other ways does the UVA program differ from those at other schools in the US?

P.L.: One of the biggest ways is the small class size and supportive, collegial environment. Virginia is justly famous for its collegial environment that bonds students and faculty, and student satisfaction

is consistently cited as among the highest in American law schools. Princeton Review rated UVA Law as No. 1 in quality of life and top five for best professors, classroom experience, and career prospects in 2016. LL.M. students not only get to know other LL.M. students from all over the world, but also the J.D. students and our outstanding faculty as well. The same faculty – leading scholars and acknowledged experts in all aspects of public and private law – teach LL.M. and J.D. students.

CEELM: What's the value of an LL.M. in general?

P.L.: There are many reasons to pursue an LL.M. degree in the U.S. First, you will be part of a global network of students, faculty, and alumni from all over the world. UVA Law has 20,000 alumni. You will strengthen your English skills, including legal terminology and writing style. You will build confidence and practice in presenting your ideas to others. Classroom discussions and debates are common in U.S. law schools, and it is no different here. LL.M. students can share their experiences with J.D. students, and bring a worldly perspective and experience to the classroom. Substantively, you will have the opportunity to focus on a particular area of the law, and improve your understanding of American law. You will face new rules, new frameworks and a new court system. Some alums have remarked to me that having this alternative lens and being able to analyze issues from a common-law perspective has allowed them to provide more creative solutions to their clients and given them opportunities to advance their careers. Graduates of our program are better able to understand complex global issues and will be more marketable to future employers. Going back to the first point about the global network, these are the colleagues that you are going to refer others to, who will refer business to you, and who will be your colleagues and friends for the rest of your professional and personal life. Each state has different criteria and procedures for admitting lawyers, but some students will take a bar exam and be licensed to practice in the U.S. following their LL.M.

CEELM: How do you help admitted students prepare for their lives at the law school?

P.L.: In the spring we create an admitted students Facebook page (or WeChat group for students who don't have access to Facebook). We connect incoming students and alumni early on. It is not uncommon for the outgoing students to sell cars, furniture, *etc.*, to the incoming group! From that, students will often create a What's App group to share information quickly and easily. I have visited alums that still maintain and use their What's App groups!

Our Student Records Office administers

a lottery process for course enrollment over the summer. We give 3Ls and LLMs priority in that process, so that they have the first chance to enroll in a particular course. If a student wants to take the NY bar after graduation, for example, we advise them of the required courses and then advise them about other courses that are suited to their academic and professional interests, or otherwise popular with JD students. I end up doing a lot of academic advising over the summer. I clear my calendar and have an hour block for each incoming student to Skype or conference. I have early morning and late night availability so that students can minimize interruption to their work day. Students sign up online and get a reminder just before the meeting time, and I don't have to worry about the time conversion because the app does it for me! Students can (and often do) make changes to their schedule after that, but this process really helps LLMs think through their course enrollment and schedules and enroll in the courses they want and/or need.

As to when they are required to be here in Charlottesville, we have a four-day mandatory orientation program prior to JD orientation and 1L classes beginning. We start with a catered breakfast Monday morning in Caplin Pavilion, so students can meet each other and start getting to know each other. We give tours of the law school and the law library, and sometimes Central Grounds (the law school is located on the northern part of campus, which we refer to as "North Grounds"). We try to balance administrative "how to" type information with substantive instruction with social opportunities. We invite all of the student services offices for introductions, so students can start thinking about how to pay their bill or how to find a job during OPT or how to connect to the secure wifi at the law school. This year, we added lectures about common law and case study and a lecture on the American legal system and the structure of our court systems. We invited professors to lunch with the LL.M. students, and the dean hosted the students for breakfast. We have a welcome picnic for students and their families, and a lot of faculty and staff and their families joined. One of the unique features of our orientation week is that Professor Verdier, Chair of the Graduate Program, meets with all students individually to discuss their course plans for the year, and answer any questions they may have about classes. This all takes place prior to the add/drop period, so students can make any necessary adjustments to their schedules.

CEELM: What connection does UVA's LL.M. program have to Central and Eastern Europe?

P.L.: We are excited about attracting more students from Central and Eastern Europe, and increasing the recognition of the University of Virginia and the Law School abroad. Each of our admitted students has compiled an exceptional academic record in earning the first degree in law and, more importantly, has demonstrated compelling reasons to pursue graduate legal studies at the University of Virginia. We provide these students with a firm grounding in U.S. legal principles and methods as applied in international settings with the ultimate goal of propagating the rule of law in the students' home countries. Many of our graduates have gone on to achieve great distinction in government, academics, and private practice in their home countries.

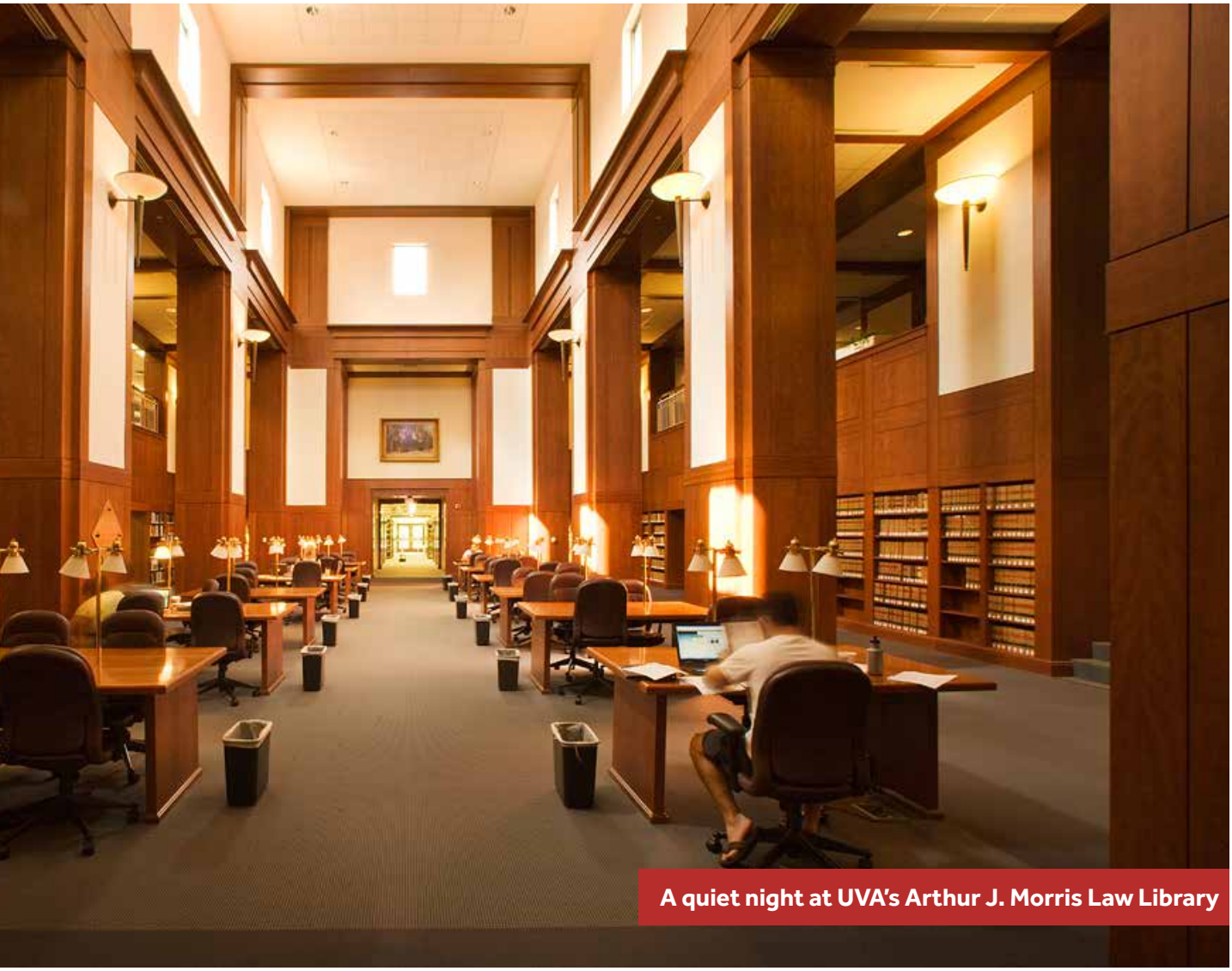
We are especially interested in students whose countries' economies and political systems are in transition. We believe that graduates from Virginia and other leading American law schools will be uniquely positioned to foster closer trade and political ties between the United States and these emerging markets.

CEELM: Do you enjoy working in the LL.M. program, personally? Why is that?

P.L.: I absolutely love it! The students are inspiring, and I love getting to know them and learn more about their cultures and experiences. I think of how brave they must be to come to another country, considering that most of them are not native English speakers, and that some

bring their families for a year (or more). I remember how challenging law school was for me, as an American citizen growing up in the U.S., and then how challenging it must be for them – to face a totally different legal system and structure, and yet how grateful I am that they are willing to do so. Our students and faculty learn so much from them and I really enjoy working with them. They get to know the wonderful city of Charlottesville and take advantage of all that our beautiful area offers, and have a wonderful time doing so.

CEELM: When was your first visit to CEE, and where was it? What in particular do you remember from that visit?



A quiet night at UVA's Arthur J. Morris Law Library

P.L.: My first visit was to Zagreb, last year as a matter of fact. It is a beautiful city. Unfortunately, I was not there long enough to explore much more than the city market and the Museum of Broken Relationships, which was both compelling and poignant. I look forward to returning soon to Central and Eastern Europe and exploring more countries – we have some terrific alumni that I can't wait to visit!

CEELM: Do you have any trips to the region scheduled for 2017-2018 which would allow interested lawyers to speak to you in person?

P.L.: I will be in Prague and Zagreb this fall in November as part of the EducationUSA LLM European Fair. The event in Prague will be held on Saturday, November 11, from 3:00 – 5:00 p.m. local time. In Zagreb, the EducationUSA LLM Fair will take place on Monday, November 13 at the Sheraton Hotel, from 6:00 p.m. to 8:00 p.m. The EducationUSA LLM European Fair in Vienna is on Wednesday, November 15 from 4-6 p.m. at the Amerika Haus. I hope to return to the area in the spring of 2018, and hopefully visit a few more countries at that time.

CEELM: Finally, what one thing about Charlottesville stands out in your mind as something the LL.M.'s consistently enjoy?

P.L.: Students take full advantage of the beauty of Charlottesville and Albemarle County. Bodo's Bagels is a local favorite, along with shops and restaurants on the Corner and the Downtown pedestrian mall. Students enjoy outdoor activities such as hiking in the Blue Ridge mountains, having a picnic in Shenandoah National Park, running or biking around Grounds, visiting wineries, attending Foxfield (the local steeplechase race), visiting the historic homes of Monticello or Montpelier, kayaking on the reservoir, and skiing at Wintergreen or Masanutten in the winter. It really depends on what the students enjoy doing in their free time, but there is no shortage of things to do outside of class!

David Stuckey

THE CORNER OFFICE: YOUR FAVORITE QUESTION

In The Corner Office we invite Managing Partners at law firms across the region to share information about their unique roles. The question this time around: What is your favorite question when interviewing a job applicant, and why?

Erwin Hanslik, Managing Partner, Taylor Wessing Prague

When interviewing a job applicant, I don't try to find out whether the person is a good lawyer. An hour or so is definitely not long enough for such a task. Anyway, they will have a probationary period of three months, which should be fine. But what I always do try to determine is whether the respective person would fit into our team. I therefore avoid speaking about legal issues. I don't want to hear that it has been the applicant's dream since childhood to work for Taylor Wessing (besides the fact that Taylor Wessing didn't exist at the time of the applicant's childhood) or to fight for justice and peace on earth. This is boring. I love to talk about things that very often have no direct link to work. I therefore always ask about their hobbies.

Personally, I'm always happy if the applicant likes sports, in particular running (because I run myself and try to motivate the whole office to do so). But any other hobby is fine as well. And while talking about such things, you really get a chance to get to know this person and to find out whether she or he would fit into the team. And simply that – to keep a good atmosphere in the team – is in my opinion one of the most important tasks for us managing partners.

Mykola Stetsenko, Managing Partner, Avellum

My favorite question to a lawyer at a job interview is about due diligence. I ask the applicant to imagine that he is advising a potential purchaser of a factory in Ukraine, performing legal due diligence. I then ask him to describe what legal areas (sides of business) the applicant would cover in his due diligence report. While this question seems simple, many fail to name such simple things as real estate or contracts. For me this question is important, because it shows how the applicant thinks, his background knowledge, general understanding of business, and how law is relevant to every side of any business.

Uros Ilic, Managing Partner, ODI Law Firm

Our recruiting process has several steps, like interviews and short tasks, but in the end what matters most is the candidates' work experience and the sense of them fitting into the team. Skills may be developed and improved, but how one fits into a team does not. Therefore, as the Managing Partner I also have to focus on the psychological aspects of recruitment. Hence,

every interview is different and the questions depend on what level of position we are recruiting for. I personally prefer casual interviews since they tend to take away some pressure from the candidates. I always ask them to tell me about themselves and then move to the business-related questions like what they know about ODI, and what would the (three) most important attributes they would bring to ODI be. For me it is imperative to see that the candidates did not just apply for a job, but rather for the right job. Answers to such questions usually bring me the right co-workers."

David Plch, Partner, White & Case Prague

All right, you asked for one question – but my favorite question is a "two-in-one." For indeed, I have made it my habit to always ask these two questions in tandem: "*What made you pick the law as the field of your graduate education?*" This tells me so much about their motivation. The variety of possible answers is greater than one would think! Some are in it for the prestige or for the earning potential, others want to help improve the legal environment from the inside, some have a thirst for knowledge, yet others look for creative and intellectual challenge. But then, I also want to ask: "*What were the contenders? What other fields of study did you consider before you settled on the law?* Again, this straightforward question can yield lots of information about what makes the candidate tick, what drives and attracts him or her. Brilliant lawyers may be equally brilliant, but they are otherwise a diverse crowd – and someone who would have become a business major has a different personality from a would-be historian, or a computer scientist. I want to work with strong personalities, and make sure to create the conditions for them to shine.

Willibald Plesser, Senior Partner, Freshfields Bruckhaus Deringer, Austria

My one favorite question at the beginning of a job interview is: *"Why are you sitting here?"* There are a lot of different ways to answer that question and every answer tells something about the candidate. Does he or she follow a pragmatic approach by just saying "because I was invited," or is the answer more creative by revealing something about the specific motivation the candidate has about working at Freshfields? At the first moment some people are confused about this rather unusual question. Here as well, their reaction tells a lot about their behavior in unexpected situations which is important for their work as a lawyer always having to deal with different issues, clients and colleagues.

Gabriella Ormai, Managing Partner, CMS Budapest

One of my favorite question is definitely, *"Do you play football?"*. Of course, we also hire people without any football skills, but CMS Budapest has an excellent reputation within CMS football circles (once in a year CMS offices get together for a football championship – this year, in Amsterdam, 800 players took part, representing 32 different CMS offices), and we are always looking forward to people who are not only outstanding lawyers but who can also help us maintain our leading position in the CMS League.

Serhan Kocakli, Partner, Kolcuoglu Demirkan Kocakli

During our job interviews we refrain from asking the candidate cliché questions. We always tell them we are discussing a potential collaboration with a new colleague. This deliberately created "friendly interview" scheme always provides sincere answers about the candidate's personality, which we need the most as the rest of the facts (schools, experience, level of English) can be weighed easily. My personal favorite question is: *"Why did you leave that other job?"* It tells a lot about the candidate, even if his/her answer is "I do not want to talk about it," "unsatisfactory compensation and benefits," "working environment," "my senior lawyer," and so on.

Nikola Jankovic, Senior Partner, JPM | Jankovic Popovic Mitic

"Could you please tell me about one occasion where you had to you use your knowledge and skills to analyze and solve a difficult situation?" I think this question gives a job applicant a solid opportunity to demonstrate personal and professional qualities, which are both equally important in the legal environment. The open-end-

ed question gives a job applicant the opportunity to shine. A good response to the question would certainly not be a rigid, cliché answer. Rather, it would be an honest explanation how she/he evaluated a situation, acted upon it, and ultimately came to resolve it. Personal integrity, honesty, situational awareness, rational reasoning, and problem-solving skills are all much valued and sought-after qualities in a potential colleague who is aspiring to join us.

Karl Paadam, Managing Partner, PwC Legal Central & Eastern Europe

If I had to choose one single favorite question - I like to ask the candidates about the role models in their life, someone they admire or look up to, and explain the reasons why. Generally, the attributes they describe as admirable give a good hint about their own values and attitudes, providing a good introduction to further exploration of their own successes, lessons, and aspirations. Also, I often ask the candidate to explain to me in a very limited time (e.g. less than 2 minutes) something they are passionate about and know really well. This gives me an understanding about their ability to convey their message in a convincing and comprehensible way. I also believe that being passionate about something in life is a trait that predicts success in other areas as well.

Vefa Resat Moral, Managing Partner, Moral Law Office

We all know that dealing with people is actually harder than dealing with the business. Human resources – especially recruitment – is one of toughest duties of a managing partner, since you have to carefully measure a personality within a short amount of time. In our people-oriented management system Moral's priority expectation from the candidate is to comply with the family environment in the firm as a perfect team member. Then the academic background and professional experiences follow. In this regard, we ask the candidates where they see themselves in the next five or ten years to measure their passion towards Moral. We are aware that this question is not a polygraph and sometimes candidates cannot be sincere due to the pressure they feel to be accepted. However, as experienced professionals we can catch some tips hidden in the sentences as to whether we can invest long term – or at least mid-term – on the candidate, or if the candidate has a future or not at Moral.

Miklos Orban, Partner, Orban & Perlaki Law Firm

"What differentiates you from the masses?" (In Hungarian it sounds a bit different, it has a special flavor– *"Hogyan illeszkedsz ki a tomegbol?"* – but I haven't found the right English translation yet). The reason: brains are like muscles – you can hire them by the hour. The only thing that is not for sale is character. Good law firms, like all good companies, are built on and by individuals with character. We live in a mass society which preaches that every individual is unique, but what you can see is just the opposite: people follow trends, fashionable lifestyles, and ideas like orders. It is always refreshing to meet somebody with a character. The rest can be learned and taught.

Kinga Hetenyi, Managing Partner, Schoenherr Budapest

One of my favorite questions is about a professional issue that the applicant solved in a specifically creative manner. This is the question to which very few candidates can give me a good answer. Some of them are totally surprised by the question and have a black-out and just start to stutter, some of them ask back what kind of issues I would like to hear about, in order to win some time. To be honest, this is a tough question if you are not prepared for it, and also if your general attitude is to solve problems in a creative way. Once you get an answer, it can be really funny and creative. One of the candidates, for example, told me how he manages to pay parking fines in a way which makes them tax deductible.

Andras Szecskay, Chief Partner, Szecskay Law Firm

Partner Judit Budai would ask the following two questions: (1) *"Would you and can you climb rocks?"* and (2) *"Can you make a sunny side up?"* My question is much less sophisticated: *"What have you read in the past 12 months and who are your favorite writers?"*

THE GOOD FIGHT:

A CONSIDERATION OF HUNGARIAN PRO BONO CULTURE

Pro bono is a Latin phrase meaning "for the public good," and, in the lawyering context, it refers to legal services provided free of charge, generally to indigent clients or charities or other public interest institutions unable to afford standard legal fees. The practice, which in its current form was developed first in Western legal markets, has seen a significant increase in recent years in CEE as well. Hungary is among the countries leading the way.

WHY?

Lawyers do *pro bono* work for a variety of reasons, including out of a sense of civic responsibility, the opportunity to gain experience, and even, sometimes, for social recognition.

Kinga Zempleni

Hungarian sole practitioner Kinga Zempleni, for one, says she puts in a minimum of ten hours of *pro bono* work each month. "In my opinion it is a moral duty to help those who are in need," she says. "And for this reason I started doing *pro bono*." Zempleni, who offers her *pro bono* assistance out of her eponymous Budapest law office, says that, "when I was younger I worked on several voluntary projects for disabled people, but currently I think that I can offer the most if I provide NGOs or people free legal advice." Indeed, the role of non-governmental organizations in a civil society and their need for assistance and support from the legal community is critical to her engagement. "NGOs have a very important role in society," she says. "They help children, disabled, refugees, women, orphans, and so on. If we had no NGOs our lives would be poorer, we would have less values. For this reason, I think it is important to help them in any way possible." As a result, she says, "each month I put in ten hours at least in *pro bono* work."

Of course, for lawyers at bigger firms, *pro bono* work provides more than a social benefit: it gives younger lawyers exposure to areas beyond their normal professional focus and a level of responsibility and


Ozgur Kahale

practical experience they are often denied in the early years of their career with paying clients. Thus, because the firms derive both social capital and a useful training mechanism for their younger associates, while *pro bono* work at the larger international law firms is generally done on a voluntary basis, lawyers usually get credit towards their billable targets for time put in.

And, voluntary or not, in many firms the practice is actively promoted. DLA Piper, for instance, "encourages lawyers to put in at least 35 hours a year," says Ozgur Kahale, the firm's Pro Bono Director, Europe, and she reports that the firm's Budapest office spent a total of 739 hours on *pro bono* in 2016.

According to Judit Kertesz, Baker McKenzie Professional and Business Development Manager, her firm "emphasizes *pro bono* to give incentive to lawyers to help individuals in need of legal counsel, and organizations that share the same values as Baker McKenzie and the society at large." And the younger lawyers are active participants, Kertesz explains. "As regards *pro bono* clients, the office management is eager to consider anyone's ideas. For example, our most recent client, Habitat, was suggested by a junior associate."

Law firms and lawyers can also find *pro bono* cases from entities dedicated to that function, such as PILnet's Pro Bono Clearing House in Budapest, which sends registering law firms a list of available *pro bono* matters from NGOs that have signed up with it. According to Tamas Barabas, Senior Legal Officer in PILnet's Budapest office, lawyers from law firms generally begin by picking matters within their traditional areas of expertise, such as Employment Law, Tax, Compliance, the nature of which are largely administrative and advisory. But, Barabas reports, "law firms have shown they are willing to go beyond their comfort zones." He cites as an example the collaboration between PILnet and NGOs dealing with cases of child custody and orphans with little access to justice, for which PILnet recruited Oppenheim, Dentons, and DLA Piper, among others, which in turn put forward a small group of lawyers to be trained as child rights experts by the NGOs. According to Barabas, this group of trained experts now regularly handles cases of child rights submitted by NGO's.


Judit Kertesz

Finally, although few will admit to pursuing it as a primary goal, lawyers, like everyone else, enjoy being recognized for work well done. Thus, in collaboration with PILnet, the Hungarian Bar Association – which also encourages *pro bono* involvement from its lawyers through a variety of publications and other methods – organizes the annual Hungarian Pro Bono Awards to recognize the individual lawyers and law firms that have strengthened civil society through their provision of meritorious *pro bono* services. In 2016, Kinga Zempleni won the Award for Best Hungarian Pro Bono Lawyer, while Baker McKenzie was named the Hungarian Pro Bono Law Firm of the Year.

WHO?

According to Lorna Kralik, the Senior Legal Officer heading PILnet's Global Pro Bono Clearing House in Budapest, "law firms have been leaders in this area." And, adds her colleague Tamas Barabas, within the law firm world, "international law firms are much more involved than local law firms." In addition, Barabas reports, lawyers at large and mid-sized law firms tend to do more *pro bono* work – perhaps because they have greater resources at hand – than sole practitioners.


Daniel Szabo

And indeed, it appears many of the sole practitioners who now excel at *pro bono* work seem to have been exposed to the practice during their time in larger firms. Zempleni, for instance, says "I was introduced to *pro bono* in 2008, when I worked for Reczicza White & Case (currently Reczicza Dentons Europe). My previous firm already had a connection with PILnet, and I started through their network to cooperate with NGOs."

And regardless of the source of the initial exposure to *pro bono* work, it would be a mistake to think it is all done by lawyers in private practice; some in-house lawyers are passionate about the practice as well. One such lawyer is Daniel Szabo, Country Legal Counsel for Hungary at Hewlett Packard Enterprise. Szabo, who explains that "HP, being a U.S company, has a strong *pro bono* culture," works in partnership with a lawyer from the Budapest office of Weil Gotshal & Manges to

avoid risks caused by his ineligibility for insurance.

Still, as Kralik says, it is the larger and international law firms that have traditionally led the way. Unfortunately, that often means that the majority of law firm *pro bono* work is done in the capitals of CEE, where the international and larger domestic firms have their offices. And even those firms outside of the largest cities who do want to do *pro bono* work face challenges their counterparts in the capitals do not. Kinga Zempleni agrees that "it is hard for lawyers outside Budapest to get involved in *pro bono*," because only lawyers who have the luxury of time and money can fully engage in these services. In her words, being able to do *pro bono* work "is a privilege."

WHERE?

By this point, firms across all of CEE are committing time and resources towards *pro bono* projects. According to Barabas, Hungary played a critical role in bringing a *pro bono* culture to CEE. "Hungary started it at first in 2005, so by now the gospel of *pro bono* culture and practice has spread quite well in the legal community," and he says the country "has an advantage in providing corporate legal support for NGOs that include labor and employment, tax law, and contractual audits."

Still, he emphasizes that many other countries in the region have since caught up. "Even though Hungary had that ice-breaking role," he says, "Poland's law firms are the real champions in the region in doing *pro bono*. Polish commercial law firms are bravely litigating human rights cases on a *pro bono* basis, which is not that common in other countries in CEE." In addition, he says, the Czech *pro bono* system is also quite established. "Slovakia is outstanding in the region on corporate CSR activities and is a major player," he says, "and Romania is unique since Cluj has a non-capital city *pro bono* center coordinated by ACTEDO, a local equality rights NGO, and Bucharest FDSC is working on to facilitate *pro bono* projects among firms and NGOs."

Still, Hungary's role as the tip of the spear for *pro bono* work in CEE remains significant. According to Kralik, "there is hope for *pro bono* culture in CEE, if places like Budapest remain a leader."

David Stuckey

Baker McKenzie Budapest Managing Partner Zoltan Hegymegi-Barakonyi smiles as his team prepares food with the Hungarian Food Bank Association for distribution to a Hungarian orphanage.

INSIDE INSIGHT:

INTERVIEW WITH PETER PAROCZI OF HARMAN INTERNATIONAL

Hungarian lawyer Peter Paroczi is the Director Counsel at Harman International, the US-based consumer electronics company. He joined Harman in Budapest earlier this year, after spending four years in private practice and then another seven in-house, first with Samsung Electronics, then at E.On. He agreed to answer some of our questions about his career.

CEELM: To start, run our readers through your career leading up to your current role.

P.P.: I started my carrier at the Deri & Lovrecz Law Firm, which at that point in time was an associated law firm of KPMG and provided "all around" legal services to international companies. After spending three years there, I decided to move on and take a leap to a larger and truly global law firm: Baker & McKenzie. As a member of the firm's Corporate/M&A practice group, I was engaged in a large number of M&A transactions. After Baker & McKenzie, I joined Samsung Electronics in 2010, where I was the General Counsel, Chief Compliance & Government Relations Officer of the company for almost six years. During my time at Samsung I was responsible for a broad variety of legal issues, including matters related to commercial, labor, and tax law, as well as state aid and greenfield investments. Following a short period at E.ON Hungary, I joined Harman International as the Director Counsel for the company, where I advise the company on commercial matters at a global level. I also oversee the operation of Harman's Hungarian entities, including its manufacturing sites, which have more than 3000 employees.

CEELM: You worked in private practice for a little over four years before joining the in-house world. In your view, how do the two environments differ?

P.P.: Being an in-house counsel (for global companies) requires different or additional skills, since you are a member of a larger, often global organization and approaching day-to-day issues from different angles (taxation, internal budgeting, organizational aspects, etc.) is critical. In-house counsels are usually part of management, and an in-depth understanding of the business is extremely important. Management skills are crucial if you are leading a department. Being able to handle stress and carry a heavy workload goes without saying, I think.

CEELM: And what skill sets do you believe are critical for a lawyer to master in order to make the transition from private practice to in-house as smooth as possible?

P.P.: Having a business mindset and management skills are the most important things. Without these, you will not be able to function within your organization adequately. Handling fast decision making is also critical. Understanding and properly dealing with different types of corporate and organizational cultures are also amongst the core value of doing business nowadays.

CEELM: What was the one project (either with your current or previous companies) that you are proudest of?

P.P.: Providing legal advice to the commercial operation of Harman International with a focus on procurement matters (Harman International owns a wide variety of global brands, such as JBL, AKG, Harman/Kardon, Infinity, Bang & Olufsen, and Mark & Levinson, among others.). From the past, I would mention a strategic investment of Samsung Hungary, where I advised the company relative to a manufacturing facility investment.

CEELM: What does a regular day in the office look like for you now? What recurring tasks take up the most of your time?

P.P.: I am responsible for the global operation, so I would say that the first part of the day usually goes for those matters coming from China and Japan, while the afternoon hours are reserved for matters coming from Harman's EU and the US entities. Since we are a US-based company, most of the conference calls are done in the afternoon or in the evening. Drafting and negotiating are the most recurrent tasks, I would say. Daily meetings take most of my time.

CEELM: Cost-cutting has been at the top of the agenda for in-house counsel for quite a few years now. What solutions, if any, did you implement that worked best for your organization?

P.P.: Cutting costs is very critical. You are not doing your job properly if you are not cutting costs. This is why most international companies hire professionals from top tier law firms with a strong business mindset (because they understand how big law firms operate and are familiar with their high work ethics). Delivering fast and clear advice is also crucial. You cannot walk in to a board meeting with lengthy, overcomplicated reports. Internal trainings and simplified template contracts are good tools to speed up the decision making and reduce the risks of the business.

CEELM: When you need to outsource legal work, what are the main criteria you consider when picking which firm/lawyer you will be working with?

P.P: Professional competence, costs, speed, and flexibility.

CEELM: On the lighter side, what was the best team-building exercise you ever participated in?

P.P.: Training sessions with the world boxing champion, Erdei "Madar" Zsolt. Most of his insights on success, failure, and competition can be implemented in business. That was a remarkable one.

Radu Cotarcea

MARKET SPOTLIGHT: UKRAINE

In this section:

GUEST EDITORIAL: THE BURDEN OF A LAWYER

For many in this world the legal profession is nothing but an appealing vocation. One has to work hard for several years to get a law degree/admission only then to obtain a lavish lifestyle and earn big bucks.

That is a simplistic yet lucrative picture many young people aspiring to become lawyers have in their minds, sometimes even through their initiation years. Many more outside the profession keep that picture in their heads throughout their lives.

Another view of lawyers and their profession can be summarized as the fatality of the "needless markup." Many business people tend to think: "We are the ones who push the business wheels forward. We know our business and trust each other. We hammer a deal out, we structure it, we earn profit for ourselves, create working places for others, and grow the public wealth. And then – for some odd reason – the lawyers step in only to complicate the things and to earn those 'big bucks,' at our expense."

Neither of these views can be farther from the truth!

Very few readers will dispute the preposition that the civilized world lives these days under rule-of-law principles – and in a rule of law country people can't simply do whatever they want! People are supposed to follow applicable rules and procedures and align their wishes accordingly. That principle applies both to a street beggar and to a President, and to everybody in-between. The idea of compliance with established legal rules is key.

Indeed, that is a very important feature of a modern society. Governments have an entire system of law-enforcement bodies to maintain it, and indeed, an entire branch of government – the judiciary – is focused entirely on that feature, as are all sorts of executive branch agencies. All of them, taken together, with all their offices, are designed to perform one very important function: to maintain the rule of law in society. And yet the history of modern civilization tells us that all of this governmental ammunition to ensure respect for the rule of law is not sufficient.

Indeed, it is impossible for the government to ensure that each and every activity of each member of society is compliant with the law. It is especially difficult for the government fully to oversee the compliance of its own activities. It follows that a rule-of-law society needs to have other, non-governmental means, to support its foundations – including those functions related to the public control of the government.

Lawyers fill that gap.

Indeed; think for a while of the most mundane chore of a lawyer – drafting a dull trivial commercial contract for a client. Does it mean a lawyer puts a "needless markup" on top of the transaction costs by pocketing their part? One may certainly be left with that point of view. Yet it would be inherently wrong.

By setting his/her hands onto the deal a lawyer puts it within the framework of the law. A lawyer makes sure that the contract – as drafted – follows the respective modalities and is generally compliant with the requirements of legislation and jurisprudence in the relevant jurisdiction(s).

The same is even more true for lawyers engaged in dispute resolution matters – whether commercial, civil, administrative, criminal, or constitutional. Offering legal protection to a client in a courtroom or under an alternative dispute resolution mechanism is simply an indispensable part of the rule of law system.

The social role of lawyers becomes crystal clear when they oppose the government and its institutions by protecting the legitimate interests of their clients. As noted, it is difficult for the government to exercise control over its own compliance with the rule of law. Independent lawyers acting *against* the government actually do the job *for* it. They make sure that the government does not derail and keeps standing within the parameters of legitimate behavior.

Let us assume for a moment that all of a sudden lawyers abandoned their profession. In the not-too-distant future, civil society would either degrade to criminal anarchy or to a lawless dictatorship, or would simply vanish.

For all these reasons we ought to be proud of our social role! To walk one needs to have at least two legs. One is unable to walk with the rule of law concept on only the leg of governmental institutions/instruments. Lawyers, as an aggregation of independent professionals, provide the second leg for society. That permits the rule of law concept to firmly stand on the ground – and in most cases even to walk in the right direction.

I do not think I have exaggerated by even a slightest bit!

Olexander Martinenko, Partner,
CMS Cameron McKenna Nabarro Olswang, Kyiv Office

UKRAINIAN ROUND TABLE: JUDICIAL REFORM IN UKRAINE

On August 17, a gathering of Dispute Resolution experts from many of the leading domestic and international law firms in Ukraine gathered in Baker McKenzie's Kyiv offices for a Round Table conversation.

The discussion revolved around the controversial and long-awaited reform to Ukraine's judiciary and the overall quality and competence of the country's courts.

Photo: Visiting session of the Cabinet of Ukraine in the Supreme Court in Kiev, October 13, 2014. Chairman of the Supreme Court of Ukraine Yaroslav Romaniuk. (photo credit: igorgolovniov)

CEELM: What's happening right now? I know that a new Ukrainian Supreme Court is being selected. What's the status of that process right now?

DLA Piper: It's been a long process of competition for positions on the Supreme Court. 120 candidates were approved for further appointment. Now we know their names, and the following steps would be for their approval by the President of Ukraine. That's a pretty formal step.

CEELM: How many will be approved?

DLA Piper: 120. But generally, the plan is to extend this to 200, if I'm not mistaken.

CEELM: For those of us from America, where the Supreme Court has nine members, how does a Supreme Court of 200 work?

DLA Piper: One might say that nine is not enough. (laughter). For Ukraine, one might say 120 is not enough! Filing to protect one's rights in court is a pretty low-cost exercise in Ukraine, and it is common practice to go through the process until the very end, and that basically means that almost every case ends up at the Supreme Court.

CEELM: So the Supreme Court here is the final stage of appellate review. Are there different panels, or are they selected individually for each case? How does that work?

DLA Piper: There are four panels – an Administrative panel, a Civil panel, a Criminal panel, and a Commercial panel – with specializations that reflect the current division by specialization of the lower courts. Thus, when the selection process took place, it was made with respect to those specific specializations.

Sayenko Kharenko: Basically, for the sake of clarity, the process of selecting judges was headed by the High Qualification Commission of Judges – they conducted different challenges, tasks, and interviews, and so on. The list of 120 winning candidates was referred to the High Council of Justice, which has the right to veto candidates it concludes are unqualified. However, no hearings have been scheduled yet. The final list will ultimately be transferred to the President.

Baker McKenzie (Host):
Viacheslav Yakymchuk, Partner, Head of Corporate/M&A and Private Equity in Kyiv

Aequo:
Pavlo Byelousov, Counsel, Head of International Arbitration

Avellum:
Serhii Uvarov, Senior Associate

Asters:
Dmytro Shemelin, Counsel

CEELM: Is there a deadline for that?

Sayenko Kharenko: No. There was a deadline for this last March, but then it was moved. The formal establishment of the new Supreme Court is linked to several other judicial developments, including the adoption by the Parliament of new procedural codes, which has not yet happened. This is where political considerations become involved as well, of course. As to the structure, the new Supreme Court is supposed to be a two-chamber court: The lower chamber will consist of four separate panels (or "courts") – those that Olga referenced earlier – and there will also be a Grand Chamber, which will contain at least five judges from each of the lower chamber's four panels.

CEELM: And is the Grand Chamber another level of review?

Sayenko Kharenko: Yes. It is about double cassation. The second level of cassation.

Avellum: Basically, what the previous Supreme Court did was not review cases on their substance, but rather check whether the law was applied consistently. This is what the Grand Chamber of the new Supreme Court will be doing.

CEELM: What was the system before this revision? Was it also 200 Supreme Court judges, and are they being replaced now, or is this an entirely new system?

Redcliffe: It was different. There were three higher courts: The Civil and Criminal Court, the Commercial Court, and the Administrative Court. And then of course the Supreme Court. Because the historical division of branches within the judiciary was that there were general courts which heard civil and criminal matters between individuals, basically, and commercial matters between legal entities, and then the administrative branch was added in 2005 which heard disputes against the state. They were all headed by their own cassation courts, and then the Supreme Court was the top, which reviewed the decisions of the cassation courts.

CEELM: And how big was that Supreme Court?

Redcliffe: It was 60 judges, I think, right?

Sayenko Kharenko: I think in 2009 the total was as high as 120 judges.

Redcliffe: But then they changed.

Sayenko Kharenko: At some point 48 remained, with many others transferred to the High Civil and Criminal Court.

CEELM: You said there's a double cassation. How many judges will be on that final level?

Sayenko Kharenko: 20 judges, plus the Head of the Court – so 21.

CEELM: When do you think this process will be finished?

Sayenko Kharenko: Most likely by the end of this year.

Aequo: As Serhiy [from Sayenko Kharenko] mentioned, it is actually linked to the new procedural codes, so we hope or expect that these codes will finally be adopted by the Parliament during the fall.

DLA Piper: There was a slight, slight chance that they would be adopted this summer.

Aequo: There was almost no chance, with the desires of our deputies, our parliamentarians, to go on vacation – there was almost no chance. But in autumn we expect that these codes will be finally adopted.

CEELM: Is this reform being greeted both in public and by you and your peers as a good thing – a necessary improvement to the system – or is it problematic?

Aequo: That's a tough question. We should probably start from 1991. (laughter)

Redcliffe: There are two aspects to that. The first question is, do we need to change something? The answer is: of course. And the second is, are we happy with the way it's being done? Probably not. Well, I think Serhiy is in a better position to comment on that, because he was in this Public Integrity Council that screened all the candidates – especially the candidates who are acting judges. Most of them couldn't explain how they had Bentleys and mansions, with salaries of only like 100 dollars

Baker McKenzie.

25 YEARS IN UKRAINE

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Arzinger: Kateryna Gupalo, Partner, Head of Tax and Customs Disputes and White Collar Defense

CMS: Olga Shenk, Senior Associate

DLA Piper: Olga Vorozhbyt, Partner

Sayenko Kharenko: Serhiy Verlanov, Partner

a month. So that's the problem. But the thing is, most of those judges were nominated to the new Supreme Court by the High Qualification Commission. And this is why we're not particularly happy with the way it's been done.

Aequo: I agree with Serhiy that there are several aspects, and probably the first one will be the structure which we have just discussed. I'm not really sure that the structure was the key problem, and whether we have a specialized or a single Supreme Court – that alone will not change much. What will change a lot is replacing the old judges with new judges, and of course a lot has been done in that direction, but there are still a lot of questions about some judges who were actually approved by the High Qualification Commission in the new selection process but with respect to whom there are still some concerns as to their integrity.

CEELM: So in your opinion it's more about the questions of integrity, corruption, and competence than it is about the restructuring.

Aequo: Right, yes, absolutely. And the third aspect would be the new procedural rules, in terms of how the process is done, but this is a rather technical issue, so the first and most important aspect will be doing justice at the Supreme Court.

CEELM: And are you all confident that this process will result in more qualified and less corrupt people?

Avellum: My feeling is that it will result in more qualified judges, but the question is that the ultimate goal of this process was not just to get *more* qualified and honest judges, but the *most* qualified and the *most* honest.

Aequo: But the process overall was quite transparent, and we may argue that we don't like some of the candidates or whatever, but my perception is that basically, the High Qualification Commission selected the best candidates from those who applied.

Redcliffe: I'm not so sure.

Aequo: And we have this proportion of almost 20% of scholars and attorneys being selected as judges of the Supreme Court who have never been judges before, and that is unique, I think, in Europe. I cannot find any jurisdictions with the same result, where 20% of judges will be previous attorneys or scholars.

CEELM: That's one of the changes, is that right? That lawyers are now able to be selected for this process, although they weren't in the past?

Aequo: Yes. Even for appellate or local courts, though in some of the interviews made during the selection process, several attorneys were asked, if you are not successful in the competition to become a judge of the Supreme Court, would you then apply to the appellate court, and the attorneys said, "no, that's not so attractive, to go to the appellate courts." That, perhaps, is due to the salary, since the salary of the Supreme Court judges is significantly more than of other judges. My colleagues may correct me, but I think that the average is like 150,000 hrivnya a month as a basic level plus some additional amounts depending on terms of service, position, PhD, and so on.

Redcliffe: Either way, it's certainly more than it was before.

DLA Piper: Well, if I just may add a short comment, at the beginning it was expected that more people from the legal profession and scholars would apply to the Supreme Court, and people from inside were encouraging people to apply, but for some reason they generally decided to stay within their own worlds.

CMS: I have a couple friends who were seriously considering applying to become judges of the Supreme Court, and the very heavy requirements put them off. Many people whom I would personally be very happy to see as a judge on the Supreme Court just said, "No, we will not even try." I say, "But consider, you would be the perfect judge, we need very professional people there." Because, from my perspective the level of professional qualification of judges previously was not sufficient, but the problem was that very many scholars and attorneys just didn't try at all.

CEELM: Why not?

CMS: Probably, there was not sufficient

belief in the successful result of this procedure.

Redcliffe: And I heard that many people were just screened out at the very beginning, because to qualify, to be eligible for this nomination, you have to prove at least ten years of experience in the courts. Which means you have to furnish documents – I mean, furnish court rulings where you are mentioned as an attorney of record, for each of these ten years, to the qualification commission. And as you can imagine it is quite difficult – especially if you change offices, for instance, you don't keep all your files with you. Things like that. So it was too difficult, too complicated. And I think it was meant to be like that, to discourage attorneys from applying. So, you know, the one hand is giving, and the other is taking – a very Stalinist style type of thing. It is what we've been up to for the last three years.

CEELM: So it's technically possible, but in reality there won't be very many lawyers on the Supreme Court.

Sayenko Kharenko: I can provide some statistics, because I was part of this process. Of the 120 final candidates, 91 are sitting judges, and from these 91 about 55 work either in the Supreme Court of Ukraine or in one of the high specialized courts (the courts of cassation in the current system), so basically nothing is supposed to change for them. Then, of the 29 non-sitting judge candidates, nine are attorneys, 16 are legal scholars, and four have so-called "mixed experience" (of which only one has never been a judge).

And the composition of the chambers varies as well: For example, in the Commercial Chamber between 11 and 13 of the successful candidates are *not* sitting or retired judges – but in the Administrative Chamber many sitting judges who are already working in the High Administrative Court are on top of the rating and will just transfer to the new Supreme Court. It's a problem, notably because although the selection process was transparent, the results are being challenged by some participants, and the High Administrative Court is the court resolving those disputes. So we may (and actually do) face a situation where a judge who has won the competition will hear a case that may knock him off the winners' list. Actually, there are at least 15 judges in the winners' list who are currently working in the High Administrative Court.

Redcliffe: What a great leap in quality!

CEELM: You sound very cynical.

Redcliffe: I am. It's not me who screened the system to keep all the same people in place.

"So we must be careful. We really have a good result, and we must be very helpful and assist both the new people in the court system and the old people in the court system. They are also accepting a challenge now, because they know they will be criticized So let's be helpful to them."

ICAC: Frankly speaking, I don't think that we need to start any discussions or draw any conclusions based on the assumption that all of the people now being selected for the high courts are somehow corrupt or guilty. I don't really believe that it would be a good solution for the system if we got almost entirely new judges. The whole system could collapse if it were made up only of new people without the requisite institutional knowledge of the judicial system. We have new procedural courts. So it will be a big problem and a big challenge for the state. We need to have the most qualified people among the judges in the system, and we need to have new blood in order to develop further.

And I also can say that, international arbitrator, state judge, and private counsel are not the same – they all do different kinds of work. And not every lawyer can be a good arbitrator, while not every lawyer can be a good judge. So we must be careful. We really have a good result, and we must be very helpful and assist both the new people in the court system and the old people in the court system. They want to develop, they want to change the system. They are also accepting a challenge now, because they know they will be criticized. So let's be helpful to them.

Arzinger: You mentioned the possibility of collapse. Just two months ago I was talking with one of the judges of the Higher Administrative Court and I asked him how many cases he had pending and he told me that his court – just one of the three courts, don't forget – has 27,000 unsolved cases. And all of these cases would be transferred to the Administrative Chamber of the Supreme Court, which consists of 30 people, and I cannot imagine how 30 people can solve such an enormous amount of cases, which of course keep coming and coming. And the current court does not have a lot of judges, because many of them are on vacation, or on maternity leave, and so on, and the ones who remain are discouraged from solving such cases, so they make no effort to hurry. We might have some kind of collapse, trying to solve all this.

Avellum: I would agree, at least partially, with Tatiana, that the problem is not that a large number of the new judges have previous experience as judges. There's no problem with that, *per se*. There are certain concerns regarding the integrity of the new candidates, so that's probably what should be discussed, rather than their previous positions.

Sayenko Kharenko: I have some more figures here. Our Public Integrity Council was established under the law, and it was the first such experiment in Europe. It consisted of both lawyers and non-lawyers (generally, civil society representatives), and there was a quite high qualification barrier to enter into this election process. The Public Integrity Council screened the candidates, and 20 members of the Council voted on whether each candidate satisfied the integrity and professional ethics criteria. When the process started, 1500 applications were submitted. Only 800 candidates succeeded in fulfilling the application requirements, from which 650 met qualifying criteria and were admitted as candidates, which is what Serhiy was talking about. Then there were two exams on professional skills and case law, after which 384 candidates remained in the process. Those 384 candidates were subjected to the Public Council of Integrity's screening, and 130 of them received

Redcliffe Partners:
Sergiy Gryshko,
Head of Dispute Resolution

International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry:
Tatyana Slipachuk, Arbitrator

negative conclusions from the Council, which could only be overruled by a qualifying majority (11 of the 15) of the members of the High Qualification Commission. In fact, only about 30 negative conclusions were upheld by the Council (and these candidates were eliminated from further consideration), while about 100 of the negative conclusions were overruled, and those candidates continued to participate. Eventually, another 30 candidates from the winners' list received negative conclusions from the Public Integrity Council, and the Highest Council of Justice now has the power to dismiss these candidates.

Asters: Just one more comment to that. It looks like many of the people who could not satisfy the integrity requirement were former judges. These were not people off the street, or lawyers who came to take part in the competition. These were former judges, and it looks to me, at least as if, the more involved the applicant was with the former hierarchy, the greater the likelihood was that he would be unable to satisfy the integrity criteria.

CEELM: What's happening right now? Is there a functioning Supreme Court right now?

Aequo: We have the old system right now in place. Yes, it functions. Though the current judges of the courts of cassation, to be honest, are reluctant to consider cases when these judges have not participated in the selection for the Supreme Court and they know that their functions will be terminated soon.

CEELM: They know they're on the way out.

Aequo: So they're reluctant to consider a lot of cases, and that's a problem right now.

CEELM: Let's move to the competence and the reliability of the courts here in general. At the lowest level of courts here – at the first level – how good are they? How reliable are the outcomes? If you have a winning case, do you win?

DLA Piper: Not necessarily. Basically, for two reasons. First, there is always a risk of corruption, always, which can never be excluded. And unfortunately, I do not believe they will be able to exclude that risk for the coming five years at least. And second, due to inconsistent professional skills and incomplete understanding of laws and the substance of the cases before them. In major cities of Ukraine, like Kiev, Kharkiv, and Dnipro, the situation is a little bit better, but when you go to regions far from the major cities, it's much worse, especially when it comes to international disputes or disputes having international components. It can be very difficult to explain your case, as often you need to go over the basics to educate your judge, so that's still a problem.

And in such situations, a lot of times it's really appreciated when the judge in the local court says, "Please explain, please justify this submission, one submission, two submissions, I will look into it, I will consider it, I will decide, I will do my best." But sometimes you are submitting, explaining, explaining, explaining, and you see the judge is not understanding, does not want to understand, and your motion is denied just because it was not understood due to a lack of professional level of the judge. It happens.

Asters: I think one of the aspects of the problem is the motivation, actually. Because, the popular understanding seems to be that the principal motivation of a lot of judges, I won't say the majority, I will say a lot of judges, is to earn money on cases. And when you have to go an extra mile to understand the background of the case, when you have to spend hours on discussing evidence, on discussing legal concepts, on reading submissions which may be 30 or 40 pages long, but you do not get paid for that except for your regular salary, you're not really motivated.

DLA Piper: And you will not get fired if you just do the minimum amount of work.

Asters: Yes. There is little motivation if you cannot get fired if you just resolve the dispute on the basis of the first article you find in the civil code.

Redcliffe: Or flipping a coin.

Asters: They say, "I found this article, it's fine, it's fine."

Aequo: We should put things in their proper context first, I think. As I said, we should go back to 1991. Back then Ukraine inherited its court system from the old Soviet system, so inquisitorial courts, focused on and dealing with two kinds of cases: criminal and family. That's all. No commercial, in our contemporaneous understanding of commercial cases. There were some civil cases, but the role of attorneys was zero – almost zero. The executive body, police, and prosecutor's office all exerted substantial influence on the judges, and these are the judges we started our Ukrainian judicial system with. Later on, commercial disputes were more frequent for Ukraine, and judges started to consider reforming commercial courts on the basis of the former arbitrage courts …

ICAC: You mentioned that we had state arbitrage courts, and good arbitrage decisions in Soviet Union, and at least there was wide understanding of commercial courts during that period. It is not true that we only started to consider commercial cases after 1991. That is not true. The amount of such cases was enormous. Especially when we talk about state enterprises. Almost all the disputes between state enterprises went to the state arbitrage courts, and they handled

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a great amount of cases. It was a very interesting practice. I actually completed my scientific degree in economic law in arbitrage procedure. I researched these practices. It was interesting, and it was really very sophisticated for that period of time. So it is not really true to say everything began in 1991: we have a good history of commercial and dispute resolution in Ukraine.

But now, can I ask a question? When we speak about the qualification of judges, should we not also discuss the level of qualification of lawyers? I am sorry, but sometimes, sometimes, you listen and you cannot understand the level of education a young lawyer has. So the judge is not always the problem. But when I hear in a courtroom that, for example, the provisions of international treaties are not applicable in Ukraine, or something like that, something so absolutely incorrect, I can't believe it. We also have a problem with legal education, and this is a real problem, because as a result we have a large number of lawyers with – in my personal opinion – quite a low level of education and understanding of the law, both in terms of procedural and substantive law.

Baker McKenzie: In my 20 years of practice, we rarely prepare agreements which are governed by Ukrainian law on cross-border M&A transactions. For example, 99% of cross border transactions in which our film is involved are governed by laws other than Ukrainian, so our clients rarely end up in the Ukrainian courts or use the Ukrainian arbitration system. And in terms of Tatiana's comment about education, she is mixing two points: We're not here discussing the quality of education. If a lawyer is not prepared, then only his client will suffer. If a judge is not prepared, then the whole system suffers because justice is not done. I think it's up to the client to select the lawyer, and up to the law firms to improve professional standards. We know that top firms probably already follow very high professional standards. And we cannot say, "Boy, it's okay that the judges are as they are, because the lawyers are not also very good." I think it's just a wrong argument. We are here to discuss the reform of the judicial system, and I agree with my colleagues that we are currently frustrated. We in the corporate department are frustrated so much that we have no agreements done using Ukrainian law. In my 20 years of practice, it's very rare that agreement is done using Ukrainian law. So this is the result of the system. We are happy that we can avoid the Ukrainian system in our group. Many of my colleagues in other areas, like IP or tax, unfortunately, cannot go and litigate in London or somewhere else.

Redcliffe: It's so humiliating, you know, you're a Ukrainian lawyer, and you have to advise your client to avoid Ukrainian courts at all costs. It is so humiliating, to be honest, we want this to change.

Asters: Probably the education argument would be important if there were, let's say, 30 lawyers across all of Kyiv and you had to go to one of them. But there are thousands of lawyers in Kyiv. But there are only 30 judges in the commercial court, or something like that. So it's not comparable at all.

ICAC: I was only objecting to the suggestion that lawyers are always forced to educate judges. It is not the situation in our system that lawyers initially are always better-read and better-educated than judges. I was only speaking about this.

"It's so humiliating, you know, you're a Ukrainian lawyer, and you have to advise your client to avoid Ukrainian courts at all costs. It is so humiliating, to be honest, we want this to change."

Baker McKenzie: But lawyers should not educate the judges. If I read the decisions of Supreme Court of U.S., you can read and enjoy reading the decisions. How they put it is really impressive. You learn, all the lawyers learn from the decisions. What can we learn from the decisions of our judges? In the U.S., the system is that you learn from precedent, you learn from the language, you learn how to develop your analysis, you learn from court decisions. So the people in the U.S. who elect judges really teach the entire population how to practice law. And I think this is what we ultimately should try to achieve, but I don't know how many years it will take.

Avellum: I think it will be really difficult to achieve in our system. Not because of competence, necessarily, but imagine, 30 people needing to decide 27,000 cases.

Sayenko Kharenko: Not 30, 25. Because 5 will be delegated to the Grand Chamber.

Avellum: Yes, 25.

Sayenko Kharenko: It is a real problem.

Avellum: It's a huge problem, and basically we have similar situations at all levels. The caseload is enormous. And we cannot expect judges to write 50-page decisions with detailed reasoning and discussion of all possible concepts and so on and so forth. So when you open the text of the decision, it can be not helpful for further practice. The most important thing is that the decisions should be correct on law and on facts, and I think it's not fair to say that our judges are absolutely incompetent or whatsoever; they do try to go deep into the cases. A lot of judges before whom I have pleaded cases, including from the regions, have tried to understand them.

CEELM: You think they're just overwhelmed?

Avellum: Yes, they are overwhelmed. Insofar as they do not know some concepts like international arbitration, international law, whatever, foreign law, they try to understand, they invite the parties to provide submissions, they try to understand what the case is about. So if we put aside the corruption concern and the integrity concern and we are talking only about the competence, I think the main problem here would be not incompetence of the judges but the fact that they are overwhelmed with a huge case load.

Asters: In Ukraine the caseload is primarily caused by the inevitability of appeals, because every case which is worth anything goes all the way up to the Supreme Court. Okay, the Supreme Court might not accept it, the cassation court theoretically might not accept it, but any case normally ends up at least in three stages of hearings. While my colleagues know that in England or in the U.S., for a case to go to the Supreme Court is exceptional. Lawyers plead in the Supreme Court like five times in their lifetime …

CEELM: … and most never do.

Asters: … and here it's like you go there on a straight road. It does not feel like three instances of appeal, it feels more like three hearings: you get a first hearing in the first instance, okay, we lost it, then we have an appeal, okay, we lost it, then we have cassation. And why is that so? My impression is that it relates to the question of integrity. Because the higher levels of judiciary initially did not believe that the parties have had a fair hearing at the lower level.

It's the perception both in the public and in the profession itself. Let's say in England, when a court has tried a case of first instance, that's basically it. The facts are straight, the law is more or less straight, and there are maybe two or three legal problems which can go either way, so that's a question for an appeal. But here, you know, the cases are often pleaded anew on appeal, then in the cassation you have new legal arguments because you know that the judge of the first instance just would not hear them, so it's totally different.

Aequo: We can discuss for eternity who is more guilty, judges or attorneys, but at the end of the day the result is simple: The trust of Ukrainian people in the court is very low – almost zero. And to be honest, when your clients or potential clients come to your office and ask for legal support and then at the end they say, "what can you do?" and you say, "Okay, we will review your documents and suggest a strategy for the court, we have experience in these type of cases, and we can help you, we will see the court practice and will develop your position," and their response is, "We don't need you to spend time on drafting something. We need to *solve the problem*, if you know what I mean." And you say, "Okay, thank you, our meeting is over." I would say something like 40% of Ukrainian clients ask this question. And you always have to deal with this, to explain that "We are not mediators or 'fixers.' We solve problems with legal tools."

DLA Piper: Yes, but let's be fair, a lot of legal professionals do just that. And when you do that, and then sit and blame courts and judges because all the while they were corrupt … who corrupts them?

Aequo: That was my point. The judges, attorneys, parties …

Redcliffe: If you're willing to take the bribe, you take it. It's as easy as that.

Avellum: If you're willing to give the bribe, you give it.

Redcliffe: If you give it to someone who doesn't want to accept it you will be caught. You only give it when you know it will be accepted.

DLA Piper: So that's what happens. And generally, don't forget, our judiciary system is very young in Ukraine, even though we have long history of Soviet-era judiciary. In the modern way, we are very young, and there are growing pains. Like every normal teenager we are pretty turbulent. So it takes time to develop.

Asters: But It's already almost 30 years!

DLA Piper: It takes us a bit of time. (laughter)

Redcliffe: Maybe we have some problems? A special-needs teenager?

CEELM: It does sound to me like being a dispute resolution lawyer in Ukraine involves a number of challenges that perhaps it doesn't in some other countries, involving levels of strategy and levels of decision-making beyond simply, "Where does the law fall on this, and how likely are we to win?" How do you advise your clients? What do you tell your clients when they say, "We've got a problem, we want you to go to court and win this for us"? Do you say, "Eh, we'll roll the dice and see what happens"? What do you say to them?

DLA Piper: Normally, for me personally, there are two components. I try to understand the legal position of the case, and I do my best to present the case based on strong legal arguments. We cannot exclude, as I already said, corruption risks. That's why, when the case is pretty big and important, media support really helps. International organizations like the IBA, the American Chamber of Commerce, and sometimes the embassies – sometimes I have representatives of embassies going with me to court just to make judges concentrate a bit more. You just need to bring more attention to the case.

CEELM: To focus their attention a little bit?

DLA Piper: Yes. Normally making a dispute more known to the public makes the lives of judges a bit more difficult if they intend to go beyond the legal framework, so that's how we do it.

Aequo: You have to employ also all the procedural tools provided by the prevailing procedural codes, which is also the point of Tatiana, I think, about the education and experience of attorneys. If a street lawyer is just passing money to judges, et cetera, you can see it in the hearing, that the attorney usually is not ready to go through the process, as well as the judge, if he or she is a bit reluctant to go to the merits since the judgment has already been made. But that doesn't mean that you should not file submissions at all, or you should not defend the client's interests. There are a lot of instances where the judges, when they see all the force of these procedural tools and the weight of your position, and when you show that the practice of the Supreme Court of Ukraine is negative for the result the judge or opposite party would like to get, they will step out in some instances.

CEELM: Do you guys have more confidence in the higher levels of the judiciary? Do you think at the end of the day, the Supreme Court's probably going to come to the right decision?

Baker McKenzie: After analyzing the case, we have this conversation with all our clients – and probably everyone here has the same – if we believe that the client is right, we say, we may lose in the first instance, you should be prepared, but we think we can get a fair trial at the higher court. Because otherwise to tell the client that he's fully right but then they lose in the first instance court, I think it frustrates them a lot.

CEELM: So you have to prepare them.

DLA Piper: Yes. We always do that too.

CEELM: Let's move to the availability and effectiveness of alternate dispute resolution methods here. Are arbitration clauses standard in contracts, or are they becoming more standard, and are you seeing more use of arbitration, for instance, in Ukraine than in past years?

DLA Piper: I think it's a nice tool to take a case out of Ukraine.

Aequo: Not out of Ukraine, but out of courts.

Redcliffe: It's common in international contracts, it's common. And it's been like that for decades, I think.

ICAC: For 25 years.

Avellum: I don't think that we see increase in popularity, but it was popular and it remains quite popular.

Redcliffe: You have to appreciate that there are two regimes for arbitration in Ukraine: there's domestic arbitration and there's international commercial arbitration based on the UNCITRAL model. So if we speak about international contracts, it's very common and it's been common all along to submit to the international commercial arbitration court of the Ukrainian Chamber of Commerce and Industry since its inception in 1992. But if we speak about domestic arbitration – *i.e.*, between domestic parties – it was very popular back in the noughties to have an arbitration clause in a contract, especially in a contract where you wanted to avoid certain mandatory procedures prescribed by Ukrainian law. For instance, when you wanted to register a proper title on real estate, the state registration procedures were so cumbersome that it was quite common to include an arbitration clause, go to the domestic arbitration court, who would say, "Well, now you are the owner of that piece of real estate, and it is a piece of real estate, by the way, and it can be now registered." So domestic arbitration was widely used as the tool to circumvent the mandatory registration procedures in the noughties – but then unfortunately this bonanza was eliminated when the parliament made those disputes non-arbitrable in 2009, and since then we have seen a huge decline in interest in domestic arbitration. I think for that very reason.

Aequo: But that concerns only domestic arbitration, international arbitration is used, and for example Ukrainian – the only permanent Ukrainian international commercial arbitration court yielded only I think last year the title of the most in-demand international arbitration court to the ICC International Court of Arbitration. So basically, I think that those problems we have been discussing which are inherent to Ukrainian litigation proceedings, they sometimes also affect issues of competence and experience in arbitrators as well, so they cause those domestic cases to go to international arbitration.

CEELM: Tatania, you're with the ICAC, right?

ICAC: Yes, and my personal view is that we need to understand that for international arbitration, we had to launch it some 25 years ago. We need to understand that for the first five years or so the institution had to gain experience while gaining an audience and lawyers, because here we have this negative effect of the former Soviet Union, where all international trade was concentrated in Moscow. For Ukraine it was a challenge to set up its own courts, and I think that it was quite successful. For me it is difficult to say anything else, because I was one of the first people engaged in creating and establishing it, in putting it in contracts, and you know that international arbitration is alive when there are three very important things: First, good legislation with understandable arbitrability provisions because where arbitrability is unclear it is a problem. The second requirement is a professional community of lawyers able to be counsels and/or arbitrators. Finally, there is the existence of understandable standard rules. In Ukraine as we speak the situation is fine, and I think that we have all three things.

We have good legislation, finally, I hope, within these final steps of adopting the new procedural codes, which will include all the procedures we need for international arbitration in Ukraine as well, taking into account the possibility for interim measures by state boards, etc. A very contemporary approach is beginning now. I hope

that we will be successful in having arbitrability provisions as of now within the draft, opening the door as well to corporate disputes and some other disputes that are important.

Sometimes I hear criticisms regarding the practice of international arbitration courts, but we have almost the same rules as any other institution. We sometimes have a problem with arbitrators – you can still sometimes receive old-fashioned arbitrators instead of contemporary arbitrators, less knowledgeable compared to more knowledgeable, etc. It is your choice, so be active in choosing the arbitration, be active in applying to the court, saying that we are not satisfied with our arbitrators. But it is a very solid structure. Understandable. This is true for foreign parties as well, because the structure is similar to almost all European countries: The same system, the same procedures, and the same rules. The same intention to give the parties more flexibility and to provide all the modern tools like videoconferences, etc. We have foreign arbitrators on the list. We have English-speaking arbitrators. When we speak about some specific cases and reference them to the Ukrainian arbitration court, let's say that in many situations, in principle, the choice of applicable law is something which seriously influences the choice of the institution. And for Ukraine, the substantial Ukrainian laws – civil law, for example, or corporate law – until recently was a problem. And that's why it was also a problem for us. I share your reluctance to say to clients, "Let's have your M&A deal governed by Ukrainian law." Because we do not have the contractual instruments in Ukrainian law expected by the parties, and we see a shift towards English law, and in this situation, we need arbitrators with knowledge of English law. We need to go to England, to use English arbitrators! It's something that usually happens, but when you have Ukrainian law, Ukrainian matters to be applicable in a London court ….

During the last five years or so the arbitration community here in Ukraine has become more active and more consolidated. It means that you can develop a practice, you can develop approaches, you can write a lot of articles, but my main concern is how to explain to judges all these new mechanisms which are now in the procedural courts. This is the issue.

"...generally, the legal profession is in support of judicial reform. Of course, we would like it to be much better – like much better. (laughter). But the fact that we have judicial reform, of such a size, of such substance, is very good."

Asters: Just as a point of discussion: the fortune of our domestic arbitration is a really interesting question. We have a reasonably large practice at the International commercial arbitration court, we have a huge amount of activity in the commercial courts, with some ten thousand cases yearly – even though it seems as if nobody trusts the courts. So why don't people use domestic arbitration, which is kind of an obvious alternative? Historically it was used as some kind of bypass. First, it was this issue of immovables. As Sergiy said, you kind of gamed the system by using the domestic arbitration courts. Then it was an issue of the banks, which established their pocket arbitration institutions to resolve disputes under the loan agreements, and you can imagine what the results of those disputes were. And there is, unlike international cases, there is still no institution which is a comparable authority on domestic arbitration. There are lots of small pocket institutions. Some are a little bit bigger, but the trust in them is also very low. So there is some room for improvement at this level, but the trust in domestic arbitration is extremely low.

ICAC: It was compromised. Yes, you are right. It was seriously compromised at the very beginning of its cases, and it was unfortunate that, at the beginning, it was very easy for anybody who wanted to be included on the list of arbitrators for domestic courts. This means that the quality of the decisions taken was below acceptable expectations. And it's really a seriously compromised procedure, and it will take a long time to fix.

CEELM: Is everyone here optimistic about these changes in general, or not?

Arzinger: We don't have a lot of choice. (laughter)

CMS: It may not have sounded like it during the last two hours. But generally, the legal profession is in support of judicial reform. Of course, we would like it to be much better – like much better. (laughter). But the fact that we have judicial reform, of such a size, of such substance, is very good.

DLA Piper: I would say that we have no other choice than to be optimistic, because otherwise we should quit.

Aequo: And we have not discussed these new procedural codes, but just one remark on this: The great excitement is that the new procedural codes are based on almost an adversarial system rather than the inquisitorial system which prevails right now. And that is a challenge not only to the judges – I hope that the judges will comply with this, and will educate themselves, and learn all the tools – but that is the problem for attorneys as well.

CEELM: And you think that's a good change?

Aequo: Yes, absolutely. Right now the inquisitorial system allows parties sometimes to succeed with no input in the case. With no oral argument, with no good submission, without anything.

Redcliffe: There is a submission. A *donation*, I would say. (laughter)

Aequo: And you know, the problem is when you have young lawyers, who just observe this, when you perform in the courtroom, you submit documents, draft, and another party does almost nothing, and this party wins at the end? That makes especially young lawyers very unhappy with Ukraine.

* We would like to thank Oksana Kozhukhivska and Baker McKenzie Kyiv for their generosity and hospitality in agreeing to host the Round Table, and Kathleen Smallwood for her assistance in transcribing the conversation.

David Stuckey

MARKET SNAPSHOT: UKRAINE

CORPORATE/ M&A IN UKRAINE: BACK ON TRACK

Alla Kozachenko

After a period of political and economic instability put M&A transactions in Ukraine into a dormant mode, the country is starting to show signs of revival. As the economy recovers and new legislation aimed at strengthening the rule of law and simplifying doing business is adopted, investors are again looking towards Ukraine with interest.

Over the last two years, Ukrainian corporate legislation has undergone a number of significant changes that have improved the business climate and made Ukrainian market more investor-friendly.

Protection of Investments

The following legislative changes aimed at protecting investors' rights have come into effect: (1) The concept of derivative action was introduced, which allows shareholders holding 10% or more of a company's shares to file an action on the company's behalf against company officials for losses caused by those officials' actions or failure to act; (2) The concept of independent directors was introduced for joint-stock companies; (3) The rules of approval of interested party transactions in joint-stock companies were improved; (4) The restriction on the maximum number of shareholders in private joint-stock company was removed.

Joint-Stock Companies

Recently, long-awaited legislative changes with respect to joint-stock companies came into effect. The purpose of these changes was to lower the number of regulations on joint-stock companies, to protect joint-stock companies from hostile takeovers and manipulations, and to bring Ukrainian legislation regarding joint-stock companies into conformity with European directives. Among the changes that will have the most impact on M&A transactions involving joint-stock companies in Ukraine are: (1) The introduction of squeeze-out and sell-out procedures, which are brand new concepts in Ukrainian legislation (according to the squeeze-out procedure, a shareholder that acquired a dominant controlling stake of 95% and more of joint-stock company shares shall have the right to demand that the owners of the remaining stake sell their shares, with settlement for the shares done via escrow account, the concept of which was introduced by the same new legislation; the sell-out procedure provides minority shareholders with the right to demand that the shareholder holding the controlling dominant stake buy-out their shares at a fair market price); (2) The introduction of new rules and thresholds for the acquisition of controlling stakes in private and public joint-stock companies; and (3) New disclosure requirements with respect to indirect and direct acquisitions of shares in joint-stock companies and the approval of material and interested party transactions.

Corporate Agreements

It is a well-established market practice in Ukraine that all significant M&A transactions are structured so that the shares of a non-Ukrainian holding company with underlying Ukrainian business are purchased and the transaction documents are made subject to English law. The main reason for this is the lack of flexibility in Ukrainian law, as well as a lack of trust in the Ukrainian judicial system. The new legislation on corporate agreements is expected to change the situation – at least in part – in terms of corporate (shareholders') agreements between the shareholders of Ukrainian companies. The new law has not yet come into effect – it is awaiting the President's signature – but it is expected to soon. The law will allow the shareholders of Ukrainian companies to regulate in the agreement the shareholders' obligation to vote in a defined way, to approve the purchase or sale of the shares at a preliminary-defined purchase price, to oblige them to refrain from share sales, and so on. The law is not perfect though, and it still leaves room for uncertainties. Thus, it is too early to draw any conclusions as to whether the corporate agreements will be successful in replacing the English law shareholders' agreements in Ukrainian M&A transactions.

Considering the details outlined above, we can conclude that there is a sufficient basis to believe that Ukrainian M&As are back on track, as evidenced by the new deals that have begun to appear on the market.

By Alla Kozachenko, Legal Director and Head of Corporate and M&A, DLA Piper Ukraine

THE WIND OF CHANGE DRIVES THE IMPLEMENTATION OF INTERNATIONAL BEST TAX PRACTICES IN UKRAINE

Oksana Kneychuk

The growing interdependence of world economies, driven by the reduction and removal of trade barriers, cheaper transport and communication costs, and increased use of the Internet (facilitating easier access to foreign markets), as well as by the growth of multinational corporations, has resulted in unprecedented cross-border trade and capital flows. At the same time, it has also opened up new opportunities for multinationals to reduce their profit in high-taxed jurisdictions by exploiting gaps and mismatches in domestic and international tax rules to artificially shift it to low-taxed countries (or tax havens).

As the largest country in Central and Eastern Europe, with a strong commitment to pro-European integration, Ukraine has to address the challenges in cross-border taxation resulting from economic globalization, such as tax avoidance through sophisticated tax planning mechanisms.

The most powerful weapons against tax evasion and aggressive tax planning currently in the armory of more than 100 governments are the 15 actions set forth in the context of the Organization for Economic Cooperation and Development (OECD) and G20 BEPS Project, aimed at tackling tax

avoidance.

Not being a member of the OECD, Ukraine is under no formal obligation to implement the BEPS Actions. However, in furtherance of its commitment to joining international anti-tax avoidance initiatives, on January 1, 2017, Ukraine became an official member of the Inclusive Framework for the global implementation of the BEPS project and declared itself committed to implementing minimum standards in four key areas: countering harmful tax practices, implementing country-by-country reporting for transfer pricing, preventing tax treaty abuse, and enhancing dispute resolution.

According to the formal plan (the "Roadmap") which was presented by the Ministry of Finance in May 2017, implementation of the BEPS minimum standards in Ukraine is expected by the end of 2018.

Prior to joining the Inclusive Framework on BEPS, Ukraine launched a deoffshorization campaign aimed at taxing the income and gains diverted to tax havens by businesses and individuals. The President's Decree of April 28, 2016 calling for the development of legislative changes for counteracting BEPS in Ukraine marked the formal launch of the deoffshorization process.

A working group established by the President's Decree has prepared draft laws aimed at improving transfer pricing control rules and anti-BEPS measures; introducing controlled foreign company rules; counteracting aggressive tax planning activities; and liberalizing currency control legislation of Ukraine. However, the legislative drafts that have been prepared so far in the framework of the deoffshorization initiative do not contain a unified approach to statutory regulation of these issues. After Ukraine's formal adoption of the OECD/G20 minimum standards, it is expected that Ukrainian officials will undertake concerted efforts to efficiently implement anti-BEPS/deoffshorization measures.

Liberalization of the Ukrainian currency control legal framework, considered one of the most rigid in the world, is a key prerequisite for successful implementation of the deoffshorization/anti-BEPS strategies in Ukraine. To encourage disclosure of control over foreign companies by Ukrainian individuals the National Bank of Ukraine (NBU) intends to introduce amnesty granting relief from penalties for the failure to obtain an individual license from the NBU prior to acquiring shares in foreign entities.

Ukraine's accession to automatic exchange of financial account information based on the OECD common reporting standard (CRS) is another essential precondition for effective implementation of BEPS initiatives in Ukraine, as it will reveal banking transactions carried out by Ukrainian tax residents in violation of tax and currency control regulations. An official statement on readiness to join a multi-party agreement on exchange of tax information was made in April 2016, however no formal commitments have been made by Ukraine so far.

Adoption of anti-BEPS minimum standards and consistent liberalization of the Ukrainian currency control regulations are definitive indicators of Ukraine's readiness to implement international best tax practices and send positive signals to foreign investors.

Albert Bushnell Hart once contended that, "taxation is the price which civilized communities pay for the opportunity of remaining civilized." Implementation of BEPS measures by Ukraine and over 100 other countries and jurisdictions will serve as the basis for a tax system that is fair and responsive to taxpayer needs and encourages them to pay their due share.

By Oksana Kneychuk, Head of International Tax Planning and Corporate Structuring Department, Eterna Law

THE NEW SUPREME COURT OF UKRAINE – THE NEW WINE OR THE OLD WINESKINS?

Oleksiy Didkovskiy

The main event of 2017 in Ukrainian dispute resolution (and maybe for all legal practices) is certainly the formation of a new Supreme Court.

For almost a century the Supreme Court was formed under the decisive influence of the executive, and only in 2016 did constitutional reform transfer the relevant powers back to the judiciary and the legal profession.

Now, for the first time ever, the judges of the Supreme Court will be appointed following an open competition, and again for the first time ever practicing lawyers and scholars outside the judiciary have been allowed to run for the highest judicial offices in the country.

The actual procedure of the appointment of the new Supreme Court judges, however, has produced mixed impressions in the legal community.

First, the widely-advertised possibility for legal professionals to take part in the competition turned out to be severely limited. To enter the competition, practitioners had to be qualified barristers (advocates) and had to confirm ten years of experience in courts. Historically, many practitioners in the civil and commercial spheres did not obtain advocate status, which had essentially no practical benefit. It can also be difficult to prove practical experience, since smaller practices and

in-house counsel rarely keep case records for ten years. Scholars suffered as well: due to the imperfect wording of the law (later corrected by the parliament) only those employed by universities were allowed to compete, while the ones working for purely scientific institutions were barred.

As a result, only 20% of the competitors were either practitioners or scholars – the rest were judges. Eventually, about the same distribution of candidates was approved for appointment to the Supreme Court.


Dmytro Shemelin

The next stages of the competition also raised questions. The practical test included drafting a judgment on the basis of a moot case. After the drafting session ended, it turned out that at least some of the candidates, including the current Chairman of the Supreme Court, apparently drafted judgments on the basis of cases they had previously considered as judges. The competition authority added fuel to the fire by declining requests to disclose the moot judgments prepared by the candidates to the public.

The most controversial development, however, was the final stage of the competition, which involved the authority interviewing the candidates, taking into consideration the conclusions of the Public Integrity Council, an independent body created to verify the integrity of the candidates, including correspondence between their official income and their lifestyle, whether their judgments had been annulled by the ECHR, whether there was any allegation of ethical breaches made against them, and so on.

The Council issued "negative integrity" decisions for about 140 of the 319 candidates who made it to the final stage. The appointing authority, however, was entitled to override the negative decisions and very often did so, which resulted in 30 candidates being approved for appointment to the Supreme Court despite having received negative integrity decisions by the Council. This prompted the Embassy of the US in Ukraine to call for an additional review of these candidates on a case by case basis.

The final list of the candidates is expected to be officially approved in September 2017, and the new judges formally appointed shortly thereafter by the President of Ukraine. They will assume their new role amid allegations of competition rigging and corruption, and it is first of all up to them to prove that the new Supreme Court will serve as an example of professionalism and fairness.

By Oleksiy Didkovskiy, Managing Partner, and Dmytro Shemelin, Counsel, Asters

ENERGY MATTERS IN UKRAINE


Armen Khachaturyan

In 2016-2017 Ukrainian authorities introduced many important legislative changes in the energy sector in line with the country's commitment to implementing the Third Energy Package as a member of the Energy Community and as a party to the EU-Ukraine Association Agreement.

New Electricity Market

On June 11, 2017, the newly-adopted Electricity Market Law came into force. The Law envisages a transfer from the current single buyer model market to a liberalized market, with associated unbundling of the transmission and distribution of electricity. After a transition period, full implementation will be executed no earlier than July 1, 2019. The new law launches the following markets: bilateral contracts; a day ahead market; an intra-day market; a balancing market; a market of auxiliary services; and a retail market.

As to the electricity infrastructure, on June 28, 2017 the Ukrainian national energy company Ukrenergo – the transmission system operator (TSO) in the power sector – signed the Agreement on Synchronization with ENTSO-E. This agreement is a starting point for the integration of Ukraine's unified power system into the electricity system of continental Europe, which will result in the full synchronization of the Ukrainian power grid system with the electricity systems of European countries.

Notably, the Electricity Market Law secured the existing favorable regime for renewable energy, but imposed responsibility on companies for imbalances.

Gas Market Developments

The highly-discussed topic on unbundling of NJSC Naftogaz resulted in a plan approved by Resolution of the Cabinet of Ministers of Ukraine No. 496 dated July 1, 2016.

With the Order of the Ministry of Finance of Ukraine dated April 4, 2017 the storage of gas in the regime of customs warehouses was launched. According to the Order, customs clearance of gas transported to Ukraine by a non-resident for purposes of storage at gas storages shall be made in the regime of "customs warehouses," which frees non-residents from paying the 20% import VAT. This innovation enables European partners to order services for storage of natural gas for a period of up to three years from PJSC Ukrtransgaz (the gas transportation system operator).

Previously, on February 4, 2016, the Parliament granted PJSC


Yaroslav Petrov

Ukrtransgaz the right to conduct gas transmission as backhaul operations (*i.e.*, virtual reverse gas operations). Backhaul operations are defined in Ukrainian legislation as the TSO's replacement of the original amount of gas (transported under the periodic customs declaration) with the same amount of gas already kept in storage or located in the gas transportation system of Ukraine. Customs clearance of such gas shall be performed on the basis of the data on the original amount of gas which is subject to replacement.

One more important development is related to the elimination of gas stock reserve requirement. Legislation requires that any supplier shall secure a natural gas stock reserve of up to 10% of the planned monthly supply volume for use in emergency situations.

Energy Efficiency Challenges

Energy efficiency has become a significant part of Ukrainian government discussions. On July 23, 2017, the Law of Ukraine on the Energy Efficiency of Buildings came into force, even though it will only be implemented in July 2018. This law aims to set forth a new regulatory framework for energy efficiency that will apply to the majority of the buildings in the country. The law establishes minimal requirements for energy efficiency of buildings in Ukraine based on EU standards and also implements a mandatory certification system. These compliance and mandatory certification requirements shall be applicable, with limited exceptions.

Extraction of Oil and Natural Gas

On June 30, 2017, the new Rules for Development of Oil and Natural Gas came into effect. The Rules govern oil and gas exploration and production covering the basics and fundamentals of development activity, establishing definitions, categories of wells, stages of exploration, technical regulations applicable to different types of activities, and so on.

To Be Continued

Recently the Cabinet of Ministers approved the Energy Strategy of Ukraine Until 2035: Security, Energy Efficiency, Competitiveness, which provides for a twofold reduction in the energy intensity of the national economy and an increase in the production of both traditional and renewable energy sources. This plan is a narrative for future developments in the Energy sector of Ukraine.

By Armen Khachaturyan, Senior Partner, and Yaroslav Petrov, Counsel, Asters

CORPORATE GOVERNANCE: RECENT DEVELOPMENTS AND PROSPECTS


Illya Tkachuk

Ukraine confidently declared its intention to bring its legislation into line with EU standards by signing the Ukraine-European Union Association Agreement in 2014, which obliges Ukraine to implement a number of EU Directives, including those regulating various aspects of corporate governance.

To that end, on June 4, 2017, the *Law of Ukraine on Amending Certain Laws of Ukraine With a View to Raising the Level of Corporate Governance in Joint Stock Companies*, which changes the principles of corporate governance, entered into force.

Squeeze-out and Sell-out

Among other things, the new law introduced the long-awaited right of shareholders who have accumulated 95% or more of shares in a Ukrainian joint stock company (either acting alone or in a group) to force the minority shareholders sell their shares to them.

In parallel, the minority shareholders are granted a sell-out right and are now able to ask shareholders who have accumulated more than 95% of shares in the company to purchase their minority shares.

Although the squeeze-out mechanism is usually associated with takeover bids, the law provides for a special two-year transition period during which existing majority shareholders may initiate squeeze-outs of minority shareholders even without a takeover.

Therefore, existing shareholders who own 95% or more of the shares of a company are able to force minority shareholders in the company sell their shares to them.

Moreover, the squeeze-out mechanism may be used even when a deceased minority shareholder's shares were not passed on to the heirs or when such shares are under a charge, arrest, or any other encumbrance.

The squeeze-out mechanism is of particular interest for joint stock companies created via privatization and have hundreds or even thousands of minority shareholders who are former employees of the company.

It is important to note that the new law introduces escrow accounts enabling the unconditional transfer of the purchase price for the purchased shares during the squeeze-out procedure. Escrow accounts are a new tool for Ukraine, and their use is not limited to the squeeze-out mechanism.

Tender Offer Procedure

In addition, the new law provides for a number of modifications to the existing tender offer procedure aimed at strengthening the protection of the rights of minority shareholders, in particular, by providing clear rules of price calculation and by introducing liability of the bidding shareholder. The law provides for the following thresholds requiring different scopes of actions from the bidding shareholders and the company: 10%, 50%, and 75%.

Shareholders' Agreements

Another important instrument which is about to be improved is shareholders' agreements. On March 23, 2017, the Parliament of Ukraine adopted the *Law on Amending the Laws of Ukraine Regarding Shareholders' Agreements*. This law introduces the possibility for participants of limited liability companies to enter into shareholders' agreements, whereas until recently this option was available only to joint stock companies, and its practical utilization was very limited.

It is important to note that this law allows for the conclusion of an agreement between the company's creditors and its participants / shareholders with a view to coordinating the management of the company in the future.

Although adopted by the Parliament, the Law has yet to be signed by the President of Ukraine.

Limited Liability Companies

The Parliament of Ukraine is considering a draft *Law on Limited Liability and Additional Liability Companies*.

This is a fundamental law aimed at upgrading the legal framework for limited liability companies – the most common form of company in Ukraine – and additional liability companies.

The draft law expands the list of available corporate governance tools which can be used by participants of limited liability companies to create a more favorable environment for investors.

Representative Offices of Foreign Companies

The Ministry of Economy of Ukraine is working on a draft law designed to improve the status of and the procedure for creating representative offices of foreign companies in Ukraine.

These long-awaited improvements would bring the status of representative offices of foreign companies in line with the general structure of companies' divisions and shorten the term for registering a representative office from the current three months to one week.

By Illya Tkachuk, Local Partner, Jeantet Ukraine

CRIMINAL LAW: CASES WITH POLITICAL FLAVOR

Olga Prosyanyuk

These days the Ukrainian media is full of news about the detention of officials and business owners, revisions of enterprises allegedly connected with corrupt officials, frozen foreign accounts, and the expected return of assets in the near future. The law enforcement system keeps an eye on ex-representatives of power and business, skillfully bringing them to criminal prosecution, and so-called "resonant" cases with a political flavor appear almost daily in the media.

In many cases, even in the absence of a direct connection between an official and business, law enforcement bodies often manipulate the current situation in our country to bring charges against businesses for financing terrorism. Moreover, a practice of amending the law specifically to strengthen cases against specific defendants is gaining momentum, such as recent legislation allowing litigation to proceed *in absentia* (with a sentence imposed in the defendants' absence), or another law that entitles authorities to proceed with a "special confiscation," requiring defendants to prove their ownership rights or lose their property. In addition, specialized bodies have been established to uncover and reveal corruption and bring the guilty to justice. Like law enforcement authorities, these specialized bodies are empowered to conduct searches and hold those accused of wrongdoing in detention, with proceedings broadcast on TV and covered in the leading Ukrainian media.

Unfortunately, such investigations often fall victim to a large number of procedural mistakes, causing many of them to burst like soap bubbles at the pre-trial investigation stage or at trial. Nonetheless, there are negative consequences for businesses subjected to searches, interrogations, and/or withdrawal of documents, because their ability to meet contractual obligations are temporarily blocked. Inevitably this harms a company's reputation and damages its ability to do business going forward.

This situation has pushed the number of client inquiries to law firms up substantially. For example, in our firm the number of inquiries has doubled this year alone, and there has been an explosion of new criminal law practices among multi-service law firms and members of the Big Four. Generally, the involvement of such practices finishes at the pre-trial stage, as, because of the risk that the state will put pressure on other clients, such firms generally allow the cases to be taken over either by individual criminal defence attorneys or, more often, by attorneys who are highly-specialized and experienced in this area of the law.

These criminal cases often require complex systemic defense,

or defence of a group of figures at one time, or defense in different regions of the country. For example, in our ongoing defense of former Ukrainian President Victor Yanukovych, we are acting in over ten parallel criminal cases simultaneously. In another example, in one of the first cases handled by the recently-created National Anti-Corruption Bureau of Ukraine, the "Oleksandr Onishchenko Gas Case," we were required to defend several figures simultaneously with a team consisting of over 30 people, working in parallel on preparing documents, participating in court hearings, and thoroughly investigating numerous accusations. This sort of complicated work requires both significant expertise and real organization.

Skilled criminal attorneys in high-profile corruption cases are also required to make a correct determination of threats and to form an algorithm of defense. Our task is to protect the rights of our clients during interrogations, ensure the legality of searches, prevent the illegal seizure of property, ensure the return of property seized illegally, and, most important, make it clear to the state that the person they are investigating will not succumb to pressure and that the investigation must be terminated. If a criminal case is submitted to the court, we should ensure that all the rules are obeyed and highlight all weaknesses in the case against our clients which could eventually lead to closure of the case.

To conclude, the criminal defense practice has become strong enough to effectively resist law enforcement and state bodies. Until the rule of law and a constitutional state are established in Ukraine, a criminal practice will be among the truly necessary practices on the legal market.

By Olga Prosyanyuk,
Managing Partner, Aver Lex Attorneys at Law

INVESTING IN PORTS INFRASTRUCTURE IN UKRAINE: PROSPECTS AND CONSIDERATIONS


Volodymyr Monastyrskyy

The growth of agribusiness production in recent years requires a proportional increase in port facilities and transportation infrastructure. The necessary investments are impeded, however, by an outdated legislative framework.

Leases, servitudes, and joint ventures have not been considered worthwhile for integral development of ports, and concession agreements have not been utilized due to gaps in applicable legislation, including an opaque mechanism for repaying investments, unclear compensation, and a lack of guarantees. New concession legislation is under development and is expected to be adopted by the end of this year.

In evaluating among potential investors (such as port operators, cargo owners, cargo lines, and institutional investors), the state tends to give preference to port operators, as – because their profit is directly tied to effective asset management – they have extra incentive to manage the port efficiently.

A potential investor may also encounter other problems when constructing and operating a port facility.

The designation of land plot must be correct before the construction is initiated; otherwise, the construction risks being ruled illegal.

Under the Law of Ukraine on Regulation of City-Building Activities a municipality may establish an infrastructure contribution of up to 10% of the construction project's value. This contribution – a form of tax which may only be used for developing infrastructure – exists only in a few countries, and it actively impedes the slowly improving investment attractiveness of Ukraine. Draft legislation abolishing the infrastructure contribution was prepared but has been tabled for the time being. At present, the best way to avoid payment of the contribution is to make sure that the relevant construction project is assigned a class number under State Classifier of Buildings and Structures which does not require payment of contribution: for example, class 21 "Engineering facilities, Transport facilities," with subclass 21.51.1, "Marine port facilities." Notably, the class number should be assigned before the construction project is approved, as not all projects (e.g., a processing plant) qualify for contribution-exempt class numbers.

Dredging projects are not being carried out in port water areas to match berth depths with those stipulated in port passports; this affects the ability of high capacity vessels to enter Ukrainian ports. These works cannot be conducted for private money because relevant legislation does not provide an investment repayment mechanism.

At present, the following state port fees are levied by the Authority of Seaports of Ukraine: A vessel fee, berthage fee, canal toll, lighthouse fee, administrative fee, and sanitary fee. Such fees in most instances are higher than in the ports of neighboring countries. Additional fees to be paid include special services fees (for pilot service and vessel traffic service) and other payments (such as towing, port information fee, and port captain fee). While vessel, towing, pilot, sanitary and, to some extent canal fees are standard worldwide, the other fees and payments are not customary.

The Government developed new procedures to calculate state port fees in an attempt to decrease them by at least 30%. But achieving this goal requires a simultaneous lowering of dividend rates payable by the Authority of Seaports to the budget from the current 75% to 50%; this is a hard task for

the Government because dividends are used to cover various state expenses.

The Law of Ukraine on Marine Ports allows for the operation of sea ports through competition among port operators (stevedores). This resulted in a drop in grain port transshipment costs from USD 17-18 to USD 11-13 per ton. An increase in port transshipment capacity has revealed other transportation problems: (i) low railroad carrying capacities (*i.e.*, a lack of grain cars, an insufficient number of locomotives, and a rate of cargo delivery that is much lower than the contractual one); (ii) restricted truck carrying capabilities (*i.e.*, high costs, axial load limits, and port entrance fares), (iii) under-developed river shipping (urgent need for dredging operations, locking operations fees, pilot services, bridge raises, and lack of barges). According to experts, the costs of transportation of grain from producers to ports in Ukraine is 40% higher than in France and Germany and 30% higher than in the USA.

The Government and the market must understand that a decrease in port fees or improvement in concession legislation will not necessarily result in a pro rata increase of cargo traffic through ports. Although cargo traffic is indeed sensitive to port fees and legislation, it nevertheless is dependent primarily on the overall economic situation in the country and on whether ports and the entire transport infrastructure is made part of greater logistic networks.

By Volodymyr Monastyrskyy, Partner, Dentons, Ukraine

TRANSFER PRICING IN MOTION


Illya Sverdlov

Ukraine has made a great leap forward in the development of transfer pricing rules since the concept of "controlled transactions" was first introduced in the Tax Code in 2013. These transfer pricing rules have been amended in recent years and Ukrainian taxpayers are likely to face many new issues on the subject in 2017.

Among others, there are changes in the material thresholds for qualification of transactions as "controlled." Starting in 2017 a company's annual profit threshold should exceed UAH 150 million (approximately USD 5.8 million) and the annual volume of transactions with one counterparty should exceed UAH 10 million (approximately USD 385,000). The old thresholds used to be UAH 50 million and UAH 5 million, respectively.

The deadline for filing reports on controlled transactions used to be May 1 of the year following the reporting year. The deadline has been extended to October 1. Therefore, for 2017 the deadline for filing transfer pricing reports on controlled transactions will be October 1, 2018. The change provides taxpayers with additional time for analysis and for preparation of all necessary documents.

In 2017, Ukrainian taxpayers supplying transfer pricing documentation have to provide additional information such as information on transactions with intangibles and others. At the same time, Ukrainian transfer pricing rules still do not provide for the three-tiered documentation requirements (consisting of master file, local file, and country-by-country report) recommended by the OCED/G20 Base Erosion and Profit Shifting (BEPS) Action Plan. In particular, there is no requirement yet to provide master file and country-by-country report under Ukrainian transfer pricing rules. Only the "local file" has to be submitted to tax authorities.

The sources of information for transfer pricing documentation have undergone changes as well. In addition to information from public sources, currently taxpayers may use any other available sources which contain information on comparable transactions and companies, provided taxpayers submit this information to tax authorities.

Grouping of transactions has been introduced starting from 2017. Now it is possible to group controlled transactions with one counterparty in order to apply an appropriate transfer pricing method. Grouping is allowed when controlled transactions are closely interconnected, are a continuation of each other, or have a continuous or regular nature.

On July 4, 2017, the Cabinet of Ministers of Ukraine adopted Resolution No. 480, which defines the list of organizational forms of non-residents, transactions with which may qualify as controlled. The list includes organizational forms of companies which usually do not pay corporate taxes and/or are not considered to be tax residents in the states of their incorporation. The list contains 95 organizational forms of companies, from 27 jurisdictions. The vast majority of companies are partnerships and other similar entities (for example, LLP in the UK, K/S in Denmark, LP in Switzerland, and so on). This new development means that transactions with such entities will now be covered by the Ukrainian transfer pricing rules and need to be reported as such going forward.

Since 2017 the list of transfer pricing sanctions has also been expanded. There are new sanctions for failure to include all controlled transactions in the reports on controlled transactions in a timely manner and for failure to file the reports on controlled transactions or transfer pricing documentation in time.


Dmytro Rylovnikov

Official data indicates that during the 2013 reporting period (*i.e.*, the first transfer pricing reporting period in Ukraine) 40 taxpayers were fined a total of UAH 9 million, while the number of fined taxpayers fined increased to 315 in 2015, with a total of UAH 92 million in fines imposed. Moreover, it has been reported that as of August 2017 the State Fiscal Service had completed 17 transfer pricing audits, with the number expected to increase, as 29 audits are currently pending and an additional ten are scheduled to start by the end of 2017.

Ukrainian transfer pricing rules are revised and amended almost every year. Nonetheless there are still many gaps and topics which remain unaddressed by Ukrainian transfer pricing rules. Given a massive change of international tax and transfer pricing landscape globally following the BEPS project, Ukrainian transfer pricing rules are likely to need further adjustments soon in order to align with the BEPS developments.

By Illya Sverdlov, Legal Director, Head of Tax, Dmytro Rylovnikov, Senior Associate, DLA Piper Ukraine

FINANCIAL RESTRUCTURING: UKRAINIAN RECIPE


Yulia Atamanova

An unfavorable global financial crunch has affected the Ukrainian banking system. The continued growth of the share of distressed loans in portfolios of Ukrainian banks in recent years ultimately resulted in a number of sonorous bank defaults and, eventually, in the unprecedented nationalization of the largest Ukrainian national bank, Privatbank. According to the National Bank of Ukraine, in August 2017 over 60% of loans in the Ukrainian banking system were non-performing. This resulted in a permanent crisis in liquidity for Ukrainian businesses and a large number of significantly overdue loans. In response to this situation, in 2016 a unique dispute settlement mechanism for creditors and debtors was implemented to provide for financial restructuring of bad assets.

This dispute settlement mechanism is unique since it combines the elements of mediation and arbitration, recovery possibilities for the claims of several lenders, short review timeline, and more ways to find a restructuring model that satisfies all parties. The specifics of the procedure involve three bodies (the Secretariat, the Supervisory Board, and the Arbitration Committee) empowered with control over the restructuring and each acting, at different phases of the proceedings, as sole intermediary between banks and borrowers.

The financial restructuring procedure consists of a number of legal instruments: (1) the financial restructuring procedure will be initiated based exclusively on a debtor's application and upon consent of defined (involved) creditors and will be based on the agreement with the financial institutions where the amount of claims before the debtor amounts to not less than 50% of the total amount of claims of the financial institutions; (2) debtor's receivables that can be restructured are rather broad and include the principal amounts of debt, financial sanctions that have arisen both on a contractual basis and under current legislation, including taxes, fees and other obligatory payments to the state; (3) no minimum amount of the debtor's obligations it required to initiate a financial restructuring procedure, as submission of information on the full scope of the debtor's obligations in the context of key creditors and/or their groups is mandatory; (4) automatic implementation of a moratorium – effective from the day the financial restructuring procedure is initiated through its completion (up to 90 days, maximum not more than 180 days) – that will be effective for any claims submitted by persons related to the debtor and will not apply against the claims of creditors that are not the involved creditors; and (5) during the financial restructuring procedure an independent expert is engaged to inspect the debtor's financial and economic activities and provide a report which will serve as a guarantee of objectivity in determining the debtor's financial condition. While checking the operational, financial, legal, and other aspects of the debtor's activities, an independent expert can draw a conclusion that the debtor's economic activities will improve. In this case, the financial restructuring procedure will be completed.

It is worthwhile to highlight the speed of decision-making that is a significant advantage of the financial restructuring procedure. The total performance period of the financial restructuring procedure may not exceed 180 days.

The law also states that the creditors will be allowed to develop and approve a financial restructuring plan. In case of no unanimity in the review of this plan, a special arbitration mechanism is foreseen, which will come into force within a maximum short timeline: a resolution will be made available within 14 days.

During the financial restructuring procedure the debtor's tax debt will be restructured as well, but special rules will be employed to determine the tax base for debtors and creditors where tax differences will be applied. Therefore, certain loans will be classified as non-performing loans and written off by

the controlling bodies.

The financial restructuring is aimed at those businesses that actually remain at the bankruptcy stage in connection with a current NPL portfolio with banks. The importance of financial restructuring for such entities is related to the opportunity to reissue the majority of overdue loans and formulate the methods for improving the efficiency of doing business and obtain a higher market value of assets.

By Yulia Atamanova, Counsel, LCF Law Group, Ukraine

EXPAT ON THE MARKET:

INTERVIEW WITH ROB SHANTZ OF REDCLIFFE PARTNERS

Rob Shantz is a partner and the Head of the Corporate practice of Redcliffe Partners. He is a US-qualified lawyer with over 28 years of experience, including some 20 years in Central and Eastern Europe. Shantz specializes in cross-border corporate law and corporate governance matters, as well as in FCPA compliance investigation.

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

R.S.: After practicing law in the US for over seven years, I came to Poland in 1995 with the Peace Corps. Following the Peace Corps, I ricocheted between PwC and KPMG: PwC in Warsaw from 1996-1999; KPMG in Bucharest from 1999-2001; KPMG in Kyiv from 2001-2010, where I was a Tax and Legal Partner; and PwC in Kyiv from 2011 until 2015, where I was a Partner and Head of the Legal Department. I joined Redcliffe Partners in December, 2015. I much enjoy living in Kyiv, and the common theme is that I changed firms rather than rotate from Ukraine. Joining Redcliffe Partners was particularly convenient – we're in the same building as PwC, so I even have the same parking spot!

CEELM: Was it always your goal to work abroad?

R.S.: No. I never even considered moving abroad until a girl that I was dating joined the Peace Corps. After several years of practicing with a large US law firm, a change sounded good, and it seemed that I had little to lose – if Peace Corps didn't work out, I'd return to the US and pick up where I left off. It turned out to be one of the best choices of my life (except with respect to the girl – she was sent to Ecuador, and I was sent to Poland …).

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

R.S.: My practice consists of advising on and leading Corporate and M&A projects. Recently, I've also been very involved with our growing Compliance practice – particularly relative to FCPA and personal data protection issues. Recent clients include IT companies (relating to structuring cross-border provision of software development services and to implementing global personal data protection procedures) and Energy firms (relating to a Ukrainian acquisition and to assessing and updating/improving certain internal policies and procedures).

When considering how to build a practice, I like the quote attributed to Woody Allen that "90% of success is just showing up." That's a bit simplistic, but there is something to be said for "showing up" and putting in the effort over an extended period of time to give great service to current clients, and to stay active to meet new clients.

CEELM: What do your clients appreciate most about you?

R.S.: Given my past experience with Big

Four firms, I'm very comfortable with tax issues, and I think that it's helpful and appreciated that I can consider these issues while addressing various corporate and/or M&A implications. Also, having worked in a number of different jurisdictions helps me to bring a very practical perspective to cross-border transactions. It's further very important to me that we do all that we can to add value by solving problems with clear and direct solutions and recommendations (as opposed to a seeming regional, historical tendency to sometimes just answer the specific question posed – even if clearly erroneous or incomplete – with lengthy and ambiguous responses).

But probably what is most appreciated is that I sometimes procrastinate and am slow to issue invoices …

CEELM: Do you find Ukrainian clients enthusiastic about working with foreign lawyers, or – all things considered – do they prefer working with local lawyers?

R.S.: My experience is that Ukrainian clients are like most other clients – they want good service for good value – and they are generally happy to work with foreign lawyers if the commercial terms are satisfactory. The perception, though, is that foreign-oriented firms are expensive, so Ukrainian clients tend to work with local lawyers for purely domestic issues, but are more likely to consider working with foreign lawyers when they have issues with cross-border implications.

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

R.S.: One broad difference that comes to mind is that issues here can be less predictable, particularly with respect to interaction with the courts and authorities. This is why many of the transactions that we work on are governed by English or other non-local law, and provide for disputes to be adjudicated outside of Ukraine. A difference in Ukraine's favor is that the tax laws are generally simpler than the monstrosity of the US tax code. As one former US Senator put it: "The present tax code is about ten times longer than the Bible, a lot more complicated, and, unlike the Bible, contains no good news."

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

R.S.: As compared to my life in the US, I often say that in Ukraine the highs are higher, the lows are lower, but it's never boring! The last fifteen years or so have been an exciting time to live in Ukraine. I've been in Ukraine through both the Orange Revolution and Euromaidan, and I'm very impressed by the efforts and energy of the many Ukrainians who want their country and its institutions to become more fair and transparent. I'm less impressed with many in the political class, and their corrupt, entrenched interests and schemes. There is real progress and the economy is growing again, but, with a little more political will and foresight, Ukraine could be - and hopefully soon will be – a real growth tiger.

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

R.S.: It's kind of sneaked up on me, but I guess that I've become the proverbial (partially) gray-haired partner. Redcliffe Partners is a young firm with much energy and enthusiasm, and many very clever (and very nice) attorneys. I'm happy that my experience is sometimes helpful for internal issues like procedures and processes, as well as to occasionally provide additional input and perspectives on important client projects that other partners are leading.

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

R.S.: This is a difficult question. I have two British friends from my Warsaw days,

Rob Shantz

and, while we're all currently living in different countries, we still try to meet at least once a year. This has been the case for close to twenty years now, and, since our meetings tend to rotate between different CEE countries, I've been very fortunate to visit many interesting, beautiful, and historic places in the CEE … and a fair number of pubs and taverns. If I have to choose, though, I still have a special fondness for Poland – it was the first foreign country that I lived in, and, with the excellent Peace Corps language training, I was able to learn Polish. It's always a nicer experience when you can speak the local language.

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

R.S.: Kyiv is a wonderful city, so, again, a difficult question. The luckier visitors come in periods of warmer weather, in which event my two favorite options are one of the many rooftop terraces (for example, at the Hyatt, Intercontinental, and Avalon, among others), which have panoramic views of gorgeous, ancient churches and/or Dnipro River; or one of the many open air cafes in the city center (such as O'Panas, Chateau, and Chicken Kyiv) which make for good people watching.

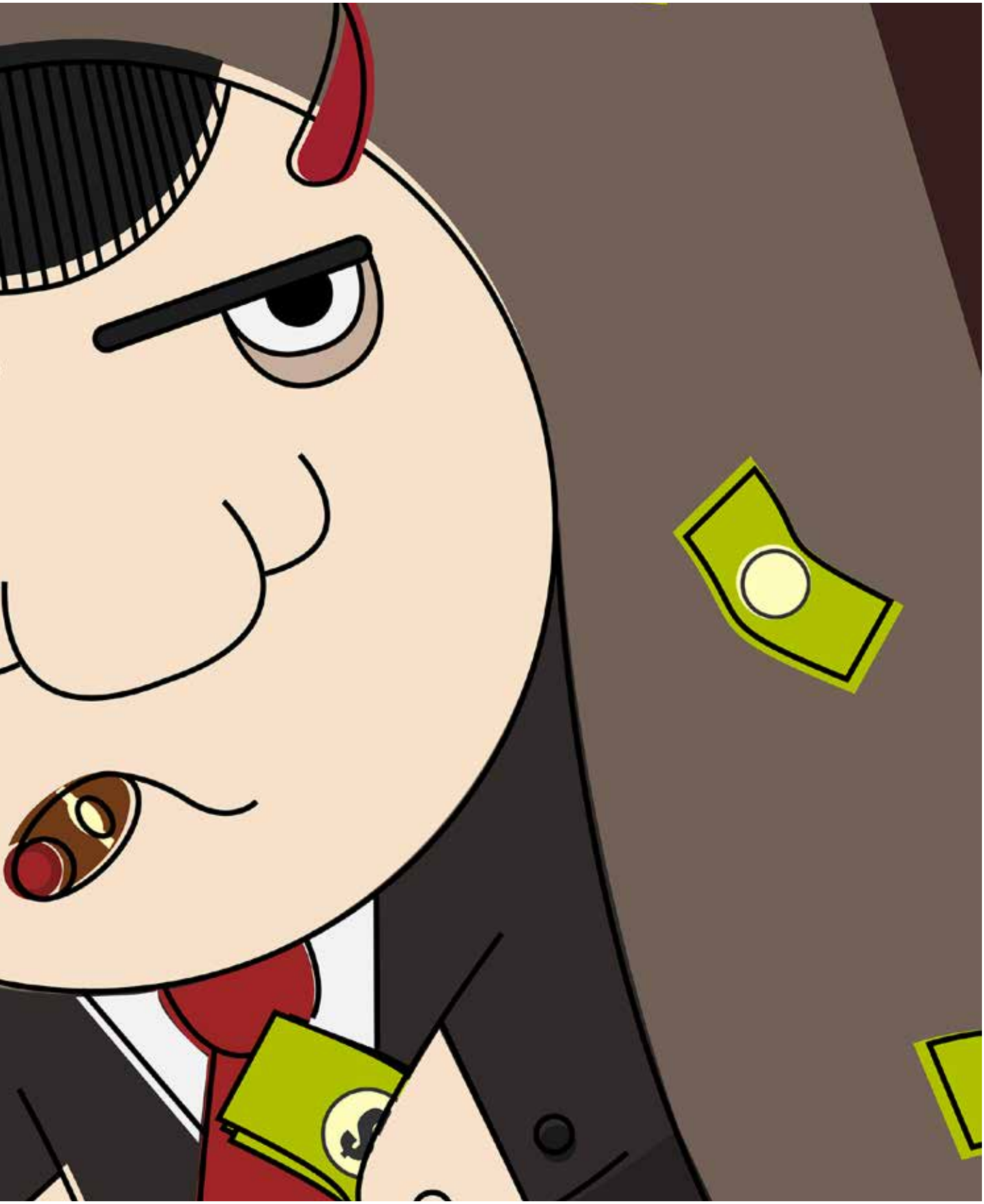
David Stuckey

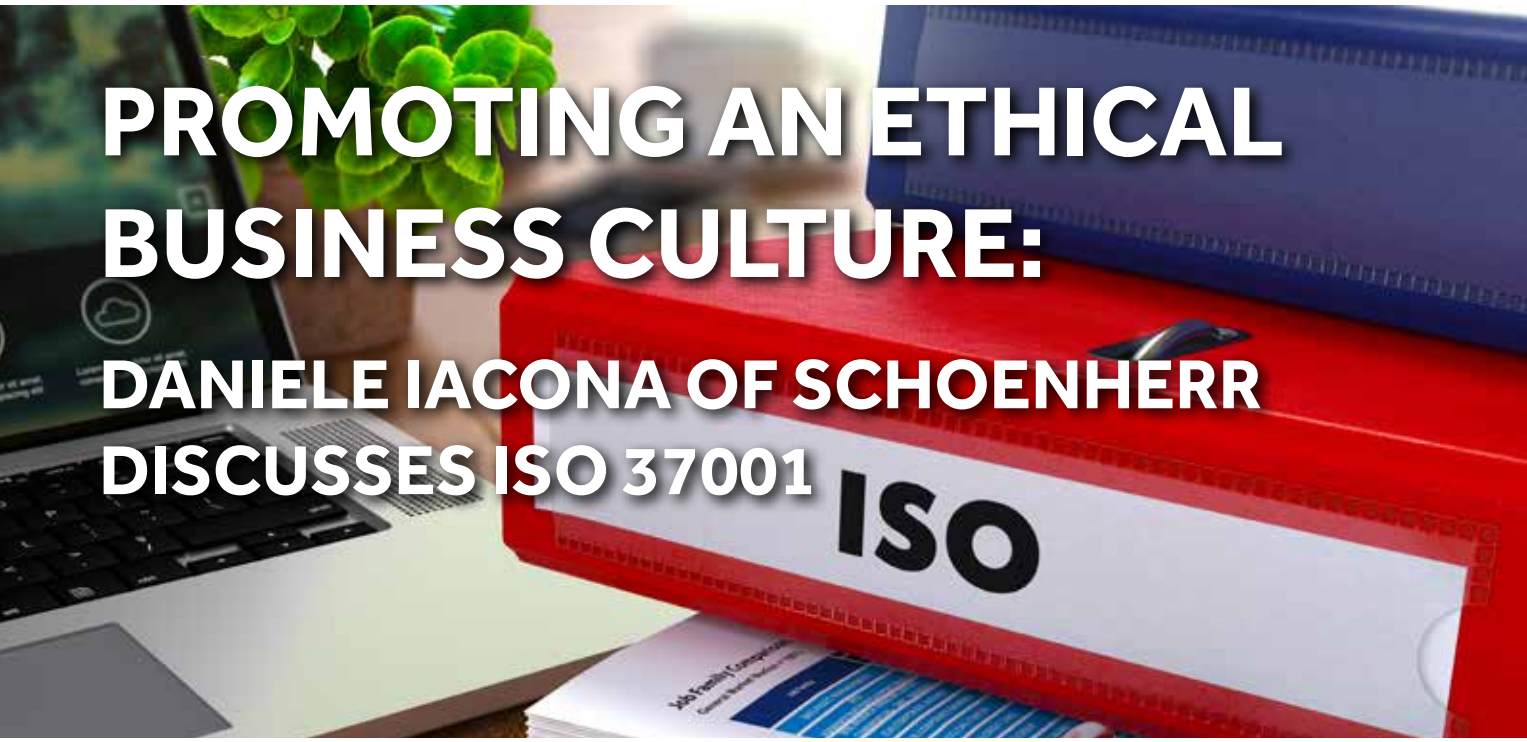
EXPERTS REVIEW: ANTI-CORRUPTION

The subject of Experts Review is Anti-Corruption. That got us thinking about crime. And that got us – wicked creatures that we are – thinking about murder. So this time, we present the articles in order of the murder rate per year per 100,000 inhabitants in the countries of CEE, according to the United Nations Office on Drugs and Crime.

Thus, after a special interview with Daniele Iacona on ISO 37001, the article from Austria – where only .51 out of every 100,000 people were killed in 2015 (the most recent year for which data is available) – goes first, and Poland's goes second. The article from comparatively violent Russia – where 11.31 people out of every 100,000 were killed in 2015 – goes last.

Because we know you're interested, the murder rate in the United States – 4.88 out of every 100,000 people were murdered in 2015 – puts it at 126th out of the 219 countries included in the report.





PROMOTING AN ETHICAL BUSINESS CULTURE:

DANIELE IACONA OF SCHOENHERR DISCUSSES ISO 37001

"Bribery is one of the world's most destructive and challenging issues. With over USD 1 trillion paid in bribes each year, the consequences are catastrophic, reducing quality of life, increasing poverty and eroding public trust," claims the International Organization for Standardization in explaining the need for the ISO 37001 certification, which it describes as "a new standard to help organizations fight bribery and promote an ethical business culture."

To learn more about ISO 37001, CEE Legal Matters spoke to Daniele Iacona, an attorney at law in Schoenherr Romania's corporate/M&A practice and the head of Schoenherr's Italian Desk, who is licensed to provide specialized legal assistance to organizations seeking to obtain the ISO 37001 certification.

CEELM: What is ISO 37001 and why should companies keep it on their radar?

D.I.: The ISO 37001 standard sets out the requirements and guidelines to help organizations stay compliant with anti-bribery laws by implementing management systems for preventing, detecting, and responding to bribery. The standard is designed to address acts of bribery by an organization, as well as acts of bribery of an organization in relation to its activities. In both cases, the concerned acts of bribery are those committed by/against the organization itself or its employees/business associates on behalf of the organization or for its benefit.

Acts of bribery can lead to civil and criminal sanctions for companies (such as fines, temporary or full business close down, interdiction to take part in procurement procedures, etc.), not to mention the reputational damages. In this context, business shareholders can consider ISO 37001 as a tool to protect themselves and their companies from the effects of bribery/corruption acts.

Implementing this standard to manage the risks of bribery acts is particularly recommended for the shareholders of companies doing business in countries where corruption reaches high levels, and this includes some CEE countries. The majority of companies active in the CEE regions have no anti-bribery good practices and compliance programs in place whatsoever and the guidelines of ISO 37001 could at least make these companies aware of what to consider in designing such measures.

CEELM: What was the main driver for its introduction and what types of companies are its main target?

D.I.: The whole world got a good look at the ugly effects of corruption back in 2008, as the unlawful acts at Lehman Brothers played an instrumental role in the unfolding of the financial crisis. From there on, the need to design an international standard aimed at protecting organizations and the general public from corruption has only grown.

The ISO 37001 standard is applicable to all types of organizations – public, private or not-for-profit, and active in any field – interested in implementing an anti-bribery compliance program.

CEELM: What are the main advantages of the standard? Are there any challenges or disadvantages you can identify at this point?

D.I.: On the plus side, the standard encourages companies to stay compliant as it allows for the implementation of consistent

anti-bribery systems on organizational level. It also represents a competitive advantage in procurement procedures where it is required, as well as providing proof to clients, business partners, and even the authorities that the company implementing this system is concerned with avoiding bribery acts.

In my opinion, the main disadvantage of the standard itself is its flexibility, as it allows for beneficiaries themselves to decide on the coverage and in-depth of the analysis and procedures conducted for certification purposes. As the way in which the standard is implemented depends on whether beneficiaries are actually committed to staying compliant or simply interested in creating an appearance of compliance, there is room for inconsistency and this could eventually lead to lack of credibility.

Obtaining ISO 37001 certification does not in itself guarantee that authorities will accept it as indisputable proof of a company's efforts to strengthen its compliance program. However, it is definitely a great example of self-responsibility that should be positively considered by authorities.

Furthermore, it is important to mention that ISO 37001 does not address fraud, cartels and other competition offences, money-laundering, or other activities related to corrupt practices. These remain to be addressed by companies as part of their corporate governance compliance programs, if such exist.

CEELM: How difficult is the process? What are the main elements a company needs to keep in mind when preparing for it?

D.I.: The process in itself is not different from the structure of any other ISO certification and it might take between two and six months, depending on the size and complexity of the organization, its existing systems, and the allocated resources. The process itself is highly customizable to respond to each company's particularities.

The pros and cons for a company seeking certification need to be considered on a case by case basis. The decision depends on many factors, including on how structured and functional the existing compliance system of the company is, how exposed to acts of corruption the industry or countries in which that company operates are, as well as on the balance between the certification/updating costs and the anticipated benefits.

CEELM: Do you expect financial institutions like the EBRD or the IFC to implement this standard as a prerequisite?

D.I.: As it was only launched one year ago, the standard is still too young to anticipate that it will become a mandatory requirement soon. With the passing of time, is not unlikely that it might develop into a prerequisite for participation in public tenders organized by governmental bodies or public companies or for companies which apply for financing from international banking institutions.

It would be a great act of responsibility to have this standard as a prerequisite for public tenders in the next future.

Daniele Iacona

CEELM: What's on the horizon in this direction? Can we expect this standard to be expanded into other corruption areas other than bribery?

D.I.: Some large multinational companies and even governments from across the world have implemented the standard in its year of existence. The more organizations get certified, the more credible the standard becomes, and the more it will be used, unless beneficiaries fail to actually implement the procedures and use the certificate only as a piece of paper to simulate compliance. Risks do exist for the standard to become an inefficient tool, and voices are calling for ISO 37001 to be mandatory and to provide a more rigid and unitary approach in all relevant organizations.

CEELM: Do you recommend ISO 37001?

D.I.: Each company needs to become aware of its unique risk profile. Any compliance program must be tailored around the particularities of each organization in consideration of this risk profile, and this naturally includes the company's anti-bribery measures. This is why we first recommend a tailored compliance program. The ISO 37001 certificate is not a definitive solution or a guarantee that the company is fully compliant, but it is a simple tool that should be considered by all companies that have rapidly developed businesses in geographies where compliance principles are still rising (e.g. CEE jurisdictions). This is why, in our opinion, the shareholders of companies active in jurisdictions known for their high levels of corruption risks should consider strengthening their compliance programs through instruments such as the ISO 37001, which, if it is obtained for the right scope of work, represents a good tool to promote and develop anti-bribery programs in the entire supply chain.

Radu Cotarcea

AUSTRIA

The FCPA Versus Austrian Criminal Law: Is the Anti-Corruption Regime in the US Equal to the Anti-Corruption Regime in Austria?


Martin Eckel

The US Foreign Corrupt Practices Act (FCPA) was introduced to fight corruption on an international level. Corporations of all nationalities which are established under US law or traded on a US stock market are embraced by this act, as are all individuals who commit relevant acts on the territory of the US.

In contrast, the Austrian Criminal Code (the *Strafgesetzbuch*, or StGB) merely covers offenses of individuals committed on Austrian territory. Corporations, on the other hand, are covered by the Austrian Code of Criminal Liability (the *Verbandsverantwortlichkeitsgesetz*, or VbVG).

Differences in Target

In general, the FCPA focuses on *active* bribery, and it therefore penalizes the party trying to gain an advantage by offering benefits to officials. The Austrian law, by contrast, also sanctions *passive* acts, and therefore penalizes those who accept such benefits as well.

There are also differences regarding the responsibility for actions of employees. While corporations subject to the FCPA are held responsible not only for the acts of their own employees, but also for those committed by employees of subsidiaries, joint ventures, and contractual partners (to the extent the corporations were aware of the violations), a company subject to Austrian law is only liable for acts of its own staff – and not for the actions of employees of an affiliated enterprise.

Differences in Impact

Difference in the regulation of facilitation payments made to facilitate an official act could have enormous impact: The StGB penalizes the payment of public officials made with the purpose of accelerating their work, even if the official's actions are in fact lawful. By contrast, the FCPA allows for bribery if the aim of the paid-for action of the official was to speed up the release of certain documents like licenses or custom clearances.

This distinction could be critical if, for instance, two enterprises – one subject to the FCPA and the other subject to Austrian criminal law – both try to get an advantage by bribing an official. The former would benefit from the time-saving act (assuming all other requirements of the FCPA's exceptions are met), while the latter would suffer from legal consequences.

Differences in Penalty Degrees

Sanctions under the Austrian law seem to be more lenient than those set out in the FCPA. Under the latter, each anti-bribery violation incurs a fine of up to USD 2 million for enterprises or other business entities, while individuals such as stockholders face a penalty of up to USD 100,000 or a maximum of five years in prison. In addition, sanctions twice as high as the monetary benefits the offender achieved with the violations can be imposed. The StGB, on the other hand, calls for penalties only up to EUR 1.3 million for legal entities and a maximum of ten years in prison for individuals – but only if the fraudulent monetary benefit equals or exceeds EUR 50,000.

Furthermore, the Austrian law allows for a sentence to be reversed if the offender meets certain requirements. For instance, the scope of liability of a legal entity depends on the measures it has taken to ensure compliance with anti-corruption regulations, and the enterprise can only be punished if it failed to act with necessary diligence and thus facilitated the commitment of crime for its employees. In addition, under the StGB, offenders can prevent fines by active repentance, meaning that impunity can be acquired by preventing the achievement of the offender's former goal and by stopping the bribed public official from executing the desired task. In the FCPA, by contrast, preventive measures do not lead to immunity, but they can mitigate the punishment.

Baiting: An Austrian Particularity

The Austrian Criminal Law contains only one singularity: Baiting – *i.e.*, the granting of benefits to influence the beneficiary. This offense differs from the afore-mentioned criminal acts in that the granting of benefits does not have to be accompanied by a certain requested action of the public official, but only takes the form of advantages provided over a period of time in order to make sure that the official is well-disposed in the case of a future request. The FCPA and other international anti-corruption acts do not criminalize this situation.

It is worth noting that the STGB and the VbVG were introduced to sanction illegal behavior in Austria, while the FCPA focuses on crimes beyond the borders of the US. Furthermore, the StGB was introduced as a codification of the general domestic criminal law, while the FCPA has the advantage of concentrating merely on white collar crimes. Therefore a comparison between the Acts has to remain incomplete.

Martin Eckel, Partner, Taylor Wessing

POLAND

A Strong Response to Corruption in Poland


Marcin Aslanowicz

The Polish Government has recently presented a draft Program on Fighting Corruption for 2018 through 2019. This is another step in the ongoing effort to introduce legal mechanisms aimed at reducing corruption in Poland. The process of systematically fighting corruption started several years ago, and it has allowed Poland to move from 43rd place in the Transparency International Corruption Perceptions Index in 2010 up to 29th place in 2017. The aim of the contemplated regulations is to push Poland further up the ranking and continue its transition to a true western-style economy.

A number of sectors were identified as especially exposed to corruption in the program. These include, in particular, public procurement, public administration, and the private sector. In order to combat corruption, the Government intends to introduce new laws in each of these sectors, as well as to facilitate coordination among anti-corruption authorities and promote social awareness through educational activities.

Public Procurement Proceedings

The authors of the Program consider the public procurement sector to be especially prone to corruption. The public procurement market in Poland was valued at PLN 116 billion (approximately EUR 40 billion) in 2015, or 6.5% of the Polish GDP, which prompted the Government to state that fighting corruption in this sector is a top priority for the next two years.

In order to achieve its goals, the Government plans to introduce a number of measures. One of the most important measures is the creation of a publicly available IT system containing information about ongoing and concluded proceedings. It is expected that the system will function similarly to the public procurement database of the European Union, known as TED.

Private Sector and Administration

Another important goal of the Program is to fight corruption in the private sector and the public administration sector. One possible measure to achieve this objective is the implementation of legislation dedicated to whistleblowing. This topic has recently been the subject of closed public consultations at an EU forum, but it remains to be seen whether the Polish Government will decide to tackle the issue independently or wait for EU legislation to be put in place.


Pawel Bukiel

In order to reduce corruption at the crossroads of the public and private sectors, the Polish Government also intends to create mechanisms for responding to possible corruption during contacts between government officials and applicants. An analysis of the most common types of corruption occurring in the public administration sector will be undertaken. The Polish Anti-Corruption Bureau will implement unified rules of behavior for public officials on the basis of this analysis.

Activities Coordination

In order to meet the objective of suppressing corruption, several actions are planned to improve the performance of investigative authorities. The Central Anti–Corruption Bureau has been selected to design a mechanism for coordination and cooperation between competent investigative authorities. The Anti-Corruption Bureau will also organize trainings and conferences as platforms for investigative authorities to exchange experiences and information. The Ministry of Justice will be responsible for conducting an analysis of foreign legal solutions and assessing the feasibility of applying reasonable anti–corruption solutions to domestic law.

Education and Rising Social Awareness

The implementation of anti-corruption education among public officials is one of the Program's priorities. Great emphasis has been put on launching permanent and periodic educational trainings targeted at the recognition of potential abuses of authority and promoting appropriate behavior in such situations, as well as the consequences of corruption. The Program will also increase social awareness by organizing seminars and conferences with the participation of governmental, local, and scientific experts. In addition, as part of the process of increasing social awareness, school teachers and university professors will be provided with educational materials within the core curricula of schools and universities.

What's Next?

The Program on Combating Corruption 2018–2019 contains a comprehensive analysis of corruption in Poland and measures designed to further reduce illegal practices. In upcoming months, we can expect intensified legislative efforts directed at the implementation of specific legal regulations covered by the Program. If the contemplated implementation of the Program turns out to be efficient and effective, Poland will accelerate its progress on the road to becoming an even more safe and stable European economy.

Marcin Aslanowicz, Partner, and Pawel Bukiel, Associate, Wolf Theiss

CZECH REPUBLIC

Whistleblowing in the Czech Republic


Jaroslav Tajbr

Despite recommendations by international organizations, Czech legislation on whistleblowers is fragmentary and does not offer a complex legal regulation of the phenomenon, or even a definition of the term. The current protection of whistleblowers – *i.e.,* employees or former employees of an organization who inform competent institutions of illegal or unethical practices in that organization – is only dealt with in the Czech Act on Banks, Act on Savings and Credit Co-operatives, Capital Market Undertakings Act, and Civil Service Act (or, more precisely, in the Government Decree implementing the Civil Service Act). Some vague protection of whistleblowers is also provided by the general provisions of the Labor Code and other regulations, which, however, do not specifically address the protection of whistleblowers as such. Currently, two acts are being discussed in the Czech Parliament aimed at providing higher labor-law protection of whistleblowers in both the private and public sectors.

The first draft, developed by the Minister for Human Rights on the basis of the Action Plan to Fight Corruption, was approved by the Government in February 2017 and has subsequently been forwarded to the Parliament. The basis for the new legal position, according to the draft, should be the amendment to the Civil Procedure Code, as the Minister for Human Rights does not deem it necessary to adopt a separate law on this matter. Pursuant to the draft, only those "whistleblowing" messages which are made in good faith and in respect of which the public interest in learning of the misconduct outweighs the harm suffered by the protected interests concerned (for example, the duties of loyalty or confidentiality) should be protected. The draft also transfers the burden of proof from the employee to the employer, which will in practice mean that an employer who dismisses an employee after the employee reports a misconduct must prove that the dismissal has been made lawfully.

An "alternative" draft of an act protecting whistleblowers coming from the workshop of the Minister of Finance was submitted to the Government in April 2016. This act would apply to workers in employment relationships and in civil service, professional soldiers, and members of other security forces. However, protection would be granted only to whistleblowers who have disclosed specific offenses (*e.g.*, corruption-related crimes, rape, fraud), while reports of other criminal acts, administrative torts, and other illegal misconduct would not be protected. This apparently contradicts international recommendations and unjustifiably discriminates between disclosures of equally serious crimes by granting protection to only some and denying


Pavlina Hlavenkova

protection to others (while the selection of crimes seems to be random). The draft suggests that whistleblowers should be protected from the moment they make their disclosure. Whistleblowers would be allowed to contact the Prosecutor's Office on an anonymous basis, through a dedicated website. Once the disclosure is assessed, the state prosecutor may offer protection to the person making it – *i.e.*, may give him or her the status of a protected whistleblower – and the employee may then safely step out of anonymity. Once the employee obtains protected whistleblower status, the employer may not end his/her employment or service relationship, either by notice of termination or immediately, nor may the employer transfer the whistleblower to another job or position without the consent of the regional branch of the Labor Office.

It should be noted that it is not clear at this point whether either of these two drafts will be given effect, nor what the final form of the adopted legislative measures will be.

Apart from the planned legislation in this matter, the Czech Constitutional Court has recently provided guidance on how to grasp this issue in two cases, issuing verdicts establishing that the principle of proportionality needs to be applied and that it is necessary to compare the public interest with employee loyalty. In the first case, there was a public interest in protecting the environment; the second case concerned the requirement of non-discriminatory treatment in employment relationships. In both of these verdicts, the necessity of employee loyalty prevailed over the public interest, as employees provided information not only to the competent public institutions, but also to other private subjects, and even to potential business partners. Therefore, the Constitutional Court denied the provision of protection to the employees, and rejected both complaints outright. It is, however, probable that decisions of the Constitutional Court would be different if the employees had not disseminated the information in the private sphere.

Jaroslav Tajbr, Head of IP/IT, and Pavlina Hlavenkova, Associate, Noerr

SLOVENIA

Anti-Money Laundering and Counter Financing of Terrorism Policy in Slovenia


Lea Pecek

Recent developments in the ongoing investigation into money transactions coming from Iran through one of the largest Slovenian banks have raised awareness about anti-money laundering and financing of terrorism rules in Slovenia.

On November 19, 2016 the Slovenian Parliament passed the Prevention of Money Laundering and Terrorist Financing Act (ZPPDFT-1) which implements EU Directive (EU) no. 2015/849 of May 20, 2015 on the prevention of the use of the financial system for purposes of money laundering or terrorist financing (the "Directive"). Since measures adopted solely at the national or even at the EU level made without taking into account international coordination and cooperation would have very limited effect, the objective of ZPPDFT-1 is also to conform Slovenian legislation with international standards, especially with the Financial Action Task Force recommendations.

The most important changes in ZPPDFT-1 include the strengthening of the risk-based-approach to increasing the effectiveness of measures, broadening the definition of politically exposed persons, lowering the threshold for reporting of cash transactions from 30,000 EUR to 15,000 EUR, and introducing the possibility of electronic identification means for Know Your Customer (KYC) procedures.

An important innovation is also the establishment of a Register of Beneficial Owners to ensure transparency of ownership structures of business subjects and thus prevent the use of business entities for money laundering and terrorist financing. Obliged entities will have to determine their beneficial owner(s) and provide that information to the register, which is going to be established and maintained by the Agency of the Republic of Slovenia for Public Legal Records and Related Services (AJPES). According to ZPPDFT-1, information to be provided should include, *inter alia*, the name, address, and ownership interest or other way of control of the beneficial owner. The register, which is expected to become publicly available in January 2018, will provide this information free of charge. Further guidance will be provided by the Rules on Implementation of Prevention of Money Laundering and Terrorist Financing Act, which have not yet been adopted.

According to the Directive, EU member states can use a proportionate approach, under which the obliged entities are able to adapt the stringency of their procedures to the risk of money laundering and financing of terrorism. The risk-based-approach affects the politics, controls, and procedures for risk management and therefore enables entities to mitigate the length of the KYC procedure in low risk areas. Since according to a national risk assessment the current risk of money laundering and financing of terrorism in Slovenia is still low to medium, simplified KYC procedures can be used by the obliged entities.


Primoz Mikolic

In June, 2017 a committee of experts (the "Moneyval Committee") conducting an evaluation of anti-money laundering measures and the financing of terrorism published the Fifth Round Mutual Evaluation Report on anti-money laundering and counter-terrorist financing measures in Slovenia. According to the Moneyval report, Slovenia is not a major international financial center and has a low domestic crime rate. Crime offences that pose the highest money laundering threat in the country are abuse of position, tax evasion, business fraud and offences related to illicit drugs. Within the financial services industry in Slovenia, the banking sector accounts for the largest part of the industry and is deemed most vulnerable to money laundering.

The Moneyval Committee showed that Slovenia has undertaken certain measures to increase transparency and its authorities have partially succeeded in identifying, assessing, and understanding money laundering risks. Further steps to improve the knowledge of supervisors and other relevant authorities regarding money laundering and terrorism-financing risks and to improve proactivity in investigating and prosecuting money laundering and terrorism-financing related crimes will however still have to be taken.

In the dynamic area of money laundering and financing of terrorism regular changes in legislation are inevitable. Slovenia will have to assess its progress based on the Moneyval 2017 recommendations and present a report at the 57th plenary meeting of the Moneyval Committee in September 2018.

Lea Pecek, Head of Corporate Practice Group, and Primoz Mikolic, Associate, ODI Law Firm

HUNGARY

Cybercrime: The Road Begins


Akos Nagy

Each year hundreds of billions of dollars are lost by companies due to cybercrimes committed by criminals. These attacks vary from sophisticated hacking to primitive fraud attempts.

However, with the right preparation and countermeasures in place, companies can prevent certain types of cyberattacks, or at least mitigate the associated

losses.

Recent Examples


Aron Barta

With increasing frequency, perpetrators are hacking employee email accounts (typically those belonging to the person responsible for payments in the company's name) by sending a message from a specially-created email address differing only by one or two characters from the email address of an actual company business partner. The email contains a request that payments due to the business partner be wired to a new Hungarian (or other) bank account provided in the email sent from the fake email address. Unless the targeted employee notices the deception, he or she may well wire the funds to that new bank account. After payment, another perpetrator will carry out different money laundering operations, like transferring the fraudulently-acquired money to another bank account, often outside of the EU. Finally, with the help of "stooges," the perpetrators can withdraw the wired money from the account in cash.

Another type of cybercrime is committed by hackers who break into a company's IT system and extract a part of or an entire database. As a next step, they send an email or other message to a company executive or other responsible person demanding the transfer of funds (or more recently, bitcoins), threatening to disclose the illegally-obtained data to the public on the Internet if they do not receive payment. In some instances, hackers have carried through with their threats when funds were not credited in line with their demands, causing huge reputational and other losses to companies.

Potential Prevention or Defence Options

Preventing the first type of attack is much easier than recovering lost assets. Companies must bring these types of crimes to the attention of the personnel responsible for accounting, finance, and IT systems by organizing internal trainings and requiring that payment of funds be made only by the book (*e.g.*, for all changes in bank accounts, a phone confirmation or other confirmation method should apply) and creating effective internal validation processes. Should such an attack take place, time is of the essence. In our experience, if a company acts quickly in filing a police report and asking for the relevant bank accounts to be frozen, there is a chance that at least some amounts can be recovered.

The second type is more difficult to prevent. Many companies spend excessive amounts of money on IT – especially IT security – but the sufficiency of such systems can only be truly measured when an attack occurs, as even less-developed IT systems are likely to detect an attempt. After a successful attack, it is very difficult to move forward quickly. Therefore, all companies should have a strategy in place to make sure that losses, if they occur, are minimized to the extent possible.

It appears that transferring money to Hungarian bank accounts is extremely popular among the perpetrators of such cybercrimes, which brings up the question of how regulations concerning the opening of bank accounts and wire transfer operations can be tightened or weak points of the system detected.

Cybercrimes have also caught the attention of the authorities. On April 15, 2013 Hungary established the National Cyber Security Center to fight such crimes, and at a European level the Directive on Security of Network and Information Systems was adopted in 2016 to strengthen cooperation between authorities. In addition, the rules of the General Data Protection Regulation (GDPR), which comes into force on May 25, 2018, also contain mandatory measures for companies. The GDPR will require companies to implement appropriate security measures to protect personal data processing operations, to carry out data protection impact assessments in connection with high-risk personal data processing (*e.g.*, if the company is likely to be a target of cyber criminals) and, once an incident (cybercrime) occurs, to notify the local data protection officer within 72 hours.

Akos Nagy, Partner, and Aron Barta, Associate, Kinstellar

ROMANIA

Slaying Corruption – Or How Romania is Fighting Its Biggest Enemy


Sergiu Dragoianu

General Context

Since Romania's accession to the European Union in 2007, the European Commission has set up a Cooperation and Verification Mechanism (CVM) in order to monitor, among other strategic points, the progress of Romania's fight against corruption.

The CVM Report, which was published on January 25, 2017, concluded that judicial reform and the fight against corruption have been key issues for Romanian society over the last ten years.

Romanian society has indeed changed significantly in the past ten years, as the level of awareness and the perception of the civil society regarding high-level corruption has shifted from acceptance to extreme disapproval. For instance, at the beginning of 2017, there were massive protests in many of the country's major cities for an ordinance created by the Romanian Government that decriminalized and/or reduced the criminal punishments for corruption offences such as abuse of office, conflict of interest, and negligence at work. In response to the largest street protests in the past 25 years, the Government repealed

the ordinance.

The most important reasons for the changes in the Romanian view of high-level corruption are: (i) the creation of a comprehensive legal framework for fighting corruption crimes; (ii) the creation of independent judicial institutions investigating, prosecuting, and deciding upon high-level corruption cases; and last but not least, (iii) the efforts made in the elaboration and implementation of anti-corruption procedures.

Even though the investigation and punishment of wrongdoers are important parts of the fight against corruption, the key element to changing society's view of corruption is the institution of prevention policies, meant to change the society's perception of the offense.

Prevention Policies

From 2012 to 2015 Romania made major progress in its attempts to stop corruption via its National Anti-Corruption Strategy (NAS). Furthermore, after many consultations with the representatives of more than 90 central and local public institutions, independent authorities and anti-corruption institutions, and various business organizations, a new strategy was adopted on August 10, 2016.

This strategy – NAS 2016-2020 – continues the efforts of the previous strategy, with primary policies including: (i) a more transparent government at both the central and local levels; (ii) increased institutional integrity; and (iii) deeper knowledge and understanding of integrity standards by employees and beneficiaries of public services.

The strategy is destined to strengthen integrity and reduce corruption risks in priority sectors such as healthcare, education, judiciary, politics, and public procurement. The prevention policies of NAS 2016-2020 are mandatory for all public sectors.

However, the engine of the Romanian economy is not the public but the private sector, and corruption practices exist in relationships between private companies as well, not only with public authorities. Thus, by focusing on fighting corruption in the public sector, Romanian authorities overlook corruption in the private sector and the need for a special law that would include sanctions and prevention policies for private companies.

Even though the authorities do not focus their resources on elaborating strategies and corruption prevention policies for the private sector, companies may look for assistance to the ISO 37001 Anti-Bribery Management System, an international standard that helps organizations manage the risks of corruption through a series of measures that aim to prevent, detect, and address bribery.

Conclusions

Corruption is a constant threat for democracy, the rule of law, and social and judicial equity. Bribery is contrary to fundamental values as it undermines organizational effectiveness in both the public and private sectors, corrupting society at its core.

Romania has made major progress in the fight against corruption, having investigated and sanctioned numerous cases of high-level corruption. However, harsh punishment has never sufficed to entirely discourage the criminal phenomenon.

We salute and support the efforts to develop new standards and establish new institutions designed to suppress corruption, but as long as there is no economic stability in society, a lack of education on the concept, and no collective awareness, none of these programs will be able to reach their goals.

Furthermore, in order to have more significant results in the fight against corruption, the authorities, civil society, and the business environment need to work together closely and continuously.

Sergiu Dragoianu, Co-Head, Criminal Law Practice, Maravela & Asociatii

ESTONIA

FCPA and UK Anti-Money Laundering Act Compliance in Estonia


Marko Kairjak

According to TRACE Matrix 2016 results, Estonia is the third least corruption prone country in the world, minimizing the risk of liability under anti-corruption regulations. To date, there is no case law under FCPA rules concerning Estonia. Nevertheless, the legal framework set by the FCPA gives rise to theoretical problems of definition which may hinder its enforcement.

The FCPA sets out liability for bribing a foreign official, providing United States courts with jurisdiction. Active bribery is also punishable under Estonian Penal Code (EPC) §6(1) by the principle of territorial jurisdiction – even (according to EPC § 7(2)(2)) if the bribe takes place outside of Estonia. In case of proceedings in the USA, however, a person making a bribe cannot also be held criminally liable in Estonia due to double jeopardy. The situation is different in those circumstances where the definitions of "foreign official" and "bribe" vary.

The scope of the FPCA is limited to giving a bribe to a public official. The EPC, on the other hand, has a wider scope of application, as it also covers bribes in the private sector. As a result, application of the former falls short and private sector corruption will be prosecuted under Estonian law.

Secondly, the EPC provides for a broader interpretation of what can be considered a bribe than the FCPA. A bribe, according to EPC § 298, is a promise of property or other advantages – meaning that a bribe is an advantage, including property. Property according to § 66 of the General Part of the Civil Code Act, means a set of monetarily appraisable rights and obligations. Therefore, for example, if a US person gives a loan to


Birgit Sisask

an Estonian public official in exchange for an act made as part of his position, it may be considered a bribe – but contains an exception for facilitating or expediting payments to expedite or secure a routine governmental action. By contrast, such payments would be prosecuted under the EPC. Gifts to public officials are considered a defense under the FCPA. In Estonia, the value of a gift that does not breach corruption regulations is low. Case law regarding gifts and hospitality in terms of corruption is scarce.

Extradition of offenders to the US has encountered problems in practice. Provided that all formal conditions are met and a person is prosecuted in the USA, extradition of that person is regulated by the extradition treaty of 2006 between Estonia and the USA. This treaty does not impede extradition in bribery cases since the FCPA is less severe than the EPC: general principles of extradition are met under article 2(1) of the treaty, which states that an act must be punishable both in Estonia and the USA by at least a year of imprisonment and it must not be expired under the law of the requesting state according to article 6. Penalties under the FCPA are leaner than those of the EPC, which, where the elements of accepting a bribe exist (*e.g.*, recurrence or large scale), allows punishments of up to ten years of imprisonment or, for legal persons, a monetary penalty of up to EUR 16 million. Parallel criminal proceedings must be avoided and should be solved by transfer of proceedings.

Anti-money laundering regulation in the UK does not differ from the Money Laundering and Terrorist Financing Prevention Act (MLTFP) in Estonia as both are based on and comply with the requirements in the fourth money laundering directive (2015/849/EU). The transposition date of the directive was June 26, 2017, however, MLTFP as the method of transposition is currently still in the draft stage (draft legislation no. 459 SE) in the parliament.

In the context of anti-corruption regulations and money laundering it should be noted that EPC § 83-2 allows an extended confiscation of assets in bribery and money laundering cases. Through extended confiscation the court may confiscate part or all the convicted person's assets if the nature of the criminal offence, the difference between the legal income and financial situation, expenses, or lifestyle of the person, or another fact gives reason to presume that the person has acquired the assets through commission of a criminal offence. In this event, the burden of proof is reversed, meaning that the accused must prove that the assets do not derive from a criminal offence. At the same time, the FCPA provides for civil penalties up to USD 10,000 with the burden of proof on the state.

Marko Kairjak, Partner, and Birgit Sisask, Associate, TGS Baltic

LATVIA

Latvia's Fight Against Corruption


Andra Rubene

Latvia is gradually improving its score in the corruption perception index. According to the international anti-corruption organization Transparency International, Latvia took 44th place in the corruption perception index in 2016, with 57 out of 100 points – after scoring 55 in both 2015 and 2014 (it scored 53 points in 2013 and 49 in 2012). This represents Latvia's best score so far, and it appears to be a sign that tolerance of corruption in our country is continuing to decrease. By contrast, Lithuania fell from 34th place in 2015 to 38th place in 2016 (with 59 points in 2016, compared to 61 in 2015), and Estonia moved up to 22nd in 2016 from 23rd the year before, though it had the same 70-point score both years.

Research on attitudes towards corruption in Latvia performed by the SKDS research center in October 2016 revealed that the number of respondents who admitted that, within the last two years they had made unofficial payments, given gifts, or used private connections when sorting out issues or problems decreased by 18% since 2015. The number of respondents who would be ready to report on cases of corruption increased by 10% as well. The readiness of respondents to inform the Corruption Prevention and Combatting Bureau of Latvia (KNAB) of known crimes, such as – for example – when a bribe is required or an official exceeds his/her commission increased by 2%.

Despite its progress, there is still a lot of work to be done in order for Latvia to catch up with Lithuania and reach the level of Estonia.

International corporations with subsidiaries, clients, and/or intermediaries in Latvia have also had a huge impact on the prevention of corruption in Latvia by educating their staff and co-operation partners and requiring them to commit to internal anti-bribery policy & compliance guidelines, as well as the US Foreign Corrupt Practices Act and/or the UK Anti-Money Laundering Act, as a precondition for commencement of business.

The most recent cases prosecuted by the KNAB or commenced by the prosecutor general at the KNAB's instruction were related to the disclosure of confidential information and corruptive behaviour by the chairperson of the regional court, the malicious misuse of official position with greedy intent, the carrying out, organization, and support of large scale embezzlement, the requesting and receiving of a bribe, trading with influence, embezzlement of a bribe, extortion of a bribe, and so on.

In the first of these, the chairperson of the regional court al-

legedly disclosed non-state secret confidential information to a representative of the media. In that same case, a private person allegedly offered a bribe to the chairperson of the regional court to take certain actions favorable to that private person in relation to the adjudication of a civil case.

In another case, employees of the municipal company AS Rigas Centraltirgus (Riga Central Market) allegedly carried out illegal actions. The chairman of the management board of the capital company owned by the Riga City Council organized a large-scale embezzlement, an employee of that capital company (a state official) supported that embezzlement, and three employees misappropriated the financial resources of that company in a large scale by handing them over to the management.

There was a case in which a private person allegedly accepted a material benefit from a company in return for using his social position to illegally influence an official of the Jurmala City Council to conclude a transaction with SIA Jurmalas Siltums (Jurmala Heating).

There was also a case concerning the alleged extortion of a large-scale bribe for the commissioning of a construction project and for forgery of documents at the construction site.

In one case, a person claiming a close relationship with the officials of the Road Traffic Safety Directorate encouraged another person to provide a bribe that the first person could then pass on to the officials of the Directorate and the State Police to cancel a prohibition of a driver's licence.

Currently, a case has been submitted for prosecution involving a state official who allegedly requested and received a bribe in return for his promise not to prohibit the renovation of a living wagon in a biosphere reservation.

The aforementioned cases reflect anti-corruption related issues topical in Latvia in 2017. None of the persons described above should be considered guilty until he/she is convicted of committing a criminal offense in accordance with the procedures specified in the Latvian Criminal Procedure Law.

Andra Rubene, Partner, TGS Baltic

TURKEY

Applicability of Foreign Anti-Bribery and Corruption Legislation and Statutory Provisions in Turkey

Semih Metin

Overview

Foreign investors willing to invest in Turkey and Turkish companies listed on foreign stock exchanges or which have a business relationship with foreign companies are under the obligation to comply with high-level international compliance requirements. As a result, these investors and Turkish companies are required to implement compliance programs which assist them and their employees to conduct transactions and actions in conformity with ethical principles, legislation, and regulatory provisions.

The US Foreign Corrupt Practices Act (FCPA) and UK Bribery Act are the main compliance regulations with cross-border effects. The FCPA was made effective by the US Department of Justice and the Securities and Exchange Commission (SEC) on December 19, 1977. The UK Bribery Act entered into force in July 2011. Turkish companies which have business relationships with US and UK companies are obliged to comply with these acts.

In addition, Turkey has ratified several international anti-corruption conventions, such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the United Nations Convention against Transnational Organized Crime, the United Nations Convention against Corruption, and several European Conventions on Criminal and Civil Law.

Current Status in Turkey

Turkish Criminal Code No. 5237 is the primary regulation dealing with corruption in Turkey. The relevant provision criminalizes bribery, misuse of trust, fraud, laundering asset values arising from criminal activities, rigging the performance of an obligation, exposing commercial secrets, and forgery. Article 252 of the Turkish Criminal Code defines "bribe" as a benefit illegally secured by a public officer in negotiation with a person to perform or not to perform a task beyond his or her responsibility. Accordingly, any public officers who take bribes will be punished, along with the person offering the bribe. In addition, bribery is committed where a benefit is provided, offered, or promised directly or through intermediaries; or where the relevant individuals request or accept such a benefit directly or through intermediaries.

In addition, the Turkish Civil Servants Law strictly prohibits civil servants from requesting and accepting gifts. In accordance with this Law, the Public Officials Ethics Board (the "Ethics Board") is authorized to determine the scope of this prohibi-

tion.

The Ethics Board was established pursuant to the Ethics Rules Law, which was created to adopt rules and monitor public officials' implementation of principles related to transparency, impartiality, honesty, accountability, and obligation to observe the public interest.

Compliance Challenges of the Turkish Companies


Cigdem Gurer

Today, although Turkish companies are more willing than ever to establish business relationships with overseas countries which have anti-bribery and corruption legislation; they face several significant obstacles on their way to compliance.

The first of these obstacles is the international corruption perception of Turkey; which, according to the Corruption Perception Index (CPI) of Transparency International, has declined over the last four years from 50 in 2013, to 45, 42, and ultimately 41 in 2016.

As the index is one of the primary indicators foreign investors consider prior to investing in a country, the decline means that Turkish companies have a greater challenge to overcome in attempting to demonstrate their willingness for international cooperation.

Unfortunately, applicable local legislation is not specific and clear in terms of what companies need to do in order to comply with anti-bribery and anti-corruption prohibitions. Therefore, Turkish companies would definitely need a solid compliance guide.

The second obstacle is that even those Turkish companies which do have a strong anti-bribery and anti-corruption company culture often transmit it verbally instead of in written policies, procedures, or codes of conduct.

Anti-corruption and anti-bribery trainings that would communicate important policies and procedures and third party due diligences are essential mechanisms that Turkish companies need to implement. In addition, although a significant compliance program component is a whistleblowing mechanism that employees can use to report violations anonymously, reporting a serious issue about a co-worker still comes up against a cultural barrier in Turkey, although this barrier could perhaps be eliminated with the help of effective trainings.

One last element of an effective compliance program that Turkish companies need to implement is a corruption and bribery risk analysis of processes to address the specific risks they face.

Conclusion

Turkish companies face certain difficulties in achieving compliance with anti-bribery and anti-corruption legislation. They also have two very important factors working in their favor, however: their economic potential and their strong desire for business partnerships with overseas companies. These will lead their efforts on compliance.

Semih Metin and Cigdem Gurer, Partners, Nazali Tax & Legal

UKRAINE

Combatting Corruption in Ukraine: International Context and Domestic Developments


Dmytro Marchukov

Combatting corruption has been declared a primary goal in Ukraine following the Revolution of Dignity in 2014. Slowly, but steadily, Ukraine's reputation as a country with a serious corruption problem is improving.

Foreign governments and investors understand that corruption is still a problem for Ukraine, although the degree is going down. The existence of publicly available Ukraine-related FCPA investigations, the applicability of the UKBA, and recent developments in combatting corruption in Ukraine all show progress.

FCPA Jurisdiction

Under the US Foreign Corrupt Practices Act (FCPA), subsidiaries of US companies may be subject to the jurisdiction of the Securities and Exchange Commission (SEC) and the Department of Justice (DoJ), irrespective of whether they act within, or outside of, the United States. The FCPA's anti-bribery provisions also apply to any US-listed company or any company that has shares quoted in the over-the-counter market and is required to file periodic reports with the SEC.

FCPA investigations involving Ukraine have been conducted based on: (i) violations conducted directly by Ukrainian subsidiaries of US companies; and (ii) involved US-listed companies.

ADM Investigation


Andrii Gumenchuk

The FCPA investigation of the Archer Daniels Midland Company (ADM) is the most widely known example of extending the FCPA jurisdiction to Ukraine and actual payment of both civil and criminal penalties.

In 2013, a unit of ADM pleaded guilty to violating the FCPA by bribing Ukrainian government officials through vendors in exchange for VAT refunds. The DoJ's investigation revealed that throughout 2002-2008 a Ukrainian subsidiary of ADM, Alfred C. Toepfer International Ukraine Ltd. (ACTI), and an-

other ADM subsidiary in Europe, had paid third-party vendors USD 22 million to pass as bribes to Ukrainian government officials for VAT refunds.

The two subsidiaries artificially increased prices in agreements with a Ukrainian shipping company to include funds to bribe government officials (*e.g.*, under sham insurance agreements, which included false premiums used as bribes). Such misconduct went unrevealed for so long due to deficiencies in ADM's FCPA compliance system regarding subsidiaries in Germany and Ukraine.

Consequently, ACTI paid a criminal fine of USD 17.8 million to the DoJ and pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.

Teva Investigation

In December 2016, TEVA Pharmaceuticals Industries Ltd. (Teva), one of the world's largest pharmaceutical companies, entered into a deferred prosecution agreement with the SEC and DoJ under which Teva agreed to pay a fine of USD 519 million.

In Ukraine, Teva had hired a government official as a consultant and paid him USD 200,000 from 2002-2011 via various fees, with false books and records made up to conceal the payments.

IBM Investigation

In 2012, IBM notified the SEC of a probe by the Polish Central Anti-Corruption Bureau. The DoJ joined the investigation in 2013 and expanded it to include deals in Ukraine as well.

The allegations involved illegal activity by a former IBM Poland employee in connection with sales to the Polish government. In June 2017, the DoJ and the SEC informed IBM that their investigations into these matters had been closed and that no enforcement action against the company would be pursued.

UKBA Investigations

The UKBA Bribery Act (UKBA) applies to offences which are committed by a person in or with close connections to the UK. The list of persons having close connections with the UK goes well beyond merely UK citizens and UK-incorporated companies.

As we write this, no investigations involving Ukraine under the UKBA have been reported.

Domestic Developments

In 2015, the Ukrainian government established the following key state authorities for combatting corruption: March 2015: the National Agency for Prevention of Corruption, which is responsible for reviewing declarations filed by public officers and verifying their lifestyle; April 2015: the National Anti-Corruption Bureau of Ukraine (NABU) responsible for pre-trial investigations of high-ranked state officials suspected in corruption; and September 2015: the Special Anti-Corruption Prosecutor's Office responsible for representing the state in court on the basis of NABU's pre-trial investigations and supervising the NABU's actions at pre-trial stage.

Additionally, the government is considering establishing an Anti-Corruption Court as a separate judicial body.

Another important development is the introduction of an e-declaration system, which requires all public officials to submit annual declarations and report substantial changes in their financial condition.

Conclusion

Ukraine is undergoing substantial reforms in combatting corruption and establishing itself as a country preferable for doing business. Despite a number of FCPA investigations, Ukraine is demonstrating steady progress towards creating a transparent investment environment. Recent developments are quite promising in this respect.

Dmytro Marchukov, Partner, and
Andrii Gumenchuk, Associate, Avellum

LITHUANIA

Lithuania Continues its Fight Against Corruption and Money Laundering


Vilius Bernatonis

Money laundering and corruption are closely related; therefore, they should be tackled systemically. Lithuania's setting in these areas is rather ambiguous – it is ranked among the top performers when it comes to an anti-money laundering regime and its effectiveness, but it performs worse than EU average when it comes to the perception of corruption (Lithuania was ranked 38th in the Global Corruption Perceptions Index reported by Transparency International in 2016).

Lithuania's fight against money laundering and corruption manifests itself not only in legislative initiatives but also in the enforcement thereof and the strong stance of the supervisory authorities. Local authorities successfully combine AML and anti-corruption efforts with other objectives, such as becoming the FinTech hub in Europe.

Consistent Approach by the Legislator

A number of legislative initiatives have been implemented in the areas of AML and anti-corruption. On July 1, 2017, the Lithuanian Parliament adopted a revised wording of the Law on Prevention of Money Laundering and Terrorist Financing,

successfully transposing Directive EU 2015/849 (the "4AML Directive") and harmonizing national legislation with Regulation EU 2015/847 in a timely manner.


Donatas Sliora

The amendments to the law expand the scope of its application, revise the sanction regime, and establish requirements for storage and disclosure of data relating to beneficial owners. The Lithuanian legislator took advantage of the opportunity and revised the law by transposing the material rules of subordinate legal acts. This way a level playing field for the obliged entities was created and the AML system was made clearer. Such amendments include, among other things, establishing remote identification measures and rules for reporting suspicious transactions.

Lithuania's approach to the AML regime is rather strict compared to other jurisdictions. Nonetheless, as the legislator seeks to keep Lithuania attractive to financial sector participants (especially to new market entrants), it is taking advantage of exemptions laid down in the 4AML Directive. For example, the legislator allows reloadable electronic money products to be offered without customer due diligence with a limit of EUR 150, also applying simplified due diligence when the total amount transacted through a payment instrument is less than EUR 1000, etc.

On July 15, 2017, Lithuania became the 42nd party to the Organization for Economic Co-operation and Development Convention on Combating Bribery of Foreign Officials in International Business Transactions, which sets standards for the criminalization of bribery and establishes a set of measures for ensuring the effectiveness of the relevant regime. Lithuania will now undergo a systematic review on the implementation of anti-bribery laws and their enforcement in practice.

Strong Stance of the Supervisory Authorities

The supervisory authorities responsible for the overall implementation of the AML measures, such as the Financial Crime Investigation Service, and the Bank of Lithuania, which is responsible for supervising financial market participants, do not compromise when it comes to the enforcement of the AML regime. This strict approach seems to be effective as the number of reported suspicious transactions increases every year and resulting investigations reveal actual money-laundering cases.

Lithuania seeks to become a FinTech hub in Europe; nonetheless, the Bank of Lithuania insists that the goal should not be sought at the price of enforcement. These statements are backed up by actions – one third of all planned investigations of financial sector participants concern the implementation of the AML regime. There are no concessions when it comes to licensing new market entrants either.

The fight against corruption is also gaining momentum, as the number of investigations carried out by responsible authorities is steadily increasing, resulting in the revelation of serious cases of political corruption as well as systemic acts of corruption by state officers.

Impact on Economy and Businesses

The shadow economy is estimated to constitute 20 to 25 percent of the GDP of Lithuania. Having effective AML and anti-corruption measures will most likely decrease the size of the shadow market, thus having a positive effect on the national economy in general. Lithuania would also benefit from the increase in investments as the country becomes more attractive to foreign capital.

Nonetheless, strict AML and anti-corruption requirements may become a burden for some businesses. The constantly increasing AML and anti-corruption compliance requirements impose significant costs on obliged entities. Such costs are in particular burdensome for new market entrants who have to establish compliance measures without having constant income.

Vilius Bernatonis, Partner, and Donatas Sliora, Associate, TGS Baltic

RUSSIA

Anti-Corruption Developments in Russia in the First Half of 2017


Dmitri Nikiforov

In 2016, Russian law enforcement authorities had some success in investigating and combatting bribery. For the first time in several years, the majority of cases involved bribe-taking, rather than bribe-giving, and involved significant bribe amounts. The number of cases against bribe-takers increased by 19.7% from 2015, while the number of cases against bribe-givers increased by only 4.4%. This trend continued in the first half of 2017; the Russian Ministry of Internal Affairs and law enforcement authorities registered 3,362 cases of bribery, of which 2015 cases concerned bribe-taking and 1,347 cases concerned bribe-giving.

Though the average amount of a bribe remains rather low (RUB 326,000 in 2016 (approximately USD 5,566)), in the first half of 2017 several major bribery cases were commenced. For example, in April 2017, the governor of one of Russia's constituent entities was charged with taking a bribe in amount of RUB 236 million (approximately USD 4 million) for entering into a conspiracy aimed at the preferential provision of state subsidies to a company owned by a regional parliament member. The bribe was transferred by means of a sale of shares in an entity controlled by the governor. Several persons involved in

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the case were taken into custody, including the governor and intermediaries in the transaction. This case follows another investigation against a governor, who earlier this year was accused of taking RUB 140 million (approximately USD 2.4 million) from several construction firms for preference in getting payments from the state budget and granting subsoil use licenses. The governor was arrested. Both cases are under investigation.

In 2017, the State Duma adopted a law that introduced a register of persons dismissed from office due to loss of trust. This register, which will start operating on January 1, 2018, will include state and municipal officials as well as officers of certain companies (in particular, state corporations and organizations established to fulfill assignments given to a federal state authority) who were terminated for committing corruption-related crimes. Though the law currently does not directly provide any consequences for being entered onto the register, in practice inclusion will prevent individuals from further employment in state and municipal authorities and institutions and companies rendering public functions and cause major reputational damage.

Effective enforcement of anticorruption measures and prevention of corruption crimes depends significantly on international cooperation, as proceeds from corruption offences as well as transactions aimed at their "laundering" often reside outside Russia. Russia's National Plan on Counteracting Corruption for 2016-17 declared international cooperation in this field to be one of its main aims, stating that such cooperation would assist with the discovery, seizure, and return of ill-gotten assets. Moreover, it stated that the Ministry of Foreign Affairs should actively participate in international anticorruption events, such as the anticorruption working groupsof APEC, G-20, and BRICS.

One of the first examples of international anticorruption investigation involving the participation of Russian law enforcement authorities was the Teva Pharmaceuticals case. In December 2016, Teva, a leading pharmaceutical manufacturer, agreed to pay USD 519 million in penalties in a settlement with the U.S. Department of Justice and the Securities and Exchange Commission as a result of an FCPA investigation against the company. Teva was accused of entering into a conspiracy to win state tenders for the supply of pharmaceuticals and increasing the sales of its drugs to the state with a high-ranking Russian state official who controlled the company's Russian distributor. The Israeli and U.S. law enforcement authorities that carried out the investigation applied to the Russian Investigative Committee for the provision of documents and materials required to push the case forward. The Investigative Committee, in its turn, cooperated with the Russian Ministry of Healthcare in collecting evidence. However, it is yet to be seen whether a criminal and/or administrative illegal remuneration case against Teva and its officers will be commenced in Russia.

Dmitri Nikiforov, Partner, Anna Maximenko, International Counsel, and Elena Klutchareva, Associate, Debevoise & Plimpton

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