



CEE

YEAR 7, ISSUE 3
APRIL 2020

LEGAL MATTERS

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

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EDITORIAL: MANIFESTATIONS OF THE SUBCONSCIOUS DURING THE COVID-19 OUTBREAK

By David Stuckey

It's sort of difficult to know where to start, isn't it? My mind is scrambled these days anyway, shifting constantly from uncertainty, to work, then anxiety, optimism, dread, curiosity, hope, boredom, resignation, and anger. Probably a lot more. In this context, trying to write a simple, straight-forward message is a challenging assignment. In fact, over the past few days, several different potential over-arching themes have proposed themselves to me. The Danube, connecting our two Market Spotlight jurisdictions, Austria and Hungary. The need to emphasize that most of the content in this article was written *before* the coronavirus crisis hit. Updates about the Deal of the Year Awards. The return of spring. And so on.

Ultimately, though, I found myself returning to the realization I had, a few days ago, about how, almost unconsciously, sub-conscious anxieties about the coronavirus had imposed themselves on my writing ... and what that signified.

For instance, the conclusion of one our articles in this issue – a fascinating consideration of Volodymyr Zelensky's rise to power in Ukraine, through the eyes of the legal community, written by Andrija Djonovic – suggests that in making a final determination of his effectiveness as a President, Ukrainians, *like everyone else these days* – are holding their breath. Without even being aware of it, I expressed that point in terms of breathing, of commonality, of suspended life, of lack of information, and of persistent uncertainty. Not too difficult to figure out what was in the back of my mind, at the time.

Similarly, last week, I wrote a message to all of our law firm marketing contacts across CEE, concluding that “we're all in this together.” It was only *after* I sent it that I started reflecting on how absolutely true that was. I started thinking, not for the first time, about how symbiotic all of our relationships are – law firms with each other (whether as competitor, collaborator, or source of referral), law firms with us (both as a target for advertising and a source of information), us with law firms (as readers/subscribers and sources of information

and financial support), in-house counsel with both law firms and us, and so on and so on. Pull pieces of that puzzle away, and the entire operation starts to crumble. We *are* all in this together, in that fundamental way.

But it's also more than that. We have, in our six and a half years of operation, made friends, both casual and close, across Central and Eastern Europe, as well as the UK. I believe that those of you who have engaged with us over those years, who have come to know us as people, attended our events, contributed to the magazine, served as judges on DOTY awards, and so on, have made our work so much more special than it would have been otherwise. Not just as friends, but as *friends*. Neither Radu or I would be doing this if we didn't honestly enjoy it ... and a genuinely significant part of that enjoyment comes from the community we've had the honor to join.

So, I found myself thinking, we *are* all in this together. Not just in a broad “we-as-humans” sense, but also in the narrower, and more specific, “we-in-the-CEE-legal-community” sense. If there's something you need from us, please ask. If there's something we can do to help, please ask. Let's ... work together. Indeed, on that note, we've rescheduled the Deal of the Year Awards Banquet from April 23 to October 13, 2020, and we remain extremely hopeful that the banquet can be not just the entertaining and laughter-filled evening it is known to be, but something different, something more important, this time: a true celebration of that community's survival and strength, and a celebration of durability, commitment. Of *renewal*. I look forward to gathering with the other members of our large (and ever-growing) CEE legal community, seeing familiar faces, happily shaking hands, and raising drinks to each other, relieved and delighted to come together after this period of uncertainty. My friends.

Stay safe. ■



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Letters to the Editors:

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

GUEST EDITORIAL: GIMME SOME LOVIN'

By Marcell Clark, Partner, Dentons Bratislava



The title of this editorial is a famous song by the Spencer Davis Group – though it makes me wonder if they were CEE in-house lawyers singing to their CEOs.

OK, I am biased when it comes to this issue. Although I am now a partner with Dentons, based in Bratislava, and have been with the firm since 2007, prior to that I was an in-house lawyer

(Associate General Counsel at Teachers Insurance and Annuity Association of America, known by the acronym TIAA (although the investment arm of TIAA has now been rebranded to Nuveen)) in Charlotte, North Carolina, and New York.

In my professional experience, businesses that value their in-house legal teams, give them sufficient independence, and demand more from them, achieve superior results. Although there are always exceptions, well-run, top financial institutions in the United States have in-house legal teams that are respected, given significant responsibility, and paid accordingly. In-house lawyers usually have extensive experience as outside lawyers before moving in-house and are fully engaged in the business of their companies. This means that not only are they responsible for general legal tasks related to making sure their companies are in compliance with applicable law, but they are also – at the very least – relied upon to assess and manage legal risk. If they are able to do these tasks effectively and garner the trust of their business teams, they are also increasingly likely to be brought into key strategic decisions, so that they are not only helping to run the railroad, but also helping to decide where and what new tracks should be laid.

As an in-house lawyer, I was drawn into transactions and new business initiatives right from the start, and I accompanied those transactions and initiatives through their lifetimes. This meant working closely with the business teams in structuring deals, drafting term sheets, preparing for investment committee approval, and of course advising on legal aspects if requested to do so by the committee, before the commitments were signed with the counterparty or any outside documentation to implement the transaction or initiative had begun. It also meant that the decision to select outside counsel was

made by (or on the recommendation of) the in-house legal team. We were expected to know those lawyers and firms best suited to make transactions or initiatives successful and to be able effectively to communicate the goals and the “company way” to those outside lawyers. In effect, we were responsible for all the legal aspects – but crucially, commensurate with that responsibility, we were also empowered by the business to be in a position to properly assess a given situation so that the company could make an optimum decision, and if it was necessary, to say “No” or “Not like that, but like this” to protect the company.

I have now had the opportunity to work as an outside lawyer in CEE for 13 years. When I first moved to the region, I was surprised that some businesses did not put their in-house lawyers in positions to succeed and appeared not to value their input. While I have seen significant improvement during this time and many institutions do a great job in utilizing their lawyers, there is still work to be done. In situations where the in-house lawyers were sidelined and an adequate corporate structure was not in place, I saw fully-executed term sheets where the business was not even legally permitted to carry out the transaction, and key points that were not properly thought through ... or even recognized. In other instances, businesses brought their in-house lawyers into a transaction only at the end of the process, and because those lawyers had not been included in the deal formulation and negotiation, they were not in a position to understand it and could not speak meaningfully about the deal, let alone raise critical objections. Needless to say, such situations are sub-optimal and can be disastrous. Some of those businesses no longer exist.

The issue is not one-sided. As much as CEE businesses should empower their in-house legal teams to be effective, it is imperative that the in-house lawyers and their leaders earn the trust of the business teams by understanding their roles and by staying ahead of the game through close communication and anticipating legal and strategic needs.

In summary, CEE businesses would be well served to value their in-house lawyers more consistently and to give them a greater opportunity to succeed. Likewise, my in-house legal colleagues must energetically seek out ways to ensure that they can more effectively fulfill their roles. ■

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ACROSS THE WIRE: DEALS SUMMARY

Date covered	Firms Involved	Deal/Litigation	Value	Country
24-Feb	Allen & Overy	Allen & Overy advised Oesterreichische Kontrollbank on legal aspects of its public offering of USD 1.5 billion of 1.500% Guaranteed Global Notes due 2025.	USD 1.5 billion	Austria
25-Feb	CMS; Herbst Kinsky	CMS Austria advised Topinstallateur GmbH on the acquisition of a majority stake in the company by Germany's Auctus investment fund. Auctus was advised by Herbst Kinsky.	N/A	Austria
25-Feb	Cerha Hempel	Cerha Hempel advised KTM AG on its establishment of a joint venture with Spanish engine manufacturer GasGas Motorcycles S.L.	N/A	Austria
4-Mar	Brandt & Talos; Herbst Kinsky; Schoenherr	Brandt & Talos advised Ready2order on its EUR 5 million investment round, which was led by Reimann Investors and Speedinvest, which were advised by Schoenherr and Herbst Kinsky.	EUR 5 million	Austria
11-Mar	Dorda	Dorda advised China's Weichai Group on its acquisition of 51% of the VDS Group, an Upper-Austrian transmissions specialist. SCWP Schindhelm advised the unidentified sellers on the deal.	N/A	Austria
11-Mar	Dorda	Dorda advised GalCap on the acquisition of a mixed-use building at Pohlasee 26 in Vienna-Meidling from UBM and Investor. UBM was advised by solo practitioner Jakob Molzbichler.	N/A	Austria
11-Mar	Cerha Hempel	Cerha Hempel advised the EBRD on the conversion of its indirect participation in listed Addiko Bank AG into a direct participation.	N/A	Austria
11-Mar	Schoenherr	Schoenherr advised Austria's HS Timber Group and Blue Minds IF on their February 28, 2020 acquisition of Interfloat Corporation and GMB Glasmanufaktur Brandenburg GmbH.	N/A	Austria
12-Mar	Brandt & Talos; Gross Hofer; Schnitker Moellmann Partners; Wilkie Farr & Gallagher	Brandt & Talos, Wilkie Farr & Gallagher, and Germany's Schnitker Moellmann Partners advised Insight Partners and e.ventures on the EUR 30 million series A investment in Viennese start-up PlanRadar. Grohs Hofer advised PlanRadar.	EUR 30 million	Austria
13-Mar	Hochedlinger Luschin Marenzi Kapsch; Schoenherr	Schoenherr advised Neuraxpharm, a portfolio company of Apax Partners, on the acquisition of Austrian consumer healthcare company Easypharm OTC GmbH. Hochedlinger Luschin Marenzi Kapsch advised the unidentified sellers on the deal.	N/A	Austria
27-Feb	BonelliErede; Gianni Origoni Grippo Cappelli; Ludovici Piccone And Partners; Schoenherr	Schoenherr, in cooperation with BonelliErede, advised Covivio on its EUR 573 million acquisition of eight luxury hotels in Europe from alternative investment firm Varde Partners. Varde was reportedly advised by Italian firms Gianni Origoni Grippo Cappelli and Partners and Ludovici Piccone and Partners.	EUR 573 million	Austria; Czech Republic; Poland
11-Mar	Eisenberger & Herzog; Noerr	Noerr and Eisenberger & Herzog advised Austrian packaging company Coveris on its acquisition of Plasztk-Tranzit Kft, a producer of flexible packaging solutions for the food industry. The unidentified sellers were advised by solo practitioner Tamas Reisz.	N/A	Austria; Hungary
27-Feb	Revera; SBH	SBH advised Zubr Capital on the investment by its Zubr Capital Fund I in the Myfin Group, an IT platform for banking products. Revera advised Myfin Group on the transaction.	N/A	Belarus

Date covered	Firms Involved	Deal/Litigation	Value	Country
5-Mar	Kinstellar	Kinstellar advised Nova Ljubljanska Banka d.d. on the conclusion of a share purchase agreement with the Republic of Serbia for the acquisition of an 83.23% ordinary shareholding in Komercijalna Banka a.d. Beograd.	N/A	Bosnia and Herzegovina; Kosovo; Montenegro; North Macedonia; Serbia; Slovenia
17-Feb	CMS	CMS helped Korea's SDN Company Ltd regain control over photo-voltaic producer EU Sunday AD.	N/A	Bulgaria
20-Feb	Georgiev, Todorov & Co.	Georgiev, Todorov & Co successfully defended the rights of Multi-Profile hospital for Active Treatment Europe against the Ministry of Health of Bulgaria.	N/A	Bulgaria
11-Mar	Kinstellar	Kinstellar advised the EBRD on its first loan under the EUR 200 million Bulgarian Water Sector Financing Framework to Ruse Water Supply and Sanitation Company.	EUR 200 million	Bulgaria
21-Feb	Cipic-Bragadin Mesic & Associates; Marohnic Tomek & Gjoic; Nozdrovicky, Suvert & Co.; Wolf Theiss; Zeljka Velic Dvorscak & Silvije Skerlev	Cipic-Bragadin Mesic and Associates advised Nafta a.s. on the acquisition of 50% of investors' rights and sharing obligations under the 2016 Production Sharing Agreement entered into between Vermilion Zagreb Exploration and the Government of the Republic of Croatia. Marohnic Tomek & Gjoic, Zeljka Velic Dvorscak & Silvije Skerlev, and Nozdrovicky, Suvert & Co also advised Nafta on the deal, while Wolf Theiss advised Vermilion.	N/A	Croatia
20-Feb	Allen & Overy	Allen & Overy advised sole lead manager JP Morgan on Moneta Money Bank's approximately CZK 2.6 billion domestic subordinated Tier 2 capital bond issuance.	CZK 2.6 billion	Czech Republic
4-Mar	PwC Legal	PwC Legal advised IBSA Group on the acquisition of its long-term distributor on the Czech market, IBI spol. s r.o. IBI was advised by Solo Practitioners Violeta Jirackova and Rostislav Zak.	N/A	Czech Republic
20-Feb	Dentons; Rodl & Partner	Dentons advised GeoPost / DPDgroup on the acquisition of Czech and Slovak parcel delivery operations of Germany's Geis logistics group. The Geis group was advised by Rodl & Partner.	N/A	Czech Republic; Slovakia
28-Feb	Badokh; CMS; Schoenherr	Schoenherr advised Kommunalkredit Austria AG on financing provided to Energy Development for its acquisition of six 21 MW solar power plants in the Czech Republic and two 4 MW solar power plants in the Slovak Republic from Czech fund Green Horizon Renewables. CMS advised Energy and Badokh advised Green Horizon Renewables.	N/A	Czech Republic; Slovakia
19-Feb	Cobalt	Cobalt advised Change Ventures on its EUR 500,000 investment in Estonian educational startup 99math.	EUR 500,000	Estonia
21-Feb	Cobalt	Cobalt advised the Hansab Group on the sale of recycling technology provider Moya OU to Swedish recycling machinery producer RVM Systems AB.	N/A	Estonia
5-Mar	Cobalt	Cobalt advised Laurus S.a.r.l. on the sale of the Valge Maja office building in Tallinn to LHV pension funds.	N/A	Estonia
5-Mar	Cobalt	Cobalt successfully helped Nuctech Warsaw Company Limited Sp. z o.o. win a public procurement procedure to sell the Tallinn Airport two baggage-scanning devices.	N/A	Estonia
19-Feb	Cobalt	Cobalt assisted Viessmann with the restructuring of its refrigeration systems business in Latvia.	N/A	Estonia; Latvia
18-Feb	Cobalt	Cobalt advised SEB life insurance entities in Estonia, Latvia, and Lithuania on a cross-border merger in the Baltics.	N/A	Estonia; Latvia; Lithuania
20-Feb	Koutalidis	Koutalidis advised Alpha Bank S.A. on matters of Greek Law related to its issuance of a EUR 500 million Tier 2 subordinated bond.	EUR 500 million	Greece
5-Mar	Noerr; P+P Pollath & Partners	The Budapest office of Noerr joined the firm's multi-jurisdictional team advising Saxonia Systems Holding GmbH on its sale of Saxonia Systems AG to Carl Zeiss AG. P+P Pollath & Partners advised the buyers on the deal.	N/A	Hungary
20-Feb	Deloitte Legal; Ellex (Klavins); Sorainen; TGS Baltic	Ellex Klavins advised SIA Verus Praedium on its sale of 14.45 hectares of land to SIA Riga Retail Park for the development of a new Saga shopping center. Riga Retail Park was advised by Sorainen.	N/A	Latvia

Date covered	Firms Involved	Deal/Litigation	Value	Country
4-Mar	Ellex (Valiunas); Nestor Nestor Diculescu Kingston Petersen; Penkov Markov & Partners; Uria Menendez; Wardynski & Partners	Ellex Valiunas advised Edenred SA on its acquisition of a 60% stake in Lithuania's EBV Finance. The acquisition also included EBV Finance subsidiaries in Bulgaria, Poland, Romania, Spain, and Estonia. Penkov Markov & Partners advised Edenred in Bulgaria, as did Wardynski & Partners in Poland, Nestor Nestor Diculescu Kingston Petersen in Romania, and Uria Menendez in Spain.	N/A	Latvia
5-Mar	Cobalt	Cobalt successfully represented AS PNB Banka before Latvia's Constitutional Court in a case involving the fee calculation for credit institutions for financing the Financial and Capital Market Commission's operations.	N/A	Latvia
6-Mar	Deloitte Legal; TGS Baltic	TGS Baltic and Deloitte Legal advised CVI Dom Maklerski on financing provided to SIA Riga Retail Park for the purposes of co-financing its acquisition of real property as well as the construction and development of the Saga Lifestyle and Shopping Centre in Stopini, a suburb of Riga, by Baltic real estate developer VPH UAB.	N/A	Latvia
12-Mar	Ellex (Klavins); TGS Baltic	TGS Baltic advised Cooperatieve Rabobank U.A. on its refinancing of Latvian fishing company SIA Batterfisa's existing liabilities and working capital needs. Batterfisa was advised by Ellex Klavins.	N/A	Latvia
2-Mar	Sorainen	Sorainen advised Credit Suisse on matters of Latvian and Lithuanian law related to its EUR 27 million loan to Amber Beverage Group.	EUR 27 million	Latvia; Lithuania
19-Feb	Cobalt	Cobalt advised Genopas B.V. and Nunica Holdings B.V. on the sale of their 100% shareholding in UAB Pusbroliai to Idex Baltic.	N/A	Lithuania
20-Feb	Sorainen	Sorainen advised Baltic Mill on its third bond issuance and the bonds' listing on Nasdaq Baltic First North, an alternative bond market managed by Nasdaq Vilnius. Sorainen also advised arranger Siauliui Bankas on the deal.	EUR 3 million	Lithuania
25-Feb	Adon Legal	Adon Legal helped Seili UAB set-up its operations as a consumer credit provider and mortgage credit provider.	N/A	Lithuania
28-Feb	Ellex (Valiunas)	Ellex Valiunas helped Lords LB Baltic Fund IV negotiate a lease agreement for a building in Vilnius with Northern Lyceum.	N/A	Lithuania
4-Mar	Walless	Walless advised Tadas Bulotas on the sale of Lithuania's BBaltics sports agency to the Wasserman sports agency.	N/A	Lithuania
4-Mar	Cobalt; Ellex (Valiunas)	Ellex Valiunas advised Fan19 on its acquisition of Engagecraft. Cobalt advised the unidentified seller on the deal.	N/A	Lithuania
5-Mar	Sorainen	Sorainen advised Autoukis NT on the sale of a complex of buildings in Vilnius to a company controlled by the Hanner Group.	N/A	Lithuania
5-Mar	Pohla & Hallmagi	Pohla & Hallmagi advised Norway's Selvaag Eastern European Development Fund OU on the sale of its Lithuanian subsidiary, UAB Parkavimo Paslaugos, to UAB Baltexpro.	N/A	Lithuania
11-Mar	Sorainen	Sorainen successfully defended HR solutions provider Amston before Lithuania's Equal Opportunities Ombudsperson.	N/A	Lithuania
11-Mar	Spc Legal	SPC Legal successfully represented the non-profit Baltic Environmental Forum in Vilnius' Administrative Court in its claim that the State Service for Protected Areas unlawfully suspended the expansion of Lithuania's Punia pinewood reserve.	N/A	Lithuania
5-Mar	Gladei & Partners; Schoenherr	Schoenherr advised Fintur Holdings B.V. on its sale of Moldcell S.A., to CG Cell Technologies DAC. Gladei & Partners advised CG Technologies.	USD 31.5 million	Moldova
17-Feb	Decisive Worldwide Szmigiel Papros Gregorczyk	Decisive Worldwide advised the ENEL MED group on its lease of medical clinics in the Centrum Zana in Gdansk and in the React building in Lodz.	N/A	Poland
18-Feb	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised the owner of Kospel S.A. on the sale of the company to the Viessmann Group.	N/A	Poland
18-Feb	Kondrat & Partners	Kondrat & Partners successfully represented KA sp. z o.o. in a dispute with Poland's Chief Pharmaceutical Inspectorate in Warsaw regarding KA's preparation of homeopathic medicines on commission for another pharmacy.	N/A	Poland
19-Feb	Act (BSWW)	Act BSWW advised Adventum International on the acquisition of the Katowice Business Point building in Katowice.	N/A	Poland
19-Feb	Greenberg Traurig	Greenberg Traurig advised Cyfrowy Polsat on the issuance of Series C green bonds with an aggregate nominal value of PLN 1 billion.	PLN 1 billion	Poland
20-Feb	Act Legal (BSWW)	Act BSWW advised MK Holding Sarl on a joint venture with a company in theDeA Capital Group, an Italian investment group focusing on real estate and equity investments.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
20-Feb	Argon Legal; Decisive Worldwide Szmigiel Papros Gregorczyk	Decisive Worldwide advised Orsted Polska on its lease of office space in Warsaw's Varso Space Complex from CHM 1, which was advised by Argon Legal.	N/A	Poland
20-Feb	Jara Drapala & Partners; WKB Wiercinski Kwiecinski Baehr	Jara Drapala & Partners advised Bas Lease B.V. on cross-border financing granted to Boekestijn Transport Holding B.V. for its acquisition of Baltic Trans sp. z o.o. from ECS Corporate N.V. WKB advised Boekestijn Transport on both the financing and the acquisition.	N/A	Poland
21-Feb	Gide Loyrette Nouel; Wardynski & Partners	Gide advised B&B Hotels Polska on a cooperation agreement with Covivio and on the sale and leaseback of three hotels. Covivio was advised by Wardynski & Partners.	N/A	Poland
21-Feb	Linklaters	Linklaters advised Panattoni Europe on negotiating the terms of a lease of nearly 6,500 square meters of space in the Panattoni Park Gorzow logistics park to Omnipack.	N/A	Poland
24-Feb	Dentons; Kwasnicki, Wrobel & Partners; Rymarz Zdort	Rymarz Zdort advised a joint venture of a fund managed by the Real Estate Group of Ares Management Corporation and Griffin Real Estate on its acquisition of 98.04% of the shares in residential property developer Murapol. RKKW advised Murapol on the deal, and Dentons advised the Cavatina real estate company on the sale of its stake in Murapol.	N/A	Poland
24-Feb	Clifford Chance; Greenberg Traurig	Greenberg Traurig advised REINO RF CEE Real Estate, a Luxembourg-based fund created by REINO Capital and Australia's CorVal, on its preliminary agreement to acquire the entire BUMA Group real estate portfolio. Clifford Chance advised the BUMA group.	PLN 1.3 billion	Poland
25-Feb	Clifford Chance; White & Case	White & Case advised the Polish Ministry of Finance on its issuance of EUR 1.5 billion five-year notes. Clifford Chance advised the consortium of banks that arranged the issuance, which included BNP Paribas, Commerzbank, ING, JP Morgan, PKO BP and Santander.	EUR 1.5 billion	Poland
25-Feb	Linklaters	Linklaters advised Bain Capital Credit on a joint venture with real estate investment manager Corestate that resulted in Corestate's approximately EUR 73 million acquisition of the first Micro Living properties in Gdansk and Krakow for Bain Capital Credit.	EUR 73 million	Poland
26-Feb	White & Case	White & Case advised the European Investment Fund on a synthetic securitization project originated by Europejski Fundusz Leasingowy, a leasing company in the Credit Agricole Group.	EUR 490 million	Poland
26-Feb	Mrowiec Fialek & Partners	Mrowiec Fialek and Partners advised Wroclaw-based Work Service S.A. on an investment agreement with Gi International.	PLN 210.2 million	Poland
4-Mar	Clifford Chance; Gessel; Noerr	Noerr advised HKM Beteiligungs GmbH on the sale of Gratka sp. z o.o. to Ringier Axel Springer Media AG, which was advised by Clifford Chance. The deal also included a related transaction in which Ringier Axel Springer Media acquired MZN Property SA via tender offer. Gessel advised MZN minority shareholder Alterium Holding Sp. z o.o., on that deal.	N/A	Poland
4-Mar	Andersen Global	Andersen Tax & Legal helped the FCA Group alter the Polish structure of the banking arm of the FCA Bank, a joint venture of Fiat Chrysler Automobiles and Credit Agricole Consumer Finance.	N/A	Poland
5-Mar	DLA Piper; Olesinski & Wspolnicy	DLA Piper advised Allegro on its acquisition of FinAi from its founders and from the Fidiasz FIZ investment fund. Olesinski & Wspolnicy advised Fidiasz on the deal.	N/A	Poland
5-Mar	Benvolor; Jacek Kosinski Adwokaci I Radcowie Prawni; LXA	Jacek Kosinski Adwokaci i Radcowie Prawni, working with the Netherlands' Benvolor law firm, advised Shibumi, a Dubai-based venture capital company, on an unspecified investment in Sustonable, a sustainable building materials company which produces composite stone surfaces. Sustonable was advised by LXA.	N/A	Poland
5-Mar	Dentons; DLA Piper	DLA Piper advised Santander Bank Polska, BNP Paribas Bank Polska, PKO Bank Polski, and Bank Pekao on a loan to HB Reavis for the development of the Forest office campus in Warsaw. Dentons advised HB Reavis on the deal.	EUR 162 million	Poland
6-Mar	Hogan Lovells	Hogan Lovells advised German real estate investment funds management company Patrizia Frankfurt on tax aspects of its sale of an office building in Warsaw.	N/A	Poland
6-Mar	CMS	CMS advised MZN Property S.A. and some of its shareholders on the acquisition of an unnamed strategic investor.	N/A	Poland
9-Mar	Allen & Overy; Wolf Theiss	Wolf Theiss advised Marvipol Development and PG Dutch Holding I on the sale by their joint venture special purpose vehicles of development plots in Warsaw and Michalowice to LaSalle Investment Management KVG. Allen & Overy advised the buyer on the deal.	EUR 29.6 million	Poland
10-Mar	Eversheds Sutherland	Eversheds Sutherland advised EEC Magenta on its investment of PLN 10 million in Sinterit Sp. z o.o.	PLN 10 million	Poland
11-Mar	Gessel	Gessel successfully represented Polish citizen Wladyslaw Frasyuniuk against charges he violated the physical integrity of police officers.	N/A	Poland

Date covered	Firms Involved	Deal/Litigation	Value	Country
11-Mar	SSW Pragmatic Solutions	SSW Pragmatic Solutions helped Games Operators obtain the approval of the Polish Financial Supervision Authority for its prospectus.	N/A	Poland
12-Mar	SSW Pragmatic Solutions	SSW Pragmatic Solutions advised V&P sp. z o.o. on the company's investment policy and investment strategy and represented V&P in proceedings before the Polish Financial Supervisory Authority, resulting in the company's successful registration as an Alternative Investment Funds Manager.	N/A	Poland
13-Mar	DLA Piper	DLA Piper advised Polnord, a residential development company in Poland, on its EUR 31.7 million public offering.	EUR 31.7 million	Poland
21-Feb	Popovici Nitu Stoica & Asociatii	Popovici Nitu Stoica & Asociatii assisted the AkzoNobel group on its inter-group merger of the company's Romanian subsidiary with the Fabryo Corporation.	N/A	Romania
28-Feb	Kinstellar; RTPR Allen & Overy	The Bucharest office of Kinstellar advised Highlander Partners on its acquisition of Sano Vita. RTPR Allen & Overy advised the sellers.	N/A	Romania
5-Mar	BPV Grigorescu Stefanica	BPV Grigorescu Stefanica successfully represented the Municipality of Bucharest in a dispute with two private companies involving the failure by its General Council to approve a Zonal Urban Plan.	EUR 5 million	Romania
5-Mar	White & Case	White & Case persuaded UK's Supreme Court to accept the petition of Romanian entrepreneur Ioan Micula and the companies in which he invested, enabling an action to enforce a 2013 ICSID arbitral award of approximately EUR 300 million, plus interest.	EUR 300 million	Romania
11-Mar	Leaua Damcali Deaconu Paunescu	Leaua Damcali Deaconu Paunescu and LALIVE successfully represented the interests of Romania before ICSID, which on March 5 rejected claims against Romania amounting to over RON 9 billion brought by Ioan and Viorel Micula.	RON 9 billion	Romania
11-Mar	Kinstellar	Kinstellar advised First Farms on the acquisition of agricultural land from NCH Capital in Romania.	N/A	Romania
25-Feb	Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner advised Enisey THC, a subsidiary of the Siberian Generating Company, on its RUB 10 billion acquisition of Krasnoyarsk GRES-2 from OGC-2.	RUB 10 billion	Russia
27-Feb	Egorov Puginsky Afanasiev & Partners	Egorov, Puginsky, Afanasiev and Partners advised the Uralsoloto Group of Companies on its acquisition of securities of Petropavlovsk PLC.	N/A	Russia
27-Feb	White & Case	White & Case advised VTB Capital as auction organizer and financial advisor to UTLC on its RUB 60.3 billion auction of a controlling stake in Russian railway container operator TransContainer.	USD 968 million	Russia
28-Feb	Debevoise	Debevoise & Plimpton advised Norilsk Nickel on the upsizing and extension of its December 2017 syndicated facility agreement.	USD 1.65 billion	Russia
12-Mar	Macfarlanes; Rybalkin, Gortsunyan & Partners	Rybalkin, Gortsunyan & Partners and Macfarlanes advised AEON Corporation on its sale of a 28.34% stake in Petropavlovsk Plc to the Yuzhuralzoloto Group.	N/A	Russia
17-Feb	Karanovic & Partners	Karanovic & Partners advised Sweden's Backer AB on the acquisition of shares in Serbia's Elektrotermija d.o.o.	N/A	Serbia
2-Mar	Zivkovic Samardzic	Zivkovic Samardzic advised Serbia's national commercial broadcaster B92, a subsidiary of the Kopernikus Corporation, on its transformation from a joint-stock company into a limited liability company.	N/A	Serbia
4-Mar	Zivkovic Samardzic	Zivkovic Samardzic advised Israeli company Sizmek Technologies Ltd. on Serbian aspects of Amazon's acquisition of Sizmek's ad serving and dynamic content optimization businesses.	N/A	Serbia
9-Mar	NKO Partners	NKO Partners advised Mercata, a Serbian distributor of fast-moving consumer goods, on its merger with Veletabak, a Serbian tobacco and consumer goods distributor. Veletabak was advised by solo practitioner Zeljko Marovic.	N/A	Serbia
5-Mar	Kinstellar	Kinstellar advised Hungary-based financial group OTP Bank on the sale of its 99.44% stake in its Slovak operations to Belgium's KBC Group.	N/A	Slovakia
11-Mar	Kinstellar; Skubla & Partneri	Kinstellar advised Austrian company European City Estates on its acquisition of the Rosum office complex in Bratislava from Penta Real Estate, which was advised by Skubla & Partneri.	N/A	Slovakia
21-Feb	Paksoy	Paskoy advised Novartis on the sale of one of Sandoz Turkey's manufacturing facilities to Turkish pharmaceutical company Generica Ilac.	N/A	Turkey
28-Feb	Baker McKenzie (Esin Attorney Partnership); Gide Loyrette Nouel (Ozdirekcan Dunder Senocak)	Gide Loyrette Nouel advised Groupama Holding Filiales et Participations on the sale and transfer of its 10% stake in Turkish insurance company Gunes Sigorta A.S. to TVF Finansal Yatirimlar Anonim Sirketi, a subsidiary of the Turkey Wealth Fund. Baker McKenzie advised TVF on the transaction.	N/A	Turkey

Date covered	Firms Involved	Deal/Litigation	Value	Country
19-Feb	Baker Mckenzie	Baker McKenzie advised the Black Sea Trade and Development Bank on its up USD 70 million loan to Epicentr K LLC and Renvior Trading Limited.	USD 70 million	Ukraine
20-Feb	Marchenko Partners	Marchenko Partners advised the Western NIS Enterprise Fund on loans granted to CCE Dnipro Training and Production Enterprise of the Ukrainian Society of the Blind and the "Printing House" Center for Labor Rehabilitation of Disabled Persons.	N/A	Ukraine
21-Feb	CMS	CMS advised the TIS Group on English and Ukrainian law aspects of a joint venture involving DP World's entry into Ukraine. Marchenko Partners advised DP World on the deal.	N/A	Ukraine
24-Feb	Kinstellar	Kinstellar advised Deutsche Investitions- und Entwicklungsgesellschaft mbH, a development finance institution and subsidiary of KfW Bankengruppe, on a USD 20 million credit facility for Nibulon, an agricultural commodities exporter and producer in Ukraine. Clifford Chance's Frankfurt office advised DEG on matters of English law.	USD 20 million	Ukraine
25-Feb	DLA Piper	DLA Piper advised food chain Billa on an eight-year lease extension with the Kyiv City Council for Billa's flagship store in Kyiv's Bessarabskyi Market.	N/A	Ukraine
26-Feb	Redcliffe Partners	Redcliffe Partners advised the EBRD on a risk participation agreement with Piraeus Bank Ukraine with a total value of EUR 10 million.	EUR 10 million	Ukraine
26-Feb	Everlegal	Everlegal successfully represented Turkish airline Onur Air in a claim to recover USD 43 million.	USD 43 million	Ukraine
27-Feb	Vasil Kisil & Partners	Vasil Kisil and Partners successfully represented Rost Agro, a Ukrainian-based seed producer and exporter, in an administrative appeal procedure with the State Tax Service of Ukraine.	N/A	Ukraine
4-Mar	Eterna Law	Eterna Law advised the MET Group on its agreement to assist Ukrenergo on the latter's plan to reconstruct its infrastructure in Ukraine.	N/A	Ukraine
4-Mar	Kinstellar	Kinstellar helped Qatar-based QTerminals obtain merger control approval from the Antimonopoly Committee of Ukraine for the appropriation of assets belonging to the State Enterprises Stevedoring Company Olvia and the Ukrainian Sea Ports Authority, both in Mykolaiv, which enable stevedoring activities in the Specialized Sea Port Olvia.	N/A	Ukraine
4-Mar	Ilyashev & Partners	Ilyashev & Partners successfully protected the interests of Ukrainian manufacturers and members of the Ukrainian Autoclaved Aerated Concrete Producers Association in an anti-dumping investigation related to imports of gas-concrete blocks originating in the Republic of Belarus.	N/A	Ukraine
5-Mar	Avellum; DLA Piper	Avellum advised arrangers J.P. Morgan Securities Plc and Raiffeisen Bank International AG on a USD 464 million bridge loan financing for Bakcell's acquisition of PSJC Vodafone Ukraine. DLA Piper advised Bakcell on the deal.	USD 464 million	Ukraine
5-Mar	Eterna Law	Eterna Law advised the Ukrainian subsidiary of AIG on its restructuring.	N/A	Ukraine
6-Mar	Cai & Lenard	Cai & Lenard is advising Ukrainian teenage dance troupe Light Balance Kids on the next phase of what the firm calls its "creative development."	N/A	Ukraine
9-Mar	Sayenko Kharenko	Sayenko Kharenko advised Promprylad.Renovation, a project within the premises of a revitalized Soviet-era plant in Ivano-Frankivsk, on its buying-out of plant facilities.	N/A	Ukraine



The Ticker:

■ Full information available at:
www.ceelegalmatters.com
 ■ Period Covered:
 February 17, 2020 - March 13, 2020

Did We Miss Something?

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

ON THE MOVE: NEW HOMES AND FRIENDS

Romania: Allen & Overy and RTPR Allen & Overy Announce “New Relationship” in Romania

By Radu Cotarcea

Allen & Overy and RTPR Allen & Overy have announced “a new relationship agreement” that involves the removal of Allen & Overy from the firm’s name and the removal of Romania from the list of Allen & Overy’s jurisdictions.

The change became effective March 2, 2020, after 12 years of the two working under an association agreement.

According to an RTPR press statement, “the name change follows A&O’s practice for the offices it does not own but partners with on transaction, cases, and advice.” It clarified that Radu Taracila Padurari Retevoescu SCA (RTPR) is owned exclusively by the six Romanian Partners: Costin Taracila, Victor Padurari, Alexandru Retevoescu, Mihai Ristici, Valentin Berea, and Alina Stavaru.



Costin Taracila

While the press statement emphasized that “RTPR will continue to work closely with Allen & Overy,” and that “the collaboration will continue to extend beyond working together on client matters, to aspects such as legal training for lawyers or joint marketing initiatives,” an Allen & Overy representative declined to comment as to whether their collaboration will be on an exclusive basis within the new agreement, stating that “details of the agreement are commercially confidential.”

Costin Taracila, Managing Partner of RTPR, stated: “We are proud to be the reference firm for, and to have worked together with, Allen & Overy on numerous landmark deals in Romania and the CEE region over more than 12 years. Having a new relationship agreement with Allen & Overy is once again testimony to RTPR’s highest quality standards of advice and ethics and further cements our position as a leading transactional firm in the market.”

Wim Dejonghe, Allen & Overy Senior Partner added: “We value our collaboration with RTPR and are pleased this will carry on under the new arrangement. We will continue to provide the highest quality legal advice in Romania and the CEE region, which are important markets for us and our clients.” ■

Serbia: Vulic Law Sets Up Shop in Belgrade

By Radu Cotarcea

Former Prica & Partners Partner Milos Vulic has established a new firm in Belgrade – Vulic Law.

Vulic started his legal career with Prica & Partners in 2007 as a Junior Associate. Working within the firm’s real estate team and in commercial litigation, often involving bankruptcy, reorganization, and liquidation procedures, in 2009 he was promoted to Senior Associate and in 2014 he became Junior Partner. He was made Partner in 2016.

“After being part of the Prica & Partners for 13 years, I felt that it was time for a new stage of my professional career,” Vulic explained, adding that, “Vulic Law has been established and organized in a manner to provide clients with complete legal support in Serbia and the region.”

The Vulic Law team currently consists of Vulic as the Managing Partner and three other lawyers. ■

Serbia: MPartners Legal Opens for Business in Serbia

By David Stuckey

A new law firm – MPartners Legal – has opened its doors for business in Belgrade.



Mihajlo Matkovic

MPartners is led by Managing Partner Mihajlo Matkovic, who works with two other partners, another two full-time lawyers, and what Matkovic describes as “five external counsel/industry experts in Energy, PPP, Competition, Real Estate and Shipping, engaged from project to project basis and cooperative offices in all WB6 jurisdictions.”

According to the firm, “as a new market player in the Serbian market, [it] aspires to provide to its clients a unique blend of premium legal services primarily in Banking & Finance, Projects & Energy, Real Estate, White Collar & Government Investigations, Employment, Competition and Dispute Resolution.” According to the firm, “our business model is based on flexibility, strong sectoral expertise and prowess in tackling seemingly insoluble legal problems.”

MPartners claims that “our experts have proven track records [as] part of legal teams on major transactions in the Serbian, Montenegrin, Macedonian and Bosnia & Herzegovina market, including the landmark Belgrade Airport Concession, the financing and construction of the first large scale Wind Farm in the WB6 region, the incorporation of the Bank of China ... General Electric ... and Zijin Mining, one of the world biggest gold producers, on the acquisition of a mining business in Serbia.” ■

Russia: RGP Launches New Arbitration Practice

By Tereza Green

Rybalkin, Gortsunyan and Partners has launched an Arbitration practice, led by new Partner Dmitry Dyakin.

Dyakin, who will be joined in the new practice by newly-hired Attorney Dmitry Kaysin (who moves over from Egorov Puginsky Afanasiev & Partners), is an international arbitration expert with over 20 years’ experience. Prior to joining RGP, he was a partner and Head of International Arbitration & Litigation at Magisters for 13 years.

According to RGP, “Dmitry has vast experience representing the government and major state corporations, Russian and foreign companies operating in various industries, including oil and gas, banking, construction, etc. Dmitry has handled numerous arbitrations under the arbitration rules of the International Chamber of Commerce, The Arbitration Institute of the Stockholm Chamber of Commerce, the London Court of International Arbitration, the International Center for Dispute Resolution, the United Nations Commission on International Trade Law, and the rules of the ICAC of the Russian Chamber of Commerce and Industry.”

“We welcome our new colleagues – exceptionally qualified professionals,” commented RGP Head of Litigation and Investigations Ilya Rybalkin. “Together we will continue building a unique law firm in our country.”

“I am delighted to become part of the RGP team,” Dyakin added. “Together we plan to create a leader in the Russian dispute resolution market.” ■

DEALER’S CHOICE LAW FIRM SUMMIT & 2020 CEE DEAL OF THE YEAR AWARDS

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PARTNER APPOINTMENTS

Date Covered	Name	Practice(s)	Firm	Country
13-Mar	Walter Gapp	Capital Markets	CMS	Austria
18-Feb	Ladislav Peterka	Litigation/Disputes	Randa Havel Legal	Czech Republic
19-Feb	Peeter Viirsalu	Real Estate	TGS Baltic	Estonia
19-Feb	Triin Kaurov	Litigation/Disputes	TGS Baltic	Estonia
5-Mar	Villy Lopman	Tax	Rask Attorneys at Law	Estonia
5-Mar	Timo Kullerkupp	Banking/Finance	Rask Attorneys at Law	Estonia
12-Mar	Alina Makovska	M&A	Walless	Lithuania
12-Mar	Akvile Mackay	Real Estate	Walless	Lithuania
4-Mar	Karina Aust-Niewiadomska	Litigation/Disputes	Rymarz Zdort	Poland
4-Mar	Ewa Bober	Corporate/M&A	Rymarz Zdort	Poland
4-Mar	Marek Durski	Energy/Natural Resources	Rymarz Zdort	Poland
4-Mar	Piotr Fedorowicz	Real Estate	Rymarz Zdort	Poland
4-Mar	Zofia Frydrychowicz	Banking/Finance	Rymarz Zdort	Poland
4-Mar	Monika Kierepa	TMT/IP	Rymarz Zdort	Poland
4-Mar	Marek Maciag	Corporate/M&A	Rymarz Zdort	Poland
4-Mar	Magdalena Pyzik-Walag	Insolvency/Restructuring	Rymarz Zdort	Poland
4-Mar	Krzysztof Sajchta	Litigation/Disputes	Rymarz Zdort	Poland
4-Mar	Jakub Zagrajek	Corporate/M&A	Rymarz Zdort	Poland
4-Mar	Jacek Zawadzki	Capital Markets	Rymarz Zdort	Poland
4-Mar	Lukasz Zak	Litigation/Disputes	Rymarz Zdort	Poland
11-Mar	Daniel Kaczorowski	Corporate/M&A	Greenberg Traurig	Poland
26-Feb	Daniel Alexandru Aragea	Competition; Litigation/Disputes	Stoica & Asociatii	Romania
11-Mar	Alexandru Aparaschivei	Tax	Nestor Nestor Diculescu Kingston Petersen	Romania
5-Feb	Igor Lozenko	Capital Markets	Sayenko Kharenko	Ukraine

PARTNER MOVES

Date Covered	Name	Practice(s)	Moving From	Moving To	Country
25-Feb	Viktor Luszcz	TMT/IP	HIPO	Danubia Legal	Hungary
20-Feb	Szymon Syp	M&A	Olesinsky & Partners	Zieba & Partners	Poland
11-Mar	Mateusz Ordyk	Compliance; Capital Markets	PWC Legal	Deloitte Legal	Poland
11-Mar	Arsen Ayupov	Real Estate	RE Group	Nektorov, Saveliev & Partners	Russia
12-Mar	Dmitry Dyakin	Litigation/Disputes	Magisters	Rybalkin, Gortsunyan & Partners	Russia
19-Feb	Nemanja Jovovic	Competition	DBP Advokati	Bojanovic & Partners	Serbia
27-Feb	Milos Vulic	Real Estate	Prica & Partners	Vulic Law	Serbia



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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.

Montenegro

Interview with Sasa Vujacic of Vujacic Law Offices



Sasa Vujacic

“Things are moving in cycles [in Montenegro], as in most parts of the Balkans,” says Partner Sasa Vujacic of Vujacic Law Offices. “This is an election year in Montenegro and

that will be reflected on the business sector for sure, as we approach election day.” Vujacic reports that the election date “should be no later than October of this year” and adds that, although more political influence will be felt in all sectors of business as it approaches, “not a lot of changes in Montenegro’s political structure are to be expected.”

Vujacic believes the recent outbreak of Coronavirus is likely to have a significant impact in the first half of the year. “We all know that it is very close,” he sighs. “While I don’t think that the

situation will be as it is in Italy,” where some 12 cities have already been quarantined, “there are some measures being announced by the government.”

Vujacic says that the EU accession process that is underway is likely to be the biggest catalyst of change for the country’s legislative framework. “A new methodology for the accession process has been developed and the powers that be are expected to decide in March whether, going forward, the old methodology will be used or this new one.” Still, he says, there have been no “negotiations on concrete things” since last November/December in the process.

“Of course, not making any progress on the accession front does not mean that nothing is happening because of it,” Vujacic notes, pointing out that “new legislation is being passed domestically quite often.” However, he says, these new laws are primarily procedural and technical in nature, and he reports that “they bring about no tangible changes, for the most part.” What is making a difference, he claims, is the country’s new Labor Act, which “gives more

oversight and control to the state on everything from the hiring process to the division of working hours.”

Vujacic describes Montenegro’s economy as “pretty much stable for the most part,” though he says that there have been few new major projects in the past few months. Still, he says, an examina-

“Of course, not making any progress on the accession front does not mean that nothing is happening because of it. New legislation is being passed domestically quite often.”

tion of some potential reserves of oil and natural gas is expected to wrap up soon, and “it is to be seen in the first half of the year if there’s anything that may be worth exploring.” He says that “it is most likely going to be natural gas reserves – and the market feels this way too – but we have to wait for the process to finish first.” ■

By Andrija Djonovic (March 4)

Latvia

Interview with Filips Klavins of Ellex Klavins



Filips Klavins

“Without question,” says Filips Klavins, Senior Partner at Ellex Klavins in Riga, “the biggest news was that last week [Friday, February 21] the Financial Action

Task Force decided not to put Latvia on its Gray money-laundering List.” Latvia has been under monitoring by Moneyval and the FATF for potentially allowing space for conducting money laundering in Latvia. “The countries that find themselves on the Gray List are the likes of North Korea,” Klavins says. “Not the company you’d want to find yourself in.” Still, he smiles, “the country has been working really hard to avoid that, and we’ve done it.”

Moneyval also reported positively about Latvia in January, and Klavins reports that Standard & Poor’s recently gave the country an A+ rating – the highest in Latvia’s history. “Of course, this doesn’t mean that we can let our guard

down,” Klavins says, but he points out that the controls put into place to prevent money laundering and terrorist financing are strong and that “some of the banks have even gone a bit overboard with them, erring on the side of caution especially while on-boarding new clients and getting to know them.” In addition, he reports that the Financial and Capital Markets Commission – the financial markets regulator of Latvia – and the Central Bank of Latvia are both under new heads and says that this will “increase the confidence in these institutions which will certainly attract new investors and continue to build on the current high level of confidence in the country.”

In other news, Klavins reports that the new Economic Court of Latvia is scheduled to begin operating by January 2021 and that changes to legislation are being made now in order to make that happen. “The idea behind the court is to have expert judges that are specifically trained to take on economically complex cases.” Klavins reports that Latvia’s Cabinet of Ministers has adopted a new way to calculate cadastral values. “The new formulas are rather complex but should lead to a more nuanced approach to real estate taxation. It will take some time for the market to adapt to this –

seeing as how it will regulate the entirety of the real estate sector, both residential and commercial.”

Finally, Klavins reports that the real estate sector is, at the moment, particularly strong. “We’re experiencing a lot of traction in this sector, especially with regards to office buildings and shopping centers.” Meanwhile, he reports that the country’s energy sector is undergoing some changes. “The Conexus Baltic Grid – Latvia’s natural gas transmission and storage operator – is undergoing a change in its shareholder structure,” he says, noting that two of its current shareholders, the Marguerite fund and Gazprom, are set to finalize the sale of their stakes. “What we’re waiting for now is to hear from the government whether or not it will use its right of first refusal and allow for the stakes to be sold to private parties, or if it decides to become a larger shareholder in its own right.” Klavins reports that the government has made no official announcements yet and says that, if it decides to pass up on Conexus shares, any new owner would have to go through a national security clearance before the transaction can be finalized, given the strategic importance of the company. ■

By Andrija Djonovic (March 5)

Slovakia

Interview with Veronika Pazmanyova of Glatzova & Co.

According to Glatzova & Co. Partner Veronika Pazmanyova, “surprisingly, just three days before the February 29 election the Slovak parliament approved a 13th pension wage and rejected the Istanbul Treaty.” According to her, “despite this clear political corruption, the ruling party, SMER, was not able to secure victory and were beaten by the anticorruption Ordinary People party led by Igor Matovic, who will presuma-

bly be the new Slovak Prime Minister.” Matovic received 25% of the votes, despite having only around 5% support in the autumn polls, Pazmanyova reports.

“SMER has been linked to multiple scandals for last couple of years,” Pazmanyova says, “which generated a massive response in civic society and, in 2018 and 2019, led to the biggest country-wide demonstrations in the modern history of Slovakia.” According to her, “this ultimately forced Prime Minister Robert Fico and Minister of Interior Robert Kalinak to step down.” Led by current Prime Minister Peter Pellegrini,

and despite winning the last five elections, SMER placed second, with 18.29% of the vote, “and will now be forced to parliamentary opposition.”

“The change of the government will be refreshing and much needed,” Pazmanyova says. “The trust in institutions, justice, and police must be restored.” She attributes the ►►►



Veronika Pazmanyova

high turnout for the election – 65.8%, the highest in nearly two decades – to the increased interest of Slovaks in public affairs following the February 2018 murder of journalist Jan Kuciak and his fiancé, which sparked the massive protests.

Pazmanyova is encouraged by the rise of democratic civic society in Slovakia. “This brings me hope,” she says. “In order for society to work, people must engage on the local level and may not be ignorant to any form of injustice. After all, we form the society we want to live

in.”

In the meantime, she says, the prosecution for those responsible for Kuciak’s murder is moving forward. “To prove guilt, the prosecution has used modern technological evidence, supported by huge amount of metadata including geolocation, encrypted Threema communication, and views of Facebook profiles of the victims prior to the murder. From a lawyer’s perspective this is quite interesting, as it widens the techniques traditionally used by the police and may surprise unsuspecting offenders.”

Croatia

Interview with Damir Topic of Divjak Topic Bahtijarevic

“The most important things coming up in Croatia are HDZ’s intra-party elections,” says Damir Topic, Senior Partner at Divjak Topic Bahtijarevic in Zagreb, referring to the ruling party. “Mid-March will see these elections concluded and we’ll see which direction the party will take.” Former Croatian President Kolinda Grabar-Kitarovic, a member of HDZ, lost her bid for re-election in December 2019 and stepped down on February 18 of this year. According to Topic, “the right-wing of the party argues this is due to Grabar-Kitarovic taking a mellow stance (which apparently stems from the ‘pro-liberal’ orientation of current party’s leaders), which lost her the support of some of the more right-wing parts of the electorate.”

HDZ currently controls most of the seats in the parliament, but they only rule via a very wide coalition with seven other parties, and according to Topic, opposition voices within the party feel that the “Prime Minister is taking too much of a liberal and pro-EU approach to governing and that HDZ should pivot to more conservative values and stances.” One of the main colla-

tion partners is the Mayor of Zagreb, who is trying to push through (and is expecting HDZ’s support for) some huge infrastructural developments in Zagreb. HDZ is expected to support his plan because the Mayor’s parliamentary party’s support is crucial for the coalition to maintain power. However, Topic reports, the local organization of HDZ in Zagreb failed to provide the expected support in the first attempt of voting for the Mayor’s plan.” Croatia is expected to have parliamentary elections before the end of the year.

Topic reports that the political turmoil is beginning to affect the parliamentary agenda. “Some things that were due to be put to a vote were pulled. Nothing major yet, but I feel like this may be a direct consequence of the issues HDZ is facing internally.” In addition, he says, Croatia needs a new Attorney General, as the previous one “was forced to resign when it was revealed that he was a Free Mason.” According to him, “the process of selecting a new AG won’t start until after HDZ’s internal elections.”

“The situation is kind of like a vacuum at the moment,” Topic says. “The economy and the business sectors are doing their thing, and the politicians are

Turning to business, Pazmanyova says that “2019 was a great year for our clients, leading to nice M&A deals for us, including several notable transactions in the telecommunications sector.” There is a significant amount of both institutional and individual investment, she reports, meaning that there is “a lot of money in the market.” She adds that “2019 saw the rise of the local entrepreneurs, as many local projects were in the center of attention. Many owners sold their businesses, and reinvested the money both locally and abroad.” ■

By Djordje Radosavljevic (March 9)

doing their own – which may be better, all things considered.”

Finally, Topic reports that Croatia’s IT and retail sectors are booming, with “people spending a lot recently.” However, Croatia’s biggest generator of budgetary resources has always been tourism – which may suffer this year due to the coronavirus. “We only have four or five cases confirmed so far,” he says, “but if there are any more this may lead to fewer tourists – which can be rather bad with tourism representing some 20% of GDP.”

Otherwise, Croatia is expected to experience around 2.6% of growth this year (in 2019 it was 2.9%), which Topic reports was “not only stated by the Finance Minister but is also consistent with projections by the World Bank and the EBRD. It is yet to be seen if this will happen – our biggest trade partners are Italy and Germany, and we have still no idea how the coronavirus will impact their economies.” ■

By Andrija Djonovic (March 9)



Damir Topic

Greece

Interview with Dimitris Assimakis of Norton Rose Fulbright



Dimitris Assimakis

There is a high level of activity in the Greek energy sector, says Dimitris Assimakis, Partner at Norton Rose Fulbright in Athens. “Renewables are going to be huge in

the near future,” he says, “mostly due to the fact that Greek authorities have put forward an ambitious plan to have the share of renewables in the final gross electricity consumption at 60% by 2030.” According to Assimakis this doubling of the current 29% share will require “a very aggressive investment program – mostly from the private sector.”

Assimakis reports that there is a “serious privatization” in the works. “The Public Gas Company – DEPA – is set to be privatized in a two-fold manner following its ongoing corporate restructuring,” he says. “As a result of this corporate restructuring, DEPA’s wholesale and retail supply activity will remain with the company, while there will be a spin-off of its gas distribution activity, which will be transferred to a

new entity.” The tender processes for the privatization of both of DEPA’s business segments are ongoing, with “the deadline for submission of the expression of interest for the supply business set for March 23.” In addition, he says “there has already been great interest shown by PE funds, infrastructure funds, and utility companies during the expression of interest tender phase for the gas distribution spin-off.” Assimakis believes that the process for both is likely to end by early 2021.

But the privatizations do not end there. According to Assimakis, “it has been announced that the government will, sometime this year, engage in the privatization of the electricity distribution network, which is operated by a wholly-owned subsidiary of the state-controlled Public Power Corporation.” According to him, the government will put 49% of the entity operating the network up for bid, “along with some of the management rights.” He says that the government is also considering selling off a part of its stake in ADMIE – the power transmission operator – which was partially privatized in 2017 when 24% of it was acquired by the State Grid Corporation of China.

“I’d say that another angle to investments in the Greek energy sector is that they will have an impact in the wider region,” he continues. “The vertical gas corridor between Greece and Bulgaria –

the IGB pipeline project – which finally gets under construction this year, will likely be finished in 2021.” He reports that this will have wide-ranging implications for the entire region, as it can “diversify, in combination with the FSRU project developed offshore the port of Alexandroupolis, the gas supply options for the Balkans as a whole.”

“Gas remains important for Greece due to a phase-out plan for coal,” Assimakis states, as the government has plans “to shut down all of the operating coal power plants by the end of 2023.” He believes that what will fill the gap will “most definitely be gas and renewables.”

Ultimately, Assimakis insists that Greece has a bright future. “After a long period of recession, it would seem that things are on a turn, with GDP finally growing and the government set to introduce measures to ease the tax burden on corporate players.”

He also describes initiatives to combat the brain drain Greece has been experiencing as a result of the crisis. “Some 500 thousand people have left the country – which is a huge loss,” he says. “The state, backed by large corporations, has a plan for a ‘brain gain’ scheme – that is to say, to introduce incentives for young professionals to come back to Greece and continue their work here, to benefit the economy.” ■

By Andrija Djonovic (March 10)

Bulgaria

Interview with Kostadin Sirleshtov of CMS

“The third year a Government is in power is when it usually feels the most confident to work on reforms,” says Kostadin Sirleshtov, Managing Partner at CMS in Sofia. “At the moment, the Bulgarian Government is stable and

active in various sectors, considering the very small possibility of a new election this year.”

Sirleshtov feels like this is the most fruitful period for Bulgaria in several years, as “the EUR 2 billion Turkish stream extension project is underway, as are the final stages of Sofia and Plovdiv airports.” The biggest focus, he says, is on the country’s infrastructure and au-

tomotive sectors. “Bulgaria was on the final shortlist for the new Volkswagen factory, the New Green Deal of the EU is driving new opportunities on the market, and even unfortunate events such as the water-supply crisis in Plovdiv have pushed new investment,” he explains.

On the subject of legislative developments, Sirleshtov reports that “there is a big focus on the Rule of Law, ►►►



Kostadin Sirleshtov

prevention of corruption, and anti-money laundering,” and he adds that “new legislation is being adopted as we speak.

Changes have also been intro-

duced in the banking sector, mostly considering the consolidation of banks.” He reports that newly-appointed General Prosecutor, Ivan Geshev, has “promised to work on reforms and the implementation of rule of law.”

Sirleshtov is satisfied with the Bulgarian economy, explaining that “the most positive thing is that the Bulgarian Lev has been pegged to the Euro for several years now, which means that every

investment is hedged to the Euro, making investors happy.” He adds that the effects of this are already visible, as the country’s real estate and M&A sectors are booming. “The banking sector has seen some large deals, including, most notably Societe General bank’s acquisition by OTP. Local banks are overly liquid and hence invest a lot.”

According to Sirleshtov, some sectors that were previously less active are expanding as well, including the military and the rail industry, which he says has “attracted some important international players.” While investment is rising, he reports some problems with exits. According to him, “the protection of competition has led to some market players having trouble selling their businesses. This, I think, is a much bigger concern than investment, which is currently on

the rise.”

“In our jurisdiction, stability disappears rapidly,” concedes Sirleshtov. “What Bulgaria needs is a stable Government ready to work on reforms. If we wish to join the Eurozone in the next couple of years, we need all actors to understand their jobs and work hard to reach this goal.” Although most remain positive in light of positive trends in various fields and the expectation of even more financing on the market in the future, he cautions that things could come crashing down by “a catastrophic event, such as the shocking 2014 crash of Corp-Bank.” As a result, he says, “in conclusion, we just hope to continue with the current stability in order for things to work out in Bulgaria.” ■

By Djordje Radosavljevic (March 11)

Slovenia

Interview with Milos Velimirovic of Samardzic Oreski & Grbovic

Milos Velimirovic, Partner at Samardzic Oreski & Grbovic in Belgrade, declares that “two things are hot right now in Serbia: the matter of Kosovo and the Parliamentary elections in April.”

Velimirovic feels that the matter of Kosovo is likely to reach a quick solution, now that “the USA getting involved in a more active manner.” According to him, “I think we can expect some sort of a concrete move from them before their general elections this November which will help clear the air here.”

As for Serbia’s Parliamentary elections, Velimirovic says that he believes “that the current government will keep its position of power and will continue along the lines of their rule so far – which will also allow the economy to grow as

planned and predicted. On the other hand, there are likely going to be some changes to its cabinet and personnel members.” He believes that these changes will likely reflect a more eco-aware stance that the government, like the region as a whole, has been expressing recently. “This will also be in accordance with the international obligations Serbia has undertaken in recent years.”

“However, maybe even more important than Kosovo and the elections are infrastructure investments, the gray economy, and the waves of migrations,” Velimirovic says wearily. “Especially when it comes to migration – these waves have been the most serious in the past few decades.” Serbia, of course, has significant experience on this front, particularly with the refugees flocking to the country following the Yugoslav wars in the 1990s.

Velimirovic reports that Serbia’s financial position is “rather good,” and that public spending is “at the same level

as some more developed economies have – what we lack here are public investments that could divert this capital to something more valuable.”

According to him, in part of because of the lack of developed financial products and capital market, the country’s real estate sector is among the most active at the moment. “In developed economies, excess capital flows into businesses, but in less developed ones it finds its way into real estate – which is what we’re experiencing here.”

Velimirovic reports that the process of harmonizing Serbia’s legislation with the EU’s Payment Services Directive will start soon. “This can open doors to a crowdfunding perspective when it



Milos Velimirovic

comes to investments,” he says, “but it still won’t necessarily mean drastic changes. Simply having a framework in place doesn’t mean that market reality will follow suit.”

Additionally, Velimirovic reports that “a

Romania

Interview with Stefan Damian of Tuca Zbarcea & Asociatii



Stefan Damian

Between what he describes as the “madness surrounding the coronavirus,” Romania’s pending elections, and the current stage of the economic cycle, Stefan

Damian, Deputy

Managing Partner at Tuca Zbarcea & Asociatii is rather pessimistic about the upcoming months.

“Officially, we have confirmed about 70 [as of March 13, 2020] cases of COVID-19 in the country, and right now a state of panic seems to be gradually spreading all over,” Damian sighs.

He notes that a lot of Romanians are working abroad – about half in Italy, the European country most heavily-affected by the virus. “I think it’s only a matter of time until we have a spike of cases in Romania,” he says, “but for the time being, this is not something worrying in itself.” What is worrying for him, he says, is “the effect this crisis will have on the economy,” as Romania is closely connected with other European markets and pins its economy heavily on exports, especially in the automotive sector – which, he believes, will suffer the most after tourism and hospitality.

new set of laws related to investment funds – the Investment Fund Act and the Alternative Investment Fund Act – will harmonize our legal framework with that of the EU.” He claims that further regulations designed to help make these

And this “madness” is coming around at a particularly unfortunate time, Damian says. “We saw more and more interest from PE funds in 2018-2019, but that’s likely to slow down,” he says, and although he concedes the country won’t be the only one suffering, he claims that, “there are also specifics in Romania that won’t help, such as having three government changes in recent months and a projected push for snap elections or a saga about electing a new Government, [which] will definitely put funds off even more.”

All of this, he says, comes against a background of an “economy that is not great anyway,” adding that “we are registering pretty high inflation and a high deficit (last year’s was 4% of the GDP and all projections point to a similar, if not higher, number for this year). At the same time, a lot of the economic growth in the country has somehow been driven by consumption – especially as salaries and pensions have gone up recently – but that will likely stop this year and that will eat away at some of the GDP growth.”

And, Damian reports, with elections around the corner (a round of legislative elections is scheduled for the end of 2020 and another one for local municipalities in the middle of the year), “people seem more interested in playing nice to secure votes than addressing systemic ills in the economy.” As a result, he admits, he is pessimistic about the economy’s outlook, especially as “Romania has

acts practically useful are currently being drafted and that they should ready the field for “new investments coming in on all sorts of levels – venture capital, private Equity, and the like.” ■

By Andrija Djonovic (March 12)

traditionally not been the best in terms of absorbing EU funds and putting them to good use towards much-needed huge infrastructure projects that would benefit the economy in more ways than one.”

Asked about new legislation generating business for lawyers in Romania, Damian points to the DAC6 Directive on cross-border tax arrangements and the implementation of the anti-money laundering regulation Directive 2015/849, which add several obligations to exchange information with authorities, and which, he says, “are defined rather broadly and vaguely, which lawyers will find tricky to navigate, especially when, arguably, some of these obligations might directly contradict the principles guiding the legal profession.”

Damian reports little real recent movement of note on the Romanian legal market, and he reports that the biggest news recently was the redefinition of Allen & Overy’s relationship with RTPR (see page 16) though he says that it will “likely not change too much in the market since the local team will likely remain their go-to partners on the ground.”

Lastly, in reference to pending/potential deals of significance, Damian reports that the one blockbuster deal in the works is CEZ being put up for sale – a deal that, “if it goes through, will likely be the largest deal in the market this year.” ■

By Radu Cotarcea (March 16)

North Macedonia

Interview with Gjorgji Georgievski of ODI Law



Gjorgji Georgievski

“The Parliament was disbanded in February and we’re reaching peak election campaign time,” begins Gjorgji Georgievski, Partner at ODI Law in North Macedonia.

“Election day is April 12, and the heat is on.”

Georgievski believes that the contest between the ruling Social Democrats and the right-wing opposition VMRO-DP-MNE party is going to be tight.

“It is very, very difficult to predict what

“Without the GMP these companies are precluded from exporting or selling their stock – which leaves a lot of unusable cannabis laying around, so some of these producers teamed up and started organizing protests trying to pressure the Government to pass new legislation which would enable them to export cannabis like a flower.”

will happen with these elections,” Georgievski says, reporting that VMRO-DP-MNE, which was the ruling party before the Social Democrats, has lost the faith of the people, while the ruling party, “hasn’t really implemented any meaningful reforms in the past four years.” According to him, whichever party wins, it will do so by a narrow margin. “VMRO-DPMNE won 51 seats in the previous parliamentary elections to the Social Democrats’ 49 – but they failed to strike a coalition deal. These elections are likely to have a similar outcome, in terms of seat distribution,” he says, adding that as a result, the elections will most likely not bring about much change.

“One of the final things the previous Parliament did was enact a new data protection act, which mirrors the GDPR,” Georgievski says, noting that the new act provides for harsher maximum financial punishments – up to 4% of the company’s yearly turnover, just like the GDPR. “The new act has been in play since February 24 with a transitional period of 18 months so that businesses can adjust.”

“What didn’t make it past Parliament, and is very important, is the new payment systems framework,” Georgievski says. The new framework would harmonize the law of North Macedonia with that of the EU – in particular the Payment Services Directive 2. “It would enable the country to have a FinTech market, would liberalize payments, and

would introduce open banking,” he says.

“The new Parliament – whichever party wins – will likely pass this first thing”

However, what may change, depending on who wins the elections, is the legal status of medical cannabis in the country. “This was a very hot topic in North Macedonia over the past few years,” Georgievski reports, noting that there are “45-50 companies registered to do business in this area, along with many more that are ready to invest.” The problem for many of these companies is that they lack a Good Manufacturing Practice certificate. “Without the GMP these companies are precluded from exporting or selling their stock – which leaves a lot of unusable cannabis laying around, so some of these producers teamed up and started organizing protests trying to pressure the Government to pass new legislation which would enable them to export cannabis like a flower.” Georgievski reports that the Government failed to enact a law before the Parliament disbanded, making the outcome of the elections especially important. “If the Social Democrats win and form a coalition, this act will pass for sure, but if VMRO-DPMNE wins, they may feel differently about the issue.” He suggests that the cannabis industry holds great potential for North Macedonia and could lead to “staggering growth of the economy.” ■

By Andrija Djonovic (March 17)



The Buzz:

■ Full information available at: www.ccelegalmatters.com
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Did We Miss Something?

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ORGANIZING FOR CHANGE: POLAND'S WOMEN IN LAW FOUNDATION AIMS HIGH

According to CEE Legal Matters' 2019 By the Numbers report, the gender balance at commercial law firms in Poland up to the senior associate level is fairly even, with 44.58% being women. However, at the partner level things change drastically, with women representing fewer than 25%. Even then, other reports suggest, many of the women lawyers who do make partner do so not at the larger, high-profile law firms, but at smaller boutiques. The "Women in Law" foundation in Poland was created to address this imbalance, and other forms of gender inequality in the legal industry, with a special focus on legal tech.

By Tereza Green



A meeting of minds – discussing lawyers' role in ethical and sustainable practices in fashion



Panel discussions at the Foundation's 'The Future of the Legal Profession' Conference

Inspiration Strikes

Women in Law founder Kamila Kurkowska began her career in the legal and consulting sector, spending six years in the tax and legal departments of Deloitte. Two years ago she began working on a project with two prominent business psychologists dedicated to diversity; she describes the experience of discovering the difference between working with lawyers and working with general businessmen and women, particularly those working in progressive and innovative fields of study, as a revelation.

Subsequently, as an attendee at a 2019 legal tech conference, Kurkowska became aware that, although approximately half the attendees were female, only one of the 11 speakers was a woman. Struck by the realization, she reached out to the speaker – Katarzyna Abramowicz, founder of data security software startup Specfile. Congratulating Abaramovic on her participation, Kurkowska commented on what a progressive triumph it was to be invited to

speak at such a male-dominated event. It turned out ... Abaramovic hadn't been invited at all. She had invited herself.

Kurkowska says, "it occurred to me that the scarcity of female speakers at such events perpetuates a vicious cycle. If women aren't seen or heard," she concluded, "organizers will not think of them when putting subsequent events together, and nothing will change." She resolved to address the issue and find ways to actively support gender diversity in the industry.

Thought Into Action

Fired with resolve, Kurkowska launched the Women in Law foundation in May, 2019, to place women front and center alongside their male counterparts in Poland's legal industry. The foundation's activities include a wide array of events, competitions and mentoring programs for law students, and multimedia publications and other initiatives to address the discrepancies of gender diversity in Poland.

"Currently we are facing a time of change and rotation in the legal market. Especially due to the economic situation. The changes will affect not only the labor market but also the ways legal services are provided. Our task as a foundation will be to provide special support to women who will enter or re-enter the labor market as a lawyer, judge, or prosecutor."

The foundation's first conference took place in October 2019, attracting some 200 attendees and broad media coverage from leading Polish outlets. Since then, it has also hosted a number of regular, smaller-scale meet-ups to showcase and network key female experts in the market. The first of these smaller gatherings, in November of last year, saw approximately 40 men and women discussing the lawyer's role in responsible fashion – i.e., sustainable and ethical production and design practices. Both



Agnieszka Krysik



Kamila Kurkowska



Cezary Zelaznicki

lawyers and fashion industry professionals spoke at the event – a tradition the foundation has maintained at its most recent meet-up, in late February of this year, concerning cybersecurity, with speakers including both female lawyers and representatives from Accenture and the Warsaw police.

Significantly, and to make it easier for the many working parents who want to attend its events, the foundation hosts its meet-ups at the Central House of Technology – an educational center in

Warsaw – and provides simultaneous childcare in the form of educational workshops on subjects like programming and robotics for the kids.

The foundation is nothing if not energetic. Future plans include inviting female law students to submit articles connecting law and technology to win a cash prize plus a three-month internship in participating law firms such as Polowiec & Wspolnicy, Roedl and Partner, PwC Legal, Greenberg Traurig, Maruta Wachta, and Lesnodorski, Slusarek i Wspolnicy. In April, the foundation will start a mentoring program dedicated to female lawyers aged 28-30, with experts – both male and female, lawyers and non-lawyers – available to help. Multimedia publications are also on the horizon, such as “Herstory” video interviews with prominent female lawyers and online and print articles about gender diversity and new technology.

Agnieszka Krysik of KrysikLaw has been involved with the foundation since the beginning. “The idea came from the need to build a form of support for women in the legal sector,” she says. “From the very beginning Kamila believed in the technological future in the legal industry, the development of which has an impact on the entire legal market - which is particularly visible in the current situation related to the epidemic crisis.”

Of course, as achieving the goal of gender equality requires the involvement of both genders, Kurkowska stresses the importance of engaging men in the foundation’s work as well, highlighting the fact that its six-member board has an even number of both men and women.

One of those male board members, Cezary Zelaznicki, is also Managing Partner and Diversity & Inclusion Leader for PwC Legal in Poland. His en-

thusiasm for the foundation is obvious, and he points enthusiastically to a panel he joined at a foundation conference called *Glass Ceiling or Labyrinth in the Legal Profession*. According to Zelaznicki, “we discussed how our perceptions, stereotypes, and unctuous biases often negatively impact women’s career choices and career opportunities. There is a lot of work to be done in order to overcome these stereotypes and there is an important role to play by both men and women. Our foundation creates a number of opportunities to discuss these matters and share ideas on how to create a more diverse legal community and equal opportunities for both men and women.”

While the primary sponsors and partners of the foundation are law firms (and one tech firm), Kurkowska is looking into city grants for future sources of funding. She also wants to create a for-profit education program on new technology for lawyers, also with the aim of potentially generating further commercial support.

And although the foundation was launched in and focuses its work in Warsaw, Kurkowska has an eye on taking the initiative farther afield. She plans attend conferences in Vienna, Wroclaw and Frankfurt later in the year, to establish connections with similar parallel foundations globally.

Ultimately, the future is bright. According to Agnieszka Krysik, “currently we are facing a time of change and rotation in the legal market. Especially due to the economic situation. The changes will affect not only the labor market but also the ways legal services are provided. Our task as a foundation will be to provide special support to women who will enter or re-enter the labor market as a lawyer, judge, or prosecutor. This will be a challenge to which we will devote a large part of our attention.” ■

VOLODYMYR ZELENSKY: SERVANT OF THE PEOPLE?

Before being elected President of Ukraine last May, Volodymyr Zelensky had virtually no experience in public office. Despite his inexperience – or perhaps because of it – over 73% of the electorate concluded that the comedian and entertainer was the right man to replace Petro Poroshenko, the previous President, and now Zelensky finds himself, at 41, leading an entire nation.

By Andrija Djonovic

Life Imitates Art

Volodymyr Zelensky was born in 1978 to an engineer mother and a cybernetics and computer hardware professor father. He holds a degree in law from the Kryvyi Rih Institute of Economics at the Kryvyi Rih National University, but he never practiced law.

“His story began as a stand-up comedian in various comedy shows,” says Avelum Co-Managing Partner Mykola Stetsenko, “and one of those shows evolved into a very popular production.” That show, called *Servant of the People*, ran for three years and starred Zelensky in a prophetic role. According to Stetsenko, strikingly, “the show was about a high school teacher who ends up becoming the President of Ukraine and deals with all of the country’s problems.”

“The main character in the show, which Zelensky portrayed, goes on a rant about how corrupt the country is and how badly it’s managed,” remembers Graham Conlon, Managing Partner of CMS Cameron McKenna Nabarro Ols-

wang in Ukraine. “In the show, the rant goes viral overnight and he gets elected to office rather accidentally. Once President, he enacts reforms that change the country.” Conlon reflects. “Little did we know that, sometime later, Zelensky would be in the exact same position in real life.”

Servant of the People was viewed widely in Ukraine, with episodes posted on YouTube and available on Netflix. “The TV depicted Zelensky as a reasonable, patriotic, and ethical man,” says Stetsenko. “He spoke to a lot of people’s core values and, consequently, a lot of people believed that he was the right choice to lead the country in real life. The traits of the character and the man got mingled.”

Stetsenko says that the show helped Zelensky develop a reputation as a straight shooter. According to him, it seemed that “people took to this kind of talk, to having somebody completely outside of politics calling things the way they were.” Zelensky took his success,

and that reputation, to heart. “He said that he was so successful in business and that he thought it was time he did something good for the country,” Stetsenko recalls. “He was well connected to a lot of people in the Government back then and he had the support of the business elites and the oligarchs – so the idea that he should run gathered a lot of traction really fast.”

“Opinion polls quickly showed that people were fed up with the old breed of politicians and demanded radical changes.”

“All of a sudden, after the *Servant of the People* became so popular, everybody was talking about him running, which caught me by surprise,” says Dentons Partner Adam Mycyk. “To be honest, I never really assumed that he had a realistic chance of winning, but it seems to be the case that a lot of folks misjudged how unpopular Poroshenko

was – which became very apparent on election day.”

“I think that everything started back in 2015 when Zelensky and his friends saw the positive reaction of the public to the show,” says Vladimir Sayenko, Partner at Sayenko Kharenko, though he notes that “Zelensky himself says that he made the decision [to run] much later, in 2018.”

For whatever reason, Zelensky’s role as an outsider without a real track record in politics helped him (as it had a similar political novice in the United States several years earlier). “Opinion polls quickly showed that people were fed up with the old breed of politicians and demanded radical changes,” Sayenko adds. “Society quickly became polarized, and people voted against candidates that they despised, rather than for a candidate that they thought to be fit for the role. Zelensky managed to play on these sentiments very well. His campaign was all about emotions.”

In the weeks leading up to election day Zelensky was given significant exposure by the Ukrainian media. “He clearly had the support of the major TV channels, he had a smart approach to campaigning on social media, and *Servant of the People* aired on the 1+1 channel all the time,” Stetsenko recalls. Capitalizing on his popularity, he says, Zelensky initiated some “new moves” for the Ukrainian political arena, such as proposing and then participating in the first live presidential debate in the country’s history.

The People Speak

On April 21, 2019, Zelensky won a second round of voting, beating Poroshenko in a landslide. “The people, ordinary citizens, were ecstatic – but the overall reaction was a bit less enthusiastic,” reports Stetsenko, who notes that parts of the country’s business community remained skeptical about Zelensky’s fitness for the role. “He had no experience

in politics,” Stetsenko points out, “and he still had not, at the time, articulated his political goals and affiliations. Nobody knew his masterplan – or even if he had one!”

“I think he is generally a capable and a smart guy, but he is not an expert in state administration, macro-economy, or the political process,” agrees Olexiy Soshenko, Managing Partner of Redcliffe and Partners in Kyiv. Still, Soshenko notes, despite President Zelensky’s relative inexperience, he gets substantial expert help from his advisors.

Mycyk agrees, stating that the new administration “seems to have a young, energetic team – you can clearly see from some of them that they’re serious, methodical, and have a good approach.” According to Mycyk, this team composition sends out a positive signal when it comes to reforms, and he points to a recent digitalization initiative as a great example of this. “There’s a concept of a country on a smartphone – digital passports, driving licenses, and the like – being completely digital, backed by a blockchain, all with the aim of combating corruption and making things more transparent overall, especially when dealing with government officials.” Mycyk feels that, even though making this happen may be a tall order, it clearly signals a proper direction.

And indeed, Sayenko reports, “so far, the business community appears to be generally satisfied with the liberal statements coming from Zelensky and his team. The elections were very civilized, with no major incidents reported and the transition of power was smooth. The absence of significant public protests, a stable currency, adequate GDP growth – all contribute to the overall positive atmosphere.”

This sense of an administration able to get things done seems to have translated well to all aspects of President

Zelensky’s political presence – on July 21, 2019, less than three months after winning the presidency, his political party, also named *Servant of the People*, won a commanding 254 out of 450 seats in the Parliament, putting Zelensky in a strong position, both executively and legislatively, to enact change in the country.

Moving Forward at Speed

The first thing President Zelensky’s administration did, after winning a majority in the Parliament, was to move forward with an aggressive legislative agenda. “Quite a few good laws were adopted, even though I hoped for a bit more on this front,” says Stetsenko. “But it’s good that this administration finished some things that the previous one started.” Stetsenko points particularly to the creation of an effective legislative framework for concessions and privatizations of Ukrainian companies. Additionally, he says, “Zelensky is pushing quite hard to enact land reform and lift the moratorium on selling private land.”

“Ukraine is one of the very few countries in the world that has a ban on selling land – releasing it will increase the GDP and also finally provide people with a wider scale of use of their property,” Conlon explains. “People can then use the land as security for bank loans. It will open up the economy.” Of course, nothing comes without some controversy, and Conlon concedes that, “there is, on the other hand, some nervousness among the population about this opening the door to foreigners acquiring a lot of land – and hence it is looking likely that foreigners will be excluded from buying, at least initially.”

And the possibility of seeing significant amounts of Ukrainian land scooped up by foreigners, unsurprisingly, did not slip by the opposition. “Yulia Tymoshenko, the former Prime Minister and one of



Graham Conlon



Adam Mycyk



Vladimir Sayenko

the most vocal opponents to President Zelensky, is furious about the land reform,” Stetsenko says. “And she’s quite firmly expressing this in the Parliament.”

Nonetheless, it appears that President Zelensky is likely to go through with the reform in this sector – and a number of others. “He, together with a few stakeholders, is in a position of almost total control of all branches of power,” says Soshenko, “and he is tackling a number of tasks.” Soshenko reports that Zelen-

sky’s initiatives are already bearing fruit, with, as an example, the country’s new Law on Concessions allowing foreign capital to move in. “The new law was well received and we already have two pilot concession projects for a couple of seaports; we have a number of grain terminals expanding; the land reform is coming; there are several privatizations for big companies announced – most notably the Odessa Portside Plant.” Still, he warns, it will take more than good intentions. “The previous government attempted to privatize Odessa Portside and a number of other objects, but failed twice – perhaps this administration will succeed.”

Soshenko reports that the current administration’s attempt to lessen the country’s dependence on Russian minerals is moving forward as well. “The Government is looking to increase the exploration of structurally-owned national resources, including oil and gas, and some steps have been taken in this direction. Currently the government is negotiating production-sharing agreements with a number of investors,” he says. “Additionally, a process to digitalize this area has begun – online licensing regimes for deposits have been introduced, and a new law regarding production sharing agreements was announced as well.”

And Stetsenko adds that “the Zelensky administration is talking a lot about infrastructure projects – especially connecting the roads around Kyiv to Odesa and connecting Lviv to the EU network of highways – if these come to pass it will be a huge boost to the economy.”

In their entirety, the administration’s initiatives have been well received by the business community in Ukraine, Sayenko says. That community, he says, “does not expect any special treatment from the government – it just wants less interference, less pressure.” And

Zelensky’s proposals could do just that. “Everything is driven by the need to attract additional investment into the country’s economy. As long as these priorities remain unchanged, I am sure that the overall business atmosphere will continue to be very positive,” Sayenko says.

Ultimately, early reviews of the former comedian’s first steps as President are encouraging. “Volodymyr Zelensky is doing a much better job than I expected him to,” Sayenko says, though he notes that Zelensky’s “lack of relevant experience is an issue.” Still, he admits to some optimism. “Most of the messages from Zelensky sound very positive and encouraging. The number of initiatives that come from the ‘servants of the people’ is also impressive and they appear to be driven by a sincere desire to improve the country.”

Inheriting a Challenge

Among Zelensky’s mandates is to complete the comprehensive reform of Ukraine’s judiciary and legal system that began several years ago. “From the business perspective one of the big priorities has, for a long time now, been the establishment of the rule of law and the efficacy of the court system – that’s the biggest problem to tackle,” says Mycyk.

“The most important thing is improving the rule of law,” agrees Conlon. “If the administration can achieve that, foreign investors will come in even greater numbers than now and the investment appetite for the country will grow.” He cautions that, in order to move the country forward, some difficult decisions will need to be made – which may not be so popular with the Ukrainian people in the short term. But, he says, “if President Zelensky follows through on the rule of law reform – the potential upside is huge.”

Soshenko notes that “big business, at

least the majority of it, feels some optimism surrounding these reforms and they will try to support the administration's efforts." He feels that the overall expunging of corruption is critical and is sure that the "majority of responsible businesses will cooperate."

Not everyone is on board with all the proposals, of course. "The judicial reform may be the true hot potato for this administration," Stetsenko says. He notes that one element of Zelensky's program involves capping Supreme Court judges' salaries. "It can be debated if this reduction is a good thing in the long run," Stetsenko says, "as it would seem to be the case that people of Ukraine universally believe that higher salaries mean more independence and less corruption." In addition, he says, "the Ukrainian Constitutional Court held these proposals to be unconstitutional."

Sayenko says he's not enthusiastic about the proposal either. "As a lawyer, I cannot support the reduction of the number of judges in the Supreme Court of Ukraine and a decrease of their salaries."

Others, though they applaud the effort, concede they remain somewhat skeptical about the likelihood of success. "The administration may be setting itself up for failure," Mycyk says. "There's still a fair amount of oligarch rule in politics and the economy, and strong influence – if only a perception of it. It is of the utmost importance for a country to have strong governance. Increased reliance on political and personal connections distorts the market, which has been the case here for a long time, unfortunately."

So Far So Good

A little under a year into his first term, the general consensus seems to be that President Zelensky is not only afloat, but – all things considered – doing well. The reform packages are well underway,

and the business community seems to view him positively.

"I can't say I was really optimistic when he got elected, but then again I didn't know who he was and what he stood for," smiles Mycyk. "But I like listening to him. He's a straightforward person and he seems to know what needs to be done. Even with goals set as high as the ones he set out – there's a pretty good chance that with the right team and strong support he'll have a good first term, maybe even a second one!"

Still, Mycyk notes that it may be a bit early to judge, given the fact that the parliamentary elections were a little over six months ago. "There was a feeling of flying without a flight plan, in the beginning, with President Zelensky announcing something in the ballpark of USD 50 billion in FDI in the first five years along with 40% growth." Mycyk describes this as a tall order, even with a detailed and worked-out plan. "Given these targets, some skepticism may be valid, but only time will tell."

"He's still polling quite high – not around 73% he had when he won, but well over 50%," Stetsenko reports. "He is very patriotic and very pro-EU – which seems to go along the same lines as the old administrations' direction of governing. With a solid parliamentary majority, President Zelensky is in much more control than Poroshenko ever was." This unusual support, Stetsenko says, makes President Zelensky one of the strongest presidents in Ukrainian history.

Soshenko agrees that most of the maneuvers the President has made so far demonstrate a real business sense. "He did run a proper business before he got elected, so he does have the necessary experience to make common sense calls in this aspect. He's interested in attracting foreign investors, in growing the GDP – and he may well be well-



Olexiy Soshenko



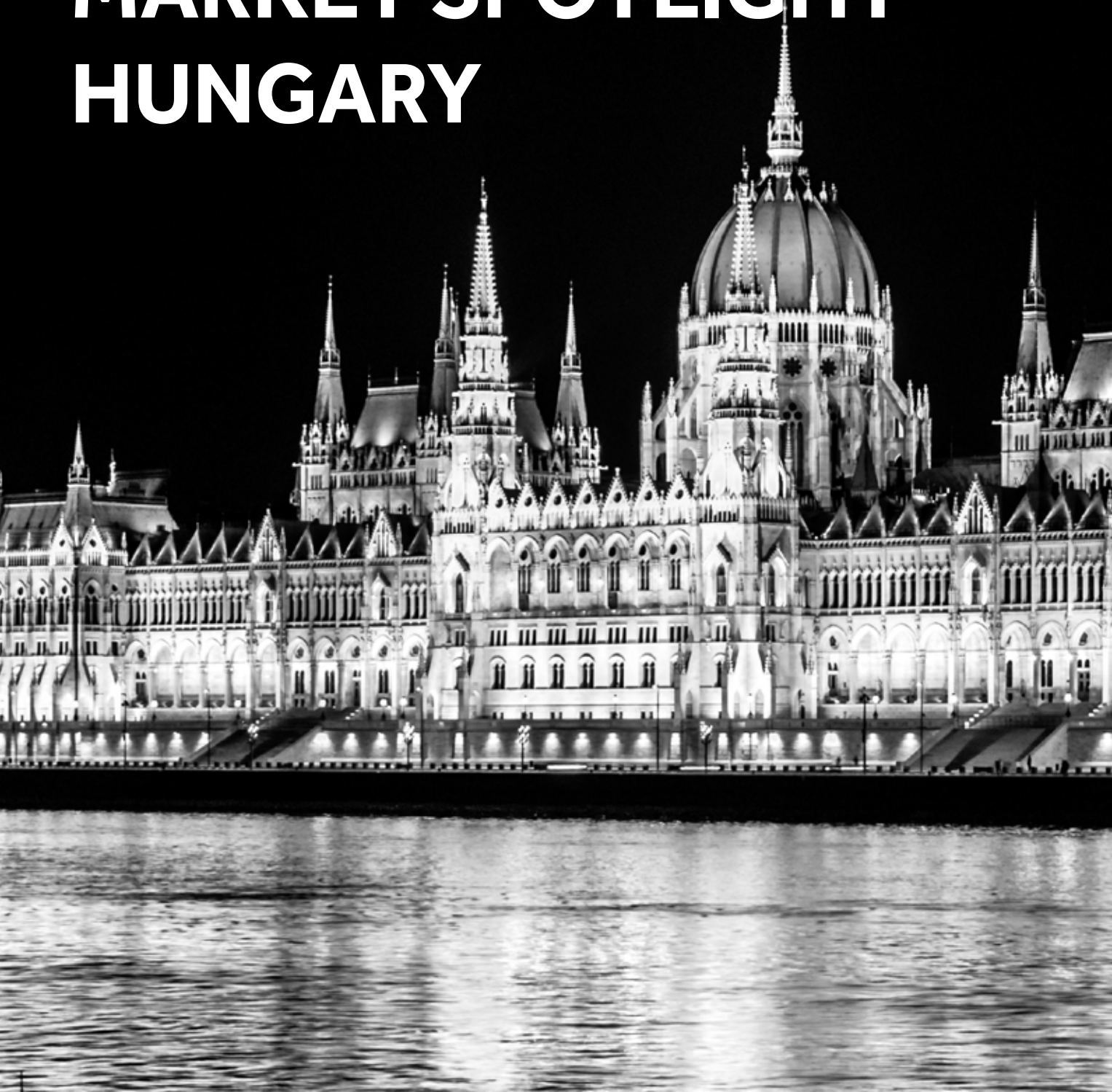
Mykola Stetsenko

equipped to achieve these goals."

Conlon agrees. "President Zelensky needs to continue to secure the support of his electorate going forward. If the country brings in foreign investors, as the administration hopes will be the case, the people will feel the difference." Higher wages, infrastructure developments, and a stronger rule of law are all, he says, "building blocks, which are linked, so it's a good thing this Administration seems to be taking them seriously."

Of course, things are changing quickly and dramatically in Ukraine, as around the world, as economies struggle to adapt to the growing global health crisis. The effect on Zelensky's administration and ability to affect the kinds of change he has promised is, ultimately, unclear. Never, it appears, has "only time will tell" been less of a cliché and more of a truism. Ukraine, like the rest of the world, is holding its breath. ■

MARKET SPOTLIGHT HUNGARY



GUEST EDITORIAL: TRIPLE BOTTOMLINE IMPACT – TIME TO CHANGE

By Csaba Polgar, Partner, Pontes Budapest



Sounds frightening, huh?

When I first encountered this expression a couple of years ago, I thought it was one of those buzzwords that had been created by accountants or other financial wizards to tackle invasively curious tax administration people. “Bottomline”

also sounded familiar: that is the very last figure in your financial statements; the one that interests you the most.

Triple bottomline (TBL or 3BL for those of you who like abbreviations), however, does not mean that your earnings skyrocketed in the previous year. To the contrary: this is about evaluating your firms’ performance from a broader perspective, taking into account the social and environmental (or ecological) points of view, in addition to the good old financial aspects. We, business lawyers, are often labeled by society as greedy, self-oriented people, who only care about our success at advising clients to the best of our knowledge. This indeed is often accurate, particularly in Hungary, where *pro bono* attitudes and actions are not yet very common. There are promising initiatives, however, largely driven by the *pro bono* departments of global law firms, and a fair number of lawyers are already engaged in such activities.

However, TBL requires more. It is about building our professional activities, conducting our professional lives, and living our days as lawyers driven by more than financial interests. It is about creating a paperless office, instead of printing out every redline version of a dull hundred-page agreement. It is about serving tap water in glass bottles instead of hundreds of PET-bottles at a never-ending deal closing. It is about not undertaking an assignment involving clients or products we are not comfortable identifying ourselves with, for ethical or other reasons.

It is about taking into account the *impact* of our actions and acting as if people and places mattered.

Now, I understand that adopting this attitude has both easy and difficult aspects. It is relatively easy to switch to selective garbage collection. On the other hand, it may prove very difficult to say no to a client asking you to represent him or her in an investment which you believe is unsustainable or harmful to the environment. It may also be challenging to turn away mandates from governments or state-owned companies in captive states or hybrid regimes where the legal markets are largely driven by chunky state assignments and collaboration is a critical skill in the fight to compete.

At my firm, this change in attitude came naturally. I have been dealing with energy matters for the past 20 years and our focus has always been on changing together with the focus of markets and clients. 15-20 years ago everything was about oil, gas, coal, and maybe some biomass. Nowadays, everything is about renewables, which fits quite easily into the TBL universe. This shift towards renewables in my area of law helped me to recognize the importance of sustainability and social responsibility in other areas of life as well. It has slowly infected (trying to use this verb carefully though) our behavior at the office and it has now become one of the core organizing principles of our daily lives, without endangering growth and economic balance.

I also know how easily the omnipotent, magical word “*growth*” can blind us to the real values in our profession. In fact, however, a new breed of companies is evolving around the globe to create a whole new ethos in business, building on the values detailed above. We, lawyers in Hungary and CEE, have led revolutions in previous centuries, using our social engineering skills, our minds, and our courage. It is now time to join the green new deal around the globe and build our business further based on triple bottomlines. We might all just get richer with this at the end of the day. ■

TAPPING CAPITAL: SOURCES OF AND PROBLEMS WITH FINANCING IN THE HUNGARIAN MARKET

A CEE Legal Matters Round Table Conversation

By Djordje Radosavljevic

The Hungarian financial market finished 2019 in a strong position. Intrigued by what many have described as a “special” year, CEE Legal Matters sat down with several of the nation’s leading Banking/Finance lawyers at Lakatos, Koves & Partners’ offices in Budapest to learn more.



From Left to Right: Balazs Jozsef Ferenczy, Gyorgy Szilagyi-Schreindorfer, Gergely Szaloki, and Mestyan Szabolcs

CEELM: Let's start by reviewing the current situation. How do you see the Banking sector as a whole, and where do you think it's going?

Gyorgy: Last year was great, and most market participants are optimistic for 2020. However, there are also various expectations that it might start getting slightly worse in the upcoming period. I think that last year was "special" mostly due to housing loans and the retail market, but the corporate market also hit the 15% extension of the credit volume. We still need a careful approach at the beginning of 2020, and we need to take our time to see how the situation develops.

Gabor: Everyone agrees that last year was successful. Currently, we have about five key players on the market that are most active in various projects, but we have also witnessed international players coming in and out. My experience tells me that banks are under pressure, considering the number of deals on their tables.

Mestyan: Agreed. I am pessimistic about repeating the same success, however. It seems like some of the players are so satisfied that they haven't woken up yet.

CEELM: What exactly led to last year's success?

Balazs: It looks as though this is a continuous course. The National Bank made efforts to restore the market in the past year. In 2013, they put a program in place to prevent a credit crunch, and it seemed to work. This led to market players being able to get loans and funds that weren't as costly. The interest rate was 2.5 percent, which led to a very favorable increase in the market. In the last two quarters of 2019 alone, HUF

435 billion was introduced.

Gergely: I think that success came from the fact that banks started to gain momentum, and in the last three years have unloaded their NPLs, which made them free to act. Of course, a significant demand on the market helped with the situation.

CEELM: Many commentators, especially from outside of Hungary, have pointed at the fact that the level of nationalization rose from 30% to over 50%. Did this trend facilitate growth?

Gergely: I don't think that last year's success was in any way connected to that fact, or that nationalization had any significant effect.

Balazs: It is very uncertain how that will play out in the future as well. Right now, we can only rely on opinions we hear. The top five or six banks are strongly embedded in the market, therefore I don't think that their position has changed in any way.

CEELM: The Deputy Governor of the National Bank of Hungary and the Deputy CEO of Erste Bank both called for consolidation in the banking sector. Do you think that is needed, and to what extent do you see it happening?

Gergely: Even though it might not be necessary, consolidation is already happening, and we had examples of it last year. Whether the outcome will be positive remains to be seen. What we may predict is that Hungary will face a slow but certain consolidation.

Mestyan: I agree. I also don't think that this has affected the big banks, and the overall picture is carved in stone.

Gyorgy: Yes. It might not be as rapid as some commentators expect, but

Round Table Participants:

- Peter Lakatos, Managing Partner, Lakatos, Kovacs and Partners (host)
- Mestyan Szabolcs, Partner, Head of Banking & Finance and Capital Markets, Lakatos, Kovacs and Partners (host)
- Gabor Borbely, Partner, Head of Finance, DLA Piper Budapest
- Balazs Jozsef Ferenczy, Senior Attorney at Law, Head of Banking & Finance, Kapoly Law Firm
- Gergely Szaloki, Local Partner, Schoenherr Budapest
- Gyorgy Szilagyi-Schreindorfer, Head of Corporate Finance Legal Department, OTP Bank

it already exists on the market. The emerging IT costs on the side of banks, which appear mostly due to digitalization, are something smaller banks can't afford. Considering they all have to deal with international competition, they are struggling to keep up on their own, therefore consolidation is a positive, even a necessary thing.

"I recently went to a branch of a bank I have used since the 90's, and I noticed that there is no cash desk, which is a direct product of digitalization. I think it's nonsense not to have it. Now you have to withdraw everything from the ATM, and the branch employs only two people."

CEELM: What are these costs, exactly?

Gyorgy: Developing IT systems in banks is costly, as are different financial services, *etc.* From a larger perspective, it could be advantageous to digitalize. If we look at the agenda of the Hungarian Banking Association, they are trying to make the regulatory environment better and more competitive, and one of their



Peter Lakatos

Peter: I recently went to a branch of a bank I have used since the 90's, and I noticed that there is no cash desk, which is a direct product of digitalization. I think it's nonsense not to have it. Now you have to withdraw everything from the ATM, and the branch employs only two people.

Balazs: Digitalization is a positive thing. Mobile payments are booming, and in those terms, this could be a great marketing strategy for the firms. Adding one more thought to the consolidation question: Consolidation is generally a good thing, and we have seen examples of great consolidation in the past couple of years. The larger the bank, the cheaper the services.



Mestyan Szabolcs

Mestyan: Spending money on digitalization is not a new thing. When the Internet came in the 90's, banks were spending a lot to develop online banking services. What is new to me as a lawyer are two things: First, it has become extraordinarily difficult to open a bank account for larger companies. If the parent company – or even the parent's parent – is foreign, you need to go through a ton of paperwork before you can open an account. I understand this is not the bank's fault, but the regulations that push this agenda. Second, in terms of digitalization, the banks are trying to simplify things by digitalizing all aspects of banking. Banks themselves sometimes tend to push for things that are not needed. We have tried to convince the banks that they don't need all of it. We can blame it on EU regulations, but this is the wrong direction.

Gyorgy: There can be different opinions about what products and services are welcome on the market and the banks pay continuous attention to this. One thing is sure: the difficulties in opening a bank account result from the AML

regulations.

Gabor: When it comes to digitalization, the biggest issue for the Hungarian banks, and the biggest change in the last five or six years, is that competition has mostly become cross-border. Technology is expensive, and we still have cash-dominated payment systems in Hungary. In conclusion, we are a small market and we can't change everything, therefore we should try to be more and more efficient on all levels.

CEELM: Lets switch the discussion to the borrowers' side. Who do you think are the biggest borrowers on the market?

Gyorgy: Generally, those are real estate developers, which in the last couple of years have mainly been funds, as well as the energy sector.

"There always have been securitizations in this country, but they are not necessarily seen by Hungarians, because they relate to global groups, even when the largest subsidiary is Hungarian. What amazes me is that some of these are done by the parent institution of the largest Hungarian banks, actually, so the Austrians are very active in our securitizations, while the local banks have no clue about it."

proposals involves more digitalization.

Gergely: I think that banks now feel dual pressure, first from the regulators who are pushing them to move on and digitalize, and second from the market – the consumers – who like to do their banking from their phones and don't like to queue.

Gergely: We advised a lot of borrowers from the real estate sector last year as well, so from our experience that sector is a sponge that certainly attracts a lot of money, although real estate developers are probably not among the largest borrowers.

Mestyan: From 15 years of experience, I have noticed that Hungarian banks somehow always look past the enormous amount of manufacturing subsidiaries, which are still going to their parents' bank or at least a bank in their parents' jurisdiction, instead of developing a relationship with a local bank. I think there is a gap here. It's hard to understand why Hungarian banks don't shoot for manufacturing subsidiaries, and that is a shame, considering the fact that there exist some great manufacturers on the market. This is especially obvious now that it has become easier

"There is a big question for the market how the Hungarian regulator will handle the issue of big tech firms, because if it's not done the right way it could potentially be harmful for the market."

for them to reach out to the Hungarian banks.

Gabor: The problem is that these companies are getting financing through their balance sheets, so they don't need financing at a subsidiary level *per se*, because they receive financing through their shareholders. What I think local banks are able to do is become a second layer of financing. This is a situation which is unlikely to change, because of the strong relationships that exist between those groups and their traditional financing partners in the headquarters.

Balazs: We have seen an increasing number of state-owned companies in the financial sector coming from the borrower's side. They turn out to be unexpectedly large players – or are aiming to become so. They are professional and know the sector very well. We will

see how this situation develops in the future.

CEELM: Aside from the traditional means of financing, we've seen a lot of bond issuances recently. Why is that?

Gergely: What we have seen in terms of bond issuance last year was mostly part of the scheme of the National Bank.

CEELM: Is this an attempt to trigger long-term investment?

Balazs: The National Bank's Funding for Growth Scheme programs were previously so successful that they felt like it was time to boost fund raising through the capital markets too. The bank's credit portfolio is positive and there is a minimal default percentage. The National Bank's launch of the Bond Funding for Growth Scheme was thinking ahead that, in an event of an unexpected crisis, borrowers would have to rely on some other, more classical source of the economy, which would be capital markets. This way, they were segmented from the banking sector, so the effects of the crisis would not spill over. Companies now feel more and more comfortable in seeking bond issuance as a financing option.

Gergely: I agree, even though I am not as optimistic that in the event of a crisis the two would be as segmented, because from the borrower's side, most of the investors are banks. This is now an extremely popular method of financing. For most of the actors, this is their first time issuing bonds.

CEELM: What is in the pipeline in terms of legislation, or at least being discussed, that's either exciting or potentially scary for you?

Gyorgy: The Hungarian Stock Exchange has established a program for securitiza-



Balazs Jozsef Ferenczy



Gergely Szaloki



Gyorgy Szilagyi-Schreindorfer

tion, and the expectation of the market is that there will be SME loan portfolios that will be securitized. Legislation has been proposed in this area in order to make it possible to establish SPV's. We are quite curious about further development in this topic.

Gergely: We are also quite interested in how securitization will play out.

Gabor: Securitization is already happening in places like Poland. In Hungary, I think, there are multiple issues, mostly from the legal aspect, which adds to the caution of the potential participants. At the same time, the number of companies who would be able to go through

"I'd like to add that overregulation will slowly kill traditional banking, because providing EU-level legislation, which allows consumers to open an account with a picture of themselves is good, yet if you go to a local branch you have to bring three copies of recent bills, and that makes no sense. As a consumer, I don't get it. To me that marks a slow killing of traditional banking as such, maybe not on the short-term, but surely in the next 20 or 30 years."

securitization is very limited.

Balazs: Agreed. There were a lot of examples in the past where the originator companies were of Hungarian origin, and pooled into a larger European group. The question is whether there would be any Hungarian company large enough to be securitized at this point. At the same time, the banks are also larger, allowing them to neutralize some of the riskier assets.

Mestyan: I agree. There always have been securitizations in this country, but they are not necessarily seen by Hungarians, because they relate to global groups, even when the largest subsidiary is Hungarian. What amazes me is that some of these are done by the parent institution of the largest Hungarian banks, actually, so the Austrians are

very active in our securitizations, while the local banks have no clue about it. I too think that the size and regulation have always been a question. I am very pessimistic about the future of legislation in this field. There were drafts back in 2007, but nothing serious happened since then.

CEELM: What needs to happen to stop you from being pessimistic?

Mestyan: To see it happen.

Gergely: It is true that the regulatory environment is a bit problematic. Having done the comparative analysis among the CEE and SEE jurisdictions, I can confirm that our regulatory environment is not as favorable to a securitization transaction right now as it is in other jurisdictions.

CEELM: Any last comments before we wrap up?

Gabor: As a last thought, I'd like to add one point in terms of the challenges for future financing in Hungary. Apart from trying to catch up and digitalize, I also think that we need to go back to the fundamentals and make those processes more efficient.

Balazs: It looks like a number of companies are looking for payment service provider licenses under the PSD2 before the National Bank now, and the environment for regulation in that particular field doesn't seem to be as problematic as it is, for example, for securitization. That's something we'll be expecting in the future. The other important issue is crowdfunding. It looks like it's coming as a sort of competition for the banks. Equity-based crowd-sourcing from the users allows consumers to avoid the capital markets. European legislation is on its way, and it looks like in 2020 it

will reach Hungary as well. This is very interesting.

Gyorgy: I agree. There is a big question for the market how the Hungarian regulator will handle the issue of big tech firms, because if it's not done the right way it could potentially be harmful for the market. As the Bank for International Settlement and the Hungarian Banking Association have already underlined, it is essential to develop regulation under the "same activity, same regulation" principle.

Gergely: Coming back to crowdfunding, two years ago we also explored the possibility of its appearance in Hungary. As long as there is no legislation in this field – which is something we are really looking forward to – I don't think that a good crowdfunding market can be established.

Mestyan: Thinking of Uber as an example of crowdfunding, if the taxis were successful in doing it, then the banks will certainly be too. I am very much in favor of it as well. I agree with Balazs, but I'd like to add that overregulation will slowly kill traditional banking, because providing EU-level legislation, which allows consumers to open an account with a picture of themselves is good, yet if you go to a local branch you have to bring three copies of recent bills, and that makes no sense. As a consumer, I don't get it. To me that marks a slow killing of traditional banking as such, maybe not on the short-term, but surely in the next 20 or 30 years. ■

CEE Legal Matters would like to thank Lakatos, Kovacs & Partners for hosting the event, and all the attendees for their participation.

THE BANKS OF THE DANUBE: AN INTERVIEW WITH GERGELY SZALOKI OF SCHOENHERR BUDAPEST

By Radu Cotarcea

The Banking sector in Hungary has been doing well in recent years. Schoenherr Budapest Local Partner Gergely Szaloki walks us through that progress.

CEELM: We spoke at length about the current state of affairs in the Banking sector in our recent CEELM Round Table (see page 32). Could we start now by offering our readers a bit of context for that conversation? Where was the sector, and the economy as a whole, five years ago, and how has it evolved since?

Gergely: If we are to use a time machine and go back five years, I'd highlight two main challenges for the Banking sector at the time: the growing ratio of non-performing loans and the start of digitalization stress.

As to the first, I'd say the Banking sector has made good progress. NPLs are at a healthy level, in no small part due to the fact that the economy in general has picked up, allowing debtors to start making money and financing their debts. This was also supported by the Hungarian housing market picking up. Really, apartment prices have skyrocketed in the last five years in both Budapest – the capital – and outside of it, with prices per square meter having doubled in certain regions. This raise in flat prices helped a lot in terms of raising capital. There were also a few regulatory chang-

es that helped banks along the way in terms of getting rid of these NPLs.

On the second subject, I'd say that the stress of digitalization was only starting to show its head back then. Back then, Fintech companies were only just starting to enter the market. The difference between then and now is massive – five years ago I couldn't pay with my phone, or handle my finances with it. We'd read back then about developments in the field – but it still seemed to be science fiction. Today it's mainstream.

CEELM: You mention both the economy overall and real estate prices picking up as a driving factor for banks. What role did the banks themselves play in the recovery?

Gergely: It might be a bit strong to call them *zombies* at the time, but before they got rid of their NPLs, banks were rather inactive. Once those portfolios were cleared, they could restart their lending business, which naturally helped the real estate market. And it was not just the residential real estate sector that saw a boom – a lot of commercial development kicked off as well, and

most of it was financed by local banks. On top of it, the Hungarian Government employed various mechanisms to encourage Hungarian families to have children, which also incentivized a lot of development in residential spaces, again financed by local banks. I'd say it was a two-way street in terms of which helped the other recover.

CEELM: What about the practice of law in the Banking sector? How is it different in Hungary today from five years ago?

Gergely: I'd say that lawyers' jobs basically remained the same over that time. There is really nothing new in my everyday work – I am pretty much doing the same things I was five years ago. *How* I am doing it might have changed a bit in the interim.

Firms faced the same digitalization push the banks did. Many see this as a hurdle to overcome but, of course, once that's done, it helps our work as lawyers rather than impeding it.

Of course, as a law firm, considerable investments are required, especially



if, like us, you aim to be at the cutting edge of both software and processes. Once those investments are carried out though, you reap the benefits. The Schoenherr office is operating under a home office setting at the moment, in light of current events. Everyone, from assistants to associates to partners, was initially encouraged, and then required, to work from home to stay safe. The transition to this set-up was extremely smooth – but five years ago this would have been much harder to implement. This is where we felt first-hand that our efforts in digitalization had paid off.

And I suspect every major law firm in Budapest has worked hard, and continues to do so, to gain a competitive edge on the digitalization end of things.

CEELM: How does this evolution translate in terms of fees for the clients?

Gergely: Of course, it will ultimately translate into the pricing strategies, but really, that revolution started ten years ago with the crisis kicking in. We were used to working mostly on an hourly basis but that's not something our clients are interested in paying for anymore.

Now, as a result of digitalization, it no longer makes sense for us either, as certain tasks no longer pay off under that old model. If certain kinds of client requests took up a large amount of time in the past to perform, with the deployment of the right technological solutions, they can now be done in a far more efficient manner. Applying traditional hourly fees would actually not reflect our investments as well as other aspects, such as our professional liability coverage.

CEELM: You've told us about the sector overall. What about your firm specifically? How has it evolved over the last few years?

Gergely: I think this was an interesting time for the firm. As you probably know, Schoenherr's network is based in Vienna, where the first office was opened in 1950. Between the fall of the Iron Curtain and around ten years ago, the firm managed to open up offices pretty much everywhere in the CEE and SEE regions, except Greece.

Since the last five years is the main point of reference we've been looking at, I'd say the firm underwent a different type of expansion in that time. Granted, as seen from the outside, not much has happened in terms of our network, with fewer eye-catching headlines of the kind that accompany the opening of a new office. Seen from within, the story looks quite different, however, as our main drive over the recent years has been to grow stronger in those markets where we already planted our flag.

For example, the Budapest office grew by 30-40% in terms of headcount in the last four or five years, and revenue has almost doubled in that same time span. It is a good problem to have, but we need to move to a new and bigger office

as we have outgrown our current place. Yes, it's less spectacular news to report but I would argue it's a more significant development than geographical expansion.

CEELM: What about the future. How do you see the next five years?

Gergely: I obviously have no crystal ball in front of me, and things are very volatile today. The Covid-19 virus is here and it sometimes feels like it came out of nowhere. I'd like to believe that things will pick up soon but there is always the chance we'll fall into another recession, as many economists project. Then again, we've been listening to the same people telling us that the next big crisis is just around the corner for the last two or three years, so am I not sure if the virus will be the thing to finally trigger it or if it will turn out to be just another hiccup along the way.

If I had to place a bet, I do expect some level of economic downturn – but I am hopeful it won't be as big as a decade ago. I expect it will require a lot of restructurings, and looking at CEE, I foresee plenty of companies having liquidity problems or other forms of shortages that will require bridge financing or some form of organizational restructuring. We, at Schoenherr, are expecting these – as I assume most of the market is – and are building up our capabilities further to meet the expected demand down the line.

CEELM: You mentioned you are preparing for restructurings. Are banks?

Gergely: I am talking to clients regularly but, at this point, the feedback is mixed. Some say they are already feeling it, while others are not yet reporting anything just yet, but they say that they are still preparing for the inevitable moment

when it will.

CEELM: How are they preparing?

Gergely: That I have limited info on, as I assume they protect that strategy as a business secret. Generally speaking, Hungarian banks have a robust capital structure so, if some of their clients will face difficulties, I think they should be able to weather the storm.

Beyond that, there's a great deal of know-how that has been built up over the last ten years, which I'd split into two chapters. The first five years after the recession were all about sweating it out and hanging on. The subsequent five were all about selling off what was perceived as helpless. Should banks be faced with a new wave of challenges, I think they are far better equipped now to distinguish between what's salvageable and what's not and act quickly based on it.

CEELM: What about legislation? Is there anything in the works that may help down the line, should it be needed?

Gergely: There are some talks about a new insolvency law, but nothing has been published yet, so what it will bring is still a big question mark for us. I really hope that, whatever they are cooking in their kitchen, they will allow us to at least get a sniff soon so that we can brace ourselves and wrap our heads around it.

And it's not just a matter of preparing as under normal circumstances when it comes to new legislation. We need to face the reality that this is what we may end up going to war with. If a crisis is to hit us, it would be rather unfortunate to have a fresh insolvency regime in place that has not yet been fully vetted out. ■

DEALER'S CHOICE LAW FIRM SUMMIT
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INSIDE OUT: PANNONIA BIO BOND ISSUANCE

By David Stuckey

On September 20 2019, CEE Legal Matters reported that **BLS** had advised **Pannonia Bio Zrt.** – a company operating a biorefinery in Tolna County, Hungary, that is the largest ethanol plant in Europe – and that **CMS Hungary** had advised **OTP Bank Plc.** on Pannonia Bio's issuance of the first Hungarian forint bond in line with the Central Bank of Hungary's Bond Funding for Growth Scheme.

The Players:

- Counsel for **OTP Bank**: Erika Papp, Managing Partner, **CMS Budapest**
- Counsel for **Pannonia Bio**: Gabor Kovacs, Partner, **BLS**





Erika Papp

CEELM: Erika, how did you and CMS become involved in this matter? Why and when (and by whom) were you initially selected as external counsel?

Erika: We were already working on this product when Pannonia Bio, with whom we have a very good and long-standing relationship, approached us. Since there is lack of experience with transactions of this type in the market, our prelimi-

nary work in respect to bond issuances proved essential and helped us secure this deal.

For instance, we represented both issuer and arrangers in several similar transactions prior to this deal such as OTP Bank’s EUR 500 million MREL bond issuance on the Luxembourg Stock Exchange, where we acted as Hungarian legal counsel to OTP Bank as issuer.

Our initial kick-off meeting about this bond issuance proved quite successful. We initially met Pannonia Bio in a local café to discuss bond issuances in general. Following the discussion, we were asked by Pannonia Bio as issuer and OTP Bank as lead arranger to represent OTP Bank in the Pannonia Bio issuance, which marked the first ever bond issuance within the framework of the Bond Funding for Growth Scheme.



Gabor Kovacs

CEELM: What about you, Gabor? How did you and BLS become involved in this matter?

Gabor: Our team has acted as the outsourced legal department of the issuer, Pannonia Bio, for more than half a decade. From the outset of this project, we worked closely with management to make sure that the issuance process aligned with their expectations and the way in which the company does business.

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

Erika: OTP Bank gave us the mandate to act as counsel for this project. This effectively meant that our colleagues drafted and negotiated several documents (e.g. certain parts of the information memorandum, and other transaction documents) necessary for issuances of this kind, and participated in personal meetings with the main investor, the National Bank of Hungary.

Gabor: We were contracted to manage all legal functions of Pannonia Bio, a major regional producer of sustainable biofuel, animal feed, and other co-products. The mandate was to provide legal counsel in an efficient and transparent way, so that management could focus on business development. Unlike conven-



tional law firms, we advise the company on any and all legal matters around the clock, and in this instance we advised them throughout the bond offering.

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

Erika: Dr. Arpad Lantos, senior consultant, and Dr. Zsolt Beregi, junior associate, were responsible for the drafting, negotiation, and timely delivery of the transaction documents.

Arpad has many years of experience in debt capital markets both in regulatory advice and transactional assistance.

Zsolt has an LL.M. degree in International Banking and Finance Law at University College London (University of London) and he also has considerable domestic and international experience in debt capital markets transactions including bond issues and regulatory matters both in English law and Hungarian law.

At CMS, we always strive to do transaction management proactively, which we did in the present matter as well. This effectively involves the preparation of documentation, gathering comments from various stakeholders in the transaction, and driving the transaction forward so it can be completed on schedule to the satisfaction of all parties involved.

Gabor: The client's BLS team consisted of the founding partners, me and Erzsebet Szalay, and associate attorney Mark Bene. I managed the key work streams to make sure that they met the agreed-upon deadlines, and facilitated the seamless flow of information between various parties including the Organizer Bank (OTP), the Issuer's internal departments, and additional advisors. Erzsebet supervised the corpo-

rate aspects of the case and ensured the quality of documentation, while Mark did the heavy lifting throughout the documentation process and technical coordination between the parties.

CEELM: Describe the issuance in as much detail as possible, and your roles in making it happen.

Erika: Pannonia Bio issued the first Hungarian Forint Bond in line with the Bond Funding for Growth Scheme announced by the Central Bank of Hungary in July 2019. For funding the entire programme, an aggregate amount of HUF 300 billion was initially set aside by the National Bank of Hungary, which was increased later.

Within the programme, issuer companies raise capital through debt financing. By purchasing the bonds, investors become lenders to the issuers and directly finance the operation of such companies. As opposed to the issuance of share and raising capital through equity financing, the purchasers of the bonds do not acquire ownership or voting right in the general meeting of the issuer, and they are not entitled to dividends from the profits.

Generally, in individual issuances, the issuer repays the principal borrowed amount in one lump sum on the final maturity date whereas the interest is paid on a periodic basis. The tenor of the bonds may range from three to ten years from the date of issuance under the programme.

The bonds are issued first to a selected few institutional investors in an auction, and within 180 days of the auction the bonds will be traded in a newly-set up multilateral trading platform of the Budapest Stock Exchange, called the Xbond platform.

Pannonia Bio's B+ credit rating and good standing helped to decrease the yield on the bonds in the auction procedure and also helped to make the bonds more attractive to investors.

Finally, investors purchased all issued bonds with the National Bank of Hungary purchasing the maximum 50% on first issuance and an additional 20% on the secondary market.

Gabor: The issuance was among the first of its kind under the National Bank of Hungary's Growth Scheme. The issuance process is relatively standardised, with a few specific rules set by the NBH for this particular scheme. Our biggest added value was to clearly explain the specialties of each party, so that Pannonia could act in a way that ensured that their needs were understood and addressed – all within the tight turnaround time set by the company's management.

CEELM: What's is the current status of the issuance?

Gabor: The bonds will soon be listed on the xBond system operated by BET, the Budapest Stock Exchange.

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

Erika: The most challenging part was that this was the very first issue within the scheme and the parties had to be cautious how to price the bond given Pannonia Bio's high credit rating. The National Bank had to consider future issuances especially in respect to the potential spread offered to investors of future issuances within the programme. The concern was that if the yield on Pannonia's bond was priced too high, then companies that enter into the scheme at a later stage with lesser credit rating would have to offer a higher yield

to investors. This would have led to certain companies being out priced from the future issuances.

Gabor: Being the first in anything is never easy, especially when it comes to implementing a new rulebook set by a financial regulator in a relatively mature and highly regulated environment like bond regulations. We had to cooperate closely with all of the parties involved, especially CMS, to find solutions that could serve as a model for future issuances. Understandably, we encountered a few bumps along the road, but the direct and professional service that we provided eventually paid off. For me, the most challenging task was to clearly reflect Pannonia's specific considerations as a family-owned private company.

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

Erika: The whole transaction was completed in less than a month after receiving the mandate due to the professionalism of the teams with OTP Bank and Pannonia Bio. It was easy to get along with them, which helped the smooth completion of the deal.

Gabor: I highly appreciated the efficient and constructive cooperation of CMS throughout the process. Their solid understanding of securities law made things much easier, and they were always open to our business-related comments.

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

Erika: The mandate matched the final product.

Gabor: It absolutely did, in the sense that we accomplished yet another important project for Pannonia acting as

their outsourced legal department.

CEELM: Erika, what specific individuals at OTP Bank directed you, and how did you interact with them?

Erika: The OTP Bank team consisted of Andras Kazar, Head of Capital Markets Advisory and Securities Services, and Gyorgy Szelenyi, Senior Capital Markets Advisor. Most of the communications were done by email or phone. We had regular update calls with both the teams of OTP Bank and Pannonia Bio on the line where we discussed outstanding issues and how to proceed with the transaction.

CEELM: What about you, Gabor? What individuals at Pannonia Bio directed you?

Gabor: We worked with Lajos Dobai, the company's CFO, who was internally responsible for the issuance at Pannonia. Our relationship with Lajos during the project is a great example of the way we look at the function of an external legal counsel: we worked with him on a daily basis, striving to put him in a position where he could concentrate on business decisions, while leaving the legal and technical matters to us with full confidence. This fits well into our working philosophy of working in tandem with business.

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

Erika: We have a good standing relationship with BLS. Most of the time the negotiations took place via phone and emails and there was a personal meeting in which the representatives of all parties and the National Bank also participated. The final negotiations were completed within hours. Fortunately, the whole process was smooth.

Gabor: As mentioned previously, the working relationship with CMS is excellent on every level. I appreciate their integrity and dedication to soliciting clear legal advice, as this makes our business legal consulting work much more straightforward. Deals like this involve a lot of iterations, calls, meetings and extensive e-mail correspondence between the working parties. I believe that the key to success is to select the right communication channel for the status of the transaction and the goals of each party. I think the entire project team nailed this, and CMS played a decisive role in making that happen.

CEELM: How would you describe the significance of the issuance to Hungary and CEE in general?

Erika: We advised the very first bond issue within the Bond Funding for Growth Scheme in Hungary. This means that the National Bank of Hungary purchased corporate bonds within the scheme for the very first time. Moreover, in CEE no other bond growth programme offers the possibility for any Central Bank to purchase 70% of issued bonds.

Gabor: Boosting the local bond market via the GS programme was a clear policy goal set forth by the National Bank of Hungary. Had financially stable private companies declined to participate in the programme, achieving that goal would have been challenging. As such, we felt that the entry of Pannonia Bio as a regionally significant player within the CEE region would be an important development for the local economy. As business lawyers that advise clients running operations within the CEE region, we welcome any initiatives that enhance access to funding and develop the region's financial markets. ■

MARKET SNAPSHOT: HUNGARY



HUNGARY'S PRIVATE FOUNDATION ACT

By Eszter Kamocsay-Berta, Managing Partner, and Eberdhardt Balint, Junior Associate, KCG Partners



In the few months since Hungary's Private Foundation Act came into force on March 29, 2019, it has already significantly grown in terms of financial importance.

Highlights of the Private Foundation in Hungary

A private foundation is an atypical form of a foundation that is mainly established in order to prevent the fragmentation of the private property and to ensure proper asset management. Private foundations are generally considered to be outstanding legal structures and asset management instruments for companies and high-net-worth individuals. Especially in the case of high-net-worth individuals, private foundations are created by founders who grant certain assets to realize the purpose of the

foundations and determine how the assets shall be managed both while they are alive and after their deaths. Private foundations may have named beneficiaries and as such may prove to be a great tool against fragmentation of family estates through inheritance. A founder's intention to provide for the integrity of his or her private wealth may, however, also prove to be legitimate during the founder's lifetime, should the founder not want to be engaged in the operation of the assets to the extent he or she was before, but, for instance, allocate more time to other life time activities.

In essence, a private foundation is a legal entity, separate from its founder and from its administrating officers, of which the founder may be a dominant member. It is also separate from the beneficiaries, who may receive various types of financial benefits from the private foundation in a regulated way as provided for by the founder. The right to revoke a foundation and to transfer the assets back to the founder as well as the



founder's capability to become a beneficiary are also ensured. Without reference to certain tax provisions with attractive benefits for founders and beneficiaries, the concept of the private foundation provides considerable incentives for funds to be transferred into the domestic economy.

Public-Benefit Private Foundations vs. Private Interest Foundations

The Hungarian Private Foundation Act distinguishes between private foundations based on their objective. Public-benefit private foundations are made for public interest such as education, healthcare, research, or sporting activities; thus, the scope of the beneficiaries is open. The foundation shall support and/or cover the funding for the purposes of the public interest, or support institutions which carry out such activities. The Corvinus University for Economic Studies in Budapest is a well-recognised example for a public-benefit private foundation. By contrast, as a private foundation's objective is private, the scope of the beneficiaries can be closed. In this case, beneficiaries shall be named or otherwise described in the statutes.

Capital Requirements and Capital Control

Although the procedure to establishment a private foundation is similar to that for the establishment of a non-private foundation, there are some differences. In Hungary, there is a minimum capital requirement of HUF 600 million (approximately EUR 1,775,000). These assets – which can be provided either in cash or in kind – have to be defined in the statutes in sufficient detail to enable their individual identification.

In order to provide the greatest safety for the founder's assets, there are several control and monitoring mechanisms required by law, and further protective functions and procedures can be detailed in the statutes. For example, a Hungarian Private Foundation must safeguard the assets provided by the founder. This provision ensures that the funds are preserved and managed to that their value does not fall under the level of the minimum capital; thus, providing appropriate protection by requiring the board of foundation to exercise due diligence during the administration of funds.

If the minimum capital requirement cannot be met, payments to the beneficiaries shall be lowered or withheld. Furthermore, if this situation continues for three consecutive years, the foundation shall dissolve, as it is deemed to not have reached

the goal set out in the statutes. In addition, dissolution can be initiated at the request of the body or person who exercises the rights of the founder at any time.

Monitoring the Management of Assets

Founders may transfer their rights to the foundation's board or other organs. If they do so, a property administrator shall be appointed, whose most important tasks are to oversee whether the management of assets is in accordance with the statutes and to monitor the exercise of the founder's rights. If the property administrator finds that the latter violates the provisions of law or the statutes, judicial oversight proceedings can be initiated.

An important aspect of the establishment of a private foundation is the obligation to draft an investment policy, describing the portfolio and its risk-management and decision-making mechanisms regarding envisaged investments in detail. This way, the founder can specify the way he or she wishes the assets to be managed and shape their future management. All in all, the investment policy ensures that the assets are guarded and used by the private foundation according to the will of the founder.

Management and Controlling Bodies in a Hungarian Private Foundation

The main decision-making and managing body of the Hungarian Private Foundation is the board of directors, which must consist of at least five natural persons. These members are the executive officers of the private foundation, and – in order to ensure that the assets are safeguarded with the highest competence – educational or other requirements can be defined in the statutes as a requirement for these roles. The supervisory board must be both set up and operated with an auditor.

Hungarian Private Foundation Act – Future Prospects

Since the entry into force of the Hungarian Private Foundation Act, the private sector has shown considerable interest in this legal construct. The possibility of establishing a private foundation enables the safe and successful transfer of private wealth by lowering or eliminating the risk of fragmentation or the effects of mismanagement. The concept of private foundations is appropriate to fulfil their designated role by providing various safeguards. Even though the minimum capital requirement is considered slightly high, there is a strong intention on the legislator's side to significantly reduce this amount, which would give an even greater boost to the success of this legal instrument. ■

RECENT CHANGES IN THE STOCK EXCHANGE REGULATION

By Gergely Szaloki, Partner, Schoenherr Budapest



On December 27, 2019, several amendments made to the Hungarian capital markets act by the Hungarian Parliament to adhere to the relevant rules of the European Union be-came effective, also making it easier for Hungarian companies to issue bonds under the Bond Funding for Growth Scheme (BGS) by introducing more lenient information and publication rules for issuances.

The Hungarian National Bank launched the BGS on July 1, 2019, to provide liquidity in the Hungarian bond market. Under the BGS, the Hungarian National Bank purchases 50% of bonds with an eligible rating issued by non-financial corporations – initially – up to the aggregate amount of HUF 450 million (approximately EUR 140 million). The Hungarian National Bank purchases the bonds at market value and may purchase a further 20% on the secondary market at market value (*i.e.*, the aggregate stake of the Hungarian National Bank may reach 70%).

The amendment of the Hungarian Capital Markets Act was only the first step towards a more relaxed regulatory environment. The bonds issued under the BGS must be introduced to a trading platform within 180 days from the issuance, even if the issuance was not meant to be a public placement. The Hungarian Stock Exchange launched the XBond trading platform on July 1, 2019, that is open only to eligible issuers and investors, and bonds may be issued and introduced to the XBond trading platform without the need for a prospectus. After half a year, the Hungarian Stock Exchange adjusted the terms and conditions of the XBond trading platform by further simplifying the pricing and offer process, in order to make its use is even more comfortable for the market players.

In addition, the Hungarian Capital Markets Act was amended in four primary ways:

The first point circles around the BGS. Pursuant to the new rules, registering the securities to a multilateral trading platform (*e.g.*, the XBond trading platform) does not auto-mat-

ically result in a public placement. This also means that no prospectus will be re-quired for securities introduced to the XBond trading platform; a simple information memorandum is sufficient.

The definition and rules of public placement have been harmonized with the relevant EU regulation (Regulation No. 1129/2017), and although this expands that definition and those rules, the exemption from the requirement of submitting a prospectus has become wider as well. For example, under the former rules the offering of securities only to qualified investors was deemed a private placement. Under the new rule it will be con-sidered a public placement, yet it will be exempted from the prospectus requirement.

For securitizations, the amendment establishes a special regime for the transfer of the exposures from the originator (the party from whom the exposures originate) to the SPV (the party securitizing them). According to the new rules, ex-ante approval is required for the transfer of the exposures from the originator to the SPV if the exposures stem from at least 20 contracts or their value is higher than HUF 10 billion (approximately EUR 30 million). Furthermore, the originator must notify the debtors about the transfer 30 days prior to the transfer and the debtors may terminate their contracts within 15 days from such notification.

Regulation No 596/2014 on market abuse (the “Market Abuse Regulation”) induced nu-merous amendments to the Hungarian Capital Markets Act. The Market Abuse Regulation also led to the amendment of the Hungarian National Bank Act to resolve certain juris-dictional and scope conflicts.

Although the amendments are numerous, it is not expected that the market will be dis-rupted by them. The establishment of the XBond trading platform and the recent fine-tuning of its operation is welcomed by the market. The harmonization of the public placement rules was a long-standing obligation of the Hungarian legislator. Although the securitization regulation is yet to be tested, the approval requirement and the termina-tion right of the debtor may make market players skeptical. ■

THE CHANGING BANKING SECTOR IN HUNGARY AND ITS LEGAL CHALLENGES

By Erika Papp, Managing Partner, CMS Hungary



The Hungarian banking sector enjoyed a banner year in 2019, but still faces challenges. Legislative changes are creating more aggressive competition between banks, which in turn are cutting fees and demanding flexible financing structures in order to survive. Although some banks are unwilling to take part in these practices, one thing is certain: All banks

must adapt to the new regulatory environment. I've outlined some of the major challenges that Hungarian banks face in the near future.

New Insolvency Regime

Banks will have to forget everything they know about bankruptcy and insolvency since new legislation is now being drafted to replace the current law, which has been repealed to comply with a 2019 EU Directive on preventive restructuring. These two pieces of legislation – the EU Directive and the new Hungarian law – will provide regulatory cover for much of the life of a Hungarian company, starting from the date a firm experiences financial difficulties and initiates preventative restructuring to avoid insolvency (the period covered by the Directive) to when the company becomes bankrupt and must either be reorganized (according to the bankruptcy process) or terminated.

Digitalization

Under EU Directive 2015/2366, also known as the Payment Services Directive (PSD 2), and its Hungarian implementation law, banks are required to open their systems to “payment service providers” and “payment information service providers,” which gives small businesses the opportunity to connect to a customer’s bank account to provide services or initiate payments. Another EU regulation facilitates electronic transactions. The Electronic Identification, Authentication and Trust Services directive (eIDAS) requires banks to identify customers electronically. To that end, eIDAS has created standards for electronic signatures, qualified digital certificates, electronic seals, and other authentication mechanisms.

To prevent fraud, the European Banking Authority has published guidelines on customer authentication and secure

communication, which should have far-reaching implications on the competitive position of banks in the digital era. Because legal obstacles in Hungary prevent banks from digitalizing their operations, the Hungarian Banking Association has drafted 22 recommendations to help bring Hungarian banks into the digital era.

Reinvigorating the Bond Market

In a bid to reinvigorate the bond market, the Hungarian National Bank has launched a national bond program, involving the purchase by the National Bank of a maximum 50% of primary-market issues. The issued bonds must be listed on the Xbond platform of the Budapest Stock Exchange and must be issued in Hungarian forints. Issuers must have a minimum B+ rating and the offering must be public with a three-to-ten-year term. The coupon type can be fixed floating or zero coupon. Since September, MOL, Cordia, and Pannonia Bio have participated. Financing banks were also asked to purchase bonds, which some declined to do, given their lack of experience with transactions of this type and the risks entailed in having to repay bond yields quickly. But more progressive banks have been eager to participate.

Energy Financing

Energy financing was dormant until 2019 when a solar financing boom began in Hungary. This boom, which should continue throughout 2020, was possible after the Hungarian Energy Office began issuing KAT (Kotelezo Atveteli Tarifa) and METAR licences for solar projects. Banks have been waiting for energy financing possibilities for years and are now competing to participate in these projects. But legal challenges have arisen because some of the land on which these projects are based qualify as farmland or industrial properties not owned by the solar project company. Also, lawyers are undecided whether a solar-panel unit is real estate or a fixed asset. This ambiguity complicates matters when a bank tries to create a security interest for solar panels. For this reason, some banks are reluctant to finance solar projects while other banks are able to live with these risks.

2020 will not be an easy year for Hungarian banks due to these legislative changes. Banks have tasked their legal departments and outside counsels to bring clarity to these issues, but the environment will remain uncertain so long as gaps in regulation remain. ■

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UPCOMING LEGAL CHANGES AFFECTING THE REAL ESTATE SECTOR

By Laszlo Krupl, Head of Real Estate, and Adrian Menczelesz, Associate, Schoenherr Budapest

Greenfield Investments: Extended Liability of General Contractors and Interim Subcontractors



In the construction industry, it sometimes happens that the blue-collar employees working on a project do not receive their wages because the employer, acting as the subcontractor, is insolvent. For this reason, the Hungarian legislator has argued that it is necessary to increase liability on the construction market and thus to

force general contractors and subcontractors to choose reliable subcontractors and agents.

Due to an amendment, as of February 1, 2020 Hungary's labor supervision authority will require the general contractor of a construction project or any interim subcontractor to pay the wages of employees hired by another company acting as the subcontractor or other agent if they do not get paid by the employer.

The new rules are only applicable to third-country nationals hired for seasonal work and only if the employer does not pay the wages of such employees in full by the end of the employment relationship.

Real Estate Transactions: Changing the Transfer Tax Rules

Generally, real estate classified as "urban area" is designated for construction activities, whereas real estate classified as "non-urban area" serves primarily for agricultural and other purposes. According to the legislator, the acquisition of non-urban real estate may be speculative. There have been several cases in the past where non-urban real estate was acquired, then reclassified to urban and sold at a considerable profit.

As of February 1, 2020, the transferring party (*i.e.*, the seller) in a transfer of urban real estate via an asset deal must pay transfer tax if the real estate was reclassified from non-urban to urban within the ten years leading up to the transfer, except if the reclassification occurred in the sixth year or later from the original acquisition by the seller. For example, if the original acquisition was in 2010 and the subsequent sale occurs in 2020, then a transfer tax is payable if the reclassification from non-urban to urban occurred by December 31, 2015, whereas no payment obligation exists if the reclassification occurred

later. No amount will be payable if the real estate is sold more than ten years following the reclassification.

The tax base of the real estate transfer tax is the difference between the market value of the non-urban real estate at the time of the original acquisition and the market value of the urban real estate at the time of the subsequent transfer.

Transactions will be taxable on 90% of the tax base. The transferor (the seller) will need to notify the tax authority of the market value and the tax will be paid not by the acquirer (*i.e.*, the purchaser) but by the transferor on a self-assessment basis. Except for corporate tax exemptions (*e.g.*, a beneficiary asset transfer), no tax exemption will apply. The new law also applies to share deals, *i.e.*, if the transaction concerns the transfer of shareholding in a company holding reclassified real estate. In a share deal, however, the purchaser will pay real estate transfer tax only if it acquires (together with its related parties) more than a 75% stake in such a company, whereas in a transfer of reclassified real estate, the seller's payment obligation exists irrespective of the transferred stake.

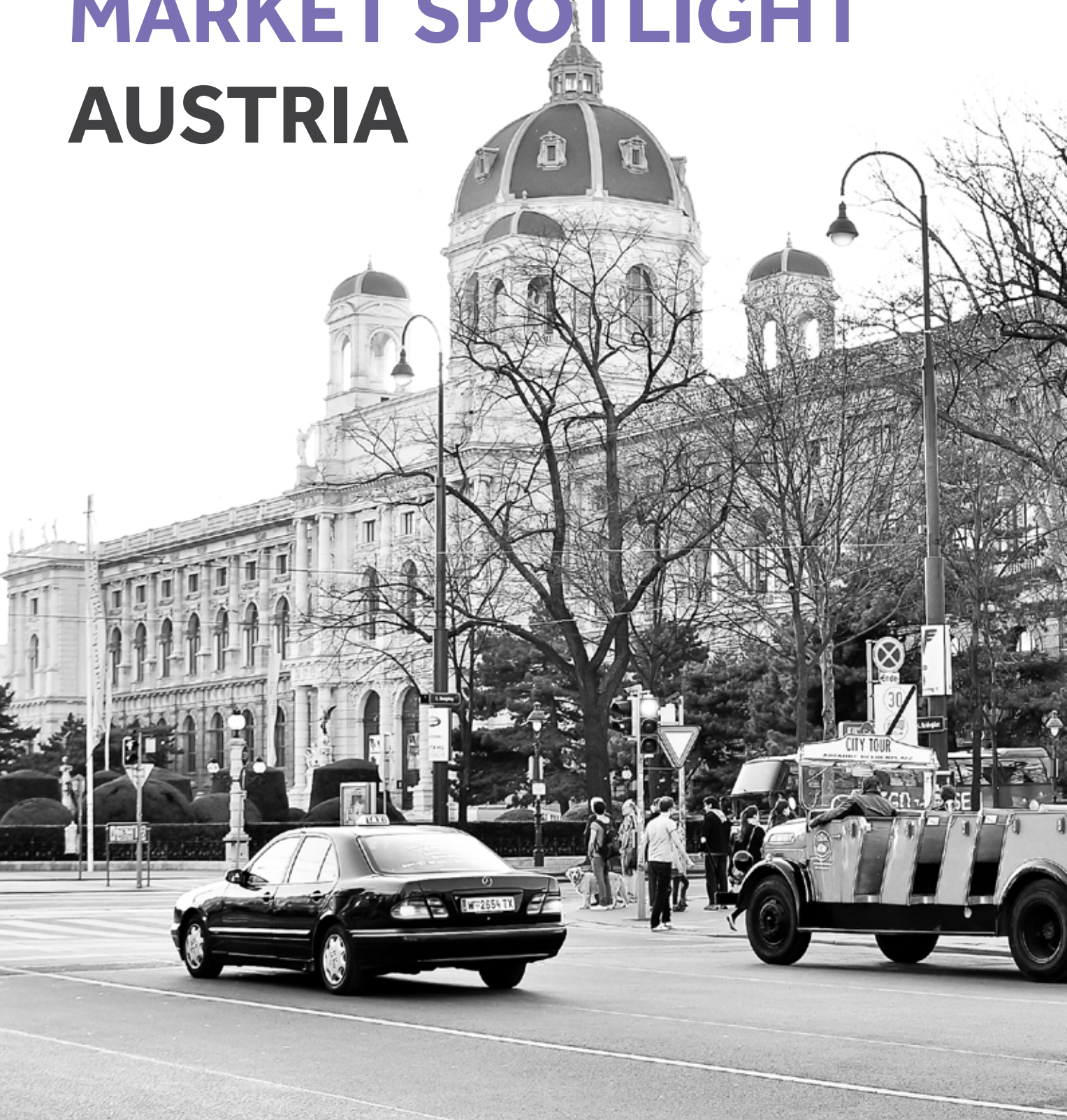
Building Authority Procedures: Governmental Offices to Act as General First-Instance Building Authorities

As of March 1, 2020, local notaries in Hungary have lost their competency to act as general, first-instance building authorities. Such competence has been passed to governmental offices, previously acting as second-instance building authorities. Thus, building authority procedures have become single-tier and it is no longer possible to file an appeal against their decisions. It will still be possible to challenge such a decision before competent courts. According to the legislator, the aim is to streamline decision-making.

Ongoing procedures that were not closed by February 29, 2020 will be decided by the governmental office. In practice, the transfer process may lead to a delay in terms of decision-making. In any case, the inability to file an appeal within the public administration system may alter the actions of developers and other parties in construction processes. As litigation is expensive and time-consuming, this may discourage those clients from seeking legal remedies. ■



MARKET SPOTLIGHT AUSTRIA



GUEST EDITORIAL: THE EVER-CHANGING LEGAL MARKET

By Michael Lagler, Managing Partner, Schoenherr

Everybody talks about the speed at which life moves in our globalized world. And the Austrian legal market isn't evolving more slowly – so keep up the pace!



With more than twenty years of experience in the legal market, there is one thing I can say for sure: the legal market is evolving incredibly fast, so much so that it is sometimes hard to keep up. This is one of the biggest challenges in our daily business – but at the same time it is also what makes our profession unique in comparison to what the practice of law

used to be 20 years back.

This is true in Austria as everywhere else. There has been considerable change in the market. The legal climate of, say, 2018 was vastly different from where it is now, and it will undoubtedly hold new surprises for us this year. To give you some examples, let's take a look at some interesting developments from the past year.

Recent statistics show that the number of transactions on the Austrian m&a market decreased by 13.8% compared to 2018. This is especially significant when looking at high-volume deals. There was no significant high-end-inbound-transaction in 2019 on the Austrian m&a market. As there are not enough interesting targets, companies are holding back and waiting for an economic correction to come. As soon as that happens, there will be no time to waste!

While some business sectors are decreasing, others are facing increases in deal volume. Due to low interest rates, the real estate and construction business is booming. Actually, the real estate sector is currently the only one on the Austrian market performing so well as, in 2019, six billion euros were invested in the Austrian market in this sector, and every second real estate transaction had a quantum higher than 100 million euros. But still: the highs do not remain undisturbed. The high demands are not matched by supply and everybody is waiting for the new Austrian government to take further action regarding topics such as brokers' commissions and changes in rental law. It remains to be

seen what the impact of action in this regard could be to the Austrian real estate market. Chances are that the effect will be significant.

And then there are also global developments which impact the Austrian legal market. Barely a day passes without new climate change-related issues. It was only a matter of time until this topic would gain more popularity in the public sphere and, now that it has, new laws and regulations are being adopted in order to provide the necessary regulatory framework to address it. The legal community is currently waiting for new steps to be undertaken by the government. The governmental program of OVP/Greens foresees significant innovation in the sector for renewable energies and energy efficiency, and we are already on the starting blocks!

So what does all of this mean for our profession? I guess it is more important than ever to respond flexibly to market conditions, and to figure out ways of being aware of new developments and trends before your clients and competitors do. Or, to work with our competitors in developing strategies that empower all practitioners, as we are doing in the legal tech sphere. Staying on top of the latest political and economic developments is important and wasn't always a part of the lawyering job – but in 2020 it is, more than ever, an important part of getting the job done! The days of sitting behind a big wooden desk and exclusively doing client work are so far behind us that younger generations might not even be aware of them. In addition to billable work, lawyers also have to stay on top of legal tech developments, be active on social media, be business developers and PR-all-rounders.

So what can you do to keep up in this rapidly changing world? I think that having a strong team is what keeps the machinery going – as with everything in life – and when these people share the same values and a common vision, that is even better. Then it becomes easier to open new avenues of legal advice and to keep developing innovative products. Exchanging ideas with colleagues from other firms and jurisdictions also provides a better overall picture of the developments on the market. In the end, it is an easy task to keep up the pace with a portion of passion, curiosity, and an eye for the big picture. ■

THE BIG 4: AN EMERGING ALTERNATIVE IN AUSTRIA

By Andrija Djonovic

The move by the Big 4 firms – Deloitte, KPMG, EY, and PwC – to capitalize on their client lists and their multi-disciplinary capabilities by extending the ability of their legal arms to compete with traditional law firms is by now well-established. In Austria, their legal arms have begun competing aggressively for talent as well.

Launch and Expansion in Austria

Unsurprisingly, all the Big 4-associated law firms in Austria were founded by partners from high profile traditional law firms. “Our firm is ten years old and was initially founded by Andreas Jank and me as a spin-off of Fellner Wratzfeld & Partner,” explains Maximilian Weiler, Partner at Jank Weiler Operenyi – Deloitte Legal. “We were a small law firm in Vienna, when we first started, focusing mainly on Corporate/M&A and Banking & Finance.” Some three years later Alexander Operenyi joined from Freshfields Bruckhaus Deringer, giving the partnership its current name. “We had some projects with the local Deloitte team and they, one day, asked us if we would be interested in joining their global network – which we, after negotiating the details of the cooperation, finally did in June 2017,” remembers Weiler. As a result, the firm more than doubled in size, “with respect to employees and expertise – we recruited partners for new practice fields that we hadn’t covered before, like employment and data protection, which gave us a bigger depth of field for a broader base of providing service.” Notably,

former Wolf Theiss Partner Gabriele Ettl joined the firm in 2017 and former Baker McKenzie Partner Marc Lager joined in February of 2020. The firm now counts 25 fee earners, plus staff. “We’re still growing and still recruiting,” Weiler says, happily.

EY Law is rapidly growing in Austria as well. “We were among the first movers in Austria,” says Mario Gall, Partner at Pelzman Gall Gross – the legal arm of EY – with pride. “What was back then, in 2012, a band of 12 lawyers, numbered more than 20 lawyers some three years ago, and is now a 40-person team operating in all areas of business law.” According to Gall, “we grew by hiring very talented lawyers, many of which started their careers in well-known traditional law firms.” Indeed, Gall himself came to EY Law from Baker McKenzie, as, last March, did another former Baker McKenzie partner, Stephan Gross.

KPMG Law has recently ramped up its capabilities as well, bringing 11 lawyers onboard – again, from Baker McKenzie – to launch its Austrian legal practice in August of 2019. “Yes, 11 of us that were engaged with Baker were ap-

proached and then left to create KPMG Law in Austria,” confirms Wendelin Ettmayer, Partner at KPMG Law Austria – Buchberger Ettmayer. “In summer of 2019 Dieter [Buchberger], I, and three more partners started, with five more lawyers. Now there are 15 of us.”

Selling Points for Lawyers and Clients

All claim that moving to the Austrian offices of the Big 4 represented more than a simple financial decision – and use almost identical language in explaining the attractiveness of their new firms.

“The biggest reason I joined Jank Weiler Operenyi, the Austrian law firm in the global Deloitte Legal network, was, to be honest, the impressive positive culture that the company beamed with,” says Deloitte Legal Partner Marc Lager, who joined Deloitte Legal from Baker McKenzie in February, 2020. “The approach towards work, teams, team members, clients ... this is the core way in which a firm differentiates itself from others. The corporate culture here brings out the best in people and focuses on togetherness – it leverages all the tools it has at its disposal.”

Lager also insists that the Big 4 are, despite their size and long histories, forward-thinking. At traditional law firms, he says, “the culture, the very approach to practicing law, is different, it can be very conservative.” Such firms, in his opinion, often employ business models that are “based on individuals, are clearly hierarchal, and focus too much on billable hours in the short term.” While acknowledging the value of individual contributions and the added-value of the personal networks partners at traditional law firms are able to bring to the table, Lager believes that “this environment makes it very difficult for juniors to grow, to get access to clients. Information flows from a senior to a junior and this can lead to a communications breakdown, with incomplete information.” As a result, he says, some firms may experience a leveling-down effect – even though they have very talented lawyers working for them, those lawyers are often not given much room to progress.

“The status quo is very difficult to change, in law firms,” Lager continues, turning to what he believes his new firm does differently. “A law firm is all about getting the client to the firm, whereas here, at Deloitte Legal, it’s all about getting the firm to the client.” He says that when this became apparent to him, along with what he describes as Deloitte Legal’s innovation-orientated approach to technology – he was sold. “Sometimes you can see, in law firms, that senior lawyers do not necessarily express a desire to learn how the tech that their company uses actually works – it is viewed as something foreign. On the other hand, at Deloitte Legal, technological innovation is embraced with open arms.” As a result, he says, instead of having to use a lot of man-hours to get work done, “[Deloitte Legal] drives costs down by using all of the tech that

is at its disposal. This allows for efficient use of talent – one which does not force [lawyers] to do mind-numbing work for days on end – which reduces the rate of errors and allows them to focus on legal problems.”

And Lager points to the personal focus at Deloitte Legal as well. “What impressed me was the approach [Deloitte Legal] had when they approached me – the first thing they said was that they want people to *fit in* well, to be able to work together.” Indeed, he says he “clicked immediately” with his new colleagues. “It went rather smoothly,” he smiles, recalling how surprised he was at the informal communication style at the firm. “At first I found it odd that such a large consultancy firm didn’t foster a culture of formality, but then I realized that it was precisely *that* which kept everybody in good spirits – we’re all one team and team members have to be approachable in order to have cohesion.”

Ultimately, Lager says, Deloitte Legal’s success is tied to its multi-disciplinary nature. He says he was impressed by how “quickly Deloitte Legal brings people together” and by how the company’s “cross-sectoral approach is felt from initial brainstorming on how to approach a client all the way up to the pitch and later service implementation.” He feels that this approach fosters both unity and transparency in the firm.

Ettmayer describes a similar culture at KPMG Legal. “The enthusiasm and the spirit of people in KPMG are contagious – everybody is focused on growing legal as one of the core areas of the company,” and he says that it is “most exciting to be able to contribute to that development.”

Ettmayer says that the true difference between KPMG and a traditional law firm is that the former deploys a “fully

integrated” service. At KPMG, he says, he is in constant contact with both tax and M&A advisers, and the cooperation is tighter. This exchange, he says, is facilitated by the fact that KPMG Law is in the same building with the rest of KPMG, so “we have a chance to see each other daily and have a much more familiar and relaxed type of communication.”

Mario Gall says he was attracted to the “multidisciplinary environment and the fact that both EY and EY Law are present in a large number of jurisdictions around the world.” He notes that this allows him and his colleagues to “cooperate closely with other service lines of EY, such as Tax and Transaction Advisory Services, both in Austria and abroad.”

“A lot of business that used to go to traditional law firms is being rerouted to the Big 4 law firms – which is the goal for all of us that work with them, to get referred within our network and not have work go to outside law firms.”

Gall believes that this type of a cross-sectoral approach “reduces complexity for the clients who no longer need to coordinate different streams of consultants,” in order to harmonize the stream of services they receive. As a result, he says, “our services are aligned before we approach clients with our analysis and recommendations.”

The Managing Partners of the legal arms of the Big 4 in Austria insist that their firms are able to provide a distinct kind of service to clients as well.

“To be honest, I think that’s the future of legal services,” says Weiler. “We provide one-stop-shop services with other



Mario Gall

fields of expertise, such as tax, financial advisory, or consulting.” He feels that Deloitte Legal is able to assist multi-disciplinary teams in “nearly all fields of expertise – more or less all over the world. Only very few law firms, if any, can offer similar services within their own network.”

As a result, Weiler says, “a lot of business that used to go to traditional law firms is being rerouted to the Big 4 law firms – which is the goal for all of us that work with them, to get referred within our network and not have work go to outside law firms.” He describes having exclusivity in performing *all* legal work for clients as the “endgame scenario.” And he’s confident about achieving that goal. “I feel that, in a few years, our work will become even more disruptive due to clients desiring a one-stop-shop rather than wanting to go around shopping for firms that practice in specific areas.”



Wendelin Ettmayer

Lager, his colleague at Deloitte Legal, chimes in. “The Big 4 have a breathtaking client base – and by leveraging this and using these connections the options and the potential for further growth are huge. I firmly believe that if Deloitte Legal, and other similar-minded Big 4 companies, continue to work more efficiently and employ a more relaxed cultural approach – the traditional law firms cannot compete.”



Marc Lager

Gall agrees with this being one of the key reasons why EY Law gets a lot of work. “Clients very much appreciate our multi-disciplinary approach. In combination with our large network, it increases efficiency a lot.”



Maximilian Weiler

Even though “personal relationships that are still quite important in Austria,” Ettmayer feels that what brings clients to trust and decide to engage KPMG Law is “the increase of quality stemming from close cooperation with tax,

advisory, and audit colleagues.” He feels that the “dense network” KPMG has is a “real universal service provider.”

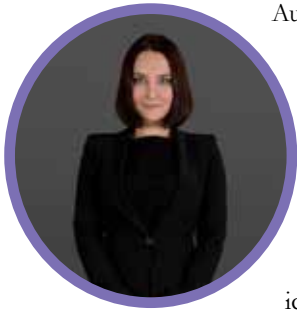
“The Big 4 have a breathtaking client base – and by leveraging this and using these connections the options and the potential for further growth are huge. I firmly believe that if Deloitte Legal, and other similar-minded Big 4 companies, continue to work more efficiently and employ a more relaxed cultural approach – the traditional law firms cannot compete.”

Ultimately, Ettmayer says, the “integrated approach” of the Big 4’s legal arms “really benefits the clients. It’s our task to convince them that integrated services – IT, Management Consulting, Transformation Advice, Tax – can all be received in the same place.” Precisely for this reason, he insists that he won’t be going back to “practicing law traditionally” anytime soon. “I’m just very excited to be a part of a company that strives to grow in this one-stop-shop manner – I’d rather try and persuade teams from established law firms to come to us rather than go back to one myself.”

And to some extent, the success of one benefits all. “The bottom line is that to get awareness and eminence of the one-stop-shop concept,” says Weiler in conclusion, “everybody needs to win.” Thus, he says, “in that respect, we want to see the other three Big 4 firms succeed with their legal arms – so we all can. We are not direct competitors and I hope for all the best for the other three Big 4 legal arms – we are all in this together.” ■

FOREIGN INVESTMENT: BENEFITS OF AUSTRIA'S LEGAL ENVIRONMENT FOR CIS INVESTORS

By Ekaterina Larens, Senior Associate, and Christoph Mager, Partner, DLA Piper Weiss-Tessbach



Austria is one of the most desirable destinations for investors from Commonwealth of Independent States (CIS) countries. It is frequently chosen as a country for investment or as a hub for doing business in Eastern and Southern Europe. In addition to Austria's attractive economic and political environments,

investors can benefit from Austria's legal environment, in particular (a) the general accessibility of its market; (b) Austria's flexible corporate law, which has a lot of similarities with CIS corporate law; (c) the country's comfortable tax regime; and (d) benefits the country extends to startups. Below we briefly consider these benefits.

First, CIS investors are free to hold assets in Austria, except in a few very specific cases, which are almost identical to CIS countries' regulations (e.g., strategically important objects and land, where an individual would require special structures).

Second, Austrian corporate law is similar to CIS corporate law. The main legal forms for investments are limited liability companies (GmbHs) and joint stock companies (AGs). Investment can flow through a joint venture vehicle or an Austrian subsidiary. Though in CIS countries the minimum charter capital is much lower, in Austria, at EUR 35,000-70,000, it is still manageable, and the funds can be used for business activities and maintenance of the company. Only 50% needs to be paid prior to registration for a GmbH and 25% for an AG. As in CIS countries, GmbHs have a flexible two-tier or one-tier management structure. Information on participants and management of GmbHs is available in the Firmenbuch (similar to the Unified State Register of Legal Entities in the CIS). Conversely, in an AG the identity of the shareholders remains confidential. The public shareholders' agreement or confidential syndicate agreement are the key documents to regulate voting rights, lock-ups, options, and financing. Provided that options and lock-ups are stipulated in the shareholders' agreement, they are enforceable against third parties. CIS investors will benefit from developed court practice related to warranties and representations in Austria.

Third, disputes resolved in Vienna's arbitration court can be enforced in Russia, which adds comfort to joint venture

partners.

Fourth, CIS investors can benefit from Austrian private foundations, which have flexible regulations and provide certain tax benefits. They are broadly used to manage both real estate and shareholding in other companies.

Fifth, the Austrian tax regime is investor-friendly. Austrian law acknowledges group (where a parent company has more than 50% in the affiliate and a tax group exists for at least three years) taxation, which means that losses incurred by individual members of the group can be offset by profits from other group members. There is no limitation for directly-held foreign subsidiaries to be included in the group. Losses may be carried forward for an unlimited number of years and be offset by later gains. The corporation flat tax rate (for GmbHs and AGs) is 25%, and this will be reduced to 21% in the near future. Dividend distributions received from Austrian companies by Austrian or foreign subsidiaries are, in general, not subject to corporation tax. Gains from the sale of shares in foreign subsidiaries are also not subject to corporate income tax. As a rule, the distribution of dividends from an Austrian company to its Austrian or EU parent company are generally not subject to withholding tax; the same applies to interest and royalty payments. The withholding tax for distribution to individuals in Austria or to non-EU companies is 25-27.5%. It can also be reduced to 0% if the dividend is paid in the form of a share premium repayment. The distribution of profits to non-Austrian shareholders or companies outside the EU is subject to tax in accordance with the terms of the applicable double tax treaty agreement, and Austria has double taxation treaties with more than 80 countries, including Cyprus, Luxembourg, the Russian Federation, Ukraine, the Republic of Kazakhstan, and other CIS countries.

Lastly, Austria welcomes business startups by exempting startup shareholders from a number of stamp and court duties and transfer taxes, subject to certain requirements. There is a research premium system in the form of a tax credit; this leads to a payment of 14% of the research expenses to operative researching entities in Austria (and in the EU). In addition, companies with fewer than 250 employees are entitled to an investment growth bonus of up to EUR 67,500.

This list of benefits is by no means exhaustive and there are many more advantages to investing in Austria. ■

EXPAT ON THE MARKET: IVAN MALES OF DLA PIPER

By David Stuckey

Ivan Males, from Croatia, is Senior Associate with DLA Piper in Vienna. He is a Finance, Projects & Restructuring practitioner with a focus on financing transactions and the infrastructure sector. In addition, he has gained particular knowledge on corporate and M&A cross-border transactions, notably in CEE and SEE markets.



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

Ivan: This is quite a general question so I guess I should start from the beginning. I was born in the southern part of Croatia, in the city of Split (the second largest city in Croatia), where I attended primary and grammar school. I attended Law School at the University of Zagreb. There, I was an active member of the Institut Francais and Alliance Francaise, and later I continued my studies in Paris

at Universite Paris Descartes (Paris V).

Soon after returning to Croatia from France, I started in my first legal role as an associate with Savoric & Partners Attorneys at Law, a top-tier law firm in Zagreb, where I practiced my legal skills on some of the most significant transactions in Croatia. After a few years of practice and passing the bar exam, I moved on to become a senior associate with another prominent law firm on the Croatian market, Glinska & Miskovic. While working with this law firm, I started frequently to collaborate with DLA Piper Vienna on various projects as an external counsel. After several years, our cooperation evolved to its current form.

CEELM: Was it always your goal to work abroad?

Ivan: From my perspective, it was never a question of living abroad. My goal was always to work in a challenging and dynamic environment, while evolving my professional and social skills. That being said, when the opportunity to work in

a leading global law firm such as DLA Piper arose, I could not resist. Could anyone? All things considered, I am happy that this professional opportunity led me to Vienna.

CEELM: How would clients describe your style?

Ivan: I would be glad to know the answer to this question! I try to always do my best in every field of work. Growing up in a smaller city taught me to be friendly and understanding, while the studies and career in legal business made me strive for excellence and to be persistent. A combination of these elements, including DLA Piper's efforts to encourage me to put clients first and understand their business, designed my current approach. I would hope that my clients see me as friendly but professional, relaxed but reliable, rigorous but pragmatic, easy-going but exact and knowledgeable.

CEELM: There are obviously many differences between the Croatian and Austrian judicial systems and legal mar-



Males and friend at the Palmenhaus

kets. What idiosyncrasies or differences stand out the most?

Ivan: Actually, the differences between the two are not that significant. Both legal systems belong to the civil law family and, in addition, the Croatian legal system has historically been influenced by the Austrian one. Although, the Croatian legal system originated from the common Central and Eastern European tradition, Croatia had a substantial level of autonomy in its judicial and legislative organization which caused a different application of the same laws (for example, procedural codes were effectively different in Croatia than in Austria). Later on, the similarities between the two legal systems diminished - up until the accession of Croatia to the European Union, when its legal system was almost completely harmonized with European Union law.

The fact that the market in Austria has been more open for years as well as the fact that Austria has been a part of European Union much longer than Croatia had a significant influence on the development of the legal markets.

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

Ivan: Austria and Croatia share similar cultural values originating from shared

history. There are no great differences - but if I had to choose something, in my view, people in Croatia are more outgoing, social, and treasure a community lifestyle more, while in Austria people are more reserved and the lifestyle is more individualistic.

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

Ivan: My international experience (both in education and work) allows me to understand how different judicial and legal systems work and, consequently, allows me to have a comparative and solution-driven approach to each cross-border transaction. According to the feedback form my clients, they appreciate having a single point of contact who is able to apply international standards to cross-border deals while keeping an eye on the differences in each local jurisdiction.

CEELM: Do you have any plans to move back to Croatia?

Ivan: For the time being, no - not even long-term plans of moving back. Vienna is a wonderful city and it comes as no surprise that it has been voted one of the most livable cities around the globe for last several years. So, as I am personally and professionally very happy here,

I have no intention of moving anywhere soon. Do not get me wrong, I miss my family and friends – but as Croatia is just a few hours away from Vienna I can easily visit them.

CEELM: Outside of the Croatia (and Austria), which CEE country do you enjoy visiting the most, and why?

Ivan: This is a difficult question as each country has its own unique traits. If I had to choose, I would say that I enjoy visiting Slovenia, the Czech Republic, and Serbia. Those countries have never disappointed me with what they have to offer - from the night life to local cuisine, from nature to architecture.

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

Ivan: Luckily Vienna has a lot to offer from museums, concerts, film and cinema to restaurants and night clubs. The usual “tourist” path in Vienna depends on the wishes of the visitor – but certain places are not to be missed, such as starting a day with breakfast at Naschmarkt and visiting its flea market, followed by a brunch at Palmenhaus, spending the afternoon with a stroll along the park of Schonbrunn Palace and the Schonbrunn zoo (which celebrated the birth of a baby polar bear recently), riding the rollercoasters in the Wiener Prater, visiting Albertina and Kunsthistorisches Museum Wien for an inspiring exhibition, and so on. I always like to take my visitors to the late-night projections of *The Third Man*, a 1949 film noir set in post-World War II Vienna, at Burg Kino, and/or have a drink at the Loos Bar, an architectural jewel designed by Adolf Loos, with a *fin de siècle* interior design that is super attractive.”

All things considered, I am happy that this professional opportunity led me to Vienna. ■

INSIDE INSIGHT:

INTERVIEW WITH INGO STEINWENDER, GROUP HEAD OF LEGAL AT CA IMMOBILIEN ANLAGEN

By Radu Cotarcea

CEE Legal Matters first interviewed **Ingo Steinwender** in 2014, near the end of his first year as Group Head of Legal at CA Immobilien Anlagen AG, one of the largest real estate companies in Austria. Six years later, we check in.



CEELM: Remind our readers who you are and how you got to your current position.

Ingo: My name is Ingo Steinwender. Since 2013 I have been the Group Head of Legal of the Austrian-listed CA Immobilien Anlagen AG, a leading European real estate player. Before joining CA Immo I worked for Deloitte, Schoenherr, Cerha Hempel, Eyemaxx Real Estate, and an Austrian family office.

CEELM: You've been with CA Immo for over seven years – and in the real estate sector throughout your entire 12-year in-house career. What is it about

your work and the sector that keep you interested?

Ingo: Simply because in the last six years with CA Immo there has been no routine and always even-more challenging projects. Every transaction has certain legal, technical, or commercial challenges (despite quite uniform SPAs) and the same is true for development and asset management.

My enthusiasm for real estate is further fostered by the boom of this industry and of course the great performance of CA Immo.

CEELM: Given the nature of the company you work for, one would expect you

and your team to do far more transactional legal work than most Heads of Legal. Is that the case? If so, how has that influenced the development of your team?

Ingo: We do transactional legal work in Austria and Germany, in our home jurisdictions, partly in-house, partly with the help of external counsels. It depends on whether CA Immo is selling or buying, on our capacities, and on the legal complexity.

In CEE and SEE the Vienna-based in-house team is the legal manager and decision-maker in transactions, and we deal with external counsels because we

are dealing with a foreign jurisdiction. In my point of view, this is the industry standard.

CEELM: While the company is headquartered in Austria, it reportedly controls property assets of approximately EUR 4.7 billion in Germany, Austria, and across CEE. Do you tend to hire in-house colleagues locally to support you or do you tend to work with external counsel?

Ingo: The figures are true and will be ever-increasing. My team is based in Vienna, Munich, Frankfurt, and Berlin. In these markets, we tend to work in-house, whereas in CEE and SEE we employ external counsels and only manage extraordinary projects (like transactions, material litigations, or developments) from Vienna.

We think this structure best suits our business model, given, in particular, the different fee levels of external counsels compared to salaries for highly qualified senior lawyers in the various markets. Actually, we do not plan to hire more beyond our current team in the near future.

CEELM: If you had to pick, name the three projects you are proudest of having worked on. What was it about them that stands out?

Ingo: The first was in 2013: the sale of the “Hessen Portfolio Leo II,” a portfolio deal with 36 properties in Germany sold to a fund managed by German Patrizia with a deal value of more than EUR 800 million. This transaction makes me proud because it was my first portfolio transaction of considerable size and we managed to close it within a short time under seller-friendly terms.

The second was in 2015: The attempt to partially take over Immofinanz, which,



Ingo Steinwender

despite its failure, proved the abilities of our in-house team to manage complex legal issues within a short time and under pressure.

The third is our 2020 filing of the first action for damages in the symbolic amount of EUR 1 million (out of a total damage of EUR 1.9 billion) against the Republic of Austria and Land Karnten, which is an unprecedented court case in Austria resulting from, in CA Immo’s view, the unlawful privatization of the federal residential property companies in 2004.

CEELM: And what one project did you find particularly challenging and complex?

Ingo: I would say that the projects I mentioned in my previous answer were personally also the most challenging – each in its own way. One of the most important keys to success is the team. The main takeaways from every project for me as a GC is that I have to carefully select the (internal and external) team, build the team (in particular nurturing a “one for all and all for one” culture), even before the start of the project, and then proactively manage and support the team.

CEELM: What do you see on the hori-

zon – either in significant trends in the sector or in terms of legislation – that you believe is most likely to impact your work within CA Immo?

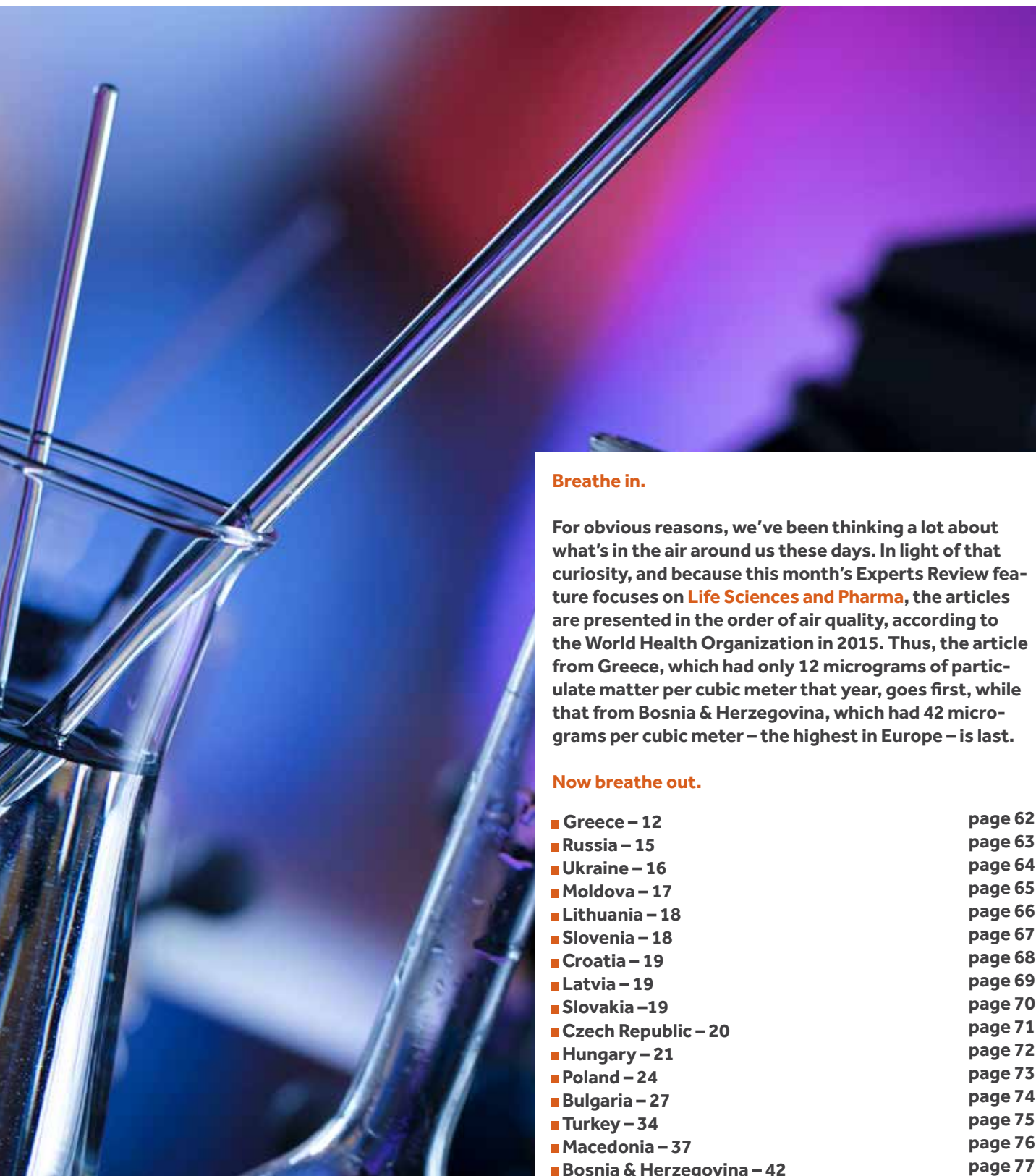
Ingo: We are keeping an eye of course on ongoing legal developments, but apart from that at the moment specifically on the beginning of digitalization of the real estate business and its legal impact. Apart from data protection digitalization touches many established workflows and procedures which must be adjusted or raised in particular liability discussions.

CEELM: On the lighter side, looking around your office, name three items: the first thing you’d pick up and run within the case of a fire, the thing which best represents your work/management style, and the thing you believe most readers would be surprised to hear you have in there.

Ingo: Of course my laptop to have all the information I need, then my phone to be able to talk to people as I deem the personal contact becoming more and more important in these digital, anonymous times. There are no surprises in my office, which is equipped in only a very Spartan fashion and – actually after our office refurbishment – lacks personal items. ■



EXPERTS REVIEW: LIFE SCIENCES AND PHARMA



Breathe in.

For obvious reasons, we've been thinking a lot about what's in the air around us these days. In light of that curiosity, and because this month's Experts Review feature focuses on **Life Sciences and Pharma**, the articles are presented in the order of air quality, according to the World Health Organization in 2015. Thus, the article from Greece, which had only 12 micrograms of particulate matter per cubic meter that year, goes first, while that from Bosnia & Herzegovina, which had 42 micrograms per cubic meter – the highest in Europe – is last.

Now breathe out.

■ Greece – 12	page 62
■ Russia – 15	page 63
■ Ukraine – 16	page 64
■ Moldova – 17	page 65
■ Lithuania – 18	page 66
■ Slovenia – 18	page 67
■ Croatia – 19	page 68
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■ Macedonia – 37	page 76
■ Bosnia & Herzegovina – 42	page 77

GREECE: ARTIFICIAL INTELLIGENCE & PRIVACY IN THE TIME OF COVID-19

By Ioanna Michalopoulou, Managing Partner, Michalopoulou & Associates Lawgroup



The White Paper on Artificial Intelligence published on February 19th by the European Commission presents some important building block policy options to enable the trustworthy and

secure development of artificial intelligence in the EU, fully respecting the presiding values and the fundamental rights of its citizens. The enormous volume of data which has already been generated and that yet to be generated constitutes an opportunity for Europe to position itself at the forefront of global AI policy. The use of AI brings both fears and uncertainties: on the one hand, citizens fear they will be left powerless against the information asymmetries of algorithmic decision-making, while on the other, companies are truly concerned with legal uncertainty.

The aim of a clear European regulatory framework must be to build trust among consumers and AI businesses, and thereby accelerate the uptake of the technology. Developers of AI are already subject to European and national legislation on fundamental rights (such as data protection, privacy, and non-discrimination), consumer protection, and product safety and liability rules. Although consumers expect the same level of safety and respect for their rights whether or not a product or a system relies on AI, some specific, inherent features of AI (such as its lack of transparency) can make the application and enforcement of this legislation more difficult. Member States, according to the White Paper, are pointing to the current absence of a common European framework. AI – most specifically, machine learning models – reveal the ability to track and analyze the daily habits of people. AI can be used, in breach of EU data protection and other rules, by state authorities or other entities for mass surveillance and by employers to observe employee behavior. Analyzing large chunks of data and identifying relations among them, AI can also be used to retrace and de-anonymize data about persons, creating new personal data protection risks even for datasets that do not specifically include personal data. AI is also used by online intermediaries to prioritize information for their users and to perform content moderation. The processed data, the way applications are designed, and the possibility of human intervention can affect the rights to free expression, personal data protection, and privacy, as well as political freedoms.

Article 6 of the EU's General Data Protection Regulation outlines

the conditions under which personal data can be legally processed, with one such requirement being that the data subject has given their explicit consent. However, there are exemptions to the rule for public security issues, for which AI recognition technologies should be allowed to automatically identify persons legally.

When the Covid-19 pandemic began to spread, systems for temperature detection at work and even in airports with the use of AI technology proliferated, allowing for the monitoring of numerous cameras at once, and automatically sending alerts to data controllers. Moreover, a thermal camera, which must not pick up skin color, can record the face image of anyone who registers a fever.

To this end, Recital 46 of the EU General Data Protection Regulation specifically mentions epidemics: “The processing of personal data should also be regarded to be lawful where it is necessary to protect an interest which is essential for the life of the data subject or that of another natural person. Processing of personal data based on the vital interest of another natural person should in principle take place only where the processing cannot be manifestly based on another legal basis. Some types of processing may serve both important grounds of public interest ... for instance when processing is necessary for ... for monitoring epidemics and their spread.” For EU companies, data processing must always be compliant with Articles 6 and 9 of the GDPR. In Greece, on March 18th the Data Protection Authority published guidelines for the processing of personal data in the context of Covid-19 protection measures. The guidelines state that protecting personal data is not absolute; fundamental rights and the proportionality principle should be taken into account in favor of the society's public good and interest.

In addition, earlier this month the European Data Protection Board emphasized that a legal condition may legitimize restrictions of freedoms provided the restrictions are proportionate and limited to the emergency period. When processing is necessary for reasons of substantial public interest in the area of public health, there is no need to rely on individual consent.

The balance between the public benefit and individual privacy concerns must be reconsidered in the absence of a common European framework. Defending data protection rights during this pandemic has to take into account the length of the emergency period and the proportional actions of the authorities. The latter and their clear and updated definition and public communication must be the benchmarks for drafting secure legal frameworks on these issues in the coming months. ■

RUSSIA: COMPULSORY LICENSES FOR PATENT RIGHTS TO PHARMACEUTICALS IN RUSSIA

By Julien Hansen, Partner, Julianna Tabastajewa, Counsel, and Pavel Arieovich, Legal Director, DLA Piper Moscow



The issue of compulsory licenses for patent rights to pharmaceuticals is becoming more and more controversial in Russia, due to the growing number of important court rulings involving compulsory licenses affecting leaders of the pharma industry over the last few years.

Key Elements of the Russian Rules

According to the Russian Civil Code, the court can uphold the claim of a claimant (*i.e.*, the intended compulsory licensee) to be issued a license for the invention, utility model, or industrial design (objects) owned by the defendant (*i.e.*, the patent owner), in two scenarios: (1) if those objects are not used or are *insufficiently used* by the patent owner for four years from the patent issuance (for patents and industrial designs), and for three years from the patent issuance (for utility models), which results in such products being insufficiently offered on the market. If the claimant is willing and ready to use such objects but the patent owner refuses to grant to the claimant a license on fair market terms, the claimant can bring a claim for a compulsory license; (2) if the owner of a later-registered patent (a second patent or dependent patent) cannot use the patented invention without violating the rights of the earlier-registered patent (the first patent), and the first patent owner refuses to grant the second patent owner a license on fair market terms. The claim of the second patent owner in that case will be granted if the second patent owner proves that the invention patented by the second patent owner represents an *important technical achievement* and possesses *significant economic advantages* over the invention possessed by the first patent owner.

Practical Application of the Rules

In practice, the most sensitive disputes over compulsory licenses in Russia have arisen in connection with patents on pharmaceutical substances mostly owned by multinational pharma companies such as AstraZeneca, Bayer, Bristol-Myers Squibb, Pfizer, *etc.*

A common claimant in these disputes is Russian-based company OOO Nativa, which is involved in the commercialization of generic medicines. Within the last five years several such court disputes took place, usually involving hearings in multiple court instances, and all very complex. Each case has raised questions about how exactly the criteria of *insufficient use*, *important technical achievement* and/or *significant economic advantages* should be approached in order to achieve a fair balance of rights.



At present, Russian court practice is shifting towards more frequently supporting claimants against senior patent owners. The state tends to support local manufacturers of generics, partly because of a lack of financing for clinical trials and the development of medicines. On the other side, generic manufacturers are themselves acting aggressively on the market and often have their medicines registered with the Russian healthcare authorities even before the expiry of the original patent validity terms (this was repeatedly recognized as patent infringement by courts), and then file a court claim to obtain a compulsory license against the original patent owners.

Court Cases

In one prominent case, *OOO Nativa and Mr. Mikhaylov vs. Celgene Corporation*, the court partially satisfied the claimant's claim to have Celgene issue a compulsory license on the following terms: (1) the volume of use includes the manufacture, application, offer for sale, sale and storage of pharmaceuticals containing lenalidomide as an API; (2) the amount of license fees is 30% of the revenue part of the price; and (3) the payment is to be made annually.

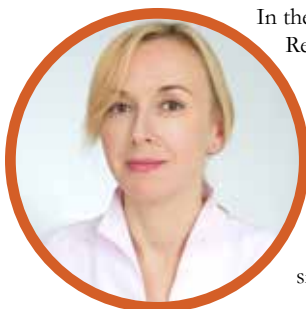
Celgene unsuccessfully appealed and only thereafter were the parties able to amicably settle the dispute.

In another case, *OOO Nativa vs. Sugen LLC and Pharmacia/Upjohn Company*, OOO Nativa claimed that its patented invention is dependent on the defendant's invention, and won. The courts of several instances supported OOO Nativa's demand for a compulsory license from Sugen in connection with the preparation based on sunitinib as an API. The latest development in the case was the higher court's refusal to consider the case at the Economic Dispute Collegium of the Supreme Court.

These examples signal the controversial trend and apparent difficulties for pharma patent owners to protect their rights on the Russian market. Such vague criteria as "*important technical achievement*" are still assessed very subjectively by different experts and courts, and it is difficult to rely on any solid position here. There is also no doubt that Russian authorities often tend to support local generic manufacturers due to political reasons. Nevertheless, all industry participants hope that the higher courts will eventually elaborate more solid approaches that would be of benefit in making the concept of compulsory licenses more balanced and transparent. ■

UKRAINE: NEW INITIATIVES IN IP PROTECTION IN THE PHARMA SECTOR

By Anna Pogrebna, Partner, and Naida Shykhkerimova, Associate, CMS Reich-Rohrwig Hainz, Kyiv



In the European Commission's January 8 Report on the protection and enforcement of intellectual property rights in third countries, Ukraine was identified as a Priority 2 country. This category includes countries with systematic problems in the area of intellectual property protection and enforcement, causing significant harm to EU countries.

Ukraine became quite infamous in the intellectual property right (IPR) protection area on the pharmaceutical market due to repeated cases of invention patent protection infringements, violations of protected industrial design or trademarks, and copying of packaging by generic producers, which could be confusing to consumers and harmful for the holders of IPR.

An illustrative case of ineffective IPR protection was a threatened investment arbitration by Gilead Sciences Inc., in which Gilead Sciences Inc. claimed that the Ukrainian state authority registered a generic drug bypassing Gilead Science's IPR on the innovative drug *Sovaldi*. The investment arbitration claim was eventually averted after Ukraine agreed to a settlement.

Now, Ukraine is about to introduce significant changes to the IPR regulations that may improve IPR protection on the country's pharmaceutical market. Draft law No. 2259 (the "Patent Legislation Reform Draft"), which has already passed its first reading in the Ukrainian Parliament, is designed to increase competition between pharmaceutical producers and combat IPR abuse. Significantly, it introduces provisions designed to combat so-called "evergreen" patents and implements the Bolar provision to enhance the access of generic products to the market.

Combating "Evergreen" Patents

Due to lack of any regulation, evergreening had been used by drug producers as a strategy to extend the lifetime of patent protection by presenting minor changes, for example, to the form of drugs.

Now, in an attempt to combat evergreening, the Patent Legislation Reform Draft specifically withholds IPR protection from some substances, like salts, ethers, combinations, polymorphs, metabolites, and so on, as well as from new uses of an existing medicinal product.

In addition, the Patent Legislation Reform Draft provides for post-grant opposition proceedings to allow challenges to granted patents by third parties in an administrative process.

Implementation of the Bolar Provision

The Bolar provision is a safe harbor exemption that allows a generic producer to register its product straight after expiry of patent protection of the original drug, thus reducing the time for bringing a product to the market and giving consumers the opportunity to get faster access to treatment.



While the Bolar provision had not been previously implemented into the Ukrainian IPR regulations, now the Patent Legislation Reform Draft specifically prescribes that production of pharmaceuticals protected by patent by generic producers does not constitute violation of IPRs. However, generic producers will be allowed to sell their drugs only after expiry of additional patent protection of the original drug.

Parallel Imports as a Tool to Enhance Competition on the Pharmaceuticals Market

In addition to the Patent Legislation Reform Draft, draft law No. 2089 (the "Parallel Imports Draft") is currently under active discussion in the Parliament. If adopted, it will significantly change competition conditions on the market, especially regarding so-called "monopolistic" drugs, *i.e.*, those that are not interchangeable with any other products.

Under the Parallel Imports Draft, importers from other countries will be allowed to import drugs registered in their countries to Ukraine, only updating packaging to Ukrainian legal requirements. While such parallel imports may undoubtedly increase competition on the distribution level and allow patients to purchase drugs at fair market prices, there are concerns that introduction of parallel imports may undermine IPR protection of drugs. However, due to constant attempts of Ukrainian stakeholders to enhance competition on the pharmaceutical market, it is highly likely that the Parliament will eventually support this initiative.

Ultimately, these initiatives are mostly about finding the desirable balance between IPR of pharmaceutical companies, which are trying to protect their incomes and cover material costs for the elaboration of innovative drugs, and protection of end customers. At the same time, as under the EU-Ukraine association agreement Ukraine is obliged to enhance the level of IPR protection and enforcement, further progress and developments in this area are inevitable. ■

MOLDOVA: PHARMACOVIGILANCE AND DRUG SAFETY IN THE REPUBLIC OF MOLDOVA

By Marina Zanoga, Head of Regulatory, and Doina Doga, Associate, ACI Partners

Following its exit from the Soviet Union, the Republic of Moldova started its independent life with a poorly-regulated medical system that lacked the proper means of ensuring patient safety.



However, in the last few years Moldova has increasingly adjusted its legislation to Europe's, securing the rights of patients and improving the quality of drugs administered in the country.

The most recent achievement on this front is the transposition of the European Pharmacopeia into Moldovan law, which represents a significant accomplishment in terms of protecting society against such phenomena as adverse reactions to medical products and inferior drugs.

Evolution of the Pharmacovigilance System

Even before the pharmacovigilance system was established, several legal provisions ensuring the safety of drugs placed on the Moldovan market were included in the country's domestic legal framework.

The first attempts of the Moldovan legislator to impose certain drug safety standards were made by means of the Law on Drugs in 1997, which established the requirement that medicines be of good quality, proper for their purpose, and without undue adverse reactions. In 2003, though not yet a member to the Convention on the Elaboration of a European Pharmacopeia, Moldova nevertheless introduced the concept of the European Pharmacopeia into its legal framework by supplementing The Law on Pharmaceutical Activity of 1993 with a general requirement that drugs must comply with the standards established by the European Pharmacopeia. Also, between 2006 and 2015 the Ministry of Health of Moldova enacted additional secondary legislation, establishing a number of measures to be followed by medical staff and drug manufacturers in respect to drug safety, drug registration, and the reporting of recorded adverse reactions. The above-mentioned acts constituted stepping-stones towards today's Moldovan pharmacovigilance system.

Pharmacovigilance Today

Moldova's current pharmacovigilance system is a well-developed mechanism, with several methods for ensuring that the drugs offered to Moldovan patients comply with European safety requirements. By adhering to the Convention on the Elaboration of a European Pharmacopeia in 2016, Moldova has undertaken to observe and com-

ply with the standards and requirements established by the European Pharmacopeia and impose them on any drug manufactured in or imported into Moldova. In 2017 and 2019, the Ministry of Health set the timeline for transposing the ninth and tenth editions of the European Pharmacopeia into Moldovan law. Edition No. 10 is to become fully enforceable in Moldova by 2022.



The current pharmacovigilance system includes a centralized mechanism instituted within the Medicines and Medical Devices Agency that provides for the collection of reports on adverse reactions and also imposes certain measures to ensure that drugs that may cause unforeseen adverse reactions are excluded from the market.

Thus, under the Regulation on Execution of Pharmacovigilance Activities, the holders of drug registration certificates are required to develop a pharmacovigilance plan ensuring the quality control of the medicinal products placed on the market. Such entities are required to report any adverse reactions to their products to the VigiBase database. Furthermore, these entities are required to perform continuous scientific research of their products, undertake necessary actions to minimize any risks posed by the drugs they place on the market, and adopt appropriate preventive measures.

Besides the holders of drug registration certificates, medical staff that has been informed of adverse reactions to particular medicinal products and patients that have experienced them are also required to report to the Agency.

Pharmacovigilance Effectiveness

Though it is a new mechanism and the practice of reporting adverse reactions is still under development, the pharmacovigilance system has already registered significant results, having attained its core objective – ensuring that drugs posing a risk to human health are prohibited and/or removed from the Moldovan market. The number of adverse reactions reported has risen from 277 in 2016 to 940 in 2018. Most of the reports (91.38% in 2018) were submitted by medical staff informed of adverse reactions to drugs administered to patients.

Although still in development, the Moldovan pharmacovigilance system appears to be a mechanism well-shaped and adjusted to European standards, representing an intrinsic tool for ensuring public health. ■

LITHUANIA: NEW INITIATIVES IN IP PROTECTION IN THE PHARMA SECTOR

By Ruta Pumputiene, Partner, Ruta Pumputiene Law Firm



The Lithuanian life sciences industry has skyrocketed over the last two decades – the average annual growth within the biotechnology and pharmaceutical research and production sector reached over 19%, with 90% of its output exported. In 2017 Lithuania reached 16th place in the Scientific American Worldview biotechnology rankings. Lithuania dominates many (much) larger Central and Eastern European countries and boasts the fastest growing life science industry in Europe.

Currently, there are around 300 life science private companies in Lithuania and the private sector grows more than 50% a year (the average growth of life science turnover is 58%, and of pharma products is 60%).

Lithuania can now boast of investment by such companies as Moog, Teva group, Hollister, Thermo Fisher Scientific, Intersurgical. Furthermore, most of the largest worldwide innovative pharmaceutical companies (such as Johnson & Johnson, Pfizer, Novartis, Astra Zeneca, AbbVie, Sanofi, Lilly, and many others) have subsidiaries in Lithuania.

Moreover, Lithuania, which hopes to become the most attractive country in Europe for the development of Life Sciences, aims to have the sector yield five percent of GDP by 2030. Currently, the sector contributes more than one percent to Lithuania's GDP, which is already six times the EU average.

Today's success is not novel – the roots of the Lithuanian Life Sciences sector date back to the Soviet Union, when the Lithuanian sector was among the strongest in all the Soviet Republics.

The recipe for a strong Lithuanian Life Sciences sector includes, first, a well-developed educational system and qualified labor. Thus: 11% of all students (around 10,000) study Life Sciences in eight universities and nine colleges; there is an expert pool of 18,000 active life science researchers; and there are 16 research & development centers and five science centers which receive over 400 million euros of investments into equipment and infrastructure.

Second, the recipe requires low costs and financial incentives. Thus:

the country receives an estimated 400 million euros in EU structural & national support towards five specialized science and tech centers; there is a triple deduction of R&D cost from income tax; taxable profits are reduced by 50% if companies invest into substantial tech improvements; there is funding or reimbursement of the patenting costs for both academic institutions and private companies; and there are microgrants (so-called “innovation cheques”).

Finally, the recipe calls for a global outlook. Thus: 90% of Lithuanian life-science production is exported, to more than 100 countries; Medical device exports (including re-exports) have doubled since 2008 (particularly to the UK, Spain, Russia, France, and the US); every 10th scientific laser in the world was produced in Lithuania – and Lithuanian femtosecond laser systems take up to ten percent of the global market; there is a wide network of bilateral treaties on the protection of foreign direct investment against adverse state action; and there is a bilateral agreement with the Russian Federation on the promotion and reciprocal protection of investments making it a favorable starting platform for investments in Russia.

Lithuania, however, still has a lot of challenges ahead, which need to be addressed by the new Government, which will take office in November 2020. The main issues to solve during the upcoming political season include: Finding ways to apply R&D incentives to statistical, analytical, or data collection activities, as today the incentives are only applied to novel R&D activities which can be proven to have been performed in search of a solution to a technical problem; relaxing the requirements for innovative medicine reimbursement, as the current requirements remain overly strict and prevent Lithuanian patients from getting quick access to the most modern treatment and it sometimes takes up to ten years for new medicines to be included on the reimbursed medicines list; ensuring maximum transparency in project management and fund allocation; and removing unnecessary paperwork and administrative burdens, as well as unjustified economic barriers to the reimbursement of medicines, especially for oncological and rare diseases.

In general, the direction in which Lithuanian decision-makers are going is the right one, especially in terms of facilitating dialogue and listening to the arguments of all involved stakeholders. Despite that, as well as strong roots in Life Sciences, Lithuania has to think about issues of the future, including emigration, demographic challenges, and regional competition. This will become even more apparent after the Lithuanian parliamentary elections in October 2020. ■

SLOVENIA: WILL REGULATION CATCH UP WITH THE RAPID GROWTH OF THE CBD MARKET?

By Jera Majzelj, Partner, and Lidija Zupancic, Senior Associate, Selih & Partnerji



CBD products are the latest consumer fad, and demand and supply has significantly increased all over the world. The market for CBD products is projected to keep growing, and accord-

ing to some estimates, the European CBD market should be worth some EUR 1.5 billion by 2023. Despite such rapid development and expansion, placing CBD products on the Slovenian market remains somewhat of a legal grey area.

CBD (cannabidiol) and THC (tetrahydrocannabinol) are the two best known cannabinoids, *i.e.*, chemicals found in the hemp plant (*Cannabis sativa L.*). Unlike THC, CBD does not cause the typical “high” and/or intoxicating feeling: instead it is usually advertised for its healing properties and therapeutic benefits, making it an appealing additive to food and other consumer products. However, the plant *Cannabis sativa L.* itself, together with extracts and resins, is considered an illicit drug, the cultivation and sale of which is generally a criminal offence in Slovenia.

That said, there are some exemptions. For instance, since 2017, it has been lawful under certain conditions to cultivate, sell, and/or keep *Cannabis sativa L.* for medical, veterinary, educational, and/or scientific research purposes. The procedures and conditions for obtaining such licenses are not clearly specified, however, and in practice the Slovenian Ministry of Health has so far only issued a very limited number.

Additionally, Slovenian rules permit the growth of industrial hemp, which comes from *Cannabis sativa L.* varieties that are listed in the EU’s Common Catalogue of Varieties of Agricultural Plant Species and which have less than a 0.2% concentration of THC. The rules specify that industrial hemp may be grown, among other things, for food and beverage production as well as for extracting substances for cosmetic purposes. However, beyond that, there are no detailed rules that would regulate the conditions under which products containing CBD may be sold to consumers.

Because of these partial exemptions, products made from hemp, including CBD products, had been available on the market. This has recently changed, at least with regard to certain CBD products. A

new entry in the EU’s Novel Food Catalogue states that extracts of *Cannabis sativa L.* and any derived products containing cannabinoids are to be considered “novel foods,” because they were not used for human consumption to a significant degree within the EU before May 15, 1997. “Novel foods” are subject to a safety assessment before they can be placed on the market in the EU as either food or a food ingredient.



Such an assessment is all the more important given that extracts from *Cannabis sativa L.* may contain up to 1000 times the CBD concentration of that naturally present in industrial hemp and such extracts may be acquired by way of a process that has not yet been confirmed to be safe.

Following these developments and owing to the lack of proper safety assessments, the Slovenian authorities appear to have increased their interventions, demanding that online and physical shops remove certain CBD products from the market.

The situation is different when it comes to cosmetic products containing CBD. Regulation (EC) No. 1223/2009 prohibits the use in cosmetic products of natural and synthetic narcotics, *i.e.*, all substances listed in Tables I and II of the Single Convention of Narcotic Drugs (1961). Table I lists cannabis, cannabis resin, and extracts and tinctures of cannabis, meaning that these ingredients are prohibited from use in cosmetic products. According to the Slovenian Ministry of Health, because CBD itself is not listed in the Convention, synthetic CBD and CBD that is not obtained from those parts of the plant listed in Table I may still be used in cosmetic products.

The market for CBD food, beverages, cosmetic, and other products is not clearly regulated in Slovenia, and thus different interpretations and/or practices have developed over time, causing confusion among consumers as well as businesses that are already in this market or are trying to enter with new products. In order to avoid the ambiguity and uncertainty, Slovenia should adopt additional legislation to make the whole area clearer and, most importantly, safer for consumers. After products have reached the market and become freely available to consumers, later interventions by the authorities become harder to enforce. ■

CROATIA: ADVERTISING MEDICAL DEVICES IN CROATIA – BARELY REGULATED, BUT HEAVILY MONITORED

By Marija Musec, Partner, CMS Zagreb



Advertising of medical devices is a significant market activity in the regulated pharma industry. Companies are always in search of new tactics and business strategies to remain competitive in the market and to attract new customers, in conditions of fierce market competition.

Medical devices carry certain risks, including health risks, hence everything connected to them, including their advertising, is heavily monitored by Croatia's Ministry of Health and the national regulatory authority, HALMED.

Croatia has a brief, general set of national rules on the matter. In the absence of more extensive guidance, advertisers are thus challenged with a question: what rules to observe in order to stay compliant? As there is no obvious answer, advertisers often choose a conservative approach and advertise medical devices under the rules applicable to medicinal products. But is this absolutely necessary?

The answer is no: Medicinal products (medicines) are subject to a heavy set of rigid rules on advertising, and advertisers of medical devices need not strictly follow them. Their relative freedom is limited, of course. EU-wide rules require that medical devices can be advertised only if marked as *Conformite Europeenne*. Even if a device is CE-marked, any promotion must be limited to the specific purpose for which the mark has been granted. Promotion of off-label uses of medical devices is prohibited.

There is also a strict prohibition against misleading advertising and advertising that is mainly or exclusively addressed to children. Advertisers should carefully examine their advertising claims as these are always under the scrutiny of the regulatory authority. Advertising claims must be based on scientific evidence and avoid un-objective, discretionary statements. Advertising must not use inappropriate, disturbing, or misleading statements about recovery options or inappropriate pictorial representations. Advertisers must not give the impression that a medical device guarantees success in treatment of a disease and that the health of a patient can be improved solely by the use of a device.

These basic restrictions are EU-wide, and by now familiar to advertisers. Country-specific rules, though, may give a headache. In Croatia, all information related to a medical device must be in Croatian. Croa-

tia provides a limited derogation from the national language requirement for medical devices that are intended for professional use only. Other marks (that serve promotion purposes) may be affixed, but these must not reduce the visibility and legibility of the CE marking.

In addition, two considerations deserve special attention: direct-to-consumer advertising and promotional actions, including interactions with key decision-makers and health-care officers (HCOs), such as hospital managers, acquisition managers, heads of departments, *etc.*

Croatia has not made direct-to-consumer advertising subject to a specific regulatory regime. Medical devices, unless professional-use only, can be advertised towards the general public under the rules applicable to health care professionals (HCPs). Professional-use only medical devices can be advertised only towards HCPs.

Interactions with decision-makers are increasingly used as a form of promotion, but many forget that these interactions are heavily restricted, especially if the HCOs are hospital officials and if the interaction occurs during a running public tender. Interactions having promotional goals must be kept separate from any other interaction. If there is a mixture of promotional interactions and other interactions, or if interactions are promotional only, then the interaction with a HCP or a HCO must not exceed 15 minutes / once a month. Interactions must not involve the giving of a gift or an item of value in excess of HRK 70 (approximately EUR 8).

Discussions about a tender must be kept separate from promotional activities. You are permitted to ask information about availability of funds, as long as such information is not requested specifically for a certain product. Asking to see or seeing/checking a necessity report or tender documentation before it is officially published is prohibited. Any involvement in preparing the necessity report or the tender documentation or placing the order to a wholesaler must be made only through official channels using a procedure of consultations with market participants.

Use of social media, and information technology in general, triggers additional concerns. As much as social media easily unfold vast promotional opportunities, it is a challenge to navigate through the legal rules on on-line advertising. It is a field where the rules on consumer protection, product liability, data protection, anticorruption, health and safety, *etc.*, interact with the specific pharma rules on medical devices in a complex and often confusing manner.

Advertising of medicinal products, although barely explicitly regulated, should be carefully thought-through. ■

LATVIA: A SOLUTION TO INSUFFICIENCIES IN SUPPLY OF MEDICINES IN LATVIA

By Indrikis Liepa, Partner, and Janis Sarans, Attorney, Cobalt



In accordance with statistical data from 2018 and 2019, Latvia's State Agency of Medicines concluded that there is a high risk of unavailability of state-reimbursed medicines in the Latvian

pharmaceutical market, mainly as a consequence of the behavior of the wholesalers. The same conclusion was reached by the Competition Council of the Republic of Latvia which, in late 2018 and 2019, published two reports on the availability of medicines. Accordingly, it was concluded that the existing regulatory framework was unable to provide an effective market protection mechanism to reduce the risk that patients in Latvia might not have access to state-reimbursed medicines, because after these medicines are made available in Latvia by producers or importers, they are exported to third countries or other EU member states by other market participants.

On March 17, 2020, Latvia's Cabinet of Ministers adopted Regulation No.416 "Procedures for the distribution and quality control of medicinal products" (the "Regulation"), comprehensively amending the existing regulatory framework to protect Latvian patients. The Regulation is expected to solve the insufficiencies in the supply of medicines in Latvia.

First, the amendments to the Regulation implement a procedure for controlling and even banning the export of state-reimbursed medicines for which the National Health Service and the producer have concluded an agreement on financial participation. Thus, the National Health Service will be able to exercise control over the amount of medicines that may be exported under any agreements involving it and a producer and, under strictly defined conditions, even ban their export altogether. Imposition of an export ban will only be available where the risk of a potential deficit is demonstrated either by referring to existing interruption of the supply, which has been properly communicated to the National Health Service, or the fact that insufficient availability of the medicines in question has been identified during the previous three-month period. As a result, it is expected that the primary goal of the wholesale activity, which ought to be the local supply of the state-reimbursed medicines, especially within the context of public service obligations, will be ensured.

Second, the amendments to the Regulation establish a system for ex-

changing information between wholesalers and the State Agency of Medicines (SAM) about the inventory of medicines held by each wholesaler. It imposes a duty on each wholesaler to inform SAM of their inventories on each business day, using an electronic data transfer system. As this information is already available to most wholesalers, only technical modifications were necessary to provide SAM with access as well. In addition, individual pharmacies will also be able to access the system to verify availability of medicines in the inventory of any specific wholesaler.



Third, the amendments to the Regulation establish a more transparent mechanism for ordering both state-reimbursed and non-reimbursed medicines by pharmacies, when their own inventory does not have the necessary amounts. Previously, many wholesalers failed to live up to their public service obligation to provide medicines to requesting pharmacies within a 24-hour timeframe. The new regulatory framework will help to monitor wholesaler compliance with supply obligations and to reduce the risk that wholesalers may prefer to supply their own integrated pharmacies and not dispense the medicines to the pharmacy where the end patient requests it.

Some of the minor amendments to the Regulation involve, inter alia, requirements for complying with good distribution practices for medicinal products in customs warehouses and temporary storage facilities, requirements for the distribution of non-registered medicines, and conditions for provisions of medicines as gifts to medical treatment institutions.

It is yet to be seen whether the new regulatory framework can actually provide a solution to the growing problem of insufficiency of medicines locally. Nevertheless, it is worth noting that the creation of a transparent and functional export and inventory control system is the way forward, in order to balance the interests of all the parties concerned and not to usurp the interests of patients that ought to be the true beneficiaries of the mechanism for state-reimbursed medicines. ■

SLOVAKIA: FIRST MEDICAL VENDING MACHINES IN SLOVAKIA

By Natalia Tunegova, Leader of Pharma and Life Sciences, Peterka & Partners Slovakia



A well-known chain of pharmacies launched a pilot project to run medical vending machines in Slovakia last year. Although Slovakia has not had such machines in the past, they are not uncommon abroad.

According to the creators of the idea, the machines are designed to improve comfort in the area of patient care. The vending machines,

which operate nonstop, offer typical over-the-counter products for digestive problems, colds, eye preparations, food and nutritional supplements, vitamins, certain medical devices and medical supplies for first aid, disinfection, condoms and products for women, and so on. They do not offer medicines.

Slovak Chamber of Pharmacists Skeptical

Some are praising the innovation due to 24/7 product availability. However, the Slovak Chamber of Pharmacists has taken a stand against medical vending machines, which it claims are hazardous for patients. The Chamber points out that even with food supplements there are contraindications and a risk of negative interactions with various medicines.

Pharmaceutical care is based on professional expertise and advice about the appropriate medical assortment for a particular patient. Some pharmacists therefore point to the lack of expert advice to accompany vending machines, which are unable to do patient identity checks and do not limit the sale of nutritional supplements. Pursuant to the Slovak Act on Medicines, a pharmacy shall ensure the dispensing of medicines and medical devices by professionally-qualified persons. Pharmacies therefore also serve as consulting centers for patients.

Some pharmacists also fear that the machines will lead to a gradual reduction in the regulation of over-the-counter medicines. According to the Slovak Chamber of Pharmacists, any procedures to move medicines towards retail sales are undesirable.

In response, the chain of pharmacies introducing the vending machines has explained that the machines offer products designed to solve the most common minor problems and complications which do not necessarily require consultation with pharmacists.

Vending Machines Will Not Replace Pharmacies (Yet)

Medicines are strictly regulated in Slovakia. Patients can obtain pre-

scription medicines only from a brick-and-mortar pharmacy, although over-the-counter medicines and many kinds of medical devices can be offered online. A pharmacy e-shop can be provided exclusively by the holder of a license to provide pharmaceutical care in a public - pharmacy or in a medical device store (*i.e.* a physical pharmacy or a physical medical device store).

Therefore, patients will not find any medicines in medical vending machines – not even painkillers, fever medications, or regulated medical devices.

Those strict dispensing rules, however, do not apply to vitamins, dietetic foods, medical supplies, hygiene and cosmetic products, and so on. Although such products are offered in pharmacies, they can also be freely sold in ordinary shops, in principle, in any form. Dispensing them in vending machines is not specifically regulated and thus not prohibited.

Medical vending machines as such are not legally regulated either. Nevertheless, given the wording of the Act on Medicines and the regulation of medicines described above, it can be concluded that the sale of any medicines and regulated medical devices in such an automated manner is still excluded.

Despite the concerns of some pharmacists, medical vending machines are likely to become popular.

Recent legislative changes in the area of emergency pharmacy services in Slovakia have resulted in many pharmacies shortening their evening opening hours. Especially in smaller towns, emergency pharmacies were underused. In addition, health insurance companies and the government do not provide any financial contributions to emergency pharmaceutical services. The pharmacies were therefore unprofitable during late hours. Since the January 1, 2020 entry into force of an amendment to the Act on Medicines, it is up to the Slovak Chamber of Pharmacists, the self-governing territorial region, and pharmacies themselves, to determine at what time and at what location an emergency pharmacy will be open, and only if no agreement is reached will emergency pharmaceutical services be ordered by law.

Whether other pharmacy chains will be interested in operating medical vending machines in the future and whether legislative measures regulating medical vending machines will be adopted are not yet known. For the time being, however, it can be said that views both for and against medical vending machines are based on the idea of protecting health and helping patients. So, let's let the future of the automated dispensing of medical products be a surprise. ■

CZECH REPUBLIC: FIRST STEPS ON THE JOURNEY TO EHEALTH

By Monika Maskova, Partner, and Michal Rehorek, Associate, PRK Partners Prague



Similar to other areas of human endeavour, healthcare is bound to undergo the inevitable process of digital transformation. In the last two years the Czech Republic has taken its first steps towards digitizing its healthcare system by introducing mandatory electronic prescriptions and electronic sick notes and is about to introduce an electronic

medications record. Unfortunately, there has been little progress on other fronts. Moreover, the Ministry of Health has yet to complete its draft law setting common standards and rules for eHealth, and it is unlikely to meet its current goal of having the law go into effect in 2021.

e-Prescriptions

Although legally anchored much earlier, electronic “e-Prescriptions” (in Czech “*eRecept*”), were not widely employed until January 1, 2018, when they became mandatory. Despite initial objections and resistance, mainly by independent general practitioners, today several million e-Prescriptions are issued every month.

Each e-Prescription carries information about drugs prescribed to the patient and ensures an electronic exchange of this information between the doctor, patient, pharmacy, and healthcare insurer. When a doctor issues an e-Prescription, it is stored in the central repository of electronic prescriptions, and accessible to the relevant pharmacy dispensing the drug. The patient is free to choose how he/she will receive the e-Prescription identifier. Paper note identifiers are still the most common, but electronic means such as SMSs, emails, and smartphone apps are becoming increasingly popular.

The central repository allows for the creation of patient-specific medication records, *i.e.*, a registry of all e-Prescriptions issued and drugs dispensed to the patient. Effective from June 2020, any doctor treating a patient will be able to view the patient’s medication record, as will any pharmacist dispensing a drug to the patient. This will prevent duplicate prescriptions and unwanted drug interactions. Patient consent to authorized access to their medication record is presumed but can be revoked (*i.e.*, an opt-out system).

e-Sick Notes

On January 1, 2020, an electronic system went into use for processing decisions on temporary incapacity to work. The system for these

“e-Sick Notes” (in Czech “*eNeschopenka*”)

was inspired by the e-Prescriptions system. It ensures an exchange of information among doctors, employers and the relevant social security office. Doctors no longer issue sick notes in hard copy. Employees inform their employer that they are sick via phone or email without the need for paper forms. Employers verify the e-Sick Note via the Social Security Administration’s web portal. There, they can also opt to receive sickness notifications for their employees via an electronic databox and notification alerts to their email.



Once the sick employee has surpassed 14 days of sickness he/she is entitled to sickness insurance benefits. Under the new system employees no longer have to inform their social security office; it is done automatically. The benefit is deposited directly in the employee’s bank account, which is provided by the employer.

e-Health Act

Carrying out systematic digitization of the national healthcare system would not be possible without an appropriate legal framework. The Ministry of Health is currently drafting a law that will set out a comprehensive systematic solution. The Act on Electronic Healthcare (the “e-Health Act”) is expected to set common technical standards for digitization and sharing of health records among healthcare providers and patients. Considering the sensitive nature of this data and the potential related risks, it is envisaged that health records will not be centrally collected; as a general rule, they should be indexed instead. Only an “emergency data record” containing basic information about the patient relevant for emergency services (*e.g.*, allergies), will be kept in a central register. The e-Health Act should also establish registers of patients, healthcare providers, and healthcare workers and set out the rules for access to this information.

While the e-Health Act was expected to go into effect this year, there have been significant delays. Currently, the Ministry of Health intends to have the draft law prepared by mid-2020 and is hoping to put the law in effect in 2021. At this point, these goals seem unrealistic, considering the paucity of information available about the draft law and the fact that it will likely face significant debate with all relevant stakeholders (state authorities, healthcare providers, payers, patients, *etc.*), not just on the technical standards and practical issues of implementation, but also on personal data protection aspects of healthcare digitization. ■

HUNGARY: CYBER INCIDENTS IN THE HEALTHCARE SECTOR ON THE INCREASE

By Akos Nagy, Partner, Eszter Takacsi-Nagy, Special Counsel, Zsombor Orban, Managing Associate, and Bianka Pandur, Junior Associate, Kinstellar



In recent years, and for multiple reasons, cyber-attacks against healthcare providers have increased significantly on a global level. First, IT platforms and devices used by healthcare providers have a technical diversity, while sources devoted to an integrated cybersecurity system for these IT platforms are often limited, making the IT systems vulnerable and ideal

targets of potential cyber-attacks. Second, health data qualifies as “highly sensitive data,” which is considered very valuable on the black market compared to other types of personal data.

Cyber-attacks against healthcare providers can cause significant damage, not only to the individuals and institutions concerned, but also on a social level, particularly because cyber-attacks against healthcare institutions can often result in a partial or complete disruption of patient care. Furthermore, cyber incidents can also cause substantial reputational damage to the institutions involved.

Such problems have been observed in numerous cyber-attacks, such as the WannaCry ransomware attack against the UK’s National Health System in 2017, which affected numerous hospitals and other NHS bodies. Nor has Hungary been immune from cyber incidents affecting the healthcare sector. According to the National Cyber Defense Institute in Hungary (NKI), the number of cyberattacks against Hungarian healthcare institutions and hospitals increased significantly in 2019. The NKI points to phishing and ransomware attacks as the main threats in this sector.

In the European Union, healthcare providers, such as hospitals and private clinics, are obliged to comply with both: (i) the local cybersecurity-related legal framework implementing the NIS Directive (Directive (EU) 2016/1148 concerning measures for a high common level of security of network and information systems across the Union); and (ii) the GDPR (Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC).

In addition, in Hungary, under the country’s cybersecurity regime, certain healthcare providers must, among other requirements: (i) maintain an adequate level of protection of their electronic information systems; (ii) establish an operator security plan; (iii) appoint a liaison officer; and (iv) report cyber incidents to the NKI.

Under Hungarian law, cyber incidents include any loss of or damage to the confidentiality, integrity, authenticity, functionality, or availability of information recorded and stored in an electronic information system. In the event of a cyber incident, the affected healthcare providers are obliged to notify the NKI without delay. Following notification, the NKI contacts and cooperates with the relevant organizations, service providers, and authorities to address the cyber incident. Failure to comply with specific cybersecurity-related obligations could lead to a fine of up to HUF 5 million (approximately USD 16,700).



In addition to these cyber security requirements, the GDPR requires healthcare providers to notify the National Authority for Data Protection and Freedom of Information (the NAIH) of any privacy incident without undue delay, if possible within 72 hours after identifying the privacy incident, in addition to other related obligations.

Should the healthcare provider fail to comply with the requirements set out by the GDPR in relation to the management of data breaches, *e.g.*, by failing to notify the NAIH of a cyber incident concerning personal data, the NAIH can impose an administrative fine of up to 4% of the annual global turnover of the company group or EUR 20 million, whichever is higher. In addition, the competent authority may prohibit the breaching healthcare provider from continuing the non-compliant data processing activity, which could pose a significant risk to business continuity if the healthcare provider heavily relies on processing personal data as part of its business model.

In addition, a number of criminal offenses have been introduced into Act C of 2012 of the Criminal Code (including information systems fraud, information system or data violation, circumvention of technical information system protection, misuse of personal data, *etc.*) in order to protect personal data and sensitive health-related data by threatening perpetrators with criminal prosecution.

In practice, cyber incidents raise numerous complex issues involving cybersecurity, data protection, and criminal law. We are of the view that although cyber-attacks cannot be fully prevented, preparation for such cyber-attacks is critical, especially in light of the NHS’ Lessons learned review of the WannaCry Ransomware Cyber Attack (February 2018), according to which “[...] *in the judgement of most industry experts, it is not a question of ‘if’ but ‘when’ the next cyber-attack strikes the health and social care system.*” ■

POLAND: CHALLENGES FOR LIFE SCIENCES LAWYERS IN THE TIME OF CORONAVIRUS

By Pawel Hincz, Partner, and Juliusz Krzyzanowski, Senior Associate, Baker McKenzie Poland



All European countries are now facing the SARS-CoV-2 pandemic and each state is undertaking different measures to limit the spread of the virus. Recently, the Polish government has extended the so-called “export ban list” – a list of, in particular, medicinal products and medical devices the export or sale of which abroad may be subject to the objection of the Chief Pharmaceutical

Inspector. This list grew by over a thousand items in the past month and has changed from a list of products subject to parallel export due to price differences to a list of products that we want to keep in Poland. Also, the President of the Office for Registration has asked pharmaceutical companies to consider launching clinical trials in these unique circumstances.

However, all of that are industry-specific regulations which may not be applicable to the majority of pharmaceutical companies. What all of us (including probably each healthcare company) will surely face are changes to existing agreements, for instance for delays or non-performance of deliveries, cancellation of bookings, etc. This is why, in these extremely specific, dynamic, and unpredictable circumstances, the civil law basics of *force majeure* and *rebus sic stantibus* clauses, which were very rarely used in the past, may become especially important now.

Force majeure clauses define circumstances beyond the parties’ control that can render contractual performance too difficult or even impossible. Where an event (or series of events) triggers a *force majeure* clause, the party invoking the clause may suspend, defer, or be released from its duties to perform without liability. There is no explicit provision in Polish law that provides that *force majeure* is a basis for relief which excludes liability for breach of contract. The parties to a contract usually define it by specifying the forms of *force majeure*, such as disasters, acts of war, fires, floods, etc.

Absence of a specific *force majeure* clause in a contract means relying on the general civil law concept of *force majeure*. Under Polish law, liability is guilt-based, and *force majeure* may be relied upon in order to exclude contractual liability in the absence of specific provisions in the contract. It is generally accepted that *force majeure* is an event that is: (a) external, (b) impossible (or almost impossible) to predict or unavoidable, and/or (c) impossible to prevent with regard to the effects. Those premises are sometimes required to be jointly fulfilled, but it is certain that the external character and the impossibility of prevention are crucial conditions. According to some recent judgements

(including those of the Supreme Court), epidemics and acts of the sanitary authorities as a result of epidemics (such as quarantine) may be seen as *force majeure*. State acts ordering the closure of the borders, introducing import or export restrictions, cancelling flights, or closing the premises of a company could also be considered as *force majeure*, even if they are introduced as preventive measures. These sorts of acts meet the

general description of *force majeure*, which is an extraordinary, external incident that is impossible to prevent and which the company has no influence on and cannot oppose. Note that there has to be a link between the extraordinary event and failure to perform the contract or improper performance thereof. Hence, not all such events may qualify as *force majeure*, especially if they happen abroad. For example, considering the number of confirmed coronavirus cases in Poland so far (27 cases by March 11, 2020), there might be no link between the epidemic abroad and a breach of contract in Poland at this point. Given the dynamics of the situation, however, this could change at any moment.

The alternative option is the *rebus sic stantibus* principle - so called extraordinary circumstances. Based on this principle, the court may change a contract or even terminate it in the event that the performance meets (i) excessive difficulties or (ii) one of the parties is threatened with serious loss (iii) because of an extraordinary change in circumstances (iv) which the parties did not expect when entering into the agreement. As should be apparent, the requirements are much less stringent than for *force majeure*. Such cases could encompass, for example, a situation in which flights were cancelled resulting in the need to travel to a distant place by train or boat, which is expensive and time consuming when the project has tight deadlines and a tight budget. Another example would be closed borders for a longer period or long quarantine that results (for instance) in serious difficulties visiting a location in order to perform the contract or could endanger the supplier’s employees who are visiting such places in the course of performing the contract. Also, such change cannot be mitigated/easily removed. Note that to use this possibility, the party would have to request that the court change or terminate the contract.

While it is too early to tell how exactly these concepts will be applied to contracts in the life sciences and health care industries, at the moment there has been no indication that different rules will apply and there is reason to predict that they will be applied similarly. ■



BULGARIA: THE EFFECT OF THE NEW EU MEDICAL DEVICE REGULATION ON BULGARIAN LEGISLATION

By Elena Todorova, Head of Life Sciences, Schoenherr Sofia



In 2010, France's Agence Nationale de Sécurité du Médicament published the results of tests of breast implants produced by the French company PIP and banned their use, due to an increasing number of reports of incidents related to impaired implant integrity and subsequent health-related complications.

In December 2018, an Irish manufacturer of breast implants and tissue expanders announced that it had suspended the sales of breast implants and had withdrawn its products from the market in the EU Member States. This decision was a result of an order for compulsory withdrawal made again by France's regulatory authority.

Following the scandal over PIP products, MEPs in the European Parliament unanimously adopted a resolution calling on the European Commission to review existing legislation on medical devices. In 2015, the Permanent Representatives Committee finalized the Council of the European Union's position on two draft regulations aiming at updating EU rules on medical devices and *in vitro* diagnostic medical devices. The European Parliament adopted the two regulations on April 5, 2017. Regulation 2017/745 on medical devices will take effect on May 16, 2020, and Regulation 2017/746 on medical devices for *in vitro* diagnostics will take effect on May 26, 2022.

There are more than 500,000 types of medical devices – including those for *in vitro* diagnostics – on the EU market, including x-ray machines, pacemakers, breast implants, artificial joints, medical spikes and automatic seams, sutures, contact lenses, etc. *In vitro* diagnostic medical devices are used in sample testing and include blood tests for HIV, pregnancy tests, and blood glucose monitoring systems for diabetics.

In Bulgaria, the medical device market is estimated unofficially at about 400 million Bulgarian levs (approximately EUR 200 million) a year, and there are over 1000 registered dealers in the country. The National Health Insurance Fund's budget for medical devices in 2018 was 98 million Bulgarian levs and another 46 million Bulgarian levs were provided for in the budget of the Social Ministry covering the need of medical devices such as hearing aids, wheelchairs, etc.

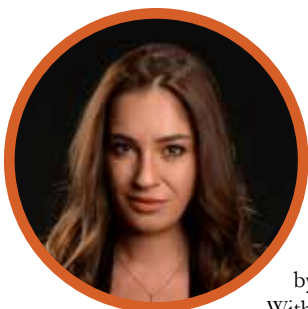
Until 2016, the Bulgarian Medical Devices Act provided that the

State Agency for Metrology and Technical Supervision (SAMTS) is the competent authority for the assessment, designation, notification, and monitoring of medical devices released on the Bulgarian market. However, as of 2016, control over the medical devices has been exercised by the Bulgarian Drug Agency (BDA). Currently, the BDA is responsible for, *inter alia*: (i) Registering persons who place medical devices on the Bulgarian market; (ii) Issuing permits for conducting clinical trials with medical devices; (iii) Issuing authorizations for the conformity assessment of medical devices, including the evaluation of clinical data in accordance with Implementing Regulation (EU) No 920/2013; (iv) Providing licenses for wholesaling of medical devices; (v) Supervising products placed on the market/in operation on the territory of Bulgaria; (vi) Maintaining a system for recording, analyzing, and summarizing incidents and potential incidents with medical devices; (vii) Maintaining an electronic database of publicly paid medical devices; (viii) Provide information in a standardized format in the EUDAMED European Database; and (ix) Validating information submitted by applicants when registering manufacturers and medical devices in the electronic list of devices that can be paid for with public funds.

Once implemented, Regulation 2017/745 on medical devices will change the law in Bulgaria concerning medical devices, as well as the functions of the BDA. The Ministry of Health is working on drafting an amendment to the Bulgarian Medical Devices Act and has set up an intradepartmental working group on the project. According to official information from the Ministry of Health, the draft amendment to the Medical Devices Act will be published for public consultation before May 26, 2020 – the date for entry into force of Regulation 2017/745. This means that in practice the adaptation of national legislation to the directly-applicable Regulation 2017/745 will likely be delayed. For a certain period of time after May 26, 2020, there might be administrative ambiguity regarding the competencies of the BDA with regard to the registration and placing on the market of medical devices. Therefore, our advice to manufacturers is to keep the above information in mind when planning for the Bulgarian market. ■

TURKEY: AUTHORIZATION PROCESS FOR MEDICINES IN TURKEY

By Nazli Sener, Partner, and Kaya Kayaoglu, Senior Attorney, Sezer & Utkaner



Recently, the spread of COVID-19 has been classified as a “pandemic” by the World Health Organization. With the global contagion of the epidemic, rumors have appeared regarding the

development of new medicines and vaccines in Turkey, as everywhere else, and this situation has caused much misleading news and information to be published by the media and on the Internet.

Pharmaceutical Industry In Turkey

The pharmaceutical industry in Turkey continues to grow from year to year, especially in terms of domestic R&D investment. According to 2019 reports, the sector reached a sales volume of approximately TRY 31 billion and more than 2 billion boxes of pharmaceutical goods in 2018. These numbers make Turkey the 17th largest market in the global pharmaceutical industry.

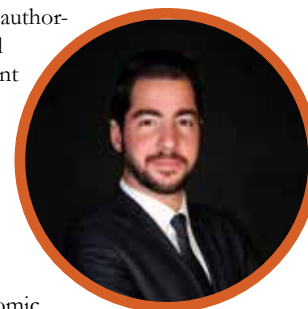
Authorization of medicines in Turkey is made by the country’s Medicines and Medical Devices Institution – a subsidiary of Turkey’s Ministry of Health. The Institution is responsible for determining the rules and standards regarding the licensing, production, storage, sale, import, export, placing on the market, distribution, putting into service, collection, and use of products falling within its purview, as well as authorizing and inspecting public and private legal entities and real persons to carry out these activities and imposing sanctions on them when necessary. The Institution authorizes medicines in accordance with the Human Medicinal Products Authorization Regulation, dated 19.01.2005.

Authorization Process

The authorization process begins with an application to the Institution with relevant documents and reports. All documents and reports submitted at this stage are kept confidential by the Institution. The application will be reviewed and a response sent to the applicant within 30 days after the application is received. If there are any missing documents, applicants have an additional 30 days to submit them.

After the application is complete, the Institution will begin its evaluation, which must be finalized within 210 days (unless there is a state of emergency or missing documents or information have been re-

quested from the applicant). When authorizing a medicine, the Institution will evaluate whether it is proven efficient and reliable under the prescribed conditions of use, with appropriate technical and pharmaceutical properties. However, where public health requires, the Institution may abandon the application of some of the criteria mentioned above by taking into account pharmacoeconomic data.



The Institution will issue its authorization for medicines determined to be in accordance with the criteria stipulated in the regulation, will inform the applicant directly, and will announce the authorization in the Official Gazette.

Even after the authorization process, of course, successful applicants remain responsible to the Ministry in accordance with the conditions set out in Article 24 of the Regulation to produce the medicines in accordance with specifications related to safe use, product availability in the market, and, most importantly, public safety.

This responsibility is supervised and enforced in a strict manner in Turkey, as it is around the world. In Turkey, people and institutions who were found to have illegally distributed and sold drugs were fined a total of TRY 6.65 million in administrative penalties in 2019.

Conclusion

As reflected by the extensive authorization process, medicines are supervised in a strict manner by the Turkish Medicines and Medical Devices Institution in order to protect public health and ensure the highest level of compliance with international agreements and regulations. Even obtaining authorization after the development stage of the medicine takes nearly a year in Turkey. Even if this period can be shortened in emergency situations – such as an epidemic – the Institution continues its supervision in a strict manner.

In this context, much of the news regarding the Coronavirus pandemic published on the Internet or broadcast by the media is misleading, because even if a drug is developed in a short time, it takes a long time to complete the clinical trial, R&D, and licensing processes. For this reason, it is predicted by the World Health Organization that effective drugs for the Coronavirus outbreaks which are affecting the whole world today can be released in the spring of 2021 at the earliest. ■

NORTH MACEDONIA: MEDICAL CANNABIS IN NORTH MACEDONIA

By Goran Radosevic, Partner, and Veton Qoku, Attorney at Law in cooperation with Karanovic & Partners

Introduction



Cultivation of medical cannabis has become a lucrative business in recent years. Countries around the world have started legalizing this controversial crop, approving medical cannabis in particular in some capacity. In 2018, Canada made history by passing the Cannabis Act, thus becoming the first industrialized

nation in the world (and second overall, after Uruguay) to pass legislation allowing adults to purchase marijuana. In addition, over 33 states in the USA have made the use of cannabis legal for medical purposes.

Not only does this legislation ease the lives of patients suffering from multiple sclerosis, epilepsy, and even cancer, it also represents a boon to the economy.

A study conducted in the US state of Colorado has found that that state's taxed and regulated cannabis industry contributed more than USD 58 million to the local economy, with spikes in housing values and predictions of increasing employment.

It is therefore not surprising that there is an increase in investments in the business of cultivation and production of cannabis in countries where it is allowed.

Over 30 countries around the world have legalized the use of medical cannabis, with Europe being the most progressive continent. On the Balkan peninsula, this crop has been legalized for medical use only in Croatia and North Macedonia; in Slovenia, cannabis-based drugs are allowed for medicinal use, but not cannabis itself.

Legal Framework

In 2016, the Republic of North Macedonia made changes to its Law on the Control of Narcotic Drugs and Psychotropic Substances, defining the terms "hemp," "hemp seed oil," and "cannabis/hemp oil" for the first time as well as regulating the procedure for cultivation and production of hemp by adding institutional control and providing criminal provisions and sanctions for violation of the law.

Cultivation of cannabis for medicinal or scientific purposes is allowed only to legal entities which have obtained a license from the Ministry of Health upon prior consent from the Government of the Republic of North Macedonia.

Hemp cultivated in North Macedonia can be processed in the country only from a legal entity that has a license for the production of cannabis extracts.

New Law in Parliamentary Procedure

A new Law on the Control of Narcotic Drugs and Psychotropic Substances was in parliamentary procedure before the parliamentary elections were announced, and it is expected to pass after the parliamentary elections in April of this year. The purpose of this draft law is to ensure better control of opiates and psychotropic substances.



The most important innovation in the draft law is that it allows the export of the dry flower obtained by cultivating cannabis for medical purposes. This allows cannabis cultivating companies to place their manufactured quantities of a dry herbal product on the European markets and beyond while complying with international conventions and European legislation on the matter.

Market Overview in North Macedonia

So far, over 30 companies have obtained licenses to cultivate cannabis for medical purposes from the Government of North Macedonia, and this number is expected to rise in the months and years to come. There is major interest in investing in this business due to the rapidly increasing prices of dry cannabis flower and cannabis oil on the world market. The Prime Minister of North Macedonia has called upon investors who have the resources to invest in this business because of its high profitability. This will also open new jobs and contribute to the increased growth of the local economy.

Currently, there is no registry of the cultivators and manufacturers of cannabis and hemp. The Ministry of Health is responsible for issuing licenses and for other matters related to cannabis and hemp for medicinal purposes.

In conclusion, the medical cannabis market in North Macedonia, albeit new, has proven to be a fertile ground for companies looking to invest in the sector. Despite being strictly regulated, the market is expected to grow in coming years, especially since the Government is encouraging investors to make North Macedonia the new home for their cannabis cultivation and production business. ■

The information in this document does not constitute legal advice on any particular matter and is provided for general informational purposes only.

BOSNIA & HERZEGOVINA: UNLAWFUL DELISTING OF FOREIGN MEDICINES MANUFACTURERS

By Emina Saracevic, Partner, Saracevic & Gazibegovic Lawyers



A scandal shaking the pharmaceutical market of Bosnia and Herzegovina for several years now related to the unlawful delisting of foreign medicines manufacturers has moved to a silent but almost thriller-tense phase as the country awaits the Court of Bosnia and Herzegovina's final decision.

The current countdown was preceded by a unique crisis in 2018, when two subsidiaries of foreign pharma giants that had been delisted decided to fight back, even as a number of smaller players liquidated their companies and withdrew from the market.

The background of the story is heavily related to the organization of the BiH health care system, which reflects the country's administrative division and is governed by the Federation of Bosnia and Herzegovina's (FBH) and Republic of Srpska's (RS) Ministries of Health. These ministries implement their representative entity's Laws on Medicines, with an additional level of complexity arising from the existence of yet another administrative division – the ten Cantons in FBH, each with its own Ministry of Health. These ministries create the *lists of medicines financed by public funds* (i.e., health insurance funds). These health insurance funds implement mandatory health insurance based on the principles of solidarity, mutuality, and equality. Use of the benefits of the compulsory health insurance is conditioned upon payment of the contribution for health insurance. Funds collected from the contributions are then used to finance the lists of medicines available to citizens on the basis of a MD prescription.

The FBH List of Medicines, which includes the pharmaceutical names of the medicines rather than their trade names or their manufacturers, serves as a basis for the Cantonal lists. Those Cantonal lists, however, are created from applications made by the manufacturers which produce the pharmaceuticals required by the FBH list. Hence, the Cantonal Lists consist of specific trade names of medicines and their manufacturers, which is where the plot starts to develop.

The procedure for the adoption of the Cantonal Lists provides that the applicants need to meet the criteria defined by The Rulebook on Closer Criteria for Placement and Elimination of Medicines from the Lists of Medicines, and usually, once medicines are placed on the list, they remain there until the criteria for elimination from the list are

satisfied. *Country of origin* is not listed as a criterion for being admitted to the list – or for being delisted. This, however, did not prevent the Government of Canton Sarajevo, the economic leader and capital of Bosnia and Herzegovina, from delisting most of the foreign manufacturers from the Positive Lists of Medicines in the renewal process that took place in 2016. The exclusion of foreign manufacturers was justified by the Government of Canton Sarajevo by the existence of sufficient applications to the list by domestic manufacturers with the same pharmaceutical products, and the fact that nearly 40 million euros were allocated from the Cantonal Health Insurance Fund to foreign manufacturers in the previous year. The absurdity of this justification is related to the fact that it is contrary to relevant legislation, which states that regardless of how many applicants with the same pharmaceutical product appear, or how much money they earned in the past year, if they meet the prescribed criteria, they must be placed on the list. The rationale of this legislative solution was to provide the citizens funding the list with greater choice, instead of being limited to a specific manufacturer chosen by the Cantonal Government.

The Cantonal Government misinterpreted Article 9 of the Law on Medicines of FBH supporting the domestic pharmaceutical industry, which says that “...it is obligatory to also include domestic pharmaceutical industry medicines..., in addition to medicines of originators as well as foreign pharmaceutical industry medicines.” Unfortunately, it was incorrectly interpreted to create a sort of descending exclusive list, with domestic manufacturers coming first, and with foreign originators (and then, finally, foreign generic manufacturers), turned to only if the domestic manufacturers lacked the specific pharmaceutical product required by the FBH List.

The consequence of this interpretation was the delisting of a great amount of medicines present on the market for decades and used by the very contributors to the funds, many for chronic conditions, who now being denied their traditional therapy.

Several cases were initiated before the Competition Council against the Cantonal Government and the Federal Ministry of Health. Due to contradictory decisions by the Competition Council, the matters were taken to the Court of Bosnia and Herzegovina and are pending. ■

CONTRACT DRAFTING: BUSINESS-BASED PITCHING

By Aaron Muhly



Everyone knows that law firm pitches are terrible, and nobody is happy about it – not the lawyers, not the marketing/BD teams, and definitely not the clients.

Although most lawyers find it uncomfortable to sell their services by simply bragging about their expertise, firm pitches force them to do exactly that. They need to describe their personal greatness, the awesomeness of their transactions, etc. Even worse, as they recognize that their competitors are saying the exact same thing, it's hard to get excited about slapping together yet another unimaginative pitch.

The marketing/BD teams are equally frustrated. Since they have a marketing background, they understand the absurdity of just copying the marketing approaches of competitors as opposed to talking about meaningful differentiators. But, since they are not lawyers, who's going to listen to their opinion?

Last not but least, we have the clients. Imagine that you are a client with an important matter. You send out an RFP to several firms, and each firm sends you almost the exact same information. It's no wonder that clients regularly choose the cheapest offer.

Regardless whether you work at a client or a law firm, you can improve the pitching process by getting all participants to focus on the client's business.

The Missing Ingredient: The Client's Business

If you ask in-house counsel to identify their biggest problem with law firms, you will likely hear that the lawyers simply don't understand their business. For example, in Altman Weil's 2019 Chief Legal Officer Survey, in-house leaders were asked to select the main improvements that they would like to see from outside counsel. Not surprisingly, the most popular choices focused on saving money (e.g., "greater cost reduction"). However, after these money-related responses, the most popular answer was "Greater effort to understand our business."

With this in mind, wouldn't it be a good idea to differentiate your firm from competitors by using your pitch to demonstrate your understanding of potential clients' business? In particular, I recommend that you dedicate just a page of your written pitch or a few slides of your .ppt to address the key business issues that will impact and shape your service to their company.

To identify the key business issues of your client, you need to talk to them. In other words, once you get invited to pitch, pick up that phone and start investigating the relationship between (i) the transaction/dispute, (ii) the client's business goals, and (iii) your firm's services. In particular, you are likely to obtain valuable information by asking the following types of questions: (i) How is this transaction/dispute important to your company's business? (ii) How do you envision the best possible structure/result for this transaction/dispute? (iii) Who are the key stakeholders for this transaction/dispute? What is their position/opinion/interest on/in this matter? (iv) What are your biggest concerns regarding how your external counsel manages this matter? (v) Is there anything special (i.e., not addressed in the RFP) that you or your colleagues would like us to address in our pitch?

Most clients welcome such questions and will happily provide surprisingly detailed answers. With these answers, you can improve your pitch by: (i) communicating your understanding of these fundamental business interests, and (ii) explaining how you would ensure that your firm's services would best address them.

However, clients should not sit around and wait for lawyers to take the initiative. Many lawyers feel uncomfortable with picking up the phone to ask such questions. If you expect your lawyers to pick up the phone, it's not a bad idea to communicate this expectation explicitly.

Similarly, the marketing/BD teams can greatly support their lawyers in this process by (i) compiling useful questions to support clients, (ii) obtaining feedback about the success of questions and sharing these with the lawyers, and (ii) updating firm pitch templates to include a section focused on client business interests. ■

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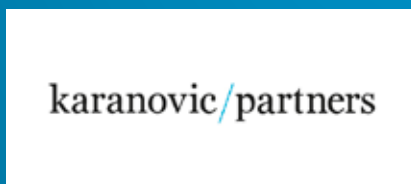
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