



CEE

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LEGAL MATTERS

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



Guest Editorial by Marge Manniko of Lextal Estonia ■ Across The Wire: Deals and Cases ■ On The Move: New Homes and Friends
The Buzz ■ Latvia's Amended Advocacy Law: A Change Affecting all Law Firms ■ Reimagining Industry

Marketing Law Firm Marketing: Planning the Marketing Budget ■ Building Real Estate: An Interview with Katarzyna Sulimierska of Schoenherr

The Balkans Guest Editorial by Vladimir Dasic of BDK Advokati ■ All Roads Lead to the EU: Accession Progress in the Balkans

Introducing: Gecic Law's ESG Practice ■ Market Snapshot: The Balkans ■ Experts Review: Banking/Finance

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EDITORIAL: A NIGHT TO REMEMBER

By Radu Cotarcea

Yes, this issue is a couple of days late. But we have a good reason for it, we promise, one that no one can really hold against us: We were partying!

On December 2, between 6 pm and midnight (ahem, and considerably later for those brave enough to carry on), CEE Legal Matters hosted our (kind of) annual Winter Gala. I say 'kind of annual' because a certain unnamed virus (I've reviewed all too many articles revolving around it in the past months – I choose to avoid naming it in at least my editorial!) prevented us from coming together in 2020.

The Winter Gala, prior to the forced break, was always an event that had no agenda to prepare for, no seminars or lectures to sit through, rather, celebrated the opportunity (and the possibility, however forced) to have the leading lawyers in the region come together and, over a glass of wine (or a few!), exchange war stories related to what's been going on with their firm, their practice, and even themselves personally.

And, oh boy, could you feel *how* much it was needed. I knew I was cabin feverish these past few months, but I never realized just how much I missed catching up with our markets, without buggy internet connections or having to repeat some version of the line "I think you're on mute." And, based on the vibe of the room, that feeling was shared by many.

I think the best proof of this is just how much of a headache it was for many to join us. We've had dozens

of e-mails exchanged with attendees on border crossing rules, on invitation letters, on appeals to declines from embassies – and everyone went through that headache despite lingering thoughts in the back of their head reminding them that a new variant of the unnamed virus was closing down countries left and right. And if all of that was not enough, everyone had to put up with a rather unpleasant on-site rapid test, to be allowed into the venue – luckily, no one had to be turned away!



I am particularly grateful to those who joined us and put up with all of the above because, as many of our readers might know, the Winter Gala tradition originally started as a small group of 8-12 lawyers coming together towards the end of the year and marked our anniversary (eight years – sheesh!). I can imagine no better way to celebrate it each year, with the CEELM team, than toasting with all of you!

As such, from the bottom of my heart and on behalf of the entire CEELM team, I thank all of you who joined us and helped make it an excellent evening – one that, as always, refreshes our energies and bolsters our spirits as we prepare for the new year.

And we hope to see everyone, including those of you who wanted to but couldn't make it, in London on April 5, 2022, for our Deals of the Year Awards Gala – save the date! ■



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

GUEST EDITORIAL: THE BIG CHALLENGE OF 2022

By Marge Manniko, Managing Partner, Lextal Estonia



I have been the managing partner of the pan-Baltic law firm Lextal – with offices in Estonia, Latvia, and Lithuania – for six years. During this time the market has changed considerably.

Law firms are consolidating and are thereby creating bigger firms. According to CEE Legal Matters' CEE by the Numbers issue (December 2021), the period of 2019 to 2021 has marked a general decrease in the number of offices ranked across the region. This is also felt in the market twofold.

Firms are always looking to merge. Clients are looking for a larger

firm. Both are driven by the same core understanding – bigger teams are better.

Another thing to mention (also confirmed by CEE by the Numbers) is that, due to the small size of Estonia, most of our law firms are domestic. There are only a handful of regional firms and only a few truly international ones.

What I have noticed and is also supported by the numbers published by CEE Legal Matters, is that the Estonian market is still too small for the big international law firms (in Estonia the total turnover of law firms in 2020 was EUR 108 million and the estimate for 2021 is about EUR 120 million). Usually, the big names of international repute opt for a simpler strategy in such a small market: work with the best independent law firms in each jurisdiction or smaller region. This has led to a clear increase of regional firms in the Baltic states.

The third interesting development is that the total number of lawyers compared to 2019 has been on a steady decline. The decrease is considerable: Estonia - 152, Austria - 222, the Czech Republic - 74, Bulgaria - 67, Lithuania - 65, Croatia - 39,

Latvia - 13. Why are we losing lawyers from the ranked law firms?

The answer is simple: start-ups and next-generation companies are in many cases a much more appealing option, for both young and old lawyers.

Estonia is very active in the start-up business, fintech, and e-services, being Europe's (and, depending on the methodology and the metrics used, probably the world's) number one in terms of the number of unicorns per capita. So far there are seven unicorns founded by Estonians (skype.com; playtech.com; wise.com; bolt.com; pipedrive.com, zego.com; ID.me) and there is huge pressure from this sector on the lawyers of law firms.

During the last three years, many law firms have 'lost' good people to start-ups, who flatter lawyers with high salaries, option pools, huge benefits programs, and a focus on one big goal to achieve instead of having multiple cases to address simultaneously, as in a law firm. And rightly so! As law firms, we need to step up our game if we are to compete for the top brains.

The fact is, there is a new generation of lawyers in (and coming to) law firms. This is not bad; we just need to take a moment to understand the next generation and be ready to offer them proper conditions if we want to be successful in this changing world.

So be ready to offer the best team, the best facilities, an option pool, personal coaching, soft values, table-tennis, food and drinks at the office, many joint trips and social events, remote work from Bali or Miami or whencesoever, all possible benefits and support – including a psychologist and physiotherapist – and, after all that, you might succeed in keeping and onboarding good next-generation brains.

Hope you are ready to take on the big challenge of 2022! ■

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ACROSS THE WIRE: DEALS AND CASES

Date Covered	Firms Involved	Deal/Litigation	Value	Country
20-Oct	Herbst Kinsky; Schoenherr	Schoenherr advised Swiss investment company Nice & Green on the up to EUR 5.4 million convertible note funding program for Vienna Stock Exchange-listed Marinomed Biotech. Herbst Kinsky advised Marinomed.	EUR 5.4 million	Austria
22-Oct	Hengeler Mueller	Hengeler Mueller is advising Austria's Greiner on obtaining the European Commission's merger control approval in relation to its conditional voluntary public takeover offer to acquire a majority of Recticel shares, which was officially announced on October 06, 2021.	N/A	Austria
26-Oct	Brandl Talos	Brandl Talos advised TriLite Technologies on its EUR 8 million Series A financing round.	EUR 8 million	Austria
8-Nov	Cerha Hempel; Grama Schwaighofer Vondrak	Cerha Hempel advised Abrdn on the acquisition of a residential project in Vienna from the Innsbruck-based project consortium Moser Immobilien and Bauwerk Immobilien. Grama Schwaighofer Vondrak advised the sellers.	N/A	Austria
11-Nov	Freshfields; PHH Rechtsanwälte; White & Case; Wolf Theiss	PHH, working with Freshfields Bruckhaus Deringer, advised the shareholders of life sciences company Szabo-Scandic Handelsgmbh on its sale to the Nordic BioSite Group. Wolf Theiss and White & Case advised Nordic BioSite.	N/A	Austria
11-Nov	PHH Rechtsanwälte	PHH advised German digital transformation company Sidion on its acquisition of a 65% stake in the Austrian-based Hillside IT consulting group.	N/A	Austria
12-Nov	Cerha Hempel	Cerha Hempel advised Energy Exchange Austria and its cooperation with CCP Austria on the restructuring of the clearing of spot market trading in electric power products on the Vienna Stock Exchange and on the transfer of the central counterparty function from EXAA to CCP Austria.	N/A	Austria
27-Oct	Binder Groesswang; CMS	CMS advised plastic packaging and recycling company Alpla on its acquisition of the Wolf Plastics Group. Binder Groesswang advised the sellers on the deal.	N/A	Austria; Hungary; Romania
4-Nov	Sorainen	Sorainen advised the Latvia-headquartered Eleveling Group on Belarusian law aspects of its EUR 150 million bond issuance and private placement with professional investors.	EUR 150 million	Belarus
15-Nov	Bogdanovic Dolicki & Partneri; Jadek & Pensa; Jankovic Popovic Mitic; Kinstellar; Prebanic & Jusufbasic-Goloman; Rojs, Peljhan, Prelesnik & Partners	JPM Jankovic, Popovic, Mitic, working with Rojs, Peljhan, Prelesnik & Partners, Prebanic & Jusufbasic-Goloman, and Kinstellar, advised DuluxGroup on its EUR 194.5 million acquisition of Jub. Jadek & Pensa advised the shareholders of Jub on the deal. Bogdanovic, Dolicki & Partners has, reportedly, also advised the buyer.	EUR 194.5 million	Bosnia and Herzegovina; Croatia; Serbia; Slovenia
18-Oct	Kinstellar; Wolf Theiss	Kinstellar advised Park Lane Developments on its sale of the Park Lane Office Center in Sofia to SAP. Wolf Theiss advised the buyer.	N/A	Bulgaria
26-Oct	Atanassov & Ivanov; Paul Hastings; Schoenherr	Schoenherr, working with Paul Hastings, advised French-based Sendinblue on the acquisition of Bulgarian e-commerce metrics company Metrilo from its founders and investors. Atanassov & Ivanov reportedly advised Metrilo on the deal.	N/A	Bulgaria

Date Covered	Firms Involved	Deal/Litigation	Value	Country
29-Oct	CMS	CMS successfully collected the feed-in tariff from the Republic of Bulgaria in favor of Solar R1, Solar RAS, and Solar Group Systems following various litigation rounds, which extended over seven years.	N/A	Bulgaria
8-Nov	CMS	CMS advised the Bulgarian Branch of ING Bank on its 1000 square-meter lease of office space in the North Tower of Sofia's Infinity Tower development.	N/A	Bulgaria
2-Nov	BDK Advokati; Djingov, Gouginski, Kyutchukov & Velichkov; Herbert Smith Freehills; Kinstellar; Lakatos, Kovcs & Partners; White & Case	Kinstellar advised GIC on the Czech, Hungarian, Bulgarian, and Serbian aspects of its 30% stake acquisition in the Cetin Group from PPF. BDK Advokati, Lakatos, Kovcs & Partners, and White & Case advised the seller on the transaction. Djingov, Gouginski, Kyutchukov & Velichkov and NautaDutilh reportedly also advised the seller. Herbert Smith Freehills also advised the buyer, with Loyens & Loeff reportedly advising the buyer in the Netherlands.	N/A	Bulgaria; Czech Republic; Hungary; Serbia
18-Oct	Bradavica Maric Wahl Cesarec	Bradavica Maric Wahl Cesarec advised Eko Medjimurje on the acquisition of a majority share in Hittner from Stjepan Hittner.	N/A	Croatia
11-Nov	Divjak Topic Bahtijarevic & Krka; Kovacevic Prpic Simeunovic	Divjak, Topic, Bahtijarevic & Krka advised KJK Fund III on the acquisition of Gumiimpex, with OTP Bank Croatia providing transaction financing. Solo practitioner Hrvoje Matic advised the sellers. Kovacevic, Prpic & Simeunovic advised OTP.	N/A	Croatia
11-Nov	Clifford Chance; Savoric & Partners; Selih & Partners; White & Case	Selih & Partners, Clifford Chance, and Savoric & Partners advised Allegro on its acquisition of Mall Group and WeDo from the PPF Group, EC Investments, and Rockaway Capital. White & Case advised the sellers on the deal.	N/A	Croatia; Czech Republic; Poland; Slovenia
18-Oct	CMS; Havel & Partners	Havel & Partners advised Moog Brno on the transfer of a part of its business to AVL Moravia. CMS advised AVL Moravia.	N/A	Czech Republic
19-Oct	BPV Braun Partners; Novalia	BPV Braun Partners advised the owner of residential development Zaluzi Park on its sale to Elite Domy. Novalia advised the buyer.	N/A	Czech Republic
20-Oct	Havel & Partners	Havel & Partners advised the Ministry of Defense of the Czech Republic on an inter-governmental contract for the purchase of the Spyder Israeli air defense system from the Rafael Advanced Defense Systems state-owned company.	CZK 19.9 billion	Czech Republic
22-Oct	PRK Partners	PRK Partners advised Credit Suisse, Goldman Sachs, Morgan Stanley, and other lenders on the Czech law aspects of refinancing senior acquisition and revolving facilities amounting to EUR 2,13 billion, governed by English law.	N/A	Czech Republic
26-Oct	PRK Partners	PRK Partners advised Czech technology company Trask on its acquisition of an ownership interest in Bell & Hurry.	N/A	Czech Republic
26-Oct	Delta Legal; Pelikan Krofta Kohoutek	Delta Legal advised CTP on its acquisition of Business Park Chrastava's owner and operator Renwon. Pelikan Krofta Kohoutek advised the seller.	N/A	Czech Republic
26-Oct	Orrick Herrington & Sutcliffe; Ropes & Gray	Orrick advised Rossum on raising USD 100 million from General Catalyst in a Series A funding round. Ropes and Gray reportedly advised GC.	USD 100 million	Czech Republic
2-Nov	Cytowski & Partners; Weinhold Legal; Wilson Sonsini Goodrich & Rosati	Cytowski & Partners and Weinhold Legal advised Resistant AI on its USD 16.6 million Series A funding round led by Alphabet's GV with the participation of Index Ventures, Credo Ventures, Seedcamp, and several unnamed angel investors. Wilson Sonsini Goodrich & Rosati reportedly advised GV.	USD 16.6 million	Czech Republic
3-Nov	Weinhold Legal	Weinhold Legal advised Gate4ad on the launch of its advertising space purchasing platform.	N/A	Czech Republic

Date Covered	Firms Involved	Deal/Litigation	Value	Country
3-Nov	Clifford Chance; White & Case	Clifford Chance advised the Charnwood Company on its sale of Eastgate Park to Hines Global Income Trust. White & Case advised Hines Global on the deal.	N/A	Czech Republic
4-Nov	Weinhold Legal	Weinhold Legal provided pro bono legal assistance to Czech endowment fund Tilia Impact Ventures on its investment in start-up Deafcom.	N/A	Czech Republic
5-Nov	Clifford Chance	Clifford Chance advised real estate investment trust P3 Spain Logistic Parks on the restructuring of its European logistics portfolio.	N/A	Czech Republic
15-Nov	CMS; White & Case	CMS advised Revetas on the successful disposal of the remaining assets of its Revetas Capital Fund II Project Papa office portfolio in Prague to Ceskomoravska Nemovitostni. White & Case advised CMN.	N/A	Czech Republic
9-Nov	Andric Law Office; Dentons; Kinstellar	Dentons advised the PPF Group on its sale of mobile phone operator Telenor Montenegro to Hungarian technology company 4iG. Andric Law advised PPF on local Montenegrin law aspects. Kinstellar reportedly advised 4iG on the deal.	N/A	Czech Republic; Hungary; Montenegro
18-Oct	Eversheds Sutherland	Eversheds Sutherland advised Atos International on the acquisition of Ideal Product Data.	N/A	Estonia
19-Oct	Sorainen	Sorainen advised financial automation platform Aurelia on raising USD 3 million in a seed funding round led by Blossom Capital.	USD 3 million	Estonia
26-Oct	Cobalt; Wallace	Wallace advised the Tilgmann Group on the sale of Nordic Label and Data Print to Waterland Private Equity portfolio company Asteria. Helsinki-based Dittmar & Indrenius also advised Tilgmann, while Cobalt and Finnish law firm Krogerus advised the Asteria Group.	N/A	Estonia
3-Nov	Sorainen	Sorainen is providing pro bono legal support to Estonian citizen initiative and non-profit project Autumn Plan, aimed at helping individuals make an informed decision about vaccination.	N/A	Estonia
3-Nov	Sorainen; Wallace	Wallace advised Estonian software company Nortal on its acquisition of a 19% stake in cybersecurity start-up Talgen. Sorainen advised Talgen's shareholders.	N/A	Estonia
5-Nov	Sorainen	Sorainen advised Estonian real estate company Arco Vara on its secondary public offering and listing of the new shares on the main list of Nasdaq Tallinn.	EUR 2.25 million	Estonia
11-Nov	Triniti	Triniti advised Estonian government-owned Transpordi Varahaldus on the EUR 23 million financing it received from LHV Bank for seven of its Bombardier CRJ900-type aircraft.	EUR 23 million	Estonia
11-Nov	Sorainen	Sorainen is providing legal support to Estonian streaming platform Fairmus, aimed at creating a transparent and fair payment model of music streaming services.	N/A	Estonia
12-Nov	Ellex (Raidla); Ulegal	Ellex Raidla advised Superangel on its investment in Ringo Eco. Ulegal advised Ringo Eco.	EUR 500,000	Estonia
12-Nov	Wallace	Wallace advised Estonian electric bicycle developer Ampler Bikes on a EUR 7.4 million investment round.	EUR 7.4 million	Estonia
9-Nov	Paul Weiss; Sorainen	Sorainen, working with Paul, Weiss, Rifkind, Wharton & Garrison, advised Apollo Global Management on a bond issuance.	EUR 730 million	Estonia; Latvia
18-Oct	GSK Stockmann; Lextal	Lextal advised Estonian financial technology group luteCredit on its EUR 75 million senior secured corporate bond issuance. GSK Stockmann reportedly acted as a global advisor on the deal.	EUR 75 million	Estonia; Latvia; Lithuania
29-Oct	Cleary Gottlieb Steen & Hamilton; Ellex; Shearman & Sterling; Sorainen	Shearman & Sterling and Sorainen advised joint global coordinators and joint bookrunners Citigroup, Nordea, and Swedbank on Enefit Green's EUR 175 million Rule 144A / Regulation S initial public offering and listing on Nasdaq Tallinn. Cleary Gottlieb Steen & Hamilton and Ellex advised Enefit Green and its owner, Eesti Energia.	EUR 175 million	Estonia; Latvia; Lithuania

Date Covered	Firms Involved	Deal/Litigation	Value	Country
18-Oct	Reed Smith	Reed Smith advised PPC Renewables on a joint venture with RWE Renewables towards the joint development, construction, and operation of an up to 2 gigawatt-peak solar photovoltaic projects portfolio in Greece.	N/A	Greece
19-Oct	Koutalidis; Lambadarios Law Firm	Koutalidis advised the Hellenic Gas Transmission System Operator (DESFA) on its issuance of a EUR 505 million common bond loan. Lambadarios Law Firm advised Alpha Bank, Eurobank, the National Bank of Greece, and Piraeus Bank as the four Greek systemic banks.	EUR 505 million	Greece
27-Oct	Koutalidis	Koutalidis advised the Macquarie Group on the acquisition of a 49% ownership interest in the Hellenic Electricity Distribution Network Operator.	N/A	Greece
29-Oct	Bahas Gramatidis & Partners	Bahas, Gramatidis & Partners advised Marriott International on a set of agreements with Michaniki Environment for the operation of a new five-star 100-room hotel in Thessaloniki.	EUR 15 million	Greece
29-Oct	Bahas Gramatidis & Partners	Bahas, Gramatidis & Partners is providing pro bono legal support for the Western Greece Regional Governor's initiative to restore and replace up to 100,000 olive trees out of those affected by the recent fires in the greater area of Ancient Olympia.	N/A	Greece
2-Nov	Saplegal Papadimitriou & Partners; Souriadakis Tsibris	Souriadakis Tsibris advised the founders of Greek electric appliances trading company Inventor on the sale of a majority stake to Swedish Beijer Ref. Saplegal Papadimitriou & Partners reportedly advised the buyer.	N/A	Greece
3-Nov	AK Law Firm	AKL advised Alpha Bank acting as original subscriber, mandated lead arranger, bondholder agent, and administrative agent on the issuance of an up to EUR 362 million common bond loan by Astir Palace Vouliagmenis.	EUR 362 million	Greece
11-Nov	KLC	The KLC law firm advised the Hellenic Gaming Commission on awarding the "concession of the license to operate a wide range of casino activities in the Metropolitan Park of Elliniko-Agios Kosmas" to an association of companies operating as Athens IRC.	N/A	Greece
15-Nov	Milbank	Milbank advised BC Partners on the financing for its acquisition of Pet City Group in Greece.	N/A	Greece
27-Oct	Kapolyi	Kapolyi advised Budapest Stock Exchange Premium-listed automotive investor AutoWallis on preparing its latest public share issuance.	HUF 6-8 billion	Hungary
3-Nov	Lakatos, Koves & Partners; Szabo Kelemen & Partners Andersen	Lakatos Koves & Partners advised VGP on the acquisition of a 38-hectare development site in Ulló, next to Budapest's Liszt Ferenc International Airport. Szabo Kelemen & Partners Andersen Attorneys reportedly advised the sellers.	N/A	Hungary
8-Nov	Clifford Chance; Lakatos, Koves & Partners	Lakatos, Koves & Partners, working with Clifford Chance, advised lead arrangers BNP Paribas, Citi, Goldman Sachs Bank Europe, and J.P. Morgan on Hungary's EUR 1 billion and USD 4.25 billion London-listed sovereign issuances. Solo practitioner Zsolt Szita advised the Hungarian state on the matter.	"EUR 1 billion USD 4.25 billion"	Hungary
11-Nov	CMS; Oppenheim	CMS advised Austrian Hypo-Bank Burgenland on the sale of its Hungarian subsidiary Sopron Bank Burgenland to MagNet Bank. Oppenheim reportedly advised the MagNet Bank.	N/A	Hungary
19-Oct	Sorainen	Sorainen is providing pro bono legal assistance to journalists Madara Sprude and Normunds Robeznieks from Tynet Grupa, and Inga Springe from the Baltic Center for Investigative Journalism Re:Baltica in connection with the persecution and intimidation of journalists carried out by a private individual.	N/A	Latvia
18-Oct	Sorainen	Sorainen advised Lords LB Baltic Green Fund V on the acquisition of a Holiday Inn hotel in Vilnius from Valmeda.	N/A	Lithuania
18-Oct	SPC Legal; Walless	SPC Legal advised Mano Sala, Grinvest, and We Property NL on the sale of a warehouse and distribution center to East Capital. Walless advised East Capital on the deal.	N/A	Lithuania

Date Covered	Firms Involved	Deal/Litigation	Value	Country
19-Oct	Ellex (Valiunas)	Ellex advised investment fund manager BLF Management on its establishment and licensing in Lithuania.	N/A	Lithuania
20-Oct	Sorainen; Triniti (Triniti Jurex)	Sorainen advised Lords LB Baltic Fund III on the sale of a shopping center in Marijampole, Lithuania, to Rivona. Triniti Jurex advised the buyer.	N/A	Lithuania
21-Oct	Cobalt; Sorainen	Sorainen advised Lithuanian venture capital fund Open Circle Capital on investing in the Billo community marketing platform. Cobalt advised Practica Capital on co-leading the EUR 2 million seed round.	EUR 2 million	Lithuania
8-Nov	Sorainen	Sorainen advised French asset manager Eiffel Investment Group on its EUR 20 million funding for renewable energy company Green Genius.	EUR 20 million	Lithuania
9-Nov	Cobalt; Sorainen; TGS Baltic	Cobalt advised Lithuanian financial technology start-up Kevin on raising USD 10 million in a seed funding round, co-lead by Global PayTech Ventures, OTB Ventures, and Speedinvest. TGS Baltic advised OTB Ventures and Speedinvest. Sorainen advised Global PayTech Ventures.	USD 10 million	Lithuania
11-Nov	Walless	Walless advised the Lithuanian Ministry of Energy and UAB Energy Cells on state aid clearance procedures regarding a EUR 100 million investment in energy storage facilities.	N/A	Lithuania
11-Nov	TGS Baltic	TGS Baltic advised Lithuanian sports clothing manufacturer Audimas on separating its manufacturing and trading companies and on establishing a real estate management company.	N/A	Lithuania
12-Nov	Motieka & Audzevicius	Motieka & Audzevicius successfully defended Olympic Casino Group Baltija before the Supreme Administrative Court of Lithuania.	N/A	Lithuania
12-Nov	Cobalt	Cobalt advised Novian Group company Novian Systems on the acquisition of information systems and software developer Elsis Pro.	N/A	Lithuania
12-Nov	Cobalt	Cobalt advised European Energy on the divestment of three Lithuanian wind farms with a total capacity of 185.5 megawatts.	N/A	Lithuania
15-Nov	Cobalt; Eversheds Sutherland	Cobalt advised the shareholders of the Lithuanian Apotheca Vaistine pharmacy chain on its sale to Magnum. Eversheds Sutherland reportedly advised the buyer.	N/A	Lithuania
29-Oct	Cytowski & Partners	Cytowski & Partners advised North Macedonian advertising technology company Howitzer on its USD 500,000 seed funding round with Hungary's Day One Capital and angel investors Mergim Cahani and Matei Pavel. The firm also advised Day One Capital.	USD 500,000	North Macedonia
18-Oct	Greenberg Traurig; Wolf Theiss	Greenberg Traurig advised real estate investment manager Invesco Real Estate on its sale of the A2 Warsaw Park to Savills IM, acting on behalf of Savills IM European Logistics Fund 3. Wolf Theiss reportedly advised Savills on the deal.	EUR 112.5 million	Poland
18-Oct	Dentons	Dentons advised the Atrium Group on its first two residential acquisitions in Poland.	EUR 53 million	Poland
18-Oct	Baker McKenzie; Simmons & Simmons; SSW Pragmatic Solutions	SSW Pragmatic Solutions advised Bank Pekao on financing Enterprise Investors' acquisition of a majority stake in Snap Outdoor. Baker McKenzie advised the borrower. Simmons & Simmons reportedly also advised the bank.	N/A	Poland
18-Oct	Allen & Overy; Lux Nova Partners; Solivan Pontes; White & Case	White & Case advised the Octopus Renewables Infrastructure Trust on the acquisition of two in-construction onshore wind farms in Poland from the PNE Group. Lux Nova Partners advised PNE on English matters. Allen & Overy advised Bayerische Landesbank and the EBRD on financing the deal. Solivan reportedly advised PNE on Polish law matters.	N/A	Poland
20-Oct	Gessel; RJ & Partners	RJ & Partners advised Air Liquide Polska on its acquisition of a majority stake in BetaMed. Gessel advised the seller.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
21-Oct	Act Legal (BSWW); Studnicki, Pleszka, Cwiakalski, Gorski	Act BSWW advised the Interpump Group on the Polish component of its EUR 278 million acquisition of the White Drive Motors and Steering business unit from the Danfoss Group. SPCG advised the seller on Polish legal aspects of the transaction.	N/A	Poland
22-Oct	CMS	CMS advised Cinven-controlled Partner in Pet Food on the acquisition of pet food businesses G-Mart and Zaklad Przetworstwa Rolniczego from Polish entrepreneur Grzegorz Werblinski.	N/A	Poland
25-Oct	Balicki Czekanski Gryglewski Lewczuk; Dotlaw	Balicki Czekanski Gryglewski Lewczuk, working with Dotlaw, advised Symfonia on its acquisition of Cloud Planet and Skanuj.to.	N/A	Poland
25-Oct	Eversheds Sutherland	Eversheds Sutherland advised Parker Hannifin's Polish branch on the sale of its premises and transfer of its operations to a newly leased Oxygen Project property.	N/A	Poland
26-Oct	CMS; Linklaters	Linklaters advised European Logistics Investment on its EUR 111 million loan agreement with Berlin Hyp. CMS reportedly advised Berlin Hyp on the deal.	EUR 111 million	Poland
26-Oct	Linklaters	Linklaters advised CBRE Investment Management on the acquisition of 7R Park Poznan East and 7R Park Sosnowiec from 7R.	N/A	Poland
26-Oct	DLA Piper; Noerr	Noerr advised Polish logistics company X-press Couriers on its sale to e-commerce platform Allegro. DLA Piper advised the buyer.	N/A	Poland
26-Oct	Balicki Czekanski Gryglewski Lewczuk; Norton Rose Fulbright	Balicki Czekanski Gryglewski Lewczuk advised Bank Gospodarstwa Krajowego on its PLN 500 million financing for Polish mobile network Play. Norton Rose Fulbright advised Play on the transaction.	PLN 500 million	Poland
27-Oct	Linklaters	Linklaters advised Polish developer Echo Investment on the EUR 47.3 million sale of the Moje Miejsce I office building in Warsaw to a real estate institutional investor.	EUR 47.3 million	Poland
27-Oct	B2RLaw	B2RLaw advised media company CANAL+ Polska on the acquisition of its headquarters office building from the Real Management Group.	N/A	Poland
28-Oct	MFW Fialek	MFW Fialek advised Develia on a PLN 125 million joint-venture transaction with Grupo Lar's Polish subsidiaries involving several development investments in Warsaw that will include over 600 apartments.	PLN 125 million	Poland
3-Nov	Deloitte Legal; WKB Wiercinski Kwiecinski Baehr	Wiercinski, Kwiecinski, Baehr advised BNP Paribas Bank Polska and Santander Bank Polska on financing for the construction of logistics centers by Panattoni Group companies. Deloitte Legal advised Panattoni on the deal.	N/A	Poland
3-Nov	Allen & Overy; DLA Piper; PwC Legal	DLA Piper advised OX2 on the sale of a Polish 24-megawatt wind farm project to Equitix. PwC advised Equitix on the deal. Allen & Overy reportedly also advised the buyer.	N/A	Poland
3-Nov	Clifford Chance	Clifford Chance advised Polish technology holding company Famur on its planned green bond issuance up to PLN 400 million in value.	PLN 400 million	Poland
5-Nov	White & Case	White & Case advised the Polish Ministry of Finance on the CNY 3 billion issuance of three-year treasury bonds maturing on October 15, 2024.	CNY 3 billion	Poland
8-Nov	Allen & Overy; Penteris	Penteris advised Immofinanz on its EUR 50 million sale of the Empark office building to Polish developer Echo Investment. Allen & Overy advised the buyer.	EUR 50 million	Poland
8-Nov	Clifford Chance	Clifford Chance advised Allegro Pay on its purchase of receivables cooperation agreement with the Aion Bank.	N/A	Poland
9-Nov	Act Legal (BSWW); Dentons; Legalia	Act BSWW advised the Adventum Group on the acquisition of the Mercedes-Benz building in Warsaw from IFP Erste Immobilienfonds fur Polen as well as on its facility agreement with Bayerische Landesbank. Legalia advised the seller. Dentons reportedly advised the bank.	N/A	Poland

Date Covered	Firms Involved	Deal/Litigation	Value	Country
9-Nov	Gide Loyrette Nouel	Gide Loyrette Nouel advised Poland's Tauron on obtaining a PLN 2.8 billion loan from the European Investment Bank.	PLN 2.8 billion	Poland
10-Nov	Greenberg Traurig; JDP	JDP Drapala & Partners advised Trei Real Estate on establishing a retail park development joint venture with Patron Capital. Greenberg Traurig advised Patron Capital on the matter.	N/A	Poland
11-Nov	M.Mazurek i Partnerzy Radcowie Prawni; Moskwa Jarmul Haladyj i Wspolnicy	Moskwa Jarmul Haladyj advised Poland's OT Logistics on the sale of an 88% stake in C.Hartwig Gdynia to Rhenus Beteiligungen International. M.Mazurek & Partners advised the buyer.	N/A	Poland
11-Nov	Clifford Chance; Rymarz Zdort	Clifford Chance advised RTB House on the acquisition of NapoleonCat. Rymarz Zdort advised the founders of NapoleonCat.	N/A	Poland
11-Nov	Baker Mckenzie	Baker McKenzie advised Texas-based video game publisher and developer Devolver Digital on its initial public offering of common shares on the AIM market of the London Stock Exchange.	N/A	Poland
11-Nov	FKA Furtek Komosa Aleksandrowicz; PwC Legal	Furtek Komosa Aleksandrowicz advised the Finnish Uponor Corporation on its acquisition of Poland's Capricorn. PwC Legal advised Capricorn's shareholders on the deal.	N/A	Poland
12-Nov	Brzozowska & Barwinska	Brzozowska & Barwinska advised the shareholders of Total Fitness on the sale of its shares to Benefit Systems.	N/A	Poland
12-Nov	Baker Mckenzie	Baker McKenzie advised US water treatment company Ecolab on the acquisition of PuroLite for an all-cash consideration of approximately USD 3.7 billion.	USD 3.7 billion	Poland
15-Nov	CMS; NGL Legal	NGL Legal advised the shareholders of CDT Medicus on the sale of their company to Medicovert. CMS advised Medicovert on the deal.	N/A	Poland
8-Nov	Sorainen; TGS Baltic; Wolf Theiss	Sorainen, working with Wolf Theiss in Poland, advised iCotton on obtaining a EUR 10 million loan from the Altum Capital Fund. TGS Baltic advised the lender.	EUR 10 million	Poland; Latvia
2-Nov	Bulboaca & Asociatii; Kinstellar; Latham & Watkins; Linklaters; Morgan Lewis & Bockius	Kinstellar, working with Linklaters, advised a consortium of banks on Romanian law aspects of an USD 800 million joint high-yield bond issuance by Canpack Poland and Canpack US. Bulboaca & Asociatii advised Canpack on Romanian law. Morgan Lewis reportedly advised the lenders on English law. Latham & Watkins reportedly acted as international counsel for the issuers.	USD 800 million	Poland; Romania
20-Oct	Kellerhals Carrard; Popovici Nitu Stoica & Asociatii; Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii, working with Swiss law firm Kellerhals Carrard, advised the Autonet Group Holding on its acquisition of a 51% stake in Augsburg International. Popovici Nitu Stoica & Asociatii advised the shareholders of Augsburg International.	N/A	Romania
26-Oct	Wolf Theiss	Wolf Theiss advised Banca Comerciala Romana on its inaugural RON 500 million issuance of senior preferred green notes under its multi issuer EMTN Program.	RON 500 million	Romania
29-Oct	Lata & Associates; RTPR	Radu Taracila Padurari Retevoescu advised Sarmis Capital on its acquisition of a majority stake in Corporate Office Solutions in Romania. Lata & Associates advised COS.	N/A	Romania
29-Oct	Vertis Legal	Vertis Legal advised Arobs Transilvania Software on a RON 74.2 million private placement on the AeRO market of the Bucharest Stock Exchange. The firm also advised the BRK Financial Group on mediating the investment.	RON 74.2 million	Romania
9-Nov	CEE Attorneys; Filip & Company	CEE Attorneys/Boanta Gidei si Asociatii advised Romanian start-up Flip.ro on a EUR 1.5 million financing from eMAG Ventures. Filip & Company advised eMAG on that investment and on its acquisition of a stake in Flip.ro from minority shareholders.	EUR 1.5 million	Romania

Date Covered	Firms Involved	Deal/Litigation	Value	Country
9-Nov	Tuca Zbarcea & Asociatii	Tuca Zbarcea & Asociatii provided pro bono legal assistance to George Enescu International Festival organizer Artexim in a dispute with the Historic Auction House in connection with the auctioning of manuscripts and a violin that had presumably belonged to Romanian composer George Enescu.	N/A	Romania
10-Nov	CEE Attorneys; Legal to Business	CEE Attorneys/Boanta, Gidei si Asociatii advised lead investor Sparking Capital on the USD 500,000 financing granted to Romanian corporate digital waste management platform start-up EcoTree. Legal to Business reportedly advised EcoTree on the deal.	USD 500,000	Romania
11-Nov	Act Legal (Botezatu Estrade)	Act Botezatu Estrade Partners advised Sweden-based Founders Bridge on its EUR 300,000 investment in Romanian start-up Mero.	EUR 300,000	Romania
15-Nov	Filip & Company	Filip & Company advised A&D Pharma-Dr. Max Group subsidiary Sensiblu on its acquisition of 23 pharmacies from Optifarm.	N/A	Romania
20-Oct	DLA Piper	DLA Piper advised e-commerce platform Ecwid on obtaining regulatory clearance from the Federal Antimonopoly Service of Russia for its acquisition by Lightspeed.	N/A	Russia
25-Oct	Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner advised Irrico Limited on the sale of a Russian agricultural holding company.	N/A	Russia
25-Oct	Latham & Watkins	Latham & Watkins advised PIK Specialized Homebuilder on the secondary public offering of quasi-treasury ordinary PIK shares by its fully owned subsidiary PIK Investproekt.	RUB 36.28 billion	Russia
27-Oct	Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner successfully defended United Aircraft Corporation's subsidiary Irkut and its employees in a criminal case in connection with customs duty evasion amounting to more than RUB 50 million.	RUB 50 million	Russia
28-Oct	Debevoise	Debevoise & Plimpton advised Polyus on its USD 700 million seven-year eurobond offering with an annual coupon rate of 3.25% and the related tender offer for outstanding notes due 2022-2024.	USD 700 million	Russia
29-Oct	Bryan Cave Leighton Paisner	Bryan Cave Leighton Paisner successfully defended FM Logistic and its employees in a criminal case in connection with the collapse of a pedestrian bridge in a warehouse that resulted in the injury of more than 50 people.	N/A	Russia
2-Nov	Korelskiy Ischuk Astafiev & Partners	Korelskiy, Ischuk, Astafiev & Partners successfully represented Chinese manufacturer Shanghai Jilong Economy Development before Russia's Intellectual Property Court in a trademark dispute with a Russian entrepreneur over the ZRAY brand.	N/A	Russia
5-Nov	Akin Gump	Akin Gump advised Lukoil on its acquisition of a 25% participating interest in the Shallow Water Absheron Peninsula exploration project in the Azerbaijan sector of the Caspian Sea, from BP.	N/A	Russia
8-Nov	Akin Gump	Akin Gump advised Lukoil on its acquisition of a 15.5% interest in the Shah Deniz natural gas project in the Azerbaijan sector of the Caspian Sea, from Malaysia's Petronas.	USD 2.25 billion	Russia
9-Nov	Clifford Chance	Clifford Chance advised Rosbank, Sberbank, Bank Saint-Petersburg, Credit Bank of Moscow, and the Eurasian Development Bank on a RUB 15 billion five-year syndicated loan under Russian law for the Ural Mining & Metallurgical Company.	RUB 15 billion	Russia
11-Nov	Egorov Puginsky Afanasiev & Partners	Egorov Puginsky Afanasiev & Partners successfully represented LabQuest Technology in a joint-venture-related corporate dispute.	N/A	Russia
11-Nov	Akin Gump	Akin Gump advised Lukoil on the USD 2.3 billion issuance of Rule 144A/Regulation S notes in two tranches.	USD 2.3 billion	Russia
21-Oct	Jankovic Popovic Mitic	Jankovic Popovic Mitic successfully represented Lithuanian company Alita before the Supreme Court of Cassation of Serbia in a dispute with the Serbian Privatization Agency over a terminated privatization contract.	EUR 68 million	Serbia

Date Covered	Firms Involved	Deal/Litigation	Value	Country
26-Oct	Karanovic & Partners	Karanovic & Partners advised the Innovation Fund on launching the Katapult start-up accelerator in Serbia with support from the World Bank.	N/A	Serbia
3-Nov	Ashurst; BDK Advokati	BDK Advokati, working with Ashurst, advised J.P. Morgan and UK Export Finance on supporting the construction of the Morava Corridor motorway through a EUR 430 million guaranteed loan to the Republic of Serbia.	EUR 430 million	Serbia
3-Nov	Karanovic & Partners	Karanovic & Partners advised ElevenEs on partnering with EIT InnoEnergy to build a lithium iron phosphate (LFP) battery factory in Subotica, Serbia.	N/A	Serbia
8-Nov	Jankovic Popovic Mitic	Jankovic Popovic Mitic successfully represented Worldfin before the Court of Appeal in Belgrade in a corruption charges case related to the privatization of Luka Beograd.	N/A	Serbia
9-Nov	Dentons; Karanovic & Partners; Weksler Bregman	Karanovic & Partners, alongside Dentons and Weksler Bregman, advised Big Shopping Centers on raising approximately EUR 55 million through issuing secured bonds on the Tel Aviv Stock Exchange by refinancing the Big Fashion Kragujevac, Big Krusevac, and Big Fashion Outlet Indjija shopping centers in Serbia.	EUR 55 million	Serbia
10-Nov	AP Legal; Kinstellar; Sajic	AP Legal advised Banka Postanska Stedionica Beograd on the acquisition of Komercijalna Banka Banja Luka from Komercijalna Banka Beograd, a member of NLB Group. Kinstellar and Sajic advised the sellers on the deal.	N/A	Serbia
11-Nov	AP Legal; Isailovic & Partners	AP Legal advised UniCredit Bank Srbija on a facilities agreement with Serbian real estate company Marera Properties. Isailovic & Partners reportedly advised Marera Properties on the deal.	N/A	Serbia
11-Nov	CMS	CMS advised German online bank N26 on the acquisition of an unidentified Serbian fintech company.	N/A	Serbia
12-Nov	AP Legal	AP Legal advised UniCredit Bank Srbija on the financing for EAT ZGOP's acquisition of ZGOP Novi Sad from Integra Construction Kazakhstan.	N/A	Serbia
2-Nov	Fatur Menard; Zivkovic Samardzic	Zivkovic Samardzic and Fatur Menard advised Trigal on its investment in five urban lighting regeneration public-private partnership projects in Serbia.	N/A	Serbia; Slovenia
20-Oct	Allen & Overy	Allen & Overy advised a club of banks led by Tatra Banka on a EUR 177 million financing for Swan and Swan Mobile.	EUR 177 million	Slovakia
25-Oct	HKV; MCL	MCL advised Slovakian Fun Media Group on the acquisition of Corporate Legal. The HKV Law Firm advised the sellers.	N/A	Slovakia
9-Nov	HKV; Paul Q	HKV advised the owners of Slovak radio stations Europa 2 and Radio Jemne on their sale to the Bauer Media Group. Paul Q advised the buyer.	N/A	Slovakia
15-Nov	Selih & Partners	Selih & Partners advised ADM on investing in precision fermentation company Acies Bio. Solo practitioner Klemen Ticar advised Acies Bio on the deal.	N/A	Slovenia
22-Oct	Herguner Bilgen Ozeke; Paksoy	Paksoy advised DW Reusables on the acquisition of Turkish reusable transport packaging companies Etap Enjeksiyon from Ozgorkey Holding and Etap Dogan from Ozgorkey Holding and Daghan Unludogan. Herguner Bilgen Ozeke advised the sellers.	N/A	Turkey
29-Oct	Turunc	Turunc advised Turkish venture capital fund HiVC on its secondary capital raise.	TRY 12,88 million	Turkey
2-Nov	Paksoy	Paksoy advised on the initial public offering of Gelecek Varlik Yonetimi, an asset management company operating under the Fiba Group.	TRY 360,4 million	Turkey
3-Nov	Paksoy	Paksoy advised Turkish biotechnology company Anatolia Geneworks on its TRY 516,9 million initial public offering.	TRY 516,9 million	Turkey
4-Nov	Debevoise; Paksoy; Linklaters	Paksoy, working with global counsel Linklaters, advised PwC on the agreement to sell its Global Mobility Tax and Immigration Services business to US private equity group Clayton, Dubilier & Rice. Debevoise & Plimpton was global counsel to the buyer.	N/A	Turkey

Date Covered	Firms Involved	Deal/Litigation	Value	Country
11-Nov	Erdem & Erdem	Erdem & Erdem advised Yildirim Group's subsidiary Qazaq Soda in the tender and construction proceedings for the establishment of a sodium carbonate factory in Kazakhstan.	N/A	Turkey
18-Oct	Freshfields; Linklaters; Sayenko Kharenko	Sayenko Kharenko, working with Linklaters' Paris office, advised the Bel Group on the completion of the disposal of its entire shareholding in PrJSC Bel Shostka Ukraine to Lactalis. Freshfields Bruckhaus Deringer's Paris office advised Lactalis on the deal.	N/A	Ukraine
18-Oct	Avellum; DLA Piper; Kinstellar; Linklaters; Slaughter and May	Kinstellar, working with DLA Piper's London office, advised VF Ukraine on a consent solicitation related to the outstanding USD 500 million 6.20% loan participation notes due 2025 issued by VFU Funding plc. Slaughter and May advised VFU Funding plc, while Linklaters and Avellum advised J.P. Morgan as the solicitation agent.	USD 500 million	Ukraine
19-Oct	CMS	CMS advised DAI Global and the National Securities and Stock Markets Commission of Ukraine on the rules for clearing transactions with securities and licensing terms for clearing institutions.	N/A	Ukraine
20-Oct	Avellum; Kinstellar	Avellum advised Kazakhstan's financial technology firm Kaspi.kz subsidiary Kaspi Pay on its acquisition of Ukrainian online payment platform Portmone from Ukraine-based 4i Capital Partners. Kinstellar advised the seller.	N/A	Ukraine
26-Oct	Esquires Attorneys At Law	Esquires successfully represented Solum before the Darnytskyi District Court of Kyiv in lifting the arrest imposed upon a 3,500-square-meter property purchased at public auction.	N/A	Ukraine
29-Oct	Equity	Equity successfully represented former Ukrainian Minister of Infrastructure Volodymyr Omelyan before the High Anti-Corruption Court of Ukraine.	N/A	Ukraine
2-Nov	Asters	Asters successfully defended PrivatBank before the Solomianskiy District Court against a claim of unlawful personal data usage by Igor Kolomoiskyi, seeking the invalidation of agreements between PrivatBank and the National Bank of Ukraine.	N/A	Ukraine
4-Nov	Avellum	Avellum advised MHP on its investment in Ukrainian food technology start-up Foodz.	N/A	Ukraine
5-Nov	KPD Consulting	KPD Consulting successfully represented Greentech in a dispute over the unlawful termination of its electricity supply by operator Zhytomyroblenergo.	N/A	Ukraine
8-Nov	Baker Mckenzie; DLA Piper; Kinstellar	Baker McKenzie advised the shareholders of Depositphotos on the USD 85 million sale of the company to VistaPrint. Kinstellar, working with DLA Piper in the US, advised Vista on Ukrainian law.	USD 85 million	Ukraine
9-Nov	CMS	CMS advised a syndicate of banks led by ING Bank on the extension of a pre-export facility for Ukraine's Kernel Group as well as an increase in the credit facility to USD 420 million, with an in-built possibility for a further increase to up to USD 450 million.	USD 420 million	Ukraine
11-Nov	Sayenko Kharenko	Sayenko Kharenko successfully represented Olfa before the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry.	EUR 3 million	Ukraine
15-Nov	Sayenko Kharenko	Sayenko Kharenko successfully represented Auchan before the Supreme Court of Ukraine in a case against the Asset Recovery and Management Agency of Ukraine.	N/A	Ukraine
15-Nov	Sayenko Kharenko	Sayenko Kharenko assisted the Allard Pierson Museum in the 'Scythian Gold' case by preparing an expert report on Ukrainian law.	N/A	Ukraine

ON THE MOVE: NEW HOMES AND FRIENDS

Lithuania: Ruta Pumputiene's Law Firm Joins Ellex

By Andrija Djonovic (01 October 2021)

Ruta Pumputiene's Law Firm, operating primarily in the field of life sciences and regulatory practice in the Baltics, has joined Ellex Valiunas.

According to Ellex, this merger was driven by "the priority of both firms for the development of the life sciences sector and a significantly increased need for pharmaceutical and life sciences law."

As Ellex Valiunas puts it, Pumputiene, who became the 20th Partner at the Lithuanian firm, is "one of the most valued experts in life sciences, healthcare, biotechnology, and pharmaceutical law."

"I am delighted that both my team and I will be able to continue our professional career in this field, only having even wider, bigger, more diverse, and more interesting opportunities with Ellex," Pumputiene says. "The professional path must always advance and lead only forward. I believe that by sharing our knowledge, together we will be able to offer our clients and their projects the highest, exceptional expertise and quality, which is the aspiration and the main goal of us all."

"The demand for life sciences has grown enormously in recent years as the pandemic made the world realize a long-term perspective in this area," comments Managing Partner Rolandas Valiunas. "Ruta and her colleagues have been leaders in the life sciences area for many years, and this merger of our firms will open new avenues for the industry planning additional business steps in the Baltics. But most importantly, our alumni are coming

back. Ruta had contributed to Ellex's growth and strengthening for ten years, and while she was practicing elsewhere, we sincerely missed her."

Joining alongside Pumputiene are her team members – Lawyers Ieva Balene, Giedre Tubelyte, and Viktorija Kod. ■

Hungary: Zsombor Orban and Team Join Deloitte Legal

By Radu Cotarcea (06 October 2021)

Former Kinstellar Budapest Head of TMT Zsombor Orban has joined Deloitte Legal as a Partner and Head of Privacy and TMT in Hungary. He is followed by former Kinstellar Associates Daniel Nagy and Flora Szalai.

Prior to his move, Orban had been with Kinstellar since 2016, when he joined as an Attorney at Law. In 2017, he was promoted to Senior Associate and was appointed to Head of the TMT practice in Budapest in May 2018. In January 2019 he was further promoted to Managing Associate. Earlier, Orban worked as a Legal Advisor for Nestle Hungaria and as an Associate with Budapest Law Firm No. 5000 and with the Bogsch and Partners Law Firm.

Alongside Orban, Nagy is joining Deloitte as a Senior Associate, while Szalai is joining as an Associate.

"We are looking forward to team up with the market-leading IT risk and advisory teams of Deloitte, and to take the data protection and privacy legal services to a next level in Hungary," said Orban. ■





Poland: Gerard Karp and Team Join DWF's New Practice

By Andrija Djonovic (06 October 2021)

Former PwC Legal Partner and Head of TMT/IP & Data Protection Gerard Karp has joined DWF as a Partner and Head of the firm's newly established Personal Data Protection, Cyber Security, and Technology Compliance practice in Poland. Former PwC Counsels Marian Giersz and Pawel Dudojc will be joining him in DWF's new practice as Counsels.

According to DWF, Karp specializes in personal data protection, IT, and electronic communication. "His longstanding experience has seen him advise clients on diverse and complex aspects at the intersection of internet law, IT, privacy rights, and the broadly defined digital market. Gerard, for the last 15 years, has advised the largest national and international entities on key projects regarding personal data protection, e-commerce, IT, and cloud solutions."

Prior to joining PwC in 2017, Karp was a Partner with Eversheds Sutherland, where he spent almost 11 years. In 2006, he spent nine months with White & Case as an Associate in the firm's TMT practice.

"It's a great pleasure to join such a prestigious legal business, with so many exceptional lawyers on board, which in addition is growing at such a rapid pace," Karp stated.

"I'm delighted to welcome Gerard, Marian, and Pawel to DWF in Poland," added DWF Poland Managing Partner Michal Pawlowski. "This is an important step in the development of our offering in Poland for the benefit of our clients and is in line with the market trends and our strategy."

"I am delighted that Gerard is joining DWF to lead our new Personal Data Protection, Cyber Security and Technology Compliance practice in Poland," commented Global Head of the Technology, Media & Communications Sector at DWF, Stewart Room. "His experience and reputation in the market align with our business' deep pedigree in supporting clients through a huge range of technology and regulatory matters. I look forward to working closely with Gerard, Marian, and Pawel in establishing a successful team in Poland." ■

Austria: E+H Announces New Partner and Office in Brussels

By Radu Cotarcea (07 October 2021)

Former Wolf Theiss lawyer Jochen Anweiler has joined E+H as a Partner to open the firm's Brussels office.

Anweiler is admitted to the bar in Germany and Austria and focuses on antitrust law. He had been with Wolf Theiss since 2010.

"I am very pleased that we can further strengthen our antitrust practice with Jochen Anweiler. Now that we have him on board, and with the numerous proceedings that we have conducted for our clients in recent years before the European Commission, opening an office in Brussels is the next logical step," explained E+H Partner and Head of Antitrust Dieter Thalhammer.

"I am looking forward to working with a really great team. Setting up E+H's office in Brussels is a special honor for me," added Anweiler. ■



Bulgaria: Kolev, Angelov & Miteva Opens Doors

By Andrija Djonovic (11 October 2021)

Lex Ludens Partner Angel Angelov has joined forces with Nikolay Kolev, Iva Miteva, and Rossiza Marinova as Partners in establishing the Kolev, Angelov & Miteva law firm in Sofia.

All four KAMM partners worked together for over ten years, at Boyanov & Co, where Kolev was until recently a Partner, while Miteva and Marinova were Senior Associates. In addition to the partners, KAMM includes nine other lawyers.

Kolev will lead the firm's Energy/Natural Resources practice and co-lead the Corporate/M&A practice. He is a graduate of the Sofia University St. Kliment Ohridski and, prior to joining KAMM, he spent 16 years with Boyanov & Co.

Angelov is Head of Projects and PPP and Co-head of Corporate/M&A. Before founding Lex Ludens in 2017, he spent over a year with Ruskova & Draganova and 11 years with Boyanov & Co.

Miteva will lead the firm's Real Estate and Construction practice. She too is a Sofia University St. Kliment Ohridski graduate who spent 16 years with Boyanov & Co, before joining KAMM.

Marinova is the Head of KAMM's Intellectual Property practice. Before joining the firm, she spent two and a half years with Interlus Attorneys at Law and another 16 with Boyanov & Co.

"I am extremely excited and delighted to announce that we are now joining forces with leading Bulgarian lawyers and researchers to establish a brand-new law firm," Angelov said. "The team includes prominent professionals ... as well as our rising stars ... A new journey begins!" ■

Serbia: DNVG Attorneys Opens Doors in Belgrade

By Radu Cotarcea (13 October 2021)

Damjan Despotovic, Marina Nikolic, Milorad Glavan, and Srecko Vujakovic have established DNGV Attorneys in Belgrade.

Prior to setting up DNVG Attorneys, Despotovic had been a Lawyer with NKO Partners for 11 years. He focuses on labor law, competition law, commercial and corporate law, public procurement, and real estate.

Nikolic too joins from NKO Partners, where she was a Senior Associate since 2015. Before that, she was an Associate with Schoenherr between 2012 and 2014. She focuses on corporate, M&A, and commercial law.

Glavan, who also joins from NKO Partners, had been with his previous firm for over seven years, having started in 2014 as a Legal Trainee and becoming a Senior Associate in 2016. He focuses on data protection, dispute resolution, pharmaceutical, and labor law.

Vujakovic joins from Schoenherr affiliated firm Moravcevic Vojnovic i Partneri. He first joined his old team in 2006 as an Associate. In 2009 he became an Attorney at Law. He made Junior Partner in 2011, and Partner in 2014. He focuses on corporate and M&A work but also advises on capital markets, insurance, digital assets, data protection, and employment law.

"We are proud and excited to announce the launch of DNVG Attorneys," commented Despotovic. "Our team is composed of experienced lawyers with strong backgrounds in various fields of commercial law, brought together by the common vision and commitment to providing the best quality service and making a difference for our clients. We look forward to cooperation with businesses seeking reliable and professional legal advice and support." ■

Ukraine: Oleksandr Aleksyeyenko and Team Join Nobles

By Radu Neag (14 October 2021)

Former Marchenko Partners Partner Oleksandr Aleksyeyenko has joined Nobles as a Partner in the firm’s Competition & Antitrust and Intellectual Property practices. He is followed by a team of two Associates.

According to Nobles, the team focuses on state aid, unfair competition, abuse of dominance, cartels, merger clearance, and compliance. Aleksyeyenko also “advises on transactional and ongoing employment matters as well as trademarks, patents, regulatory, data protection, and trade secrets.”

Before joining Nobles, Aleksyeyenko spent five years with Marchenko Partners as Head of the firm’s Antitrust & Competition and Intellectual Property practices. Earlier, he spent seven years with Integrites and four and a half with Volkov & Partners, where he was promoted to Partner in 2008, as well as one year as a Lawyer with Amsel & Co.

“We are delighted to become part of Nobles, with whom we share common values and vision,” Aleksyeyenko said of the move. “I am looking forward to working with my new colleagues across the firm to deliver first-class legal service to clients facing various challenges.”

“We trust the new colleagues will strengthen our competition law and IP practice, and share our approach of an integrative, compliant law firm focusing on international clients and modern values,” Nobles Partner Alexander Weigelt commented.

“Oleksandr Aleksyeyenko and his team are dynamic and experienced,” Nobles Partner Volodymyr Yakubovskyy added. “His reputation and experience at complex and multidisciplinary competition cases will be a great resource to our clients. He and his team joining Nobles is a significant step in our strategy to strengthen Nobles as a full-service business law firm in Ukraine.” ■



Poland: Marta Bijak-Haiduk and Team Join Deloitte Real Estate Practice

By Andrija Djonovic (18 October 2021)

Former Schoenherr Partner and Head of Real Estate in Poland Marta Bijak-Haiduk has joined Deloitte Legal as a Partner, along with a team of lawyers. Bijak-Haiduk will be leading the Deloitte Legal real estate advisory team, starting January 2022.



Also joining Deloitte Legal’s real estate sector are Local Partners Dominik Gorski and Dominika Sulak-Seyfried, Senior Managing Associate Patrycja Czarnecka, Senior Associate Anna Jablonska, and Associates Enrika Gawlowska and Emilia Kubiszyn.

According to Deloitte, Bijak-Haiduk has been specializing in legal advice for the real estate sector for thirteen years, “in particular on issues related to the investment process, various structures of real estate projects, and the acquisition of real estate.”

Bijak-Haiduk joined Schoenherr in 2020 (as reported by CEE Legal Matters on March 17, 2020). She had previously spent over seven years with Hogan Lovells and almost three years with Linklaters.

“I see a great opportunity for Deloitte Legal to become the leading player on the dynamically developing market of legal advisory services for the real estate sector,” comments Bijak-Haiduk. “My vision matches the company’s growth strategy and thus I strongly believe that together with the team we will be able to significantly expand the real estate practice of Deloitte Legal.”

“The expansion of the Deloitte Legal team is closely related to a growing interest in real estate law services from our clients,” added Tomasz Ostrowski, Managing Partner of Deloitte Legal Poland. “We have been conducting more and more transactions of this type, and the demand of the real estate market will most likely strengthen this trend. Our objective is to create as extensive an offering as possible and Marta and her team will help us deliver it.” ■

Czech Republic: Dubanska & Co Opens Doors in Prague

By Radu Neag (08 December 2021)

Former Taylor Wessing Partner and Co-Head of the firm’s CEE Life Sciences practice Barbora Dubanska has established Dubanska & Co in Prague, a boutique law firm specializing in life sciences, biotech, FMCG, and digital.

Dubanska focuses on pharmaceutical, regulatory, consumer, and antitrust law while working for clients in the life sciences, FMCG, and TMT/IP sectors.

Before joining Taylor Wessing (as reported by CEE Legal Matters on October 09, 2019), Dubanska was the Head of Legal at Novartis Oncology for three years. Prior to that, she spent five years as Head of CEE Competition with CMS, during which time she was seconded to Amazon for almost three. Even earlier, she was a Senior Lawyer with Weinholt Legal for two years and a Lawyer with Clifford Chance for four and a half.

“I felt I could be more impactful in a specialized law firm – to focus on what I feel is important, including working with patient organizations and providing input on the ethical ramifications of medical technology development,” Dubanska commented. “I was able to choose the people I will work with. We have a great team of professionals, all focusing on different areas of healthcare, from data and how we use it, to medical devices, to IT integration and the personal data protection aspects of life sciences. With a decreasing number of medical professionals and an aging population, we see telemedicine as the future.”

“We’re already very busy and more requests are coming in. We will remain a boutique/specialized law firm, but look to slowly increase our team going forward, all the while keeping true to our DNA,” she said of Dubanska & Co’s plans for the future. ■

Poland: Katarzyna Sarek-Sadurska and Team Join Deloitte Legal

By Andrija Djonovic (08 December 2021)

Former Raczkowski Partner Katarzyna Sarek-Sadurska has joined Deloitte Legal as a Partner and Head of the firm’s Employment Law & Benefits practice in Poland.

Also joining Deloitte Legal’s Employment Law & Benefits practice from Raczkowski are Senior Managing Associates Magdalena Skwara and Wojciech Kwiatkowski, Managing Associate Iza Gawryjolek, and Associate Maciej Mioduszewski.

According to Deloitte Legal, “for almost 14 years, Katarzyna Sarek-Sadurska has been focusing on the broadly understood HR law, providing services to employers across all sectors. She has extensive experience in both individual and collective labor law. She specializes in advisory services linked to the relations with board members and senior managers, especially in regulated markets (*i.e.* listed companies and the finance sector).”

Sarek-Sadurska studied at the University of Warsaw and Paris II. Before joining Deloitte Legal, she spent 14 years with Raczkowski.

“I am very happy to be joining Deloitte Legal, as it will be an opportunity for me to take on new professional challenges,” Sarek-Sadurska said. “Together with the team, we will be building our offering for clients that represent various industries. We will also combine labor law services with new technologies. I still want to promote the idea of digitization of business documentation.”

“This expansion of Deloitte Legal is closely linked with the interest in employment law services from our clients,” said Tomasz Ostrowski, the leader of Deloitte Legal Poland. “We are also keen to continue working closely with experts from other Deloitte tax practices.” ■



Romania: Cretu.The Law Office Opens Doors in Romania

By Radu Neag (09 December 2021)

Stoian Partners Of Counsel Alexandru Cretu has launched Cretu.The Law Office, a business law firm covering both litigation cases and legal counseling, in Bucharest.

Cretu focuses on litigation and dispute resolution as well as advising clients on commercial, banking and finance, labor, and insolvency and restructuring matters. He will also continue working with Stoian Partners, a firm he joined in 2016 as an Associate, being promoted to Senior Associate in 2018, and

appointed Of Counsel in 2021. Earlier, he was an Associate with Mitel & Partners for almost a year, a Junior Associate with ZRVP for two years, and a Legal Intern with White & Case in Dubai.

Cretu.The Law Office currently includes two lawyers.

“I’ve decided to start the law firm wishing to offer top-notch legal advice (which is also the firm’s motto) based on the experience I’ve gained through the years in handling litigation cases, as well as granting legal advice in a wide range of legal areas, which has brought me an in-depth understanding in multiple business areas,” Cretu commented. ■



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PARTNER MOVES

Date	Name	Practice(s)	Moving From	Moving To	Country
21-Sep	Natalie Hahn	Labor	DSC Doralt Seist Csoklich	Eisenberger + Herzog	Austria
11-Oct	Angel Angelov	Infrastructure/PPP/Public Procurement	Lex Ludens	Kolev, Angelov & Miteva	Bulgaria
11-Oct	Nikolay Kolev	Energy/Natural Resources; Corporate/M&A	Boyanov & Co.	Kolev, Angelov & Miteva	Bulgaria
11-Oct	Iva Miteva	Real Estate	Boyanov & Co.	Kolev, Angelov & Miteva	Bulgaria
11-Oct	Rossiza Marinova	TMT/IP	Boyanov & Co.	Kolev, Angelov & Miteva	Bulgaria
8-Nov	Barbora Dubanska	Life Sciences; TMT/IP	Taylor Wessing	Dubanska & Co.	Czech Republic
12-Oct	Lefkothea Nteka	Competition	Hellenic Competition Commission	Lambadarios Law Firm	Greece
6-Oct	Zsombor Orban	TMT/IP	Kinstellar	Deloitte Legal	Hungary
1-Oct	Ruta Pumputiene	Life Sciences	Ruta Pumputiene Law Firm	Ellex Valiunas	Lithuania
21-Sep	Przemyslaw Furmaga	Corporate/M&A	Eversheds Sutherland	Crido Legal	Poland
6-Oct	Gerard Karp	Data Protection; TMT/IP	PwC Legal	DWF	Poland
13-Oct	Mateusz Zalenski	Corporate/M&A	DLA Piper	Greenberg Traurig	Poland
18-Oct	Katarzyna Sulimierska	Real Estate	Hogan Lovells	Schoenherr	Poland
18-Oct	Marta Bijak-Haiduk	Real Estate	Schoenherr	Deloitte Legal	Poland
18-Oct	Dominika Sulak-Seyfried	Real Estate	Schoenherr	Deloitte Legal	Poland
19-Oct	Michal Miecinski	Real Estate	Linklaters	CMS	Poland
20-Oct	Alicja Sarna	Tax	MDDP	SSW Pragmatic Solutions	Poland
20-Oct	Robert Jaszczuk	Tax	PwC	SSW Pragmatic Solutions	Poland
9-Nov	Katarzyna Sarek-Sadurska	Labor	Raczkowski	Deloitte Legal	Poland
12-Nov	Lukasz Dynysiuk	Tax	CMS	DLA Piper	Poland
29-Sep	Andrei Georgescu	Competition	Suciu Popa	360Competition	Romania
3-Nov	Alexandru Mocanescu	Competition; Litigation/ Disputes	Kinstellar	KPMG Legal Toncescu si Asociatii	Romania
9-Nov	Bogdan Bibicu	Corporate/M&A	Kinstellar	Wolf Theiss	Romania
9-Nov	Alexandru Cretu	Litigation/Disputes	Stoian Partners	Cretu. The Law Office	Romania
8-Oct	Petar Kojdic	Banking/Finance	Schoenherr	Kinstellar	Serbia
13-Oct	Damjan Despotovic	Labor; Competition	NKO Partners	DNGV Attorneys	Serbia
13-Oct	Marina Nikolic	Corporate/M&A	NKO Partners	DNGV Attorneys	Serbia
13-Oct	Milorad Glavan	Data Protection; Disputes	NKO Partners	DNGV Attorneys	Serbia
13-Oct	Srecko Vujakovic	Corporate/M&A	Schoenherr	DNGV Attorneys	Serbia
24-Sep	Cemal Araalan	Litigation/Disputes	ARC Avukatlik Burosu	Bezen & Partners	Turkey
15-Oct	Seyfi Can Kandemir	Infrastructure/PPP/Public Procurement	White & Case	Morgan Lewis	Turkey
14-Oct	Oleksandr Aleksyeyenko	Competition	Marchenko Partners	Nobles	Ukraine

PARTNER APPOINTMENTS

Date	Name	Practice(s)	Firm	Country
12-Nov	Dominik Hofmarcher	Competition; TMT/IP	Schoenherr	Austria
18-Oct	Petr Dohnal	Corporate/M&A	Havel & Partners	Czech Republic
19-Oct	Jan Stejskal	Corporate/M&A	White & Case	Czech Republic
12-Nov	Radek Matous	Labor	Eversheds Sutherland	Czech Republic
30-Sep	Laszlo Agai	Corporate/M&A	KNP Law	Hungary
19-Oct	Jacek Liput	Infrastructure/PPP/Public Procurement	Gawronski & Partners	Poland
19-Oct	Marek Sawicki	Corporate/M&A	White & Case	Poland
4-Nov	Szymon Balcerzak	Private Equity	Kochanski & Partners	Poland
4-Nov	Jacek Kozikowski	Energy/Natural Resources	Kochanski & Partners	Poland
4-Nov	Karol Polosak	Corporate/M&A; Insolvency/Restructuring	Kochanski & Partners	Poland
22-Sep	Dmitry Kuptsov	Litigation/Disputes; Insolvency/Restructuring	Alrud	Russia
18-Oct	Alexey Chertov	Banking/Finance	Morgan Lewis	Russia
19-Oct	Olga Fedosova	Capital Markets	White & Case	Russia
27-Sep	Aleksandar Popovic	TMT/IP, Litigation/Disputes	JPM	Serbia
27-Sep	Ognjen Colic	Corporate/M&A, Labor	Gecic Law	Serbia
26-Oct	Patricia Gossanyiova	Banking/Finance	Dentons	Slovakia
12-Nov	Sona Hekelova	Banking/Finance; Capital Markets	Schoenherr	Slovakia
19-Oct	Derin Altan	Capital Markets	White & Case	Turkey
19-Oct	Ates Turnaoglu	Banking/Finance	White & Case	Turkey

IN-HOUSE MOVES AND APPOINTMENTS

Date	Name	Moving From	Company/Firm	Country
19-Oct	Michael Czermak	Park Now Group	Casinos Austria	Austria
16-Sep	Edit Rosta	3M	SAP	Czech Republic
7-Oct	Josef Adam	Havel & Partners	CZG - Ceska Zbrojovka Group SE	Czech Republic
25-Oct	Maria Dardai	MSC Cruises	Kinstellar	Hungary
18-Oct	Dominik Gorski	Atrium European Real Estate	Deloitte Legal	Poland
21-Oct	Anela Musat	Partners Group	Blue Horizon	Romania
24-Sep	Ekin Inal	Inal Unver Attorney Partnership	International Finance Corporation	Turkey



On The Move:

- Full information available at: www.ccelegalmatters.com
- Period Covered: September 16, 2021 - November 15, 2021

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

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.

Bulgaria:

Interview with Nikolay Kolev of Kolev, Angelov & Miteva

By Teona Gelashvili (October 15, 2021)



The current political atmosphere in Bulgaria is turbulent and hectic, as the country faces an unprecedented situation of running its third extraordinary Parliament elections in a row within a single year, according to Kolev, Angelov & Miteva Partner Nikolay Kolev.

“The next parliamentary elections scheduled in mid-November will be held together with the Presidential elections, which adds even more complexity to the situation,” Kolev begins. According to him, the political scene faces fragmentation, with political parties racing to reach the 4% barrier for entry into Parliament. “The attempts for political coalitions are opportunistic as parties lack a real common conceptual background,” he adds. “Recent surveys indicate that six or even seven political parties will be able to enter the Parliament, which is very challenging, given the size of the Bulgarian population.”

Kolev reports that it is difficult to identify any recent major legislative updates, “as the Parliament functioned only for a few months and currently, the country is in the middle of two election campaigns.” However, a controversial topic is “Bulgaria’s largest labor union’s new proposal, suggesting an

increase of the social insurance burden over the employees and entrepreneurs with the highest incomes,” he adds. According to Kolev, if adopted, this measure will have a significant impact on businesses and might lead many companies to exit the Bulgarian market.

“Other notable proposed legislative changes relate to various aspects of corporate income taxation, VAT, excise duties, and trademark disputes, but they are still under discussion,” Kolev notes.

As for the country’s economy, Kolev reports, that the real estate sector has a 20% increase in sales compared to the same period of 2019. “SAP’s recent EUR 50 million acquisition of Park Lane Office Center marks the biggest real estate transaction for the last three years in Sofia,” he continues. “Simultaneously, many companies are trying to change the office spaces rented by them and to move to a new location. Earlier this year the famous IT company Chaos rented four floors of Sofia Office Center.” According to Kolev, other growing fields of the economy are IT and fintech, as well as medical equipment and consumables trade, and some interesting M&A transactions involving companies in these areas might be expected.

On the other hand, Kolev notes that the COVID-19 crisis has led to many negative consequences in Bulgaria. “Many companies are having financial difficulties and are trying to reorganize their business to overcome the current economic situation,” he adds. “We expect an increase in the next few months in the number of insolvency cases and voluntary liquidations. Many distressed assets and enterprises will be open for sale or will be seeking financial injection which might be a good opportunity for local and foreign investors who have the free cash for such an investment,” Kolev reports. In addition, “many office centers and shopping malls management companies are preparing themselves for potential re-negotiations or disputes with their lessees given the risk of another lockdown in the coming weeks,” Kolev says. ■

Poland:

Interview with Radoslaw Biedecki of Noerr

By Teona Gelashvili (October 22, 2021)



The current political atmosphere in Poland is rather turbulent, according to Noerr Partner Radoslaw Biedecki, as the government is losing support and the opposition remains divided.

“The ruling party does not have a parliamentary majority, and therefore cooperation with smaller parties is necessary for legislative updates,” Biedecki begins. “However, we do not expect significant change anytime soon, due to division of the opposition.”

“The situation is further compounded by the recent ruling of the Polish Constitutional Court, which has not only legal but also major political implications,” he reports. “The Court held that Polish national legislation should prevail over EU law. Some opposition leaders consider this decision a political statement that puts Polish withdrawal from the EU on the agenda.” According to Biedecki, the ruling already has implications, as Poland is one of the last three countries that have yet to obtain EU funding. “Polexit” would be a nightmare that would cause unpredictable consequences,” he says.

Another major political issue in Poland relates to migration near the Polish-Belarusian border, Biedecki reports. “Migrants and refugees seeking to enter Poland and the EU are likely to be brought to that area by Belarusian authorities. However, the Polish authorities’ refusal to let them enter is sparking debate, since the government considers these people to be economic migrants rather than political refugees.”

On legislative updates, Biedecki highlights the attempts to introduce a substantial tax reform, referred to as the Polish Order. “The proposal has not been adopted yet but, due to harsh criticism from the public and even members of the ruling party, the document has been modified significantly compared to its initial content,” he says. According to Biedecki, if adopted, the proposal would lead to a 9% tax increase, which would

most likely have a heavy impact on the Polish economy, largely comprised of micro and mid-sized entrepreneurs.

On the other hand, Biedecki notes that Poland has made up the pandemic-induced GDP loss, with 2021 witnessing an 11.1% GDP growth year on year, which indicates that the country has clearly managed to navigate the pandemic relatively well. “At the same time, official statistics report almost 6% inflation, and even that number might be misleading. If you look for instance at the prices of raw materials the inflation rate is even higher. Gas prices are over 9% higher than a year ago, electricity has also risen by over 9%, and fuel prices have increased by over 28% so far,” he continues. “It will have an impact on our ability to continue our high consumption, which is the main driver of economic recovery, and considering the potential tax increase, it will be an important factor for the growth of the Polish economy in the coming years.”

The ruling party does not have a parliamentary majority, and therefore cooperation with smaller parties is necessary for legislative updates. However, we do not expect significant change anytime soon, due to division of the opposition.

Additionally, Biedecki reports that 2021 might be a record year regarding the number of transactions. “So far in 2021, we have witnessed over 220 transactions with the three biggest ones for each quarter being Liberty Global’s sale of UPC Poland to Play Communications (Q3 2021), Trinseo’s sale of its synthetic rubber business to Synthos (Q2 2021), and the acquisition of Aviva Poland by Allianz (Q1 2021),” he explains. “The key sectors that drive the transaction industry in Poland are IT, TMT, fast-moving consumer goods, and the bio-health sector, and while there were a few big transactions in these sectors, the Polish market is instead focusing on mid-sized and small transactions,” Biedecki concludes. ■

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Romania:

Interview with Paul Buta of Musat & Asociatii

By Radu Neag (November 10, 2021)



Uncertainty is the key word in Romania of late, according to Musat & Asociatii Deputy Managing Partner Paul Buta, with the Government recently succumbing to a vote of no confidence in Parliament impacting both businesses and law firms.

“The negotiations to form a new government will likely fail,” Buta says, so “we’re looking at early elections, either late this year or early the next. This creates a serious feeling of instability for our clients. Predictability and a clear picture of their aims and policies should be the objective of any future Government,” he says.

One major development was the adoption of the National Resilience and Reconstruction Plan, envisaging significant investment in various fields, with a significant portion in infrastructure. “We expect a lot of work on public procurement, PPP, and the like – we’re looking forward to putting our expertise to good use on transportation, IT, and green/renewable infrastructure projects,” Buta says.

There is further uncertainty on the energy markets, Buta reports. “With the dramatic increase in prices for gas and electricity, the government issued two laws to provide support through the winter to two classes of consumer,” he says. “But there was also a proposal to cap energy prices, and it’s unclear which types of consumers this would be targeted at. Will high-volume industrial consumers be included, or will those companies have to bear the brunt themselves (and pass the costs on to their clients)? Will those subsidies – that need to be financed somehow – impact their bottom line in the mid-term?” he wonders.

On competition, Buta says the regulator’s strategy has been reactive, rather than proactive: “The Competition Authority doesn’t much interfere in M&A transactions. So they allow

for significant market concentration, with the associated entry-barriers on those markets,” he says. “The authority is more likely to intervene on abuse of dominance or collusive practices, but that’s really an after-the-fact approach. It creates a good environment for M&A transactions but opens up the markets to some problematic developments.”

One of those instances was painfully visible, Buta reports. “The insolvency of the largest player on the mandatory car insurance market, with a 45-50% market share, has been on the horizon for years, while the financial regulators stood back,” he says. “There are now millions of policies out there – they become void when bankruptcy is announced – and those clients will have to seek new ones. Insurance prices tripled in the past months. This is actually a systemic problem”, he notes.

The [competition] authority is more likely to intervene on abuse of dominance or collusive practices, but that’s really an after-the-fact approach. It creates a good environment for M&A transactions but opens up the markets to some problematic developments.

Buta reports that the real estate sector is also in flux. “The new Mayor of Bucharest has suspended the zoning plans for the entire city, six months ago. It will be a year before it’s resolved – with no building permits issued in the meantime,” he says. This is expected to create a drop in the supply of residential and office real estate towards the end of next year and well into 2024. “With the increased energy and construction materials prices and the National Bank increasing the interest rate compounding the lack of new projects buyers will feel the pressure.”

He says this might lead to an increased focus on renting, rather than ownership, a model that is highly atypical for the Romanian market. “And while the largest developers are still reporting record profits, that’s mainly because their income turns on a long development cycle – we’ll see the impact of 2021 three or four years down the line,” Buta concludes. ■

Czech Republic:

Interview with Janka Brezaniova of Taylor Wessing

By Teona Gelashvili (November 12, 2021)



Despite the ongoing political events, the Czech Republic is keeping up with the global trend of a record-breaking number of yearly M&A transactions, according to Taylor Wessing Partner Janka Brezaniova.

“Right after the general parliamentary elections, the Czech Republic is experiencing an unprecedented situation regarding President Milos Zeman’s possible physical incapacity to run the office due to his recent hospitalization,” Brezaniova reports. “The constitutional clause that mandates temporary delegation of presidential powers to other constitutional bodies has never been invoked, in the modern history of the Czech Republic,” according to her. In addition, Brezaniova highlights that the newly elected Chamber of Deputies will only start exercising its power after November 8, 2021 (when the new Chamber of Deputies will hold the first opening session) and, considering the potential introduction of constitutional mechanisms regarding the president’s incapacity, a lot of uncertainty and instability is present in the political sphere.

As for the legal updates, Brezaniova reports that one of the heated topics is related to a new law on the registration of Beneficial Owners (UBOs). “The rationale behind this law was to implement the EU AML Directive, however, I believe that the Czech law imposes considerably stricter obligations on companies, compared to other jurisdictions,” she continues. “The law requires all legal entities, including foreign companies, to register new UBOs, however, applying Czech law to foreign structures has created a lot of bureaucratic hurdles. Meanwhile, the inability to comply with the rules can lead to not only public law sanctions, but private law liabilities, which is quite extraordinary,” Brezaniova notes. She concludes that, while the law primarily aims to prevent money laundering, in practice it may have significant implications on transactions

and day-to-day operations. “The negative effects related to UBOs not being registered will be more evident next year when the companies finalize their financial statements. The shareholders would be expecting their dividends which, however, might not come because directors would be reluctant to pay them out – so that they do not breach their duty of care and do not expose themselves to liabilities and damages claims,” she says.

Brezaniova reports that, while compared to the previous year the business sector is significantly more active, the country faces certain challenges in the economic sphere. “First of all, as many other EU markets, the Czech Republic is experiencing an energy crisis and growing energy prices. Some companies have already stopped supplying energy, and while there are regulatory mechanisms in place to protect customers, there could be a rise in class action lawsuits,” she notes.

“Secondly, we have experienced a crisis in the automotive industry. The COVID-19-related shortage of semiconductors, which are used to produce chips to install in cars, had a severe impact on the Czech Republic, which is an automobile industry country,” Brezaniova says. “It limits automobile production, as well as employment, which has an overall impact on the whole production chain in the Czech Republic.” Consequently, she notes that automobile associations are now seeking support as the most impacted business supply chains, for instance, by adopting temporary employment and COVID-19-related programs. The representatives of trade unions, government, and employers have also met to address possible tools leading to solving the current labor market situation.

Another development impacting law firms’ day-to-day activities, Brezaniova says, was the election of new members of the Czech Bar Association’s bodies, such as the board of directors, supervisory council, and disciplinary commission, that occurred at the Assembly of the Czech Bar Association, which is convened every four years. According to her, the results of the elections are promising, as “colleagues want to bring more flexibility and modernity to the legal profession, adapt to the changes in the market, as well as promote digitalization in the legal field.” ■

Digital nomads, cyber risk insurance, and an ever-growing energy sector – these are the hottest topics in Montenegro right now, according to CMS Partner Milica Popovic.

“The most interesting topic in Montenegro right now are digital nomads,” Popovic begins, “and the fact that the government has canceled the requirement that businesses pay for healthcare.” She reports that, from a business standpoint, this has attracted attention from foreign investors to open up shop in Montenegro. “I would expect that the final legal framework dealing with digital nomads in Montenegro will end up looking like the one in Croatia,” Popovic continues, indicating that it is expected for this to occur in 2022. “In Croatia, digital nomads are not required to pay any income tax but, on the flip side, must not work for Croatian employers.”

As another interesting development, Popovic underlines an increase in the number of legal questions regarding insurance matters. “This is not a highly visible topic, but there has been an uptick in legal matters dealing with professional liability insurance and cyber risk insurance,” she says.

On the one hand, professional liability insurance, according to Popovic, has mostly to do with the increase in the number of large infrastructural projects that are currently in development. “A great number of foreign investors, contractors, and subcontractors have come to Montenegro to work on these – especially in the energy sectors,” she says. “And they are all required to obtain appropriate insurance, so the uptick in this area is logical.”

On the other hand, Popovic says that cyber risk insurance is becoming an inevitability. “It might, at first, appear that many businesses in the region are not fully aware of all the cyber threats out there – but the pandemic has made sure that awareness gets raised,” she says. “I expect the cyber risk insurance sector to grow even more, and for us to witness an increase in cooperation between large insurance companies and IT companies, such as Google, Microsoft, or Apple.”

Popovic foresees that all business sectors that rely on IT solutions will, at one point, be forced to form their own cyber risk assessment teams. “The market is becoming more and more aware of the immediate risk that cyber-attacks represent – and is preparing to react,” Popovic says. “Once there is a realization of a cyber risk – you have to be ready to react within hours.”

Finally, on insurance, Popovic adds that there was an increase in the number of legal questions surrounding business interruption policies as well. “The key question a lot of clients ask was if there was a legitimate business interruption situation in the case where countries have applied restrictive measures to combat the pandemic – mostly in the hospitality industry.” She says that, ultimately, the answer to that question was ‘no’, but that an increase in work occurred, nonetheless.

In conclusion, Popovic highlights a steady trend of growth in the energy sector of Montenegro. “There is a markable growth, especially in solar and wind power, with a few wind and solar power energy parks under construction.” Additionally, Popovic says that a fact-finding study on Montenegro’s energy supplies on the seaside should be completed in near future. “We are expecting to see the results of this study by the end of the year – it should provide information on whether Montenegro has any oil reserves at its disposal.” ■

Montenegro: Interview with Milica Popovic of CMS

By Andrija Djonovic (November 18, 2021)



“

I would expect that the final legal framework dealing with digital nomads in Montenegro will end up looking like the one in Croatia.

Estonia:

Interview with Rolan Jankelevitsh of Walless

By Teona Gelashvili (November 26, 2021)



While no major plots or surprises were witnessed during the latest presidential and local elections, Estonia's recent legislative developments might have a significant impact on the business sector, according to Walless Partner Rolan Jankelevitsh.

“Two notable political events that occurred in Estonia recently were the presidential and local elections,” he explains. “During the presidential elections, the outcome was rather predictable, as Alar Karis, endorsed by both coalition parties, received the majority's support. On the other hand, in the local elections held in October, the Center Party, known for its popularity among the Russian-speaking population, lost the absolute majority in Tallinn. The party has now formed a coalition with the Social Democrats.”

Jankelevitsh highlights three major legislative updates. “First of all, Estonia recently joined the OECD/G20 global minimum tax political deal, which will likely have a considerable economic impact, should it be ever implemented. According to this deal, if a multinational group's profits are taxed at a rate lower than 15% in one country, then the group's parent jurisdiction may ‘top up’ this tax to 15%.” He notes that Estonia initially opposed the deal, however, following political pressure, the country is now negotiating exemptions.

“Secondly, we have an update regarding crowdfunding regulations,” he continues. “Crowdfunding platforms now have to comply with EU-level regulations. Crowdfunding services will need to meet licensing requirements similar to other financial services. For this purpose, the law establishes a one-year transitional period until November 2022, during which companies

have to adjust to the updated, more stringent requirements.” According to Jankelevitsh, compared to other EU countries, the crowdfunding sector is quite extensive in Estonia, therefore, the law will have significant implications on business.

Lastly, Jankelevitsh highlights legislative updates regarding the cryptocurrency business. “Estonia is a popular jurisdiction to establish such businesses,” he says. “Businesses having the Estonian cryptocurrency service license often have little or no connection with Estonia. This potentially creates money laundering risks. Accordingly, the draft law establishes stricter authorization requirements and grounds for license revocation. The crypto-services business must now be, at least to some extent, onshore.” Considering the role of the cryptocurrency sector, Jankelevitsh notes that “the new law will be a game-changer for many businesses.”

As for the economy, Jankelevitsh points out that, similarly to many European countries, the interest rates remain low while the fear of inflation is significant. “We are witnessing busy capital markets and many ongoing investment activities. A popular saying describes Estonia as the ‘IPOdrome’, due to a large number of recent public offerings and the massive interest in them. In Enefit Green's recent IPO, nearly 5% of the Estonian population placed orders,” he says. “Bolt has also successfully finished a capital raising round recently and, as a result, the company is now valued several billion euros more.” In addition, Jankelevitsh notes that the Estonian start-up ecosystem is seeing record-high activity as well.

Jankelevitsh further adds that, during the last couple of months, the Estonian second-pillar pension system became voluntary. “The accumulated money was to a great extent injected back into the economy, contributing to consumption, the real estate market, and others, but the impact was fairly short-term,” he notes. “Also, we are witnessing people who made successful exits from their companies now looking for investment opportunities, ranging from start-ups to more mature companies. All this allows us to have a positive prognosis for future developments,” Jankelevitsh concludes. ■

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Slovenia:

Interview with Ales Lunder of CMS

By Teona Gelashvili (November 19, 2021)



Given the upcoming parliamentary elections, competition among the political parties is intensifying, while the Slovenian economy struggles to recover, according to CMS Partner Ales Lunder.

“Slovenia’s president has recently announced the date for the next parliamentary elections, which will be held in April 2022,” Lunder reports. According to him, certain political tensions are characteristic of this process. “The recently leaked recordings involving Environment Minister Andrej Vizjak are the source of additional tensions. The recordings reportedly date back to 11 years ago and imply that Vizjak, a close ally to the Slovenian prime minister, was allegedly encouraging tax evasion and referring to his potential influence on judges,” he says. “While the legality and authenticity of the recordings can be challenged, they still raise doubts about respecting the rule of law by major influential politicians of the country.”

“In addition to that, last week, the prime minister’s party started an assault on the energy sector by dismissing, in an apparently coordinated action, three CEOs of state-owned energy companies,” Lunder notes. “These developments create an unpleasant political atmosphere, indicating that political parties are interfering in the economic sector out of predominantly political reasons. The notion of ‘corporate governance’ seems to be alien to both ruling and opposition parties in Slovenia,” he adds.

“In terms of legislative updates, the parliament has been busy addressing COVID-19 related issues. The Constitutional Court has declared several regulations unconstitutional, finding that the adopted measures lacked sufficient legal grounds,” Lunder reports. “In the meantime, the recent proposal on gaming

law has resulted in public outrage,” he adds. “The proposed amendments would significantly liberalize the gaming sector, allowing foreign entities to obtain a license in this sphere. At this moment, it’s practically impossible for foreign entities to have a majority stake in the gaming business in Slovenia.” However, Lunder notes that the legislative proposal does not enjoy popular support, rendering it unlikely to be adopted by the government in light of the upcoming elections.

As for the economic sector, Lunder mentions that the transactions that were on hold due to the pandemic are eventually moving forward. “At the beginning of October, Slovenian company Jub was sold to Australian strategic investor Dulux (a Nippon Paint Holdings company). In addition, Sberbank Europe has been sold to Serbian bank Aik Banka.”

The recently leaked recordings involving Environment Minister Andrej Vizjak are the source of additional tensions. The recordings reportedly date back to 11 years ago and imply that Vizjak, a close ally to the Slovenian prime minister, was allegedly encouraging tax evasion and referring to his potential influence on judges.

Lunder explains that “during an economic recovery, it is difficult to pinpoint any specific industries that are particularly active. All sectors are busy at the moment, be it production, real estate, the financial industry (NPLs), or start-ups.” He adds that the tourism sector has been rather active due to the Slovenian government’s initiative to issue vouchers to Slovenian citizens and permanent residents, enabling them to spend money on domestic travel. “However, if COVID-19 measures are reintroduced without any new supporting measures, the tourism sector will suffer as well,” he states.

According to Lunder, the automotive sector experienced significant hurdles as well, due to the shortage of semiconductors. “This has a very negative influence on Slovenia, which is an automotive industry country. Even recently, Revoz, a Renault subsidiary company in Slovenia, had to reduce its workforce by 350 employees. I wouldn’t say that we have a recovery in that sense,” he concludes. ■

North Macedonia:

Interview with Dejvi Davidovski of Trpenoski

By Andrija Djonovic (November 30, 2021)

Political stalemate and a prolonged election period are holding North Macedonia in a lock, preventing major legislative and business moves, according to Trpenoski Partner Dejvi Davidovski.

Describing the political atmosphere in North Macedonia, Davidovski highlights the recently held local elections. “Given the fact that the Parliament has adjourned, seeing as how it’s election period, no major changes or updates to the legislative framework came to be,” he says “so the local elections were closely followed.”

Davidovski reports that the local elections resulted in no changes in the political power split and that this caused the opposition parties to raise their voices. “The opposition parties ended up in the same position in which they were before and they raised questions of legitimacy of the election process as well as regarding the position of the ruling parliamentary majority and the government, especially since the Prime Minister had already announced that he will resign,” Davidovski says. “At the moment, the political situation is uncertain, since it is still unclear whether the government will retain its Parliament majority or not, and, consequently, whether the opposition will have the opportunity to elect a new government or we’re to have snap elections.”

With the Parliament in adjournment, Davidovski reports that a “number of reform laws and major amendments and updates to laws are stuck in parliamentary procedure processes. These would have an impact on both the practice of law and doing business,” but their fate remains uncertain until the election period ends, and a new parliamentary majority is established.

The political situation has had, as Davidovski says, a negative impact on both society in general and on doing business in North Macedonia, “due to the great influence of politics and political parties in Macedonian society.”

Furthermore, Davidovski reports that “many business sectors are experiencing downward trends overall, due to the pandemic, but the last couple of months have seen some increase in corporate profits.” He says that this change for the better is expected to continue, at least until the end of the year. “The most active sectors are the financial and pharmaceutical sectors, where there is visible growth. Still, this growth is not accompanied by growth in the real sector,” Davidovski reports. “Additionally, in the past few months, no major projects have been announced or implemented, again, due to the country being stuck in the election period,” Davidovski concludes. ■



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At the moment, the political situation is uncertain, since it is still unclear whether the government will retain its Parliament majority or not, and, consequently, whether the opposition will have the opportunity to elect a new government or we’re to have snap elections.

Belarus:

Interview with Dmitry Arkhipenko of Revera

By Radu Neag (December 01, 2021)



There are a lot of legislative updates coming out of Belarus according to Revera Managing Partner Dmitry Arkhipenko, who highlights those on tax liability, company law, labor law, data protection, currency control, and the legal profession itself.

First, Arkhipenko reports that an exemption of criminal liability was introduced in tax law, “provided the offender repays the due taxes in full and also covers losses in the same sum.” He noted that the authorities have been very active in controlling tax obligations. “We see a lot of criminal cases in the field, so this was important.”

On company law, Arkhipenko says the changes were quite significant. “For instance, previously you could not conclude shareholder agreements with all the shareholders of a company, but this limitation was canceled.” He also notes some quality-of-life improvements were made. On labor legislation, for example, “the possibility of remote work was introduced, and remote work was regulated”.

From November 15, 2021, onward, Belarus will have data protection legislation, according to Arkhipenko. “Unlike in the EU, in Belarus, the circulation of personal data did not face any serious regulation. All companies working with personal data will now need to implement consent mechanisms and processing policies, and the National Center for Personal Data Protection was created, as a state regulator.”

Serious changes were made on currency regulation, for both individuals and legal entities, he reports. “A special permission was required for many capital currency operations – opening accounts, purchasing real estate or stocks, capital fund contributions, and others. A simple procedure of electronic notifica-

tion was introduced.”

The most impactful change on the legal profession, however, is the recent update of the Law on Advocacy, according to Arkhipenko. “The advocacy bureau and the individual advocacy practice are being discontinued. Legal Consultation Offices (LCOs), established by regional Bar associations, will be the only possible form of practicing advocacy.” Advocates in those LCOs will work separately from each other, he says. “Clients will not be able to enter into a legal assistance agreement with some entity, group of advocates, or several advocates simultaneously and there is, apparently, no option for an advocate to hire another advocate. This means that advocates will only conduct individual practices under the LCO. Advocates will still have a monopoly on court representation, conducting criminal cases, and advising natural persons on nonbusiness matters,” he explains.

Arkhipenko does note that Belarusian legislation provides two forms of legal practice: advocacy on the one side, and law firms on the other. “Law firms will not be able to offer services such as litigation or representation in criminal cases. Prior to the advocacy reform, we also had an advocacy bureau. We currently have alliances with 15 advocates. We’re endeavoring to preserve our litigation practice and safeguard our staff.”

For the legal market, this might mean a decrease of structured groups, an increased number of individual advocates in LCOs, and not much growth, according to Arkhipenko. “It is necessary to admit, however, that it’s difficult to focus on several spheres, as an individual practitioner. It might become increasingly hard to find firms that can provide a deep, thorough, and complex approach to the matters.”

On the business side, Arkhipenko reports an increase in requests from businesses looking to expand abroad, especially IT companies, as well as numerous requests for personal immigration. The demand is such that it has led to some law firms opening offices abroad, in countries like Ukraine or Cyprus. He also emphasizes that “probably around 80% of M&A deals are happening in IT” and mentions activity in the e-commerce sector, with many offline businesses developing their own online platforms. “We also see the increase of requests concerning data protection, IP disputes, legal expertise on sanctions, and, interestingly, more international arbitration cases. Perhaps due to the sanctions or global trends, more companies are requesting the inclusion of arbitration clauses into their contracts,” Arkhipenko concludes. ■

Ukraine:

Interview with Yuriy Terentyev of Redcliffe Partners

By Radu Neag (December 02, 2021)



Several notable decisions of Ukraine's Anti-Monopoly Committee, a bottleneck caused by a spike in the number of public procurement appeals, and the country's tax amnesty program are at the top of lawyers' agendas, according to Redcliffe Partners Partner Yuriy Terentyev.

"We are seeing big inflows of money into the Ukrainian economy," Terentyev begins. "They are affecting investment activity, public procurement, and, of course, competition. The available liquidity means a bigger interest for investments, and we anticipate an increase in M&A work and the associated antitrust activity."

Several cases on abuse of dominance that started in 2020 or prior were completed this year, Terentyev says, highlighting one where an electricity producer was found to abuse its market position. "They of course did not agree. In Ukraine we have two energy zones: the unified energy system, including most of Ukraine, and the Burshtyn Energy Island, synced with the EU but not the rest of the country," he explains. "Only thermal plants operate there, but energy can be imported from neighboring countries. And the electricity producer could control the availability of imported electricity and thus influence the pricing in this trading zone. We'll have to see how it goes in the courts."

Because of peculiarities in Ukraine's antitrust laws, Terentyev says financial institutions acquiring control of company shares or assets through foreclosures need to file concentration notifications with the competition authority or run the risk of hefty fines. "In September the authority issued a decision against the State Savings Bank of Ukraine – for its ownership of a pledged refrigeration facility without notification – and imposed a fine of around EUR 500,000. Similarly, in the

summer, the authority issued a decision concerning a sugar factory that went bankrupt several years ago, with different parts of it having been acquired by a bank and other entities and then gradually reconstituted by the new business owner. Technically they did not acquire a working business from the bank through the first transaction – but the penalty imposed by the authority was more than EUR 2 million, setting a new standard," he reports.

"The Anti-Monopoly Committee was sticking to a conservative interpretation of the law. Both these cases are questionable examples of 'classic concentrations.' Still, financial institutions should take this into account, from a compliance and risk management perspective, and just file the concentration notice." He hopes this particular issue will be addressed by Parliament in the next six months. "Meanwhile, the authority has at least clarified its stance on the issue – it's an uncomfortable clarity, but clarity nonetheless."

The biggest issue currently affecting the Anti-Monopoly Committee, according to Terentyev, is the fact that instead of the roughly 900 appeals on public procurement procedures a year back in 2014 the authority has now received about 17,000. "So, all commissioners are now reviewing up to 100 public procurement cases every day. It's a big bottleneck for public procurement and a strain on the authority's other functions," he explains. He says this will be addressed soon, with changes to the Law on Public Procurement and on the Anti-Monopoly Committee implementation, which would "divert complaints from the antimonopoly commissioners to new public procurement commissioners, to be hired within the same institution."

Finally, Terentyev mentions that Ukraine has started a tax amnesty program, available for one year starting September 2021. "Individuals may disclose their assets – those for which taxes have not been paid – without liability." He says competition law will again come into play. "If the ultimate beneficial owner declares an asset now, without having filed the proper concentration notification before, under the 'amnesty' the penalty will be limited to an amount of about EUR 700. But as of mid-September, only two tax amnesty notifications have been filed." He anticipates that most of the filings will happen towards the end of the designated period. "With the tax authority, you just send in a letter. But things might be more complicated on competition, negatively impacting the productivity of the competition authority, which will have to deal with an unpredictable number of notifications in a limited time frame, closer to the end of the 'amnesty.' Nobody wants to go first and risk becoming a case study," Terentyev concludes. ■



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Albania:

Interview with Aigest Milo of Kalo & Associates

By Teona Gelashvili (December 06, 2021)



In Albania, similarly to other Balkan countries, politics influence the administration of justice and business, according to Kalo & Associates Executive Partner Aigest Milo.

“Generally speaking, in Albania, business-related activities slow down during the election period,”

Milo says. “This year’s general parliamentary elections, held in April, created some degree of uncertainty, lasting until the election results were published in May. However, the election atmosphere this year was atypical as, even during this period, there were some developments from the economic point of view.” According to him, since the parliamentary majority was reconfirmed for a third mandate, there was a sense of continuity and, therefore, no drastic changes have occurred.

Milo notes that the ongoing judicial vetting process remains one of Albania’s major challenges. “Many judges have been dismissed from office, as they did not pass the vetting procedure,” he explains. “Until very recently, Albania’s Supreme Court was in crisis, as only three seats out of 19 were filled. Similar developments have been witnessed in the Tirana Court of Appeal and lower courts, where a substantial majority of judicial seats remains vacant.” According to him, this has resulted in delays in reviewing cases. “In fact, at this moment, around 35,000 cases are awaiting decisions in the Supreme Court. Excessively long proceedings have a significant impact on business. In particular, it has been considered a major obstacle for foreign investors, who are more sensitive to judicial delays and the malfunction of justice.” Milo notes that various chambers of commerce representing foreign investors have raised objections to this issue.

In addition, Milo highlights that one of the major recent legislative reforms in Albania is related to the convergence of banking legislation towards the EU legal framework. “An

interesting development has been the enactment of legislation regulating crypto assets. In Albania, a comprehensive law was adopted regulating different aspects of cryptocurrencies and crypto-assets, which will come into force next year. The law is a novelty not only for the region but globally, and it will have considerable implications for this sphere,” he notes.

Milo points out that the economy has largely recovered and reached pre-pandemic levels. “We are witnessing many M&A and finance-related transactions, involving local banks and international financial institutions. Unfortunately, deals involving local and regional business entities account for the majority of these transactions, as the number of foreign investments remains rather low,” he says.

” *Many judges have been dismissed from office, as they did not pass the vetting procedure.*

Milo explains that the financial industry and manufacturing sectors remain very active, along with construction. “As a matter of fact, a major industry that has not been affected at all has been construction. To give a perspective, while last year, the overall economy shrank by 4%, the construction industry grew by almost 10%. The boom in construction can be witnessed not only in the capital but primarily in the southern touristic part of the country.” In addition, Milo highlights that the government has been promoting major infrastructure projects, such as ports, airports, and highways. “While the majority of these projects are still in the preparation phase, we expect their implementation to start shortly as well,” he says.

As for transactions, Milo mentions two major ongoing deals in the banking and extraction sectors – the sale of Alpha Bank’s subsidiary in Albania and the rumored sale of one of the biggest companies in the extraction sector. “Considering these developments, we hope that the growth trend in transactions continues not only in the following couple of months but for the next year as well,” Milo concludes. ■

LATVIA'S AMENDED ADVOCACY LAW: A CHANGE AFFECTING ALL LAW FIRMS

By Teona Gelashvili

On February 18, 2021, following a five-year preparation period, the Saeima – the parliament of the Republic of Latvia – adopted amendments to the country's Advocacy Law, addressing, inter alia, the proper corporate form for law firms. Going forward, in Latvia, a law firm must either be a partnership (either general or limited) or a limited liability company. CEE Legal Matters spoke with several Latvian lawyers about the newly amended law.

A 'Vague' and 'Outdated' Law

The relevant portions of Latvia's Advocacy Law, according to BDO Latvia Managing Partner Vita Liberte, stipulated that “sworn advocates may establish offices of sworn advocates who are registered in the Council of Sworn Advocates of Latvia” and were well over 17 years old. “Since 2004, Article 116(2) of the Advocacy Law remained unchanged,” says Liberte, noting that, in the absence of any elaboration or detail, civil law provisions had to be applied by analogy to resolve the problems that arose.

Liga Merwin, the Managing Partner of Ellex Klavins, highlights the challenges law firms faced under that original law. According to her, “technically, law firms, including the large ones, were formed not as legal entities, but as civil law partnerships.” Back then, she says, “each individual attorney was registered as a taxpayer, and annual accounts were not publicly accessible. In addition, the old model led to several unresolved issues, including how to liquidate a law firm and its consequences on employees and technical staff.”

In addition, Fort Legal Partner Sandis Bertaitis says, under the previous law, even though law firms were registered as taxpayers, they were not recognized as full legal entities. “However, in everyday life, law firms acted like such, e.g., they used to open and operate bank accounts, own registered property (such as vehicles), conclude a variety of agreements (for office supplies, etc.), and even conclude employment agreements.” As a result, he says, law firms were *de facto* legal entities. Still, Bertaitis explains, it was necessary “to unify and give legal shape to existing practices by explicitly defining the legal status of law firms.”



Janis Esenvalds,
Partner,
RER Lextal

The Latvian Ministry of Justice started preparing to amend the Advocacy Law about five years ago, reports Janis Esenvalds, Partner at RER Lextal in Riga, with the country's bar association and representatives from various government and judicial bodies also involved in the process. Law firms were consulted during the drafting of the amendments as well, he says, providing them with “the opportunity to express their views on the current situation as well as their vision for its improvement.”

Feedback from other countries, including Estonia, Lithuania, Poland, Germany, Switzerland, France, and the Czech Republic, was also taken into account, says Head of PwC Legal Janis Lagzdins. “It was concluded that in similar legal systems there

is a clear regulation regarding the legal status of law firms, [allowing them to] be established as capital companies or other forms of legal persons.”

The declared purpose of the amendments’ authors, Liberte says, was simple: it was to prevent “contradictory interpretations of the law on the alignment of law offices with a legal person, as well as [to provide] recognition as a rights-holder.”

The amendments to the Advocacy Law were adopted by the *Saeima* on February 18, 2021, and entered into force on March 16, 2021. According to Bertaitis, “the amendments specify some qualification and education requirements for advocates, introduce conditions for compulsory professional insurance, and finally, stipulate the most essential changes – the legal status of law firms.” The amendments set a transitional period of six months, he says, during which existing law firms were required to register in the Commercial Register to continue their practice.

Clearing Transitional Hurdles

Lagzdins says that the “re-registration process was [treated] as a reorganization, as a result of which all rights and liabilities of the old law firm were automatically transferred to the new law firm.”



Janis Lagzdins,
Managing Partner,
PwC Legal



Liga Merwin,
Managing Partner,
Ellex Klavins

In general, Esenvalds explains, “given that the newly established law firm is the successor of the rights and obligations of the law firm established before the effective date of the amendments, the transfer of assets and liabilities to the law firm was not considered a *disposal* of assets and liabilities.” As a result, according to him, “this transfer of assets and liabilities to a new legal entity did not have any tax consequences.” In fact, he reports, adapting to the requirements was relatively easy, “as the transition period for re-registering the law firm was quite long, and the upcoming changes were announced in advance.”

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The amendments specify some qualification and education requirements for advocates, introduce conditions for compulsory professional insurance, and finally, stipulate the most essential changes – the legal status of law firms.

For Merwin, one of the most challenging elements of the transition involved accounting. “It was a fairly complex exercise,” she says. “We had to register a new company, resolve issues related to the tax regime, decide how much money partners could take out as dividends, *etc.* We are still in the process of adapting to the new reality and the coming years will show how it develops.”



Sandis Bertaitis,
Partner,
Fort Legal

The re-registration process necessitated several (often slow) administrative and bureaucratic steps, such as the opening of a new bank account and acquiring a new status as a VAT payer, says Lagzdins. “Banks in Latvia did not fully understand the legal view of this process, and accordingly, the banks were not always forthcoming in allowing the use of old bank accounts for new law firms.”

“The banks, at least initially, treated re-registered law firms as new legal entities, and thus required them to open completely new bank accounts and fulfill other formalities,” agreed Bertaitis, adding that “the resulting changes to registration codes and other banking details caused practical problems in the invoicing process and other management situations.”

Another set of issues was related to tax administration, Lagzdins says – in particular, registering as a VAT payer. “Although our law firm was registered as VAT payer before, we had to prove all over again that the new entity could be considered a VAT payer and indeed would have active business activities, by submitting a lot of explanations, documents, and so on.”

The rules, it appears, were not always clear. Bertaitis reports that “there were no clear instructions and understanding of how the migration of accounting records should be done.” According to him, “law firms can only hope that the State Revenue Service will not view the unavoidable change of bank accounts and other formalities as a deviation from the

accountancy rules.”

The changes in name and status generated additional requirements in some unexpected areas as well. According to Esenvalds, for instance, “all law firms in whose names vehicles were registered with the Road Traffic Safety Directorate were required to register changes of owner/holder with the directorate within five days after the change of status.”

“The banks, at least initially, treated re-registered law firms as new legal entities, and thus required them to open completely new bank accounts and fulfill other formalities. The resulting changes to registration codes and other banking details caused practical problems in the invoicing process and other management situations.”

And the amended law requires that names of firms be changed to reflect the new status as well. “According to the provisions of the Advocacy Law, a law firm’s name must include the term ‘*zvērinātu advokātu birojs*’ (‘sworn attorney’s office’) or the ‘ZAB’ abbreviation,” Esenvalds explains. “Failure to comply with this requirement is one of the grounds for



Vita Liberte,
Managing Partner,
BDO Latvia

the council to refuse to consent to the establishment of a law firm.”

It appears that the re-registration requirement did not have a significant impact on clients, at least. “Clients pay no attention to the legal status of the firm,” says Merwin. “We only had to notify [them] about changes in information about the law firm (such as the name, registration number, and bank account details),” adds Lagzdins. Esenvalds agrees: “clients were only affected to the extent that all invoices had to be paid with different company details after the law firm was re-registered.” Thus, he says, “if the law firm did not register in the Commercial Register by September 16, 2021, and continued to issue invoices for legal services, the client could not recognize such invoices in their accounts, as this law firm is considered liquidated.”

All Things Considered

While overcoming bureaucratic hurdles might be a challenge, the long-term effects of the amendments are difficult to gauge. “For now, it is difficult to say how the amendments will affect other fundamental aspects of advocates’ daily obligations,” Liberte says, “and there are still a lot of technical issues with the ‘reorganization’ process.” Opinions remain divided, she explains: “some believe that it is a big step in providing more transparency on law firms’ financial data, while others believe that it could hinder the very essence of the advocate’s role in our judicial system, and that these amendments could suggest that advocates only provide services, like any other company, thereby weakening their role in protecting the fundamental freedoms of their clients.”

Merwin is more confident that the law will have a positive effect. “Definitely, the amendments reflect progress in the Latvian legal system,” and allow firms “to move towards a modern setup.” According to her, the procedures relating to banks and corporate partners will be simplified, and, ultimately, “the law enables more transparency and a clear structure for clients and corporate partners.”

Esenvalds agrees. “In the long run, the legal status of law firms, the tax regime, and the administrative process are expected to be regulated in a more transparent and comprehensible manner, which is a positive step.” ■

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REIMAGINING INDUSTRY

By Radu Cotarcea

CEE Legal Matters spoke with CMS Partner and Head of Environmental Law Practice in Poland and CEE Agnieszka Skorupinska and CMS Turkey Managing Partner Done Yalcin about the impacts of the EU Green Deal and the rise of ESG in Europe and beyond.

The EU Green Deal Push

“The EU Green Deal is radically different from anything we’ve seen in the past in terms of an EU strategy,” Agnieszka Skorupinska explains. “Before it, we were used to seeing strategies being issued by the EU, with some of them being followed up by various actions and others less so – people were not always really paying much attention to them,” she adds, noting that we’ll soon pass the two-year mark since it was published. This was a period in which the strategy “has been rigorously followed by EU institutions with further detailed actions and further legal acts, like the EU Climate law.” The timeline has been, and remains, “extremely tight – it is all happening, it’s not delayed, it’s not simply left somewhere out there – with a new development resulting from the strategy almost every month.”

Critical to keep in mind, according to Skorupinska, is that the strategy truly covers the entire economy and industry in general, not just, say, the energy sector. Overall, it focuses heavily on sustainability, irrespective of the industry companies are operating in, and all the legal acts that have or will result from the strategy will create a lot of challenges before those that are not climate neutral. And Skorupinska says that, while emissions are a big component, there are many requirements beyond them (for example, those placed on chemical producers). “We’ll see a lot of regulatory pressure to look at how

you get your energy, to not emit greenhouse gases, but also to be more sustainable in general. Such a transformation will not be easy, but it does have its benefits for those who work out a new model that incorporates this transformation – they will be beneficiaries of immense competitive advantage,” Skorupinska adds.



Agnieszka Skorupinska

And this wave of regulations coming from the EU “will definitely have extraterritorial effects as well,” Done Yalcin explains, pointing to CBAM (border tax adjustment) as an example “that will have an impact on every company that sells products in the single market as well as on European companies with international supply chains.” Looking at Turkish exports (for which the largest market is the EU) as an example, Yalcin explains that an annual tax burden of USD 4 billion might be registered if Turkey does not initiate investments that will ensure compliance with the Green Deal. “Another example regarding how initiatives in the EU Green Deal train would create effects in non-EU countries could be the Corporate Sustainability Reporting Directive (CSRD). Although it basically brings disclosure obligations for companies within the bloc, if your company has an ultimate parent in a non-EU country, you could end up being subject to the CSRD,” she adds.

The carbon adjustment border mechanism – CBAM – mentioned by Yalcin is also used by Skorupinska to illustrate that the Green Deal does not only imply the regulatory stick. “There are also certain carrots, intended not just to encourage companies to undertake this transformation, but to also support them in the process. CBAM, for example, is a completely new legal tool with the purpose of equalizing the playing field for industry players producing in the EU, with all the greenhouse gas emissions restrictions in place, against those outside the EU, who might not have such burdens.” Through it, the hope is that companies will continue to be encouraged to produce, and be active, in the EU market.

Beyond protectionist approaches, “it is always important to think about money,” Skorupinska says: “Will there be any for the transformations on the horizon? For now, unfortunately, this is not that obvious.” While there are various strategies “on the table, in which financing is mentioned, not much has happened on this front up until now and the general impression so far is that industries will have to get the financial resources for this transformation on their own,” she adds. And this is currently a gap that not just EU market players

are worried about, with Yalcin pointing to “Turkish policy-makers having stated on numerous occasions that the EU, acting as a global rule-setter in this area, must take the lead in coordinating international efforts to finance the transition by mobilizing finance for its partners.” Yalcin further gave the example of Turkey only ratifying the Paris Agreement “after it was promised access to the necessary funding. According to recent reports, Turkey has reached an agreement with the World Bank; the German Federal Ministry for the Environment, Nature Conservation, and Nuclear Safety; the French Ministry for Europe and Foreign Affairs; the United Nations; and the EBRD on a USD 3.157 billion fund to ward off the effects of climate change,” much of which will be spent on a “green transformation.”

ESG Financing

“Non-financial reporting has been around for some years now,” says Skorupinska, but ESG is being considerably strengthened currently. “Businesses have to look at themselves and disclose their situation with respect to various issues that are not really just legal compliance but a bit more – being widely sustainable, going beyond the legal minimum requirements to show that you are well-managed and that you oversee the risks around the corner. Climate change is a good example. This reporting requires a different approach from what was normally used. Businesses need to carry out due diligence in respect to ESG and, from experience, they might need to change or supplement the way in which they are operating. In terms of their supply chain, for example, they might need to check for and apply new standards to their suppliers.”

And ESG is increasingly affecting the ability of companies to secure financing. “On this front, we have very strong actions from the EU over these past two years,” notes Skorupinska, pointing to the introduction of the EU Taxonomy as a particularly important tool. According to her, if a financial institution in the EU wants to say it is financing a sustainable green project, it will only be able to do so if the project is compliant with the Taxonomy, which contains very specific technical requirements for the business. “It doesn’t mean that financing *has to* go to sustainable businesses only, but we already see a tendency, with many banks stating that they won’t invest in non-sustainable businesses, and I think this will create a tremendous need for businesses to align,” she adds, which leads Yalcin to conclude: “The topic around ESG has lost the smell of nice-to-have and is now a must-have. And it is here to stay because the climate crisis in which we find

ourselves will not disappear. Therefore, every company that wants to be prepared for the future, to survive in the economic market and to remain attractive as a trading partner, must face this issue. And this rather yesterday than today.”

Bring In the Lawyers

“We kick in when industry players want to comply with the relevant reporting obligations,” Skorupinska explains. “Some of it is purely technical but, for some, you need to adopt new procedures, new internal documents, new clauses on the contracts with, for example, your suppliers.” This is why Yalcin points to the need for a holistic approach: “We recommend a comprehensive due diligence to clients, not only legally but also operationally, to evaluate exactly what is happening in the company. At the same time, the supply chain of each client is put under a microscope. Based on the results, must-haves and nice-to-have measures are defined and implemented. In addition, we work with clients to develop appropriate policies and codes of conduct, *etc.*”

According to Skorupinska, there are also investment structuring elements that need to be looked at from a legal perspective: “Ultimately, this is a legal act, so checking your investments against the Taxonomy is, to a large extent, a legal element.” And this, she predicts, is likely to go further in the near future, with an increasing “tendency when you are doing an M&A to consider if you want to buy a business based on figuring out how it will impact your ESG compliance and how it fits within the Taxonomy, in case you want to finance it down the line.” While not there yet across the board, Skorupinska says they are already seeing “some clients wanting to get this ESG and Taxonomy sorted out ahead of time when looking at assets to buy.”

Ultimately, “doing more than what the law requires you to do means reputation,” says Yalcin. “This makes you a more attractive trading and business partner and gives you a competitive advantage over other companies that have not yet seen sustainability as an opportunity. It also makes you a more attractive employer, *etc.*, not to mention the positive effect on the environment. The better and more fully compliant they are, the more prepared business owners will be for the future.” ■



Done Yalcin

MARKETING LAW FIRM MARKETING: PLANNING THE MARKETING BUDGET

At the end of each year, business development and marketing specialists across the globe are busy identifying strategies and components to plan an annual marketing budget. Accordingly, this time around, given the season, we asked Law Firm Marketing experts across the CEE region a question: **Which metrics do you look at when planning your marketing budget?**



Forget about the 5% of firm revenues as the budget calculation. The only consideration and vital metric you need is how many liters of gin you will need to survive the coming year – also known as the Cost of Marketer Sanity (CoMS).

Charlotte McCrudden,
Business Development & Marketing Manager, CMS



Our annual business development budget, which includes marketing, is planned based on several components. The major budget item is the cost of long-term marketing engagements, such as partnership/membership fees and ongoing initiatives with an already fixed budget. Another significant component relates to the initiatives, events, or umbrella marketing projects we do or participate in on annual basis. They differ in nature every year, so we can only forecast this expenditure item based on the analogous estimating technique. Every year, we try to launch new marketing activities in alignment with our firm's values and CSR policy, where the cost could only be roughly estimated, therefore we make sure to calculate a higher management reserve in that item line. We also usually add an around 5% contingency reserve to the mix, for the so-called 'known-unknowns', as each year there are at least one or two really attractive new marketing opportunities, that pop up out of the blue and are worth taking on.

Boryana Zareva,
Business Development Director, Gugushev & Partners



We normally look at how broadly covered a particular marketing event or material would be, to give a boost to Avellum's visibility on the market. Obviously, we look at the prestige of such marketing moves, too. Finally, we also take into account whether a particular marketing instrument fits well into our overall marketing strategy, for instance, to target foreign clients or to target Ukrainian in-house counsels, *etc.* A piece on market entry fits well in foreign magazines, but it would be a futile effort to publish it in a Ukrainian language local magazine.

Denys Demianenko,
Business Development Director, Avellum



When deciding where to allocate our marketing budget, the first thing I consider is: 'What are we trying to achieve, and will this activity help us get there?' This might sound obvious, but you'd be surprised to hear how many requests I get to fund activities that are not aligned with our business strategy. In an ideal situation, I favor activities which (1) demonstrate our capabilities in priority practices and sectors; (2) are aligned to our values and brand positioning; and most importantly (3) put us in front of our clients/potential clients in a way that resonates with them. Marketing initiatives that tick all three of those boxes are in the sweet spot. The other consideration is 'bang for your buck' – activities that reflect collaboration among multiple offices or practice groups are more likely to be funded than niche areas that benefit a single lawyer.

**Amanda Lowe, Europe Marketing, PR,
and Communications Director, Dentons**



Obviously, by investing in marketing a law firm can expand its outreach, increase existing clients' loyalty, gain new clients and projects, and reliably increase its revenue.

We use Return on Marketing Investment as the metric for marketing campaigns. While the ROMI calculation is straightforward, there are variables and assumptions to consider. For example, there is important information that we won't learn about from the financials: (1) the non-financial health of the organization (*e.g.* employee engagement level); (2) what customers are thinking (customer attitudes); and (3) what competitors are planning.

One of ROMI's downsides is that it is easy to recognize incremental profits in the short-term while underestimating the long-term benefits that marketing brings to brand value. Marketing activities not only affect profits in the short-term but also strengthen brand equity and client relationships over time. Investments in brand awareness and brand knowledge help clients move along the decision journey, even if they are not currently purchasing Sayenko Kharenko's legal services.

Alyona Onishchenko,
Director of Marketing and Development, Sayenko Kharenko



Marketing performance, marketing efficiency and effectiveness, ROMI / marketing ROI, and other metrics may often be used as synonyms. No matter the name, most refer to marketing strategies that reduce costs, deliver far more impact, and bring in revenue for the company.

When we embarked on our marketing budgeting project this year, we broke everything down into two segments: efficiency and effectiveness. On the efficiency side, we consolidated our agencies/vendors roster and got significantly better at comparing the pricing and scope of services *vs.* our business targets and goals. We then negotiated commercial terms with our vendors, including content marketing, media buying, research, and production.

The other side of the marketing ROI project included a number of different effectiveness tactics such as improved targeting; an inflow of new clients, contacts, and leads; an increased conversion rate; and an increase of RFPs and engagements – all of which are different parts of the future

revenue constellation. Depending on each project goal, we may have up to ten different measures that we've been able to put in place and are tracking.

When budgeting for the VUCA world, deciding where to invest resources, money, and time can be a tricky task. We are trying to be more flexible, more agile, and, above all, more resilient. We set assumptions and every quarter/six months we adjust the numbers to reflect the new reality.

Oksana Buchatska,

Marketing and Business Development Manager, Kinstellar



There's no getting around it: an effective budget takes not only perfect planning but also tracking results against goals and using them to adjust the marketing initiatives going forward. As Lord Kelvin once said, 'If you cannot measure it, you cannot improve it.' Of course, each technique accommodates certain tracking mechanisms. In my view, at a high level there are three areas of tracking that make sense: (1) business outcomes (such as revenue growth, number and type of new and long-lasting clients, profitability, and new leads – these metrics could be tracked in the corporate financial or ERP/CRM systems); (2) visibility (measured through website traffic, traffic to corporate social media pages, or growth in the number of subscribers to corporate newsletters) and last, but not least, (3) expertise (measured through whitepaper/newsletter downloads, article views, event attendance). One accurate measurement is worth a thousand expert opinions!

Biliana Tzvetkova, Marketing Manager, Schoenherr



Firstly, I decide what I want to achieve – might be broader awareness, building image in specific areas or sectors, local or regional focus, consolidating loyalty, or targeting certain clients, *etc.* – but I just pick two or three of these objectives, the most relevant on a medium-term perspective. Afterwards, when selecting media partners, I mainly consider their reader/visitor's profile, their market credibility and consistency in communication, the quality of the publication's content, the chance to bring our message right to the relevant target, the professionalism of their people, plus specific indicators like readership, traffic,

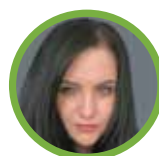
average visit duration, *etc.* Return on investment is typically a finance indicator and I would not push it into a marketing evaluation, since several aspects and outcomes of a campaign may not be quantifiable, while the results might spread from a short to a long run. Good luck calculating their net present value.

Titus Percea, Senior Marketing Manager, DLA Piper



At Drakopoulos, we create a marketing strategy towards delivering our firm's strategic objectives and goals, by defining the acquisition and retention rates we aim to reach. Our goal is to build a reliable and consistent pipeline of quality leads and convert them to loyal and long-term clients. When planning our annual marketing budget, we often perform a cost-benefit analysis, taking into consideration our target growth rate, competition, risk exposure, and cash reserves at the time, while assessing the potential of any new/rising market trends that may lead to profitable practice areas. On an average basis, we invest approximately 2-3% of our annual gross revenues in marketing, including sponsorships, conferences, publications, SEO, and listings.

Marietta Vidali, Marketing Director, Drakopoulos



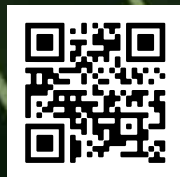
At PRK Partners, we believe that marketing investment is an important cornerstone of every law firm worldwide, regardless of its size or structure. Therefore, our long-standing strategy has been to spend approximately 5% of our turnover on marketing and business development.

The essential requirement for drawing up a marketing budget is to set the firm's business goals for the upcoming year and then determine adequate marketing tools, ultimately leading to meeting the business plan and generating the projected revenues. Most importantly, we keep the budget flexible and continue to monitor and identify relevant opportunities to participate in a variety of activities throughout the year, while not averse to *ad hoc* budget increases when it makes sense for achieving our business goals.

Sona Rampulova, Marketing Manager, PRK Partners

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BUILDING REAL ESTATE: AN INTERVIEW WITH KATARZYNA SULIMIERSKA OF SCHOENHERR

By Radu Cotarcea

On October 18, 2021, CEE Legal Matters reported that **Katarzyna Sulimierska** had joined **Schoenherr** as Head of Real Estate in Warsaw. We spoke with Sulimierska to learn more about her and her practice.

CEELM: To start, tell us a bit about your career leading up to your current role.

Sulimierska: Shortly after my studies, I had an interview with Marek Grodek who hired me in his team at the Dentons legacy firm Salans. Two years later I moved with him to Greenberg Traurig, where I worked until 2019 when I joined Hogan Lovells, again with Marek. To make a long story short, over my career I've worked with three firms prior to Schoenherr but with the same team.

CEELM: Why did you choose real estate as the practice area to focus on?

Sulimierska: The firm where I did an internship during my studies had a really strong real estate practice, and I ended up focusing on the area for my master's thesis as well. When I joined Salans that direction was sealed.

I do think there's always going to be a demand for real estate lawyers but it's more than that – looking around the market, real estate departments are growing bigger and bigger so there's obviously a lot of work in the field.

There's also a certain charm to working on something with a tangible result. I often find myself walking down the street and thinking: "I worked on that building. Oh, and that one too!"

CEELM: Do you still find the field exciting after so many years?

Sulimierska: Certainly. There's a lot of different aspects that

always keep you on your toes. I had a friend who switched practices from M&A to real estate and she was shocked by how much was involved, in terms of regulations. It's not just about following the commercial companies' code – there are a lot of interesting legal issues involved.

Another aspect that I enjoy a lot is the nature of the transactions. While the legal profession can often be confrontational, in real estate



LEGAL MATTERS

there's always a sense that there's a common interest to make a deal happen, so you have to cooperate with your counterparty's counsel to find a solution that works for both sides. And, at the end of the day, the outcome is likely a positive one, unlike in dispute resolution where, in most cases, one party is unhappy with the end result.

CEELM: You mentioned real estate teams are growing in Poland. What work is driving that growth?

Sulimierska: There's a lot going on right now. First, there are still a lot of office buildings being built. To give you a sense, 21 new office buildings have been completed in the first half of the year alone.

And there is a lot going on in residential real estate as well. A lot of people are looking to put their money into something and residential has a lot of appeal, especially when you consider that, in some instances, we see a year-to-year growth of 20% in prices.

Warehouses too are still being built like crazy. It was six years ago that people were saying that this will only last for another year or two, but here we are in 2021 with a lot of development projects still in the pipeline. That's especially driven by the rise in e-commerce and e-fulfillment, but production companies need more warehousing space as well. And it's not just Warsaw – really, warehouses are popping up everywhere along highways, especially close to the German border.

CEELM: What about your practice specifically – what's been keeping you busy?

Sulimierska: I focus on whatever the client brings in [she says, smiling]. But I generally advise investors from the real estate sector

on a whole variety of issues. In the last years, I was involved in a number of logistics and office projects. I also worked on a couple of interesting wind and photovoltaic projects and advised a major UK investor on a large infrastructure transaction consisting of the acquisition of a network of communication towers located in Poland. Since my second area of focus is environmental law, I work with clients on various matters from that field as well. For example, I advised Cooper Standard on the sale of two manufacturing facilities in Poland to Mutares SE & Co.

CEELM: What have been the pieces of legislation that most impacted your work in the last couple of years and how? And is there anything on the horizon you are keeping an eye out for?

Sulimierska: I have noticed that more and more clients are looking for legal advice on environmental issues. I think that there are two main reasons for that. The first one is that compliance with environmental law is part of their company's policy. The second is that, over the years, a lot of new legislation was adopted – related to chemicals (REACH), waste, or packaging. My clients want to comply with these regulations, but they need professional assistance, especially in the context of ESG.

By the way, ESG is a number one subject right now and investors use these criteria to screen potential investments. The more 'green' the investment, the easier it is to find an investor and finance it.

Katarzyna Sulimierska wished to dedicate this interview to Marek Grodek, with whom she had worked for almost 14 years before his passing away this August.



MARKET SPOTLIGHT: THE BALKANS



GUEST EDITORIAL: SERBIAN LEGAL MARKET – LOOKING BACK AND AHEAD

By Vladimir Dasic, Senior Partner, BDK Advokati



When I was presented with the opportunity to share my views on lawyering in Serbia and the current legal market, one of my first thoughts was where we were 20 years ago, when Serbia had just opened its doors to foreign capital, privatization started, and international banks and investors began their search for the same quality of advice and advisers they had back home. The bar was dramatically increased, traditional law firms thought they were untouchable, and only a handful of new-generation lawyers, although with very modest international experience, was able to adapt and meet this challenge.

20 years ago

To refresh my memory, I opened the *Legal500* edition I received back in 2001, when I started to consider switching from an in-house role in a state-owned company to becoming an attorney at law. I looked again at the names of the ranked law firms at the time and a lot has changed. In total 13 firms were ranked. Seven foreign and six local firms. The largest law firms reported between five and ten lawyers. Only half of those firms are still ranked, others have disappeared, and some, although still active, are unnoticeable, as they were not able to recognize the momentum and shift their law firm and lawyers into a business model.

Times were difficult. The physical data room was your second office, with no AC, no internet, not enough laptop switches, a scent of old books, and files with dusty old pages that you had to read one by one. No Wolt or Glovo when you were hungry, no Teams or Zoom for Q&As, only the good old cantina where you were also able to discuss your questions with the Head of Legal, over a usually very hearty lunch.

Nowadays

Here we are, at the end of 2021, with AI and very advanced legal tech. Currently, 27 law firms are ranked for Commercial, Corporate, and M&A, but there is at least the same number of

unranked law firms looking for top-notch clients and mandates that will bring them into the big league.

Five Tier 1 law firms have around 200 fee earners in total and have generated approximately EUR 22 million in revenues in 2020, which counts for more than 50% of the total revenues reported by all ranked law firms. Only 12 law firms have revenues exceeding EUR 1 million, so still, there is space for further growth.

All Tier 1 law firms are present in multiple jurisdictions, while the majority of Tier 1, Tier 2, and Tier 3 law firms have established or joined regional legal networks. This indicates that, although Serbia is not a small market, with a population of around 7 million, being present in the neighboring countries or being a member of a regional network is a good recipe for getting more work.

Many firms are a spin-off from the larger firms and, with no integration in sight, mainly due to our Balkan mentality, it is difficult to see any major shifts on the market for at least the next five years. Another reason for that is the limited number of large transactions, with only eight transactions above EUR 100 million reported by *CEE Legal Matters* during 2021 – and you need a role in these big transactions if you want to stay or become a market leader.

Look Ahead

Connecting talent to opportunities for their personal and professional development will be a key factor for the development of law firms in the years to come. Working on big transactions and for major international clients is still very important but working on pro-bono cases and ESG-related work is another huge driver for talent, when they are selecting law firms. Yes, they are the ones selecting, not us anymore. The partners' dedication in working closely with talent is another driver, as are constant appreciation, recognition, flexibility, and the cultural values of the firm. With all this in mind, and with appropriate succession planning, we can set the right model and shape of the law firms which will continue their life beyond the era of their named partners. ■



ALL ROADS LEAD TO THE EU: ACCESSION PROGRESS IN THE BALKANS

Contentious to the point of becoming a byword for division, countries in the Balkans still have a lot in common. Perhaps the thickest thread joining them together is their shared ambition of joining the European Union. The road to membership is neither quick nor painless and plays a heavy role in shaping everything from the political agenda to daily lives, with law serving as both a primary instrument and one of the main targets for the EU accession process.

We reached out to several law firms in Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia to get a status report on EU accession for each country, including progress on legal harmonization, realistic timelines, and the public's perception of the whole process.

Country

- Albania
- Bosnia & Herzegovina
- Montenegro
- North Macedonia
- Serbia

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ALBANIA: ALMOST 10 YEARS IN THE MAKING AND 10 MORE TO GO

By Radu Cotarcea

“The genesis of Albania’s EU accession talks dates back to June 2003, when Albania, alongside other Western Balkan countries, was identified as a potential candidate for EU membership,” explains Deloitte Legal Local Legal Partner Sabina Lalaj. While Hoxha, Memi & Hoxha Partner Eris Hoxha points out that Albania was a candidate country since 2014, official membership negotiations were opened only on March 25, 2020. According to Kalo & Associates Co-Managing Partner Aigest Milo, “the next step is for the first Inter-Governmental Conference to be held (presumably during the first semester of 2022),” but Hoxha says “no specific date has been determined yet.”

“Albania’s progress has been undeniable,” says Lalaj, echoed by Hoxha: “In its report on Albania’s progress, the European Commission noted that the country has continued to meet the criteria for starting the accession talks. It stresses that Albania has achieved ‘tangible’ and ‘sustainable’ results by continuing its commitment to EU-oriented reforms.” However, according to Lalaj, “a significant amount of work is still necessary for aligning the country with European standards.”

“While there is political agreement at the highest levels of the EU for accession talks to formally commence,” Lalaj says that “Albania is currently awaiting the unanimous decision by the European Council of Ministers for the accession talks to officially begin. While such unanimity for Albania has been reached in the last European Council summit, Bulgaria has exercised its veto right in relation to the accession talks of North Macedonia, thus entailing that the beginning of the official accession talks was also postponed for Albania.” Hoxha explains that “the start date for Albania’s accession remains deadlocked, due to the Bulgarian blockade of North Macedonia, as most EU countries prefer to see Tirana and Skopje progress towards the EU as a package.”

In terms of a timeline, Lalaj says that “expecting the process to last up to 10 years, after accession talks have been officially begun, is not unreasonable.” As a result, “if negotiations start during 2022, it is realistic that Albania joins the EU somewhere between 2030 and 2035,” according to Hoxha. Milo seems to be the least optimistic: “realistically, also considering

the experience of other neighboring countries, I do not believe Albania will be granted full membership before 2035.”

Harmonization Progress

“In light of Albania’s accession process with the EU, the Stabilization and Association Agreement (SAA) between the Republic of Albania and the European Community was entered into in 2006,” according to Lalaj, who explains that “Albania’s obligation to harmonize and enact legislation in line with the *acquis* is enshrined in Article 70 of the SAA.”

Milo says that “in general, harmonization of internal legislation with the *acquis communautaire* is progressing quite well. EU Directives are being transposed regularly in all areas of law.” Examples of already harmonized legislation, according to Hoxha, include Law no. 55/2020 *On Payment Services*, Law no. 62/2020 *On Capital Markets*, Law no. 25/2018 *On Accounting and Financial Statements*, Law no. 30/2019 *On Some Additions and Amendments in Law no. 9723 On Business Registration*, Law no. 112/2020 *On the Registry of Beneficiary Owners*, and Law no. 17/2017 *On Some Amendments and Changes to law no. 9947 On Industrial Property*. Lalaj also points to Law no. 9901 *On Entrepreneurs and Commercial Companies*, Law no. 11/2012 *On Cross-Border Mergers of Commercial Companies* and its corresponding sub-legal acts, Law no. 133/2016 *On the Recovery and Extraordinary Intervention in Credit Institutions and Investment Firms*, Law no. 56/2020 *On Collective Investment Vehicles*, Law no. 92/2014 *On Value Added Taxation in the Republic of Albania*, and Law no. 87/2019 *On Invoices and the Circulation Monitoring System*.

“As per the Commission Progress Report for Albania in 2020, the country is moderately prepared regarding harmonization of Chapter 6 (Company Law) and Chapter 9 (Financial Services) of the *acquis*,” Lalaj sums up. Despite the progress made, “there is still significant legislation which needs to be harmonized with the EU legislation, and even some harmonized laws need to be fully approximated” according to Milo.

One example of a pending update “worth mentioning,” according to Lalaj, is the one regarding Private Pension Funds, “regulating the licensing procedure and scope of activities of



Aigest Milo,
Co-Managing Partner,
Kalo & Associates



Eris Hoxha,
Partner,
Hoxha, Memi & Hoxha



Sabina Lalaj,
Local Legal Partner,
Deloitte Legal

companies engaged in the administration of private pension funds in the Republic of Albania and the creation and rules of operation for private pension funds with either open or closed participation.”

Hoxha also points to a need to approve the *National Strategy on the Free Trade of Goods*, to align with the *Treaty on the Functioning of the European Union*. Non-banking financial entities-related regulations also need to be amended, according to him, along with a transposition into Albanian legislation of the EU measures to encourage improvements in the safety and health of workers at work. Criminal, waste management, consumer protection, intellectual property protection, and customs legislation are other areas he highlights as in need of harmonization.

Lalaj also highlights Law no. 8438 *On Income Taxation*, which “is continuously subjected to amendments and additions, in an effort to, among other things, bring the regulatory framework in line with certain harmonized provisions of the *acquis*.” In fact, Milo states: “if I had to point out an area of law where more efforts are needed, tax legislation would be the one. Indeed, tax laws remain largely not harmonized with EU legislation.”

The Vibe on the Ground

“The overall sentiment of the public is pro joining the EU” says Hoxha. Lalaj argues that “euro-skepticism is a very rare occurrence in the Albanian public perception regarding EU accession,” pointing to the fact that “every major political party in the country builds their political agenda based on a common, undisputed goal – EU accession.” Indeed, Milo adds that “recent polls and studies show that 90% of Albanians want Albania to join the EU.” However, he also reports that “only 51% of them trust EU institutions (compared to 64% in 2019).”

While Milo points out that only “24% of Albanians believe that Albania will never become a member of the EU,” and Lalaj believes that “there is realistically still a long road ahead,” she argues that this road should be seen “as a desirable challenge, which Albania will undoubtedly eventually surpass.” And, ultimately, the country will be better off for it, with Milo adding: “Personally, I believe that the accession process has allowed Albania to significantly progress in its reforms towards building a functional and democratic state.” The challenge, according to him, is to “pass into the next phase, which is critical, [and move away] from a formalistic approach to actually embracing EU principles and values.” ■

BOSNIA & HERZEGOVINA: MORE DISTANT THAN EVER

By Radu Cotarcea



Adi Ibrahimovic,
Managing Partner,
Ibrahimovic & Co



Branko Maric,
Senior Partner,
Maric & Co



Davorin Marinkovic,
Partner,
Dimitrijevic & Partners



Nedzida Salihovic-Whalen,
Managing Partner,
CMS Sarajevo

According to Ibrahimovic & Co Managing Partner Adi Ibrahimovic, “the EU’s engagement with Bosnia and Herzegovina has gone through sporadic periods of intensifying cooperation and uncertain situations,” leading Dimitrijevic & Partners Partner Davorin Marinkovic to summarize the current status as: “frankly speaking, the public perception is that nobody actually knows.”

According to CMS Sarajevo Managing Partner Nedzida Salihovic-Whalen, Bosnia and Herzegovina received the status of a potential candidate in 2013, with the SAA being signed in June 2008 and coming into force on June 1, 2015. Marinkovic explains that in May 2019, the Commission adopted the Opinion and an accompanying analytical report, which sets out 14 key priorities. These are, according to Maric & Co Senior Partner Branko Maric, a required step “for the Commission to recommend the opening of EU accession negotiations with Bosnia and Herzegovina.” Marinkovic adds that “in December 2019, the Council of the EU welcomed the Opinion and called on the Commission to focus its annual reports for Bosnia and Herzegovina, starting with the 2020 report, on the implementation of those key priorities.”

With the EU accession process consisting of seven stages and “given the fact that Bosnia and Herzegovina is still in this phase of EU accession, a realistic timeline is hard to determine as it depends on a variety of factors,” Maric says. According to him, “in its 2020 assessment of Bosnia and Herzegovina [the EU determined] that the country ‘is overall

at an early stage regarding its level of preparedness to take on the obligations of EU membership and needs to significantly step up the process to align with the EU *acquis*.” This leads Marinkovic to argue that “there is an overall impression that today the accession is more distant than ever,” especially since “this pessimism goes both ways.” Ibrahimovic echoes the difficulty in identifying any realistic timeline and notes that “it seems unlikely that the fundamental reforms required to adapt to European standards will happen in the near future.” And Salihovic-Whalen grounds this feeling by explaining: “The most important condition for further steps towards EU membership is the successful harmonization of legislation and the implementation of reforms. It is a never-ending lengthy process which is demanding especially for the entities that are required to transpose a large number of EU regulations.”

The Complexity of BiH’s Set-Up

Marinkovic explains that, “due to the specific position of Bosnia and Herzegovina as a post-conflict country under something that may be considered an international tutorship, there has been strong involvement of the international community in drafting new legislation through technical assistance projects. In some cases, it was purely transmission of the directives, without really understanding the meaning of the words, and the ultimate result is that neither the public nor private sectors were mature enough for some pieces of legislation.”

Maric explains that BiH's "political structure is very complex, and the harmonization process covers all structural levels of the state." He notes that the "harmonization required by the EU has two separate dimensions: one regulates the harmonization of a complete body of the state's legislature (state, entity, and cantonal levels) with that of the EU, while the other regulates matters of internal harmonization, with the goal of making legislation and case law uniform across entity lines."

In terms of legislation, Ibrahimovic says that "many laws in Bosnia and Herzegovina have been harmonized, some of which are the law on residence and stay of foreigners, labor law, election law, and so on." Salihovic-Whalen adds that "progress has been made so far in the area of customs legislation, on visas, border management, and asylum and migration, and in the areas of intellectual, industrial, and commercial property rights." Marinkovic also points to competition, environment, energy, public procurement, consumer protection, data protection, and the judiciary as areas that were "fully and partially harmonized." Regarding the second dimension, on internal harmonization, Maric notes, however, that "case law lacks consistency ... Ultimately, it was concluded by the 2021 Report of the Commission that Bosnia and Herzegovina needs to establish a judicial body to ensure the consistent interpretation of the law and harmonization of case law across the country."

On the Docket

"The most important reforms are related to an independent and effective judiciary and civil service, in order to create a positive environment for business," says Marinkovic.

On the latter, Ibrahimovic explains that "Bosnia and Herzegovina is at an early stage with public administration reform, with very slow progress on ensuring a professional and depoliticized civil service and a coordinated countrywide approach to policymaking. To guarantee a professional civil service, civil service procedures must be based on merit principles and free from political interference. However, in practice, the situation is still significantly different."

On the former, Salihovic-Whalen points to the European Commission emphasizing that BiH "requires systemic reforms in important segments of the Rule-of-Law, such as the judiciary, and it is crucial that such reforms are primarily in the interest of the state and its citizens." Ibrahimovic notes that "court proceedings are still very unpredictable, lengthy, and uneven in decision-making. It is clear that, without the reform process of these areas, there is no legal certainty." Marinkovic adds that "enforcement of contracts is extremely

slow, and this is quite discouraging for the business community and foreign investments."

Mixed Feelings – or Simply Mixed Numbers

Ibrahimovic explains that, when it comes to joining the EU, "public perception in Bosnia and Herzegovina is always an ungrateful topic, due to diverging data on each issue." Indeed, he points to two conflicting surveys – one from the Bosnian Directorate for European Integration and one from the Balkan Barometer. While the first shows a drop in support for membership between 2016 and 2018, from 76% to 56%, the second indicates that the number of people assessing membership as 'good' increased from 33% in 2016 to 47% in 2019. Salihovic-Whalen, however, reports that the Directorate for European Integration conducted a public opinion poll in October 2020, which concluded that "in the event of a referendum on membership in the European Union, 75.6% of respondents would vote to join the EU."

Salihovic-Whalen provides some nuance as to the thinking behind the different responses. According to her, respondents of the October 2020 poll identified "the guarantee of lasting peace and political stability (33.2%), freedom of movement of people, goods, and capital (26%), and respect for laws and regulations (18.4%)" as the main reasons for supporting accession. "Respondents who do not support BiH's accession to the EU cited the fear of higher living costs and taxes as the most common reason (41.7%)."

"The public opinion regarding the accession of Bosnia and Herzegovina has been shaped by the centrifugal and centripetal forces of Euroskepticism and Europhilism," Maric explains, adding that "the overall drag of the accession process casts a shadow of disappointment on both Bosnian and EU institutions." Marinkovic too says that "fatigue of the general public about the topic is progressively increasing, or, to put it in other words, people are less interested in the debate about joining the Union as nobody really expects it will actually happen."

At the end of the day, Maric believes that "the predominant mindset remains, however, supportive. Although some discrepancies in support exist across entity lines, the majority of all three chief ethnic groups remains pro-European." Salihovic-Whalen concludes that "BiH and its citizens share the goals, values, and principles of the EU, are determined to develop society on the system of values and achievements of European democracies, and aspire to be an integral part of modern European political, economic, and security structures." ■

MONTENEGRO: IN POLE POSITION

By Radu Cotarcea



“Immediately after gaining independence in 2006, Montenegro set EU accession and the integration process as one of its foreign policy priorities,” says Jovovic, Mugosa & Vukovic Managing Partner Vanja Mugosa. “It started membership negotiations with the EU in 2012 and has so far opened all 33 negotiating chapters, three of which have already been temporarily closed: Chapter 25 (Science and Research) in 2012, Chapter 26 (Education and Culture) in 2013, and Chapter 30 (External Relations) in 2017.”



Vanja Mugosa,
Managing Partner,
Jovovic, Mugosa & Vukovic

Mugosa reports that, “although one of the youngest countries in Europe, Montenegro is today a leader in European integration.” Vukmirovic Mistic Managing Partner Lana Vukmirovic-Mistic seconds that, pointing to the latest European Commission Report, published on October 6, 2021, according to which, “Montenegro’s commitment to the goal of European integration is regularly stated as the country’s top priority and this mostly translates to policy decisions, as well.”

There are still hurdles along the way, though. According to Vukmirovic-Mistic, “it is important to emphasize that Montenegro is the first country to start negotiations under the ‘new approach to negotiations’, which is much more complex because the key Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom, and Security) are opened at the beginning of the negotiation process and will

remain open until the end. These two chapters have the role of ‘controller of negotiations’ and, in case of a standstill, the entire negotiation process can be called into question.” Mugosa reports that, in terms of the current status, “negotiations for Chapters 23 and 24 are still ongoing, as is the verification of compliance with the final benchmarks for their closure.” In particular, according to Vukmirovic-Mistic, the ‘point of tension’ is Chapter 23, with the 2021 EU Report stating that “Montenegro has made limited progress overall in this area and is only moderately prepared to apply the EU *acquis*. Constant concerns regarding this field have been expressed by EU officials and it remains an important area with great space for improvement for Montenegro.”

And “Montenegro has been explicitly warned that further accession shall depend on visible progress on the rule of law,” Vukmirovic-Mistic says, pointing out that the initial “closing benchmark dates for each chapter were determined throughout the process of accession, all ranging from 2013 to 2017 and, therefore, have all expired.” Mugosa is equally uncertain: “Having in mind the duration of the integration process so far, as well as that of other countries in the region, it can be said that neither realistic deadlines nor a conclusion about the duration of negotiations can be drawn by analogy – it depends, from state to state, on the specifics of the process itself and the readiness of the legal system and other institutions to support it.”

The Grind Is There...

“Montenegro is constantly working on harmonizing its legislation with EU *acquis*,” according to Vukmirovic-Mistic, who points to 157 laws being adopted between 2016 and 2020, as

part of the government's *Programs of Accession to the EU*.

While “key legislation in all negotiating areas has been largely adopted and harmonized with EU law,” Mugosa explains that “this is a long-term process, harmonization continues and new regulations or their amendments are still being adopted, depending on the requirements of the European Commission.” According to him, some of the most significant regulations passed are the *Company Law*, the *Law on Public Procurement*, and the *Law on Capital Markets*, with “all legislation concerning the field of competition” having been harmonized. And he expects several more laws or relevant amendments by the end of the current year: *Law on Prevention of Money Laundering and Terrorism Financing*, amendments to the *Criminal Code*, *Law on the Origin of Property*, *Lustration Law*, *Lobbying Law*, amendments to the *Law on Free Access to Information*, *Law on Personal Data Protection*, and amendments to the *Law on Judicial Cooperation in Criminal Matters with EU Member States*.

It is also “necessary for Montenegro to achieve visible and measurable results in the implementation of these laws,” Mugosa adds. “Therefore, the implementation of regulations and the creation of the necessary infrastructure for their implementation is something that awaits us in some areas and will perhaps be a more complex process than the harmonization of regulations, which is mostly completed.”

... Yet More is Needed



Lana Vukmirovic-Misic,
Managing Partner,
Vukmirovic Misic Law Firm

Vukmirovic-Misic points out that “the European Commission, in its EU Report 2021, states that the most important legal acts it expects are a Public Administration Reform and changes regarding the judiciary system.” She stresses the importance of regulating the financial market, including: “the *Law on Payments*, the *Law on Credit Institutions*, and the *Law on Recovery of Credit Institutions*, which have

been subject to changes and new legal solutions in the past few years. It is of great importance to establish good solutions in these areas, in order to protect the financial market.” She agrees that the *Law on Prevention of Money Laundering and Terrorism Financing* should be a priority, as should the *Law on*

Electronic Documents, the *Law on Electronic Communications*, and the *Law on Information Security*.

Mugosa, on the other hand, focuses on the “point of tension” mentioned earlier – Chapter 23. “Montenegro has been in the so-called ‘acting position status’ for quite a while, which significantly complicates the work of institutions in the judicial system,” he explains. “Namely, the Montenegrin Parliament has not yet elected a certain number of members of the Judicial and Prosecutorial Councils. The election of members of the Judicial Council has been awaited for more than three years, and that of the Prosecutorial Council for half a year.” In terms of what led to this, he points to “the impossibility of securing the required 3/5 majority for the election in Parliament, while the ruling majority cannot agree on the choice of members for the Prosecutorial Council.” To make matters worse, “the Constitutional Court and the Supreme Court work with significantly reduced capacities. The Constitutional Court should have seven judges, and currently has five, and that number will be further reduced soon, due to retirement. Having in mind the rules for functioning and the decision-making procedure of the Constitutional Court, the work of this court will, consequently, be blocked. The Supreme Court, which should have 17 judges, currently only has six – due to different interpretations of the provisions on the retirement of judges, which have led to a large number of resignations and dismissals.”

Spirits Are High

According to Vukmirovic-Misic, the Centre for Democratic Transition found that accession to the EU is supported by over 60% of citizens, “of which almost a third consider that Montenegro is moving as fast as circumstances allow and expect for the country to become a member of the Union by 2025, with more than half believing that young people would benefit from joining that community.” Mugosa, in turn, points to a survey of the General Secretariat of the Government of Montenegro carried out this year, “on the attitudes of citizens on European integration and the process of Montenegro’s accession to the EU, [which] showed that 73.8% of Montenegrins support accession to the European Union strongly or to some extent.”

“The high level of support among citizens and political parties, at the moment, supports the thesis that Montenegro will become a member of the EU whenever it meets all the criteria necessary for full membership,” concludes Vukmirovic-Misic. ■

NORTH MACEDONIA: WAITING AND HOPING

By Radu Neag

On June 17, 2018, the Republic of North Macedonia and the Republic of Greece concluded the *Prespa Agreement* which, according to Pepeljugoski Partner Valentin Pepeljugoski, “resolved the name issue as a historical problem between the countries and was a step forward for North Macedonia to become an EU member.” After Bulgaria opposed the start of accession negotiations in October 2020 and again in June 2021, he says that “the country’s next hopes for EU membership are tied to the EU Summit on December 14, 2021, when a date for the start of negotiations with the EU is expected. The focus in the next period is on preparing the administration for all challenges related to the negotiation process, starting from the screening to the achievement of the final goal.”

“We are now all waiting and hoping for a positive outcome in December,” Lalicic & Boskoski Partner Martin Boskoski confirms, noting that “the European Council summit scheduled for December this year might determine the start of North Macedonia’s process of accession talks for joining the EU. But, in order for this to be resolved, we still need positive vibes coming from Bulgaria.” Boskoski also says the country dodged a bullet in November, with “the current government – more open-minded to negotiate a deal or to push for accession talks than the opposition – having survived a vote of no confidence. But, considering the questionable majority that they have, we remain unsure of the outcome.” According to Trpenoski Managing Partner Natasha Trpenoska-Trencevska, “a realistic timeline for the finalization of North Macedonia’s EU Accession Negotiations is five to seven years after the official start of the negotiations.” Boskoski says the negotiations might drag on much longer than usual, due to the bilateral disagreement with Bulgaria, “and even the greatest optimist should not expect North Macedonia joining the EU before 2030.” Pepeljugoski agrees “it is very difficult to provide any timelines since the process should have been initiated some time ago, however, there is always some new issue arising, which prevents the process of joining the EU.”

Legal Harmonization Wins

Trpenoska-Trencevska says “there is no precise or reliable source for a definitive list of laws that have been harmonized

over the last five years,” but she mentions the National Program for Adoption of the *Acquis Communautaire* (NPAA) – a roadmap for meeting the criteria for membership – with the 2021-2025 NPAA having been adopted by the government on June 29, 2021. It offers “a clear picture for the reforms to be undertaken in the next years, for building and strengthening the administrative structures necessary for *acquis* implementation, as well as the necessary budget resources.” Pepeljugoski says the NPAA constitutes “an important source of information for the business and economic sector in planning future activities” and represents “an important instrument for transparency.”

He also mentions the EU *flag* laws, EU harmonized “draft laws which reference the original acts of the EU and include a Declaration of Conformity. When entering the parliamentary procedure, they are marked with the flag of the European Union and are envisaged to be adopted in an abbreviated procedure.”

Boskoski points to the *Public Prosecution Law* and the *Law on Personal Data Protection*, “which have been harmonized with EU legislation in 2020.” He mentions that “many laws have been harmonized in the last five years, but the real hurdle remains the practice and interpretation of these laws by Macedonian institutions.”

Still Work to Do

Boskoski says that “at the moment, the process of improvement of the legal framework in the field of indirect and direct taxation, through harmonization with the EU Directives and enhancement of institutional capacities, is ongoing.”

Pepeljugoski adds that the new NPAA includes “a number of national legal acts that are subject to harmonization with EU legislation, for 2021-2025, like: the *Law on Administrative Employees*; the *Law on General Administrative Procedure*; the *Law on Criminal Procedure*; Amendments to the *Elections Code*; the new *Law on Payment Services and Payment Systems*; the new *Law on the Prevention of Money Laundering and Financing of Terrorism*; the new *Law on Bankruptcy*; amendments to the *Law on Trade*



Martin Boskoski,
Partner,
Lalicic & Boskoski



Natasha Trpenoska-Trencevska,
Managing Partner,
Trpenoski



Valentin Pepeljugoski,
Partner,
Pepeljugoski

Companies; a new *Law on Audit*, the *Law on Copyright and Related Rights*; a new *Banking Law*; a new *Insurance Law*; and the new *Criminal Code*, among others.” He says the NPAA also includes plans for harmonization with EU practices on “financial services, information society and media, transport policy, energy, taxation, social policy and employment, enterprise and industrial policy, judiciary and fundamental rights, justice, freedom and security, education and culture, the environment, foreign policy, internal control and more.”

Trpenoska-Trencevska highlights the new *Law on Civil Procedure* (part of the Strategy for Reform of the Judicial System 2017-2022) as possibly the most important piece of legislation currently being addressed. “This is the result of establishing a stable civil law system by filling in the existing legal gaps in the 2005 version of the law, which did not yield the expected results in terms of speeding up litigation proceedings. The pending law is a result of the need for its harmonization with European standards and modern social trends.”

Willpower

“The decline of support for EU membership, which had been a trend for many years, stopped in 2020,” according to Trpenoska-Trencevska, “with a 4% increase in the population supporting Macedonian EU membership compared to 2019, up to 69%.” Boskoski agrees, saying that “the public and the political parties are looking forward to the country progressing towards the EU – but the latest failure of the EU to deliver on its promises, especially after the *Prespa Agreement* with Greece that changed the name of the country, resulted in worsening of the public perception at the time.”

To conclude, Boskoski says that “North Macedonia has no other alternatives than the EU. This means that the earlier we find an acceptable solution with Bulgaria the better it is for all citizens of the country. For Trpenoska-Trencevska, it’s “the security aspects of the EU integration process that constitute a significant factor for my support of EU membership.” She’s hopeful that “economic development, unemployment, the quality of life, and public infrastructure would be positively affected by Macedonia’s EU membership.” While “North Macedonia’s path to EU membership has proven to be incredibly hard, containing lots of ups and downs,” Pepeljugoski is confident that “the country has a central strategic position, and is fully focused on the European market and cooperation with European countries. Therefore, the country’s membership in the EU does not mean the EU’s enlargement, but rather its completion.” ■

SERBIA: IMPLEMENTATION ISSUES AND PRACTICAL PROBLEMS

By Radu Neag

While public perception in Serbia on joining the EU has generally been positive, according to Karanovic & Partners Senior Partner Dragan Karanovic, “recent research suggests that the overall enthusiasm of the public has taken a slight decrease, establishing a polarized, almost fifty-fifty view towards EU accession.”



Dragan Karanovic,
Senior Partner,
Karanovic & Partners

Karanovic says that, since 2019, “the negotiations are somewhat stuck on geo-politics questions and the slow-moving judiciary, rule of law, and freedom of speech reforms.” The COVID-19 pandemic has further dampened the tempo, he says, “and created a stalemate on the Serbian path to European integration. Nevertheless, the strategic goal is still in place – Serbia remains committed to EU accession.” Out of a total of 35 chapters, 18 have been opened so far, and only two have been temporarily closed, according to Zivkovic Samardzic Partner Uros Djordjevic. He agrees that negotiations have slowed down of late, with “no new negotiation chapters opened in 2020.” He reports that in 2021 “Serbia switched to a new methodology by which the negotiating chapters are grouped into six clusters.” While Cluster 1, containing all previously opened chapters, was opened in 2021, “no new chapters have been opened in 2021 either,” according to Djordjevic.

He notes that, according to the October 19, 2021, Report of the European Commission, several key areas have been marked as requiring redoubled efforts: agriculture and rural development, the justice system and fundamental rights, freedom and security, the environment and climate change, and financial control.

Karanovic says that EU policy makers’ recommendations are generally well accepted in Serbia and the approach when addressing the relevant issues has shown some progress. “Where we go from here hinges on preparing adequate implementation strategies, with realistic goals and progress mon-

itoring. The future political setting could also be a great or a poor catalyst for change.” Both Djordjevic and Karanovic agree that the current 2025 target for EU accession is more aspirational than anything. “Right now, this prediction serves more as an encouragement to fast track the existing issues, rather than a realistic deadline, Karanovic says. Djordjevic notes that, while a motion to change that goal to 2030 was not approved (during the October 2021 EU Western Balkan Summit), “taking into account what little progress has been made in closing the currently opened chapters, 2030 would be a more realistic date for the accession.”

Harmonization vs. Implementation

“Harmonization of laws predominantly occurred in previously unregulated areas,” according to Djordjevic, “with the passing of new laws modeled on EU legislation.” He highlights legislative progress in the following areas: protection of business secrets, patent law, the technical requirements for products and conformity assessment, organ transplantation, human cells and tissue, and gender equality, all in 2021; trademarks, digital goods, in 2020; export and import of dual-use goods, protection of users of financial services in distance contracting, both in 2019; maritime travel and confiscation of criminal property, both in 2018; and transfusion medicine and bio-medically assisted fertilization, in 2017. “However, the practical application of those harmonized laws is still lacking,” he says.

“Serbia had a steady tempo in EU-harmonized legislative activity in the past five years,” Karanovic says. According to him, harmonization was undertaken in two streams: “by implementing harmonized laws in areas for which chapters had been opened, and by anticipating weaknesses in legislation for still closed chapters, to get a jump start for those chapters, once unlocked.”

He highlights progress on anti-trust and anti-monopoly legislation, whereby the Serbian Commission for the Protection of Competition is active in harmonizing practices “by using EU institutions’ interpretative instruments.” Djordjevic agrees yet notes that Serbia “still has to ensure systematic com-



Uros Djordjevic,
Partner,
Zivkovic Samardzic

on access to information of public importance, in line with European standards, a great step towards a democratic and transparent society.”

He says “considerable progress can also be seen on green energy, sustainability, and climate legislation, with Serbia adopting a package of energy laws and a comprehensive climate law. The European Commission considers the opening benchmarks to have been met and recommended the opening of the respective accession cluster.” However, Djordjevic is concerned that the recent “efforts to harmonize the laws governing different aspects of environmental protection have been largely formal, without any practical effects.” He is more optimistic about the newly adopted *Trade Law*: “it was also one of the highlights of harmonization, where terms like e-shop and e-platform were found for the first time, and the most common forms of e-commerce were recognized and defined, including sales through platforms connecting consumers and merchants and dropshipping.”

Rising Standards

The European Commission’s opinion is that limited progress (of a purely formal nature) has been made in some key areas, Djordjevic says. “According to the EC, the essential effect or ‘track record’ is not yet visible when it comes to electoral conditions, the functioning of democratic institutions, the fight against corruption, organized crime, or freedom of expression,” he notes. “First on the legislative to-do list is the highly anticipated constitutional and judiciary law reform aimed at establishing and strengthening the independence of the judiciary,” Karanovic agrees. He says that crucial alignment work is also expected on capital movement, financial services, food and medicine safety, and healthcare – “as these seem to be the areas where adequate protective mechanisms lack the most.” He further lists copyright and related rights, consumer protection, state aid, whistle-blower, and border control legislation

pliance with notification and standstill obligations for all state aid measures as well as develop solid track records on the application of competition law and the *Law on State Aid Control*.”

Karanovic mentions a new consumer protection law, progress on data protection (with only the EU updates introduced after 2018 left to implement), and the “implemented provisions

as some of the areas where careful harmonization will have to be undertaken.

“Public procurement is an important ongoing issue as well,” according to Karanovic, “with noticeable changes for the transparency and digitalization of the process. In 2021, the European Commission evaluated Serbia as moderately prepared.” While Djordjevic agrees, he says “Serbia still needs to ensure further alignment,” particularly on public-private partnerships and concessions, publicly funded projects, and intergovernmental agreements with third countries.

Finally, Karanovic also mentions that several EU-harmonized laws are in the National Assembly’s pipeline, regarding trade and company law, electronic media, and biocides, among others. As he sees it, the work may not slow down, “as EU policy is constantly expanding and making the to-do list longer every day. Thus, the standards are only rising higher for each aspiring EU membership candidate.”

Key Issues

“All these laws are important milestones and serve as stable routers in each of the respective areas,” according to Karanovic. He thinks the “most noticeable (and desirable) wind of change will likely be brought on by updates regarding the freedom of movement of people, capital, goods, and services.” He expects that such changes will introduce Serbia to the EU’s single market as an equal, opening vast growth possibilities. He concedes that “the true difficulties do not lie with the introduction of harmonized laws into Serbian legislation, but with their proper implementation.”

Chapter 27 on the environment and climate change is, according to Djordjevic, “certainly the most important area which requires harmonization, due to its sheer scale and the real-world impact it has on the daily lives of Serbian citizens.” He says the problems here are not purely legislative in nature, but rather practical and economical ones. He points out that, “currently, Serbia treats only 10% percent of its wastewater, with Belgrade and Novi Sad discharging wastewater directly into the Sava and Danube rivers. Only 7% of communal waste is currently being recycled, while the EU target for 2020 was 50%. Only 0.7% of GDP is invested in environmental protection, while most CEE countries invest around 2% of their GDP.”

“To appreciate the scope of the work required for complete harmonization, it is worth pointing out that an estimated EUR 15 billion will need to be invested before closing Chapter 27,” Djordjevic concludes. ■

INTRODUCING: GECIC LAW'S ESG PRACTICE

By Radu Cotarcea

On October 11, 2021, CEE Legal Matters reported that **Gecic Law** had Launched a new ESG Practice, co-headed by Partner and Head of Corporate/M&A **Ognjen Colic** and Head of Operations **Hristina Koscec**. CEELM spoke with Gecic Law Founding Partner **Bogdan Gecic** and **Colic** to learn more about the new practice.



Bogdan Gecic

CEELM: What was the rationale behind your decision to launch the ESG practice?

Gecic: The transition to a stand-alone ESG practice was quite natural for us as it is a perfect fit for several of our core competencies. We combined our unparalleled expertise on the latest developments in EU law, such as the European Green Deal, with

our know-how in trade policy, finance, environment, and labor to provide support in all aspects of this broad and diverse field. EU law is still the uncontested *rule of the land* in Europe, for both doing business applicable to the internal market and international trade in the case of Western Balkans. As ESG rose to the top of the agenda, we realized that we could offer comprehensive solutions and significant value in this area. We are proud to be the first independent law firm in the region to provide this service in a field that is already so important and will very soon become vital to all businesses. The naked truth is that businesses can no longer afford to remain oblivious to ESG standards. Stakeholders are no longer willing to accept corporate behavior which does not adhere to standards in these areas. This impacts enterprises in the Western Balkans even more than they realize. For companies that are not mindful of these areas, it will become increasingly more difficult to borrow money from creditors, attract investors, sell goods to customers, be competitive in exports, and attract the best employees, as they are all becoming more and more interested in their ESG standing and are acting on it. Therefore, this will undoubtedly affect their success in the market and their financial results.

Colic: Adding to Bogdan's remarks, for a long time now, we have been addressing the various aspects of ESG partially, while understanding that the issues are so interconnected that fixing one area at a time does not solve the entire problem.

Indeed, businesses often emphasize the importance of, for example, carbon neutrality, and neglect other important areas, especially corporate governance. We believe that the most beneficial way is to holistically approach the issue, treating all sides of the matter. By launching our ESG practice, we aim to address the totality of our clients' needs in this increasingly important area. This is where we see the emerging opportunity and our competitive advantage.

CEELM: What were the recurring questions you'd be getting from clients that initially sparked the thought of setting up a dedicated practice?

Colic: Our clients are mostly well-informed that there are changes they will have to face as the EU accession process moves on. However, they are not always abreast with all changes that may affect their operations and the dynamics of this impact. Their main concern is how these processes may affect the vitality of their business and their bottom line. This is where we step in and start preparing our clients by first assessing and analyzing the risks they may be exposed to and then advising on how to best adapt, from a regulatory, strategic, financial, and operational standpoint. In the implementation, we prioritize between the *must-have* and the *nice-to-have* but we do provide a clear roadmap for each area. We aim to look at the big picture, but in practice, in most cases, we must often work gradually, always with an eye on the fundamentals of each business.

CEELM: How different are those implementations from company to company?

Gecic: Each business has a story of its own. So, the answers to the same questions can often be very different. We aim to provide solutions that are tailored to the specific needs and circumstances of each client. That is why, as Ognjen mentioned earlier, it is essential to go through a rigorous due diligence process together with the client to pinpoint the areas which require attention. Some businesses must undergo a fundamental transformation, while others are well ahead of the game. As advisors, we take pride in making sure we

understand the core of our clients' businesses very well and take a complete approach to the issues at hand. We strongly believe that companies should also look at ESG as an opportunity to improve their businesses in a meaningful way for the long term. They will benefit from incorporating ESG standards in their strategies and throughout their operations, not only as a quick fix but as a genuinely new way of thinking. Many businesses are still held back by a short-term approach, seeing change as an additional cost, avoiding and postponing action. Some still do not understand that failing to prepare may significantly affect their ability to compete in the market, sell their products, and have access to financing, which may spell the beginning of the end for them. As a business in our own right, we are thrilled to be part of this process, as we also take on board ESG standards. Wouldn't it be completely inauthentic if we did not adhere to what we preach?

CEELM: The ESG practice will be co-headed by Colic and Kosec. Why did this pairing make sense?

Gecic: We cannot say enough about the importance of understanding our clients' businesses thoroughly, especially in ESG. This conviction, along with an innovative and solution-oriented approach in everything we do, is the essence of the value we provide. To look at ESG from a purely legal standpoint would just not suffice. Demonstrating this commitment, we activated our top senior talent, both with a strong corporate legal and operational business background, to head our new practice area.

Colic: I think it is wonderful that we've adopted this approach. Although it's so obvious, it is still quite rare in our region and clients truly appreciate our dedication to their business needs. We make a point of including this approach in our work with clients, at every stage of our relationship, and we feel this is our unique proposition in the market. Legal advice needs to take into account wider implications on the business itself.

CEELM: And what's the composition of the rest of the team and how is it structured?

Colic: The team comprises seasoned experts in various fields. Our experience and knowledge in EU law are unrivaled and very well known in the market and play a significant part in our new ESG practice. Through the years we have also amassed a depth of expertise in the field of energy, working on some of the most groundbreaking projects in the Western Balkans, both in conventional and renewable energy. Our environmental practice also went from strength to strength as the business world moves towards the goals of net-zero

emissions, enhanced recycling practices, and improved waste management. Meanwhile, our corporate practice has tackled many fundamental issues, ranging from labor practices and anti-discriminatory policies to achieving more transparency in corporate governance. So, our team, supported by our business arm which leads our CSR efforts and human capital policies, is a unique force to be reckoned with in our region.



Ognjen Colic

CEELM: How do you see the ESG practice developing? What do you expect will be the drivers behind its growth?

Gecic: The opportunities are immense. The time will come when everyone will either be a part of the problem or the solution. We often hear that businesses in our region have more pressing concerns now, but I will say it again: if they fail to prepare, they may become obsolete soon. Regulators, investors, creditors, customers, and other key stakeholders will insist on responsible business conduct. The increasingly mandatory EU rules on ESG will define international trade in the years to come, impacting exporters and entire supply chains in the Western Balkans and beyond. Everyone and everything is connected, meaning that one non-complier can cause disruption. Running a business outside an EU member state won't be enough to avoid EU rules and regulations on responsible business policies. To survive in the global economy, businesses need to see ESG as a must.

CEELM: Do you expect more firms to announce similar practices in the market? If yes, what do you believe will make yours stand out over others?

Gecic: We have already seen movement in this area and given the high demand for ESG services, we are not surprised. We are confident in our unique approach which has always been business-oriented, multidisciplinary, and focused on the latest trends in EU law. We believe that our drive for innovation, our strategic method, and our dedication to impeccable client service will be key differentiators for our firm in this and other areas. We are one of the fastest-growing firms in the region. However, we strive to always remain sharp, flexible, and responsive to the needs of our clients. We have an amazing team of seasoned professionals with a can-do attitude which excels at anything we do. ■

MARKET SNAPSHOT: THE BALKANS

DOMAINS IN BOSNIA AND HERZEGOVINA

By Anisa Tomic, Partner, Maric & Co



The Legal Nature of Domains

According to the applicable legislation in Bosnia and Herzegovina (BH), domains are not considered as intellectual property rights (IP). The *owner* of the national domain *.ba* is the state of BH and any legal or natural person is considered a user of the registered domains, for as long as the yearly maintenance fees are paid regularly.

The Internet Domain Name of an individual country belongs to ccTLD. We can often read that the state domain of the highest level is a valuable resource of every state and is one of the elements of state sovereignty and recognizability in the virtual world. The domain of BH is *.ba* – it was assigned to BH by IANA, in 1996.

The registration of the domain grants the exclusive *right to use* the registered name, with the obligation to pay yearly maintenance and registration fees. The act of registering a particular domain exhausts a specific combination of marks, as it is impossible for two identical domains to exist at the same time. No subjective IP arises (copyright, patent, trademark, or otherwise) based on the registration itself.

When a registrant registers the name of a domain, it acquires the right to use that domain. The question arises as to what specific right belongs to the registrant on the basis of registration: contract or ownership? Or both?

The right from the registration is of a contractual nature because it is established by the contract that the registrant concluded with the authorized register. The registrant's right arises as a consequence of a contractual chain that begins with ICANN and ends with the registrant. First, ICANN authorizes a specific TLD registry operator to enter into agreements with authorized registries, and then the registrant acquires the right to use the domain based on the agreement with the authorized registry.

Further, the domain is an intangible asset and, as such, it cannot be owned in the classical sense of ownership of things. Also, it is

clear that the name of a domain cannot be the subject of IP, given the fact that no law places it in the group of legally protected IP in BH. Thus, the proprietary character of a domain can only exist in one indirect sense, derived on the basis of an analogy to objects and IP.

Currently, it is impossible to provide a single answer to the question about the legal nature of the rights from the registration of domains. There are elements of both contractual and proprietary character, coming into play to a greater or lesser extent depending on the specific situation so that the perspective of the contractual-proprietary nature of rights arising from domain registration is the most acceptable.

Pledging, Acquiring, and Granting Security Over Domains

Are those possible when it comes to business transactions? The status of a domain is that it is not owned or held by legal entities, nor does it represent IP, therefore how can one pledge something they do not own? Domains are sometimes equated with other IP rights but such a view is incorrect. There is no valid legal basis to register and consequently to release such pledges, but this is not strictly prohibited, either. Relevant practices show this is practically quite possible in BH. Domains are often subject to business transactions and, together with IP rights, are the subject of the IP Pledge Agreement. The State IP Office is not the competent authority to grant pledges over domains, as these are not IP rights. However, regardless of the legal nature of domains and the fact that the *owner* of the national domains *.ba* is the state, relevant practices also show that, in business transactions, domains are usually established and registered as proprietary rights before the state pledge register maintained by the Ministry of Justice of BH. This is possible because this register technically accepts and does not exercise any kind of control over pledged movables and rights.

It is legally allowed, however, to register another entity instead – as the user of the domain, before the relevant authority that manages national domains. The right to use domains cannot lawfully be acquired outside this due procedure. ■

CROATIA: INADEQUATE LEGISLATION MAY SOW UNCERTAINTY AND CHILL INVESTMENTS IN IT INFRASTRUCTURE

By Luka Porobija, Partner, Porobija & Spoljaric



The Croatian tech sector has been booming lately. With Rimac and Infobip achieving unicorn status, several other tech companies well on their way to a valuation above EUR 1 billion, and the recent successful listing of several IT companies, it seems like the Croatian tech party is going strong, and everyone is invited.

As it now looks, further expansion of the sector is all but assured. However, there is a potential barrier to this expansion and it comes in the form of Croatian IT infrastructure.

Presently physical Croatian IT infrastructure is, to put it mildly, lacking. While better than some of its non-EU neighbors, the available bandwidth is low, slow, and expensive compared to New-Europe EU members, with limited coverage outside of population centers. Additionally, almost all data centers are situated in or around Zagreb (an earthquake zone), with only one of these designated as a Tier III data center.

While the situation is not presently ideal, there is room for optimism. It is refreshing to hear that one of the three largest telecoms in Croatia (Telemach) is taking the issue seriously and is planning a EUR 200+ million investment in 5G and fiber-optic infrastructure. Several other private telecoms are announcing investments into infrastructure and the construction of Tier III+ data centers outside of Zagreb.

That is undoubtedly a very good start, but far more private investment will be needed if Croatia is to catch up with its competitors. Due to very short best-before dates in the industry, any investment into IT infrastructure should be executed and implemented as quickly as possible. Competition is fierce, demand is rising, and the quickest to provide cheap(er) high-level IT infrastructure solutions will be poised to reap most of the rewards. Several factors must align to execute such a quick investment.

Firstly, financing must be readily available for private investors. There are significant public funds (EU and local) available, and we expect the Croatian private banks to take a further step and take on more financing of IT infrastructure projects.

Secondly, an adequate legal framework must be in force, with as few as possible bureaucratic barriers while retaining adequate legal safeguards and remedies for investors and operators. Though not bad, the legal framework in Croatia is still lacking in certain aspects.

While the legislative macro level is adequately covered by EU legislation (*Directive 2018/1972*) and Croatian legislation (*Electronic Communications Act*), it is at the micro-level that potential issues arise and can have a severely detrimental effect on existing and future investment in infrastructure.

One such example is a provision of a binding rulebook/policy document (*Ordinance on the manner and conditions of access and joint use of electronic communications infrastructure and related equipment*) issued by the Croatian telecom regulator HAKOM regulating the refund of investments when the investor is different from the infrastructure owner/operator. The provision states (freely translated):

“The costs referred to in paragraph 2 of this Article shall be reimbursed by a one-off reduction of the infrastructure lease invoice under other agreements for the joint use of cable ducts. In the event that the full amount cannot be refunded in the current year, the remaining amount will be refunded from the next invoice and so on until the final refund of the total cost.”

The provision, in essence, implies that the investor will be refunded at an unspecified later date, and through offset of the lease, the investor will be paying the infrastructure operator for the use of the infrastructure they invested in.

Our view is that such a provision is very open to interpretation (what if the lease agreement is terminated prematurely?), can be seen as favorable to the infrastructure operator, and limits the parties' contractual freedom. Any investor contemplating investing a significant amount will be reluctant to agree to such a provision, knowing that their investment will become someone else's property, without any guarantees that it will ever be refunded in full.

We believe there is room for improvement and more positive interpretation by both parties and the regulator, as legal uncertainty is a sure-fire way to dissuade much-needed prospective investors from investing in Croatian IT infrastructure. ■

BALANCING COMPETING INTERESTS IN MINING IN NORTH MACEDONIA

By **Gjorgji Georgievski, Partner, and Fani Dimoska, Associate, ODI Law**



Mining is significant for North Macedonia, a country with one of the longest mining histories in the Western Balkans and vast natural resources including iron ore, copper, zinc, gold, lead, and lignite. Hence, mining significantly contributes to the development of the Macedonian economy and, in particular, to the development of local governments.

Specifically, a local government receives 78% of the fee paid for each concession on its territory. The regulatory framework governing mining is therefore critical for the sector's future expansion and investment possibilities.

The mining regulations adopted back in 2012 aimed to boost new investments in mining and prioritized only the financial benefits of mining activities. The mining regulations introduced shorter, simpler, and faster procedures for granting mining permits and concessions. Furthermore, they provided easy conversion of the exploratory concession into an exploitation concession, providing an opportunity for investors to commence exploitation faster. Following the adoption of these mining regulations, the sector saw a substantial increase in the number of granted concessions and mining activities. However, the increased mining activities led to increased pollution in the regions where the mining activities began. The development of the industry caused chemical pollution of water and soil, and affected the biodiversity and the health of the local population.

Despite the clear financial benefits of facilitating the growth of the mining sector, the country is now faced with the challenge of striking a balance between financial interest and environmental protection.

In an attempt to strike a balance, in 2019, Macedonian lawmakers adopted significant amendments to the mining regulations to provide greater protection of the health of the population living near the mines and environmental protection. These amendments prohibit the granting of concessions for the exploitation of mineral raw materials through leaching procedures or flotation of metallic mineral raw materials with cyanide or sulfuric acid in open-pit mines. As an exception was provided for the already granted concessions, the amendments only apply to new open-pit mines.

The 2019 legislative amendments fueled the ongoing debate

among environmental activists and the business community, triggering the Macedonian Government to reconsider its position on mining regulation. In July 2021, the Macedonian Government proposed new amendments to the mining regulations, which appear to be some sort of a compromise between the demands of environmental activists and the needs of the business community.



The most significant changes include the introduction of new circumstances under which the Macedonian Government will be entitled to unilaterally terminate a concession agreement. More precisely, the recent amendments stipulate that the concession may be terminated due to a material breach of the concession agreement and applicable regulations. The Macedonian Government will now have the opportunity to terminate the concession agreement if exploitation violates the public interest and when the concessionaire performs exploitation outside the territory to which the concession has been granted. However, in such a case, the concessionaire will be provided with an opportunity to apply for a new concession for exploitation at another site.

Concessionaires will be subject to a more thorough audit of their performance. The Macedonian Government will be entitled to terminate the concession agreement if the concessionaire exploits less than 20 percent of the projected amount of mineral raw material within one year. However, even in this case, the termination is conditional on providing an opportunity for the concessionaire to clarify the reduced exploitation. Moreover, the concession will not be terminated if the concessionaire provides an adequate explanation for the reason for the reduced exploitation. The explanation will be reviewed by a competent committee empowered to extend reduced exploitation for another consecutive year. The conditions under which the concessionaires operate will become stricter once the amendments are adopted.

The proposed amendments currently under review by the Macedonian Parliament are expected to bring some reconciliation of the stakeholders. It seems that the amendments tend to satisfy both representatives of the mining industry and environmental activists. However, it is all but certain that the debate will continue. ■

SERBIAN CORPORATE SECTOR IS GOING ONLINE

By Nenad Popovic, Senior Partner, JPM Jankovic Popovic Mitic



The introduction of new e-services of the Serbian Business Registers Agency and the beginning of the application of online-based fiscalization are rapidly bringing the Serbian corporate environment to the corporate standards of developed countries.

Whilst the enhanced quality of the existing incorporation and registration services will be expanded to all types of legal entities that may be established in Serbia, including partnerships and joint-stock companies, Serbian corporations performing the retail of goods and services are preparing for the fast-approaching fiscalization that, without any doubt, will have a significant effect on the retail sector of small and medium retailers of goods and services, by reducing the possibility of illegal tax evasion trading.

e-Incorporation and e-Registration of Business Entities Is Picking Up Pace

According to official sources, the number of e-incorporations and e-registrations with the Serbian Business Registers Agency has increased significantly during the last 12 months. For the first nine months of this year, 8.1% of all incorporations of entrepreneurs and limited liability companies have been performed electronically.

The service of e-incorporation and registration has been available to entrepreneurs since 2018 and to limited liability companies since 2021. The same service for all other available forms of legal entities, including partnerships and joint-stock companies, will be introduced in 2022. With this expansion, the suite of the e-incorporation and registration services of the Business Registers Agency will be complete and will cover all forms of business entities.

It goes without saying that the COVID-19 pandemic breakout and the lockdowns that have followed have largely contributed to

the multiplied number of users of e-incorporation and registration services in 2020 and the first nine months of 2021 (2,680 entrepreneurs and limited liability companies).

The e-incorporation and registration services are available by accessing the e-services portal of the Business Registers Agency. The whole process can be completed online – from the application to fee payment and the issuance of the electronic certificate of incorporation. To be able to submit the application, the applicant must have a qualified e-signature issued on the territory of the Republic of Serbia which can also be used for the purpose of e-filing of financial statements and communication with the tax administration. Several banks in Serbia are issuing an e-certificate for the payment of the founding capital and payment of filing fees may be performed online.

Preparations for the Application of the New Law on Fiscalization

The new *Law on Fiscalization* becomes applicable from January 1, 2022, pursuant to which all retail and services companies will have to issue electronic fiscal receipts to customers and, concurrently in real-time, deliver the data in the receipt issued. Trade and retail encompass: 1) the sale of goods and services to natural persons, 2) the retail of goods and services in retail stores to both natural and legal entities, and 3) the trade performed by vending machines, webshops, e-commerce platforms, and drop shipping.

Taxi drivers, veterinarians, banks, and insurance companies, as well as law firms and lawyers, are exempted from the application of the new fiscalization rules.

All taxpayers must, by way of an electronic application, provide the tax authority with data on all business premises where the electronic fiscalization devices will be in usage. The tax authority will certify the eligible software and processors to be used in fiscalization devices. ■

SERBIA: BANKRUPTCY COMPENSATION AS A WAY OF RESOLVING DEBT-CREDIT RELATIONS

By Nemanja Aleksic, Managing Partner, Aleksic & Associates



Offsetting of claims (compensation) is one of the ways of termination of obligations, regulated by the *Law of Contract and Torts*.

Certain procedural and legal rules, referring to the offsetting objection and the compensatory counter-claim, are also contained in the *Law on Civil Procedure*. The institution of offsetting claims is especially important when one of the parties in the obligatory relationship is in bankruptcy, in which case the special bankruptcy rules are applied. The importance of this topic is further enhanced by the changed business conditions in the world after the COVID-19 pandemic, with economic entities being increasingly forced to settle their obligations with compensation for the time being, until new sources of growth yield positive effects on liquidity.

While bankruptcy proceedings conducted under previous Serbian regulations were always a matter of mandatory, legal compensation, the applicable *Bankruptcy Law* (BL) – in Article 82, introduces a new concept of legally permitted and limited offsetting. Similar solutions are provided in the legislation of other countries in the region.

The importance of offsetting in practice, especially for creditors, is great. It allows the creditor to fully collect their claim outside the bankruptcy payment lines and regardless of the amount of available funds in the bankruptcy estate. For reasons of fairness, offsetting deviates from collective settlement as the legally established goal of the bankruptcy procedure and from the principle of parity, *i.e.* from the proportional settlement of bankruptcy creditors.

Practically speaking, by using offsetting claims in bankruptcy proceedings, the creditor avoids the regular course of events where they would have to enter the value of their obligation in full into the bankruptcy estate – as fulfillment to the bankruptcy debtor – while only settling their claim against the bankruptcy debtor together with other bankruptcy creditors, in the appropriate payment order, appropriate proportion, and depending on the available means of settlement. In practice, there is rarely a

situation in which all bankruptcy creditors collect their claims in full through bankruptcy proceedings. The advantages of the institution of offsetting mutual claims are clear, and of great benefit to creditors. Through offsetting, claims can be settled in full or at least up to the amount of the claim that the bankruptcy debtor has against the specific creditor.

In order to exercise the right to offset in bankruptcy proceedings, in addition to the general conditions concerning reciprocity, homogeneity, and maturity of claims, the BL requires fulfilling three special, cumulative conditions: (1) the acquisition of the right to offset before filing a petition to open bankruptcy, (2) filing of the entire claim, and (3) a statement on offsetting. The right to offset was not acquired if both mutual claims did not fall due before the submission of the petition to open bankruptcy. The right to offset is, however, considered to be acquired before such a submission if the debtor's accounts were blocked at the time of maturity of the creditor's claim. The BL does not set the liquidity of mutual claims – the indisputability in terms of their bases and amounts – as a condition for offset.

Regarding limitations, offsetting is not allowed if: (1) the bankruptcy creditor acquired the claim in the last six months before the day of filing the petition to open bankruptcy, and the bankruptcy creditor knew or should have known that the debtor was insolvent or over-indebted; (2) if the conditions for offsetting have been acquired through a legal transaction or other legal action that can be challenged in accordance with the provisions of the BL.

The use of the benefits of offsetting of claims in bankruptcy proceedings is related, in time and procedure, to the filing of claims in court. Creditors having the right to use this benefit have to submit the statement on offsetting to the court along with filing for the entire amount of their claim against the bankruptcy debtor, within the filing deadline. Otherwise, the right to offset is lost, and the creditor will be forced to fulfill their obligation to the bankruptcy debtor (the bankruptcy estate), while only being able to settle their own claim in the appropriate proportion, together with other creditors of the same bankruptcy payment order. ■

INFRASTRUCTURE PROJECTS IN SERBIA – AN OVERVIEW

By Vladimir Milosevic, Partner, Milosevic Law Firm



Due to its strategic position in the heart of Southeast Europe and it being part of three important European corridors, Serbia can boast excellent connections to both Western Europe and the Middle East, and has a huge potential for public and private investments alike.

Aware that investments in infrastructure can provide tangible impacts on economic growth, quality of life, and productivity, the Government of the Republic of Serbia has focused its strategic choices in the past years on infrastructure projects ownership and delivery modes. Addressing the longstanding problem of underfunding, it turned to various forms of grants, loans, donations, and state subsidies. As a result, construction activity in all fields, including infrastructure, maintained a dynamic and continued growth in 2020 and 2021 even though the COVID-19 pandemic indisputably slowed down the economy and increased the costs of construction materials, imported goods, workforce, and logistics.

This has been confirmed by a number of major ongoing infrastructure projects at a national level, including road, rail, air, and water developments, which continue to provide opportunities for investment-oriented firms from all over the world. With several countries, most notably, the USA, China, Turkey, Russia, France, Hungary, and Azerbaijan, Serbia has signed memorandums of understanding on cooperation in infrastructure development. At this point, such international agreements are the most frequently used modality in this field.

Some of the global leaders in the construction industry are thereby, by means of commercial contracts, engaged in implementing infrastructure projects of national significance. Key projects in the area of road transport include around 250 kilometers of new highways being built within the Belgrade Bypass, the Preljina-Pozega segment, and the Morava Corridor. The Sremska Raca-Kuzmin section, with a bridge over the Sava River, is part of the E-761 highway Belgrade-Sarajevo construction project. In addition, the construction of the Pozega-Kotroman section (approximately 60 kilometers long) is also planned. For these projects, the Republic of Serbia signed two Commercial Agreements with Turkish construction giant Tasyapi.

These are accompanied by several projects of exceptional strategic relevance in the area of railways and intermodal transport, such as the reconstruction and modernization of the railway sec-

tion between Subotica-Horgos and the state border with Hungary (Szeged). The construction of the Belgrade-Budapest railway is in process, too, with the project's worth at about EUR 2 billion in total, and works being partly performed by China Railways International and China Communications Construction Company.

The relevant legal framework has been amended and upgraded a few times in recent years to simplify the regulatory procedures concerning the implementation of infrastructure (re)construction projects, speed up their performance and finalization, and foster the usage of other delivery modalities, first and foremost, Public-Private Partnerships (PPPs). In addition to the *Law on PPP and Concessions*, adopted back in 2011 and amended in 2016, the 2018 amendments to the *Law on Utility Services* are also expected to draw private investment in this sector and facilitate PPP projects in Serbia. Namely, it prescribes that the procedure of performing communal activities whose financing is provided from the budget of the local self-government unit or by collecting fees from the users of communal services can be carried out exclusively through public-private partnerships.

Since the formation of a regulatory body in the form of the PPP Commission, over the past nine years, there have been almost 200 approved projects across all local municipalities in Serbia. Most of these projects have been in the previously underdeveloped wastewater processing, sewerage, water supply, and waste management sectors.

In addition, one of the most notable concessions that should tightly connect Serbia with the world is the concession of the Belgrade airport. In March 2018, Vinci Airports signed a 25-year concession contract with the Serbian government for the Nikola Tesla Airport. The concession agreement covers financing, development through construction and reconstruction, maintenance, and management of infrastructure.

Regardless of the form and structure of infrastructural projects, however, there are numerous legal aspects for all stakeholders to consider in the context of construction and projects-related regulations in Serbia. After the main parties choose the adequate procurement arrangement, transaction structures, and corporate vehicles, and comply with the FIDIC contract forms (which are required if the main parties are international contractors), they also need to take into consideration the risk allocation, appointment, and payment of contractors, subcontractors, licensing and consents, as well as projects insurance, health and safety, environmental issues, and, finally, tax liabilities. ■

EXPERTS REVIEW: BANKING/FINANCE

The theme of Experts Review this time around is **Banking/Finance**, and the articles are presented ranked by the number of commercial banks per 100,000 adults in 2020 according to the World Bank. Bulgaria is the first with 60.3 branches, while Ukraine is last with 0.4 branches.

Country

- Bulgaria (60.3)
- Montenegro (38.1)
- Moldova (30.5)
- Serbia* (27.6)
- Poland (27.1)
- Croatia (25.7)
- Russia (24.6)
- Hungary (23.4)
- Slovakia (23.3)
- North Macedonia (23.1)
- Romania (22.6)
- Albania (18.6)
- Czech Republic (18.3)
- Turkey* (16.1)
- Lithuania (10.5)
- Austria (7.4)
- Belarus** (0.7)
- Ukraine (0.4)

* 2019 data available only.

** 2017 data available only.

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BULGARIA: THE BULGARIAN BEAM MARKET – NEW GROWTH OPPORTUNITIES FOR SMEs

By Dimitrinka Metodieva, Senior Partner, and Kostadinka Deleva, Partner, Gugushev & Partners



In 2018 the Bulgarian Stock Exchange (BSE) was granted approval by the Financial Supervision Commission (FSC) to create the new Small and Medium Enterprises (SME) Growth Market BEAM (Bulgarian Enterprise Accelerator Market), under the provisions of the *Markets in Financial Instruments*

Directive 2014/65/EU (MiFID II). The new

segment of the BSE aims to promote the development of small and medium-sized companies, which have a key role in the economic growth of the country.

The BEAM Market is a special market that enables national and foreign small and medium-sized enterprises – registered as joint-stock companies having non-materialized shares – to raise funds under softer terms compared to those on the regulated market. At the same time, such businesses are enjoying similar advantages as those of public companies. A company is considered an SME before being admitted to trading if, according to its latest annual financial statements, it meets two of the following criteria: less than 250 employees, net annual turnover does not exceed EUR 50 million, or total book value of the assets does not exceed EUR 43 million.

The BEAM Market could be the first step on the road to becoming a listed company on the regulated market. It is attractive for ambitious and innovative companies with existing business and growth potential, which need additional financing to develop their activity and achieve greater publicity for their products and services. At the same time, the BEAM Market is an excellent alternative funding opportunity for start-ups with innovative ideas and promising business plans, as it ultimately reduces the dependence on bank funding, which is an important advantage at the early stages of the development of a company. Companies listed on the BSE Main Market cannot be traded on the BEAM Market, however, there is no such limitation for companies listed on stock exchanges in the EU Member States.

The BEAM Market provides companies with a number of advantages in the admission to trading process as well as in their further life as listed companies when compared to the requirements for companies listed on the regulated market. Companies may raise funds of up to EUR 3 million through an initial public offering or

further increase their funds by up to EUR 3 million, once already listed on the BEAM Market, without the need for a prospectus approved by the FSC. Furthermore, if the company aims at a capital increase of more than EUR 3 million, only a simplified prospectus approved by the FSC is necessary. The requirements of public reporting are limited to only the publishing of the annual and semi-annual financial reports.

Moreover, in the interest of management optimization and efficiency, the management bodies of the companies listed on the BEAM are allowed to carry out fixed asset transactions above certain values specified in the Public Offering of Securities Act (POSA) and transactions through which receivables or liabilities above a certain value specified in the POSA arise, without prior approval by the general meeting of shareholders.

In addition, there are also a number of advantages provided to the shareholders, such as exemption from the regulated market requirements of: (a) disclosure of their shareholdings after exceeding a certain threshold and/or acquisitions of a certain percentage of the companies' voting shares; and (b) placing tender offers for buying the shares of the minority shareholders after acquiring a certain percentage of the company's voting shares and exceeding a certain threshold. Companies listed on the BEAM Market have access to a wide range of individual and institutional investors and can benefit from the possibility to list on the Main Market of the BSE under preferential terms.

The BEAM project is a step ahead in the development of the capital market in Bulgaria, making it more accessible for smaller businesses. Currently, four companies are listed on the BEAM Market, however, it is expected that soon many more companies, having growth potential, will take advantage of the facilitated access to diversified sources of financing and the cheaper and simpler access to the public market, thus attracting a broader investor base and expanding their businesses. Tax relief for capital gains made on the BEAM Market by legal entities and individuals – for the period between January 1, 2021, and December 31, 2025 – is also envisaged as an incentive to the investors. Hopefully, as its name suggests, the BEAM will shine a light on small and developing businesses and their investors, providing interesting opportunities for growth to both sides. ■



MONTENEGRO: MONTENEGRO'S FINANCIAL SECTOR, POLITICS, AND THE PANDEMIC

By Igor Zivkovski, Partner at Zivkovic Samardzic Law Office



Unprecedented times for the entire world, even more so for Montenegro. Apart from the pandemic that still firmly grips the globe, setting back the economies worldwide, Montenegro has witnessed a huge political shift, as the opposition came to power after narrowly winning the parliamentary election held last year. The victory was hailed by many as the beginning of a new era, expecting the new government to lead this Balkan country toward a more stable and prosperous future. Many changes have been announced, and the financial sector was one of the most talked-about topics.

Due to the negative effects of the pandemic, there has been an increase in public debt, unprecedented from the time of hyperinflation in 1993, while Montenegro was still a part of Yugoslavia. The lack of diversification of dominant business activities made the country even more vulnerable to the crisis, for when the dominant sector is affected, as was the case with tourism in Montenegro, the country's entire economic stability is in peril.

The COVID-19 pandemic caused a significant strain on the medical system of Montenegro, as well as a drop in activities across all sectors, leading to the closing of numerous companies. The pandemic required constant attention and monitoring of the financial sector by the competent authorities.

The financial market of Montenegro is regulated by the Central Bank, the Insurance Supervision Agency, and the Capital Market Authority, while the Central Securities Depository and Clearing Company is the relevant body regarding trading on *Montenegroberza*, the only stock exchange in Montenegro.

The Central Bank of Montenegro, apart from its supervisory role, has a central role in the banking system and is tasked with maintaining and improving monetary and financial stability. Additionally, the Central Bank of Montenegro each year advises the government of Montenegro by recommending the necessary measures for improving the economic policy dictated by the government.

This year such advice is more valuable than ever, given the hardships brought on by the pandemic. Tourism, one of the priority sectors in

the development of Montenegro and one of the key generators of growth and employment, has been severely impacted and hindered, thus requiring immediate reaction from the financial sector. The banking system, led by the Central Bank of Montenegro, as the dominant component of the financial sector, has to ensure that solvency and liquidity remain solid. This has been achieved through the implementation of measures aimed at mitigating the negative effects on the economy caused by the coronavirus pandemic.

The necessity for maintaining the liquidity and the stability of the banks was recognized and competent authorities took action in order to ensure that the risk exposure is maintained at prudent levels. Given the fact that the financial sector of Montenegro is comprised mostly of banks (over 90%), while insurance companies and monetary financial institutions come in distant second and third places, the importance of keeping all banks liquid was paramount. An increase in the credit potential of the banks was achieved by reducing the mandatory reserve requirement by 2 percentage points, increasing the liquidity of the banking sector by EUR 70 million, according to the data of the Central Bank of Montenegro. So far, the banking sector has proved resilient in spite of the COVID-19 crisis, with banks' capital adequacy ratio comfortably above the regulatory minimum and the level of impaired loans stabilizing thanks to payment deferrals and loan restructurings. Despite the measures taken, it is realistic to expect an increase in bad loans in the coming period, as a result of the difficulties faced by the real estate sector. Nevertheless, it is not likely that the country's financial stability would be jeopardized, as the banking system is liquid and solvent.

According to the World Bank's latest projections, Montenegro's GDP is expected to grow by 7.1% this year after shrinking by 15.2% last year. However, activity in this tourism-dependent economy will continue to be hampered by international travel restrictions. The government is optimistic and has announced an increase of minimum salaries by 17%. This should lead to minimum salaries amounting to EUR 700 by the end of the next year and, consequently, a considerable increase in the standard of living in Montenegro.

Montenegro continues to strive towards European Union membership, along with the rest of the Balkans, but many challenges still lie ahead. It remains to be seen whether the new government, with its fiscal policy, will improve the current state of the financial sector, and the economy as a whole. ■

MOLDOVA: CROWDFUNDING – MOLDOVAN REGULATIONS ON PARTICIPATORY FINANCING

By Marina Zanoga, Head of Banking & Finance, and Nicolina Turcan, Associate, ACI Partners



During the COVID-19 pandemic, one of the biggest challenges for Moldovan SMEs proved to be access to financing solutions. A financial gap spread nationally across different sectors and industries. Moldovan banking institutions became reluctant to finance SMEs and sole entrepreneurs, while the existing solutions often proved to be expensive and inaccessible.

The business, especially the small business, is in high demand of alternative financing solutions. The existing options, mainly limited to contributions from the founders and financing through traditional financing instruments offered by banks and non-banking lending organizations, are not appropriate.

Worldwide, the need for alternative methods of financing, the development of IT, and social networks have led to the emergence and development of unconventional financing instruments, one of them being crowdfunding. The interest in participating in alternative financing has been noticed on both sides – the business and the investors. Nevertheless, in Moldova, it was not possible due to the absence of an adequate legislative framework.

Back in 2016, the *Law on SMEs* No. 179 introduced in premiere the definition of crowdfunding. However, it lacked vision and sufficient detail. The presented concept covered only the reward-based crowdfunding services, where an investor can pay for a service/ product in advance without expecting other financial benefits (interest, shares, equity, or dividends) in exchange for the investment.

Crowdfunding services such as loan-based and investment-based crowdfunding were not regulated and remained out of the law.

Acknowledging the importance of alternative financing solutions, a *Draft Law on Crowdfunding* No. 150/MEI/2021 was developed and proposed to the Moldovan Parliament for adoption. The draft law was elaborated in line with the standards of the *EU Regulation 2020/1503 on European crowdfunding service providers for business*.

Once adopted, the incorporation and authorization of crowdfunding services providers and the creation of crowdfunding platforms in the Republic of Moldova will be possible. The business will have the opportunity to attract funding or accumulate investments of up to EUR 1 million for their projects through crowdfunding platforms.

The investments will be able to be collected from a multitude of investors – both national and foreign.

Among others, the new draft law was designed to address some of the current concerns that severely affected the trust of the local investors that lost their life savings caused by a wave of Ponzi schemes back in the 90s.



The draft law envisages a more robust investor protection mechanism. It introduces authorization and supervision procedures and establishes clear rules on the conditions of the crowdfunding activity, the participants in the crowdfunding process, applicable principles, and other related matters.

The draft law requires the investor to permanently have prudential guarantees of at least MDL 500,000 (approximately EUR 25,000). The suppliers may not promise investors the success of their projects, any profits, or recovery of investments. Also, the suppliers have a due diligence obligation to verify the projects proposed by developers and adequately inform investors of their findings. Moreover, the suppliers shall always keep the investors informed about the investment risks, including the risk of losing their entire investment.

Under the draft law, the operation of the crowdfunding mechanism, including the execution of the agreements and all transaction-related documents, will have to take place electronically and remotely, provided secure means of identification are used. All payments within the crowdfunding process will occur exclusively by bank transfers or alternative payment instruments offered by payment providers.

Nonetheless, only two types of crowdfunding are envisaged by the draft law: (i) peer-to-peer consumer lending or peer-to-peer business lending (crowdlending), and (ii) investment-based crowdfunding. Other forms of crowdfunding remained unregulated, unfortunately.

The pandemic crisis showed us all that the business needs more flexible and affordable financing instruments. The initiative to design and implement an adequate regulatory framework for crowdfunding is an excellent response by the Moldovan authorities. By receiving the necessary boost to their cash flow, smaller businesses will have the opportunity to develop further or launch new projects, from which the entire domestic economy will benefit. ■

SERBIA: SERBIAN FOREIGN EXCHANGE RESTRICTIONS IN CROSS-BORDER TRANSACTIONS

By Milica Popovic, Partner, and Ksenija Boreta, Senior Attorney, Petrikic & Partneri in cooperation with CMS Reich-Rohrwig Hainz



There are specific foreign exchange (FX) restrictions set out in Serbian legislation. The FX rules envisage mandatory requirements with respect to cross-border loans, guarantees, assignment and set-off of cross-border claims and debt, the opening of bank accounts abroad, *etc.* As FX restrictions affect various aspects of transactions between

Serbian residents and foreign parties, they are frequently a tumbling stone in cross-border transactions.

In a nutshell, Serbian residents are rather restricted in lending to foreign residents and providing guarantees for transactions between non-residents unless the foreign borrower is majority-owned by the Serbian guarantor, with the exception of transactions between non-residents incorporated in the EU member states in which case this requirement is removed. However, lending and guaranteeing by residents to non-residents under credit transactions are still subject to other requirements and limitations such as that the Serbian guarantor has to secure its recourse receivables through adequate collateral from abroad, with the main idea to limit any funds outflow from Serbia. As there are no guidelines under the FX rules on what should be regarded as adequate collateral here, this needs to be evaluated by the National Bank of Serbia as a regulator on a case-by-case basis within the mandatory reporting procedure (uncertain in its outcome due to lack of firm standards).

With respect to the reporting procedure, Serbian residents are required to deliver various documents to the regulator, among which are the originals of relevant finance documents and their certified Serbian translations. The regulator may request to be provided with supplement documents at its own discretion within the course of the procedure. When it comes to the cross-border facility agreements, the regulator may request that certain provisions of the facility are explicitly excluded from application toward Serbian residents or that are further amended to ensure compliance with the FX rules.

The major points which the regulator usually finds problematic in facilities with non-residents are clauses on joint and several guaran-

tees, cross-default, set-off, and assignment. As the potential issues may not be fully predicted in advance, this list should not be regarded as exclusive.

The specific position of the regulator is that the cross-border guarantees may not be joint and several (*i.e.* they may be activated only if the original borrower is not capable to make the payment itself) and have to be explicit that the Serbian residents will have no payment obligations on behalf of any obligor other than pursuant to the security provided.

Cross-defaults are generally not permitted, banning the default of a Serbian borrower under a cross-border loan to be triggered based on a cross-default.

Cross-border set-off of claims is also subject to certain restrictions under the FX rules, whereby set-off is possible only for transactions explicitly prescribed by the law and following the prescribed procedure. All other types of set-off are deemed to be unpermitted under the FX rules.

Cross-border assignment and transfer of claims and debt are explicitly allowed under the FX rules only if related to the realized foreign trade of goods and services or cross-border loans and subject to certain formal requirements depending on the underlying transaction.

The policy of the regulator in this area is gradually being loosened up. In terms of legal changes, only the restriction of majority ownership for EU member states has been removed, but, through practical cases, the regulator kept adjusting its positions towards a more flexible approach. As a consequence, requirements relating to cross-border defaults and joint and several guarantees appear to have been liberalized in transactions where the resident cross-guarantees only for its direct or indirect shareholder. Undoubtedly, we will be seeing more liberalization driven by practical situations as we witness an increase in cross-border financing and refinancing transactions. ■



POLAND: IS POLAND READY FOR REITs?

By Katarzyna Sawa-Rybaczek, Partner, and Lukasz Czerepak, Associate, Penteris



REITs first appeared in the US in the 1960s, and the American REIT market has enjoyed considerable growth over the last quarter of a century. From there, REITs have spread to most developed economies, including many EU member states, and can presently be found in approximately 40 countries. In the US, the total return on investment in REITs making up the FTSE Nareit All Equity REITs Index reached 1,225% over the last 25 years, which translates into an average annual return of 10.9%. This, coupled with the good performance of REITs in other countries, contributes to an increased interest in this type of legal structure in jurisdictions where such solutions have yet to be introduced.

What Can REITs Offer?

Depending on the jurisdiction, REITs can benefit from tax exemptions or preferential tax treatment, which puts entities investing in such vehicles in a similar position as direct real estate investors. In addition to preferential tax treatment, other advantages of REITs include: (i) enabling a broad range of entities to invest in real estate; (ii) increasing local capital involvement; (iii) encouraging investment in select, professionally-managed pieces of real estate, which promises greater ROI; (iv) enabling investment in various real estate projects and different types of real estate, which creates a diverse and resilient portfolio; (v) facilitating exit, as the instruments issued by REITs (on the stock exchange) are characterized by greater liquidity compared to the real estate itself.

Poland to Follow?

Several countries in CEE have already implemented the necessary legislation with Greece first introducing REITs in 1999, Bulgaria in 2003, Hungary in 2011, and the Czech Republic and Turkey in 2013. Recent years have seen a few attempts at introducing REITs into the Polish legal system. In October 2016, the Ministry of Finance produced a REIT bill, subsequently modified in 2017. The two bills differed significantly, demonstrating a lack of clear and comprehensive vision.

Ultimately, the second bill was abandoned, only for the Ministry to surprise investors with a brand new one in 2018. In the third iteration of the bill, only residential real estate was to be eligible as a REIT

investment and receive preferential tax treatment, with commercial real estate being left out altogether. The bill faced a barrage of criticism and was eventually discarded.

In 2021, the Ministry of Economic Development, Labour, and Technology took the initiative, announcing that a new bill would be produced by the end of the year. Considering the fact that the bill has recently made its way back to the Ministry of Finance, further delays can be expected. Based on available information, REITs were initially to be allowed to invest in residential and commercial real estate alike, which is now being reconsidered in favor of either restricting or excluding residential real estate investments. On the bright side, governmental representatives indicated that both investors and REITs can expect preferential tax treatment.

Although at this time there is no bill to speak of, one cannot help but wonder whether the end of 2021 is a realistic deadline for the presentation of a draft bill as indicated by governmental representatives – the prevalent belief on the market is that it is only a matter of time before REITs take root in Poland.

What Happens Next?

There is simply nothing to wait for when it comes to REITs. Almost all investments in commercial real estate in Poland are made by institutional investors from abroad (in 2021 domestic capital was responsible for only 4% of this type of investment). Favorable REIT regulations in neighboring countries (Czech Republic, Germany) push this ratio above 20% and 50%, respectively. The example of the Czech Republic is particularly useful in this case, where the level of domestic investment in commercial real estate before the introduction of REITs to the legal system in 2013 was similar to that in Poland. It proves that appropriate REIT regulation facilitates safe and long-term investment.

One can only hope that, in this case, it's fourth time lucky. This is important as the newly introduced amendments to tax regulations (taking effect in 2022) are about to increase burdens on natural persons engaged in the real estate rental business, which could lead to a portion of Polish capital being withdrawn from direct real estate investment in favor of investment in foreign real estate. Given a proper legal framework, REITs can balance the scales and provide a powerful incentive for the development of the Polish real estate market. ■



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CROATIA: ARE FINANCINGS AND BONDS GREEN IN CROATIA?

By Martina Kalamiza, Partner, Divjak Topic Bahtijarevic & Krka



Sustainable finance is at the very heart of the financial system ensuring financial service providers offer green products and push them and the corporate businesses to be greener, to reach a higher level of social and corporate relevance when making investment or financing decisions.

Sustainable Finance – Croatian Legal Framework and Green Transition

The enactment of, among others, the *Sustainable Finance Disclosure Regulation*, *Taxonomy Regulation*, and *LCR Regulation* on the EU level boosted the way for twisting from traditional finance and investment (either through bank financing or bond issuance) into a sustainable one. The basic idea of the stated regulations is to accomplish a higher level of preservation of social rights, introduce good practices in corporate governance, and create a low-carbon economy resistant to climate changes.

Along with the EU Regulation, the Croatian Parliament enacted the *Law on Implementation of the Disclosure and Taxonomy Regulation* which, together with the EU rules, creates a legal framework for sustainability and its introduction in the field of financing and investments.

Bilateral agreements – such as the memorandum of understanding between the European Investment Bank and the Croatian Ministry of Economy and Sustainable Development signed on January 28, 2021, or the agreement between the European Investment Bank and the Croatian National Bank for Reconstruction and Development – should significantly increase financings to sustainable projects relevant for the public (water, healthcare, transport and energy infrastructure, and the national railway network and motorway) and private sectors on the Croatian market.

The aim of those agreements is to develop strategies in sectors such as renewable electricity generation and transmission, clean energy and energy efficiency measures, renovations and conversions of buildings, green mobility, and support for the Croatian economy's transition to a circular economy.

Sustainability – Opportunities

While on the global market the use of sustainability-linked principles on granting loans incorporated in the standard loan documentation and sustainability bond principles, green bond principles, social bond principles, or sustainability bond guidelines are in regular use and

develop new practices, the Croatian response to sustainable standards for finance, investments, and bond issuances being incorporated into the transaction documentation is... It is getting there.

Sustainability-linked bond principles are rarely used/incorporated into the bond documentation and there are not a lot of “green products” available on the Croatian capital markets. However, some deals on the Croatian market, such as issuance of bonds by Erste & Steiermarkische Bank d.d. whereby the International Finance Corporation subscribed for bonds in the amount of EUR 75 million in order to support the issuer's financing portfolio, including green housing loans, give a good signal that this is moving forward. However, there is still room for developments in that sense both on the financial service providers' side and the borrower's side.

On one hand, the banks should offer more “green” and “sustainable” financial products and make them available on the Croatian market while, on the other hand, the borrowers should become more resilient to changes. It could be expected that the borrowers will need to be sustainable, determine their exposure to climate change, and understand the risks they will have to cover in order to obtain “green” financing for their operations. They will need to manage and mitigate environmental and social risks factors, employees, and corporate governance in a manner that allows them to be more sustainable.

In order to reach these goals, there will have to be a clear picture as to what sustainability and ESG criteria are, how those principles should be implemented into the businesses, especially in terms of the certain investment being deemed as an investment in a sustainable target and manner how to identify greenwashing. At the moment there are no clear definitions applicable.

Sustainable Finance Going Forward

Sustainable finance does not have alternatives, and as such, it has the tendency to become the market standard. It is relevant both for banks, who may provide financing only to sustainable industries and borrowers with clear ESG standards, as well as for borrowers, who will want to obtain better terms and conditions linked to sustainability-linked principles.

The current COVID-19 pandemic and the earthquake in Zagreb and the surrounding region showed how sustainability is relevant and how companies (mostly real estate companies) should be resilient to climate change and environmental matters. Thus, clear definitions and criteria for sustainability and ESG standards should be set forth in the future and going forward. ■

RUSSIA: CORPORATE FINANCE IN RUSSIA – NEW OPTIONS NOW AVAILABLE

By Vlad Rudnitskiy, Partner, and Anna Zaitseva, Tax Advisor, Peterka & Partners Moscow



The COVID-19 pandemic has affected the business environment in Russia considerably, similar to worldwide tendencies. On the one hand, many of the companies in Russia in various industries have been negatively affected and faced a decrease in revenue and, as a result, do not have enough internal resources for further project financing or

for financing current operating costs. On the other hand, the new business circumstances have given way to the development of other companies, including various innovative start-up projects with growth potential that also require financing at the initial stages of launching the business. In such a situation, foreign companies having Russian subsidiaries, as well as foreign companies interested in investing in start-up projects in Russia, may consider different financing options.

Historically, the form of financing mostly depends on whether such financing is planned to be repaid or if it is predictable from the beginning that the investment will not be returned.

In the case of non-repayable investments, such options as a contribution to the charter capital of the company or contribution to the company's assets are available to shareholders. Contributing to the charter capital is a more burdensome procedure than contributions to the company's assets, as it implies an increase of the charter capital of the company, the preparation of the necessary corporate documents, and requires the participation of a notary public and subsequent state registration of the changes with the Russian state registration authority. It should also be noted that the net asset value of the Russian company should not be less than the amount of its charter capital. If there is a breach of this rule for two consequent years, the Russian company is obliged to reduce its charter capital.

Providing repayable financing loans to subsidiaries or other companies, on the one hand, may be attractive to the shareholders since the latter is entitled to receive loan amounts back, as well as the relevant interest, and the Russian company may deduct such interest amounts, decreasing its profit tax obligations subject to certain conditions, including thin capitalization requirements. In practice, it is not always predictable whether the borrower would have enough resources to be able to return the provided monetary funds and interest. In the case of further failure to pay any interest and return the loan amount,

there may be some disputes with the Russian tax authorities related to the requalification of such a loan into a non-repayable investment that may result in negative tax implications (*i.e.*, contesting deductibility of the interest and currency difference expenses). In practice, in situations of a lack of funds for loan repayments, Russian subsidiaries and their foreign shareholders opt to apply a set-off mechanism, *i.e.*, the obligation to contribute to the charter capital against obligations to return the loan and relevant interest.



A new mechanism – the convertible loan – was introduced in Russian legislation in the middle of 2021. With a convertible loan, the lender is entitled to claim the shares of the borrower instead of the return of the loan/part of loan and interest subject to conditions precedent set in the relevant agreement. The conclusion of a convertible loan agreement requires preliminary corporate approval for an increase of the charter capital, notary certification, and specification of the main information on the convertible loan in the publicly-available registrar of legal entities. The convertible loan agreement needs to contain the following essential terms: (1) conditions precedent (such as terms or other conditions, *i.e.*, the borrower meets certain financial indicators, *etc.*) entitling the lender to claim a loan conversion and (2) the amount of increase of the nominal value of shares, acquired by the lender or the relevant calculation mechanism.

If the conditions specified in the loan agreement occur, the lender is entitled to claim a conversion of the loan into the charter capital if such an option is suitable for the lender instead of receipt of the funds back. The latter submits the relevant claim together with supportive documents to the notary and, if the borrower has no objections, the notary proceeds with the state registration of changes to the registrar of legal entities and the charter of the borrower connected with the loan conversion and relevant transfer of shares to the lender. In case of an objection from the borrower, the relevant conversion may be performed via a court decision.

We believe that the option discussed here may be attractive for investors as it provides a flexible mechanism for corporate financing. It has a variety of particular tools available for the lender to cover various developments in a future so unpredictable at present. ■

HUNGARY: GREEN FINANCE IN HUNGARY

By Erika Papp, Budapest Managing Partner and Head of Finance CEE/CIS,
and Kitti Tulner, Associate, CMS



Environmental sustainability is essential to mitigate the risks of climate change. In order to promote this and develop a green economy, it is essential to secure adequate financing from the private sector. To this end, banks have started making available financial products for environmentally sustainable purposes.

The world's central banks are becoming increasingly active in promoting environmental sustainability and the National Bank of Hungary (MNB) has made climate change and environmental sustainability a strategic priority. In February 2019 the MNB launched its Green Program, with the purpose of supporting the domestic financial intermediary system to achieve environmental sustainability through financial products and services.

This approach was reinforced when the *Hungarian Central Bank Act* was changed in August 2021, one of the first ones worldwide to set the support of environmental sustainability as a priority objective of the MNB.

The MNB has been using a number of instruments to reduce the risks associated with climate change and other environmental problems, and to expand the financing of the domestic green economy. The range of programs and products to promote sustainable finance, both in the banking sector and in capital markets, is constantly expanding.

Environmental considerations have globally been most visible on the bond markets, and the Hungarian green market is also dominated by green bonds. The first green government bond was issued in 2020. Since then, the corporate green bond market has also started to “go green” and the number of green bonds has been steadily increasing. Most green bond issues take place through the MNB's Growth Bond Program, launched in 2019 to increase liquidity in the corporate bond market, with a total volume of EUR 4.3 billion. So far, the issuance of corporate green bonds in Hungary has been linked to the property development sector – a key area for reducing carbon emissions and mitigating climate risks.

The development of the green asset market is also supported by the Budapest Stock Exchange (BET). In March 2021, the BET issued the ESG Reporting Guidelines for BET issuers. These guidelines provide guidance and recommendations for sustainability reporting by listed companies.

MNB introduced the Green Preferential Capital Requirement Program at the end of 2020 as part of its green initiative in the capital markets. Under this scheme, investors purchasing green corporate bonds receive a discount on the capital requirements for that asset.

In addition, the MNB has a Green Mortgage Bond Purchase Program for the purchase of green-rated mortgage bonds with the aim to promote green housing lending and also the National Sustainable Capital Market Strategy project in partnership with the EBRD to help the domestic capital market become a more supportive financier of environmental sustainability.

As part of its measures for the banking sector, the MNB issued its Green Recommendation in April 2021. It sets out expectations in terms of strategy formulation, corporate governance, risk management, and disclosure. The Green Recommendation aims to facilitate the transition of credit institutions towards sustainable operations and to prepare for mandatory regulatory changes relevant to climate change and environmental risks.

In order to encourage green lending on the retail side, the Green Preferential Capital Requirement Program for Housing came into force in early 2020. Under the regulation, banks can apply significantly reduced capital requirements for loans to finance the purchase or construction of energy-efficient properties and energy efficiency retrofits, in return for which they must offer customers an interest or fee rebate and fix energy efficiency features for new loans.

As part of the green toolkit strategy, the Green Home Program was also launched to facilitate the emergence of a green home loan market, under which the MNB provides refinancing funds to banks for the construction or purchase of green homes, which they can on-lend to retail customers.

In the corporate sector, the MNB also introduced the Green Preferential Capital Requirement Program for loans financing renewable energy production (mostly solar power plants) at the end of 2020. Since then, the range of products covered by the capital requirement discount has been extended and will continue to be extended to other categories (*e.g.*, exposures related to electromobility, sustainable agri-food, energy efficiency investment, acquisitions related to green activities, and the financing of sustainable real estate investment). ■



SLOVAKIA: THE PANDEMIC AND ITS IMPACT ON FINANCIAL REGULATIONS IN SLOVAKIA

By Tomas Zaborsky, Head of Banking and Finance, and Erika Urdovicova, Junior Associate, Noerr Slovakia



The still ongoing pandemic and its impact on the economic environment occupy governments all over the world. In Slovakia, several measures have been adopted by legislative bodies since its outbreak last year mainly in the area of financial aids and business loans.

Moratoriums have also impacted the positions of banks and other creditors demanding their claims against debtors.

The adoption of the *Act on certain extraordinary measures in the financial area in relation to the spread of COVID-19*, which has been in force since April 2020, introduced a wave of various measures aiming directly at the support of businesses. They covered three areas: taxes, financial market, and budgetary rules.

The tax-related section introduced extended deadlines for submission of tax returns, tax returns of employees, annual reports, and financial statements. The aim was to relieve businesses of obligations that had increased their expenses and administrative burden. Taxpaying legal entities were, for example, able to deduct from the tax base loss carryforward for tax periods 2015 to 2018 up to the aggregate value of EUR 1 million. Furthermore, enforcement proceedings and tax audits performed by the Financial Administration were suspended.

The situation in the financial market was affected too. SMEs could receive financial aid for maintenance of their operations provided by the state-owned banks Exportno-importna banka Slovenskej republiky (Eximbanka SR) and Slovenska zaručna a rozvojová banka, a.s. Financial aid was provided in the form of either a loan guarantee or payment of loan interest (interest subsidy).

Both SMEs and large enterprises could also receive financial aid for liquidity provision from Eximbanka SR or funds managed by Slovak Investment Holding, a.s., through banks and branches of foreign banks, in the form of either a loan guarantee or loan guarantee fee waiver.

The new regulation also allowed employers and natural persons to defer repayment of their loans if they were, or could potentially be, unable to repay these on time due to the pandemic. The maximum deferral period was three months or nine months with a bank being the creditor. Similarly, consumers could apply for deferral of their consumer loans and mortgages.

Later in 2020, the measures introduced under the above *Lex Corona Act* were tightened in order to prevent the state's economy from substantial damage caused by a too long period of their application. This amendment introduced the concept of temporary legal protection which could be applied for and granted in a formal court proceeding, resulting in protection from bankruptcy and enforcement proceedings.



On January 1, 2021, the *Act on temporary protection of entrepreneurs* took effect. It leans on the abovementioned concept – while prolonging the period of granted temporary protection – but under stricter rules. Involved businesses now have to obtain the approval of the majority of creditors and fulfill other statutory conditions. Debtors may apply for the moratorium until December 31, 2022.

The temporary protection regime, as opposed to its 2020 version when it could be obtained through a formal process, is now limited by law. Affected entrepreneurs are currently more likely to initiate restructuring or declare insolvency.

As of January 1, 2021, the *Act on bankruptcy and restructuring* was amended, introducing a newly designed arrangement of a low-cost fast so-called “small bankruptcy.” The new regulation has significantly simplified the rules for the conduct of bankruptcy. If all conditions are met, the court declares small bankruptcy over the debtor's assets within 15 days from the application. This measure is intended for small entrepreneurs whose businesses failed, but could not otherwise exit the market quickly. Small bankruptcy enables them to save up to five years.

The Ministry of Justice has proposed a bill dealing with imminent bankruptcies that should form a framework for the voluntary recovery of businesses. This preventive instrument is intended to create enough room for entrepreneurs for an efficient, fast, and transparent preventive restructuring already at an early stage when insolvency is *imminent*, and thus preventing the debtors from going bankrupt and having to file for insolvency.

This purpose can be achieved also through temporary protection, as it provides a sufficient timeframe for effective restructuring. The adoption of the new regulation should simultaneously abolish the temporary legal protection provided for under the 2020 amendment. The new act should take effect in July 2022. ■

NORTH MACEDONIA: OVERVIEW OF NON-BANKING FINANCIAL SECTOR

By Svetlin Adrianov, Associate Partner and Law Leader Bulgaria, North Macedonia, Albania, and Kosovo, and Jana Nikodinovska, Law Manager, EY Law North Macedonia



Traditional banking dominates the financial system of North Macedonia with a share in the total assets of the financial system of over 80%, according to the statistical data of the National Bank of North Macedonia. The rest of the financial

assets are distributed between non-banking financial institutions such as pension and insurance funds, investments funds, and alternative financial services institutions.

Concerning the lending market, the global trend of increasing alternative financing has affected North Macedonia as well, with a five times rise in the financial assets of alternative financial institutions between 2015 and 2019 and reaching over EUR 60 million by 2020. In the same period, the share of alternative financial institutions in the total financial assets raised from 0,4% to 0,6%, which is the highest growth rate in the North Macedonian financial sector. The number of registered alternative financial services institutions also tripled from 10 in 2015 to 32 registered market players in 2021.

The rapid growth of alternative financial services in North Macedonia in recent years was driven by local market developments and the changing needs of the consumers. Alternative financial services gained even more traction a drive for financial inclusion and access to finance for the population and small enterprises that usually don't have access to traditional financing channels. The essence of alternative finance is to provide financial services to consumers in a fast, easy, and accessible manner based on the use of modern and innovative technology focusing on digital channels. Even more in a situation of the persistent COVID-19 crisis, fintech is a new reality that regulators and other stakeholders need to acknowledge.

The latest survey of the National Bank supported by the European Fund for Southeast Europe of 2020 shows that nearly 90% of the participants in the survey representing all stakeholders recognize the need for the development of the fintech sector in North Macedonia. However, a regulatory framework that supports growth and innovation is required for fintech development, digital transformation, and

the modernization of the financial system. The National Bank's survey pointed out that regulatory capacity to support this process is not sufficient and that regulations often pose challenges to the innovations in financial technology and the entry of new players into the market.



While the banks are regulated by the National Bank, alternative financial institutions in North Macedonia are regulated by the Ministry of Finance, and the regulatory framework is limited to the *Alternative Financial Institutions Law*. Secondary legislation has not been adopted to ensure a more detailed regulation of the operation of the alternative financial institutions as is the case with the banks. This often leads to the parallel operation of alternative financial services providers along the legal lines as the legal framework appears to be limited and inadequate to accommodate modern financial operations based on technology.

Consumer protection regulations with respect to consumer lending as well revealed ambiguities and inconsistencies in practice. There are regulations on electronic signature, electronic documents, and the use of electronic services, but there are still challenges in their practical implementation. The institutional and regulatory capacity for data privacy protection and cybersecurity is still developing and a new cybersecurity law is under consideration.

Nevertheless, North Macedonia needs to keep up with the trends in fintech. Obviously, there is an awareness of the benefits that fintech brings, as well as of the risks of cyber-attacks, financial crime, and money laundering associated with the use of financial technology. While building institutional and legal capacity, special attention needs to be paid to the financial literacy of the population. This is an area that requires coordinated efforts by the regulators, businesses, educational institutions, and associations in educating the public on the use of modern technology in financial services. A survey conducted within the Alternative Financial Services Association in North Macedonia pointed out a low level of knowledge and understanding of financial services by the aged population as well as by the population in rural areas. 59% of the population evaluated its financial literacy level as *average* and *weak* in this survey. ■

ROMANIA: THE CRYPTO SECTOR – “ALMOST REGULATED” IN ROMANIA

By Gabriela Neagu, Head of Banking and Finance, Bancila, Diaconu si Asociatii / EY Legal



Like many European countries, Romania has not yet taken any proactive measures to regulate virtual/crypto assets and the status of the market actors offering related services.

However, the enactment of a new anti-money laundering directive by the European Union in May 2018 pushed the Romanian authorities to start setting the necessary rules for providers offering exchange services between virtual and fiat currencies, as well as for providers of custodian wallets (Services Providers). Even though these legal provisions are only regulating a limited part of the services in the crypto segment, they are considered by the market players as highly important steps forward.

Under the national anti-money laundering legislation in force since July 15, 2020, Service Providers must comply with several mandatory requirements, such as (1) implementing know-your-customer measures, (2) implementing the necessary measures and procedures to prevent money laundering, and (3) following the registration/authorization process and obtaining a technical evaluation report from the competent Romanian authority.

Surprisingly, demonstrating compliance with the know-your-customer requirements and the obligation to implement measures and procedures in order to prevent money laundering proved to be the easiest part.

Most of the difficulties encountered by Service Providers relate to the registration and technical evaluation procedures.

The anti-money laundering legislation sets out the main rules for the authorization of Service Providers but states that a secondary legal instrument detailing these provisions should be enacted.

Thus, the Romanian Government (namely, the Ministry of Public Finances, in association with the Romanian Authority for Digitalisation and the National Office for Prevention and Control of Money Laundering) should have issued, almost a year ago, a decision setting the detailed rules for the registration process. The timeline for entering into force of these rules is uncertain, considering that not even the first draft has been published yet.

Until the secondary legislation enters into force, the status of the Services Providers remains unclear, as they are unable to obtain the authorization to provide exchange services between virtual and fiat currencies or custodian wallets services. There are several important issues caused by this legal vacuum.

The first issue is the uncertainty with respect to whether or not the Services Providers are still allowed to carry out the activities they were performing before the anti-money laundering law was amended, as at the time their activities were in a somewhat grey area – the legislation in force at that time did not regulate their activities, but it also did not forbid those activities.

This question is relevant because obtaining the relevant authorization is an essential requirement for being able to lawfully operate on the Romanian territory. In the absence of registration, carrying out the activities is strictly forbidden by the current anti-money laundering law and may constitute a crime.

The authorities' silence causes confusion among the market players, as the existing twisted framework may trigger two interpretations, both based on equally solid arguments: (1) on one hand, it can be argued that all Services Providers should be allowed to carry on their activities in Romania, as it was the legislator's responsibility to enact the necessary legislation regarding the exchange of virtual and fiat currencies and custodian wallets activities; on the other hand, (2) the current anti-money laundering law prohibits performing such activities without following the authorization process without any exemption.

The same legal vacuum also generates hitches for the Services Providers authorized in one of the EU/EEA member states, as the procedure for the notification for operating on Romanian territory should also have been regulated by the secondary legislation. The delay in the legislative process can be viewed as practically discouraging the Services Providers registered in other EU states from bringing their businesses to Romania.

Unfortunately, the incomplete legislation hinders the relevant market actors from contributing to the development of the Romanian business and economic environment. The only choice at this time seems to be waiting for the legislator to resolve the important issues caused by this legal vacuum. In the absence of the necessary secondary legislation, a constantly growing market with significant financial potential that could generate valuable income to the state budget is currently overlooked. ■

ALBANIA: THE CASE FOR DEPOSITS IN ALBANIA'S MICROFINANCE SECTOR

By Sabina Lalaj, Local Legal Partner, and Ened Topi, Senior Managing Associate, Deloitte Legal Albania & Kosovo



With a population of approximately 2.8 million inhabitants, Albania's economy is mostly composed of SMEs. To a large extent the financial sector is driven by commercial banks, however, in recent years, thanks also to extensive regulation by the central bank (Bank of Albania – BoA), non-bank financial institutions (NBFIs) have picked up a significant portion of the market.

Nevertheless, the lending activity in the country has been on a descending curb since the 2008 financial meltdown. Signs of a slight recovery are spotted here and there in the BoA quarterly reports, but indicators still show that commercial banks are in the defensive mood.

Concerning the credit crisis, experts have often pointed the finger at the supply-demand mismatch. As per Guven and Miagkyi in Albania's Credit Market (2016), "... Poor financial intermediation is the main problem on the supply side. Despite excess liquidity in the financial sector, banks are excessively risk-averse, bank practices and products are unsophisticated, and non-bank financial market is underdeveloped...".

Aside from the risk appetite of commercial banks in Albania, NBFIs have proved to be at the forefront of such a market despite the many difficulties to secure relevant funds.

NBFIs are licensed and regulated by the BoA and include entities licensed to conduct financial services (including lending and e-money activities) as well as the so-called microcredit finance institutions (MFIs). The panorama is completed by the saving and credit associations and their unions. These entities are legal persons, organized voluntarily, allowed to take deposits from their members which are to be exclusively used for members' financing, but for this article should be considered out of scope.

NBFIs are by law tout court excluded from taking deposits from the public. This legislative ban has proven to be an obstacle, especially for MFIs, as it has held back the sector from developing innovative products and serving its clientele.

According to the Albanian Microfinance Association, the matter can no longer be ignored, especially in the face of the numbers, - 180.000 clients served and a loan portfolio of approximately EUR 235 million

in 2020, – impressive in terms of portfolio size and numbers of inhabitants in the country.

Lifting the deposit ban should be addressed structurally, however, the foundations are already laid down. As mentioned, MFIs are regulated entities. However, there is no specific law regulating the microfinance sector (except for the *Law on Saving and Credit Associations and their Unions*). This legislative void is a long-time concern of the sector, which demands a proper space in the legislative panorama.

On the other hand, and despite a specific law that regulates the microfinance institutions, the BoA has been proactive in setting licensing and supervision requirements that, at present, seem too stringent.

BoA's Regulation no. 1, January 17, 2013, *On licensing and exercising of activity from the non-bank financial institutions*, contains the relevant license requirements applicable also the MFIs. BoA's Regulation no. 2, January 17, 2013, *On risk management in the activity of the non-bank financial institutions*, establishes the procedures and rules applicable to such entities, including MFIs, for administering risks during daily operations.

If one takes a close look at both regulations, it seems the regulator has taken a stringent approach in devising the rules and requirements applicable to MFIs despite the fact these entities are not allowed to take deposits from the public. The regulations with few exceptions, provide for minimum capital requirements, fit and proper requirements for directors and officers of the entities, reporting and supervision requirements, risks standards, etc. These resemble the features of prudential regulation for depository institutions but NBFIs are not allowed to take deposits.

Thus, the regulator and the microfinance sector should join forces to overcome the deposit ban obstacle and allow microfinance institutions to at least accept micro-deposits from the public. The regulator via the said or improved regulations is capable to exert effective supervision over the institutions. From the perspective of the microfinance sector, the lift of the deposits ban would be very positive as it will increase both the lending capacity and pool of clientele. Under these circumstances, a specific law combined with proper regulations seems to be the way forward to achieve this goal. ■



CZECH REPUBLIC: IMPLEMENTATION OF PREVENTIVE RESTRUCTURING – A REVOLUTION IN CZECH INSOLVENCY LAW

By Ondrej Havlicek, Head of Banking & Finance, and Natalie Rosova, Attorney at Law, Schoenherr



A long-awaited bill on preventive restructuring (Bill), implementing the directive on preventive restructuring frameworks, will introduce a brand-new legal tool preventing the insolvency of viable enterprises in temporary financial difficulties.

The Bill is in the legislative process and should become effective as of July 2022.

Although it may still undergo some changes, it is already obvious that it will revolutionize Czech

insolvency law.

Objective

Today, a distressed company in the Czech Republic may try to achieve an out-of-court arrangement with its creditors. This is a contract-based solution requiring the consent of all affected creditors with the terms of such restructuring. If a timely agreement with all affected parties cannot be achieved, the distressed company risks the deterioration of its financial situation or even insolvency.

The aim of the Bill is to enable debtors to restructure effectively at an early stage and to avoid insolvency, prevent the unnecessary liquidation of viable enterprises, and restore them to economic health. Unlike today, it will be possible to accomplish preventive restructuring with the involvement of key creditors only.

Qualification Conditions

Access to preventive restructuring is limited to legal entities that meet the following fundamental conditions: (1) the entity should be in good faith that its restructuring plan, as a key document of the whole process, will prevent the likelihood of insolvency; (2) the entity is not insolvent in the form of illiquidity – preventive restructuring should not apply in case of serious insolvency situations, but is aimed at continuation of the business by restructuring its assets and liabilities and by implementing operational changes; and (3) the financial difficulties are significant enough that declining the adoption of restructuring measures would – by the mere passage of time – result in the entity's insolvency. This should exclude the preventive restructuring of financially healthy entities manipulating their creditors or business partners to provide relief beyond the ordinary course of business.

Main New Features

Since the Bill will introduce a wide range of new measures, only some of the most distinctive aspects illustrating the preventive restructuring framework will be mentioned:

Restructuring with Key Creditors Only

Compared to insolvency proceedings, preventive restructuring does not have to involve all the existing creditors of the business entity. The circle of creditors (affected parties) is chosen by the entity itself and will likely include the key creditors only – usually the banks and the top business partners. The claims of unaffected parties will be set aside as unchanged and will be satisfied within the due dates.

Protection for New and Interim Financing

The Bill provides for special protection of new and interim financing, which should create a framework for willingness of the creditors, primarily the banks, to provide new financing to the distressed business entity.

Cross-Class Cram Down

Although preventive restructuring is based on the broadest possible consensus between the business entity and its creditors when it comes to the intended restructuring measures indicated in the restructuring plan, it is possible, subject to certain conditions, to also 'impose' the agreement on dissenting creditors.

Limited Court Involvement

During preventive restructuring, the court will be involved only partially and subject to specific conditions in case of "partial proceedings." In insolvency proceedings, the entity is constantly a party to the court proceedings.

Conclusion

In the aftermath of the COVID-19 pandemic, which has caused some businesses in the Czech Republic to fall on hard times, the preventive restructuring process to be introduced by the Bill is now needed more than ever. ■



TURKEY: ESG – TURKISH BANKING AND CAPITAL MARKETS SECTOR IN 2021

By Alaz Eker Undar and Hulya Kemahli, Partners, CMS Turkey



It has been an interesting, fruitful, and innovative year for the Turkish financial sector. Most importantly and possibly surprisingly, the Turkish financial regulatory authorities are at full speed in implementing a legal framework to support a more sustainable Turkey.

Turkish Banking Sector Transition to the Circular Economy

Throughout 2021, the Banking Regulatory and Supervision Authority (BRSA) and the Capital Markets Authority (CMA) recognized the global trends surrounding sustainability and the need to raise awareness of, and be in compliance with, ESG principles and a move to digitalization.

As the climate crisis expanded and as the effects of COVID-19 became more apparent, the potential and importance of green finance and its instruments became a focal point in Turkey. Following a sector-specific approach to legislation and after the Capital Markets Board of Turkey published its sustainability compliance framework in late 2020, which set out ESG and sustainability principles for specific companies, in July 2021, the Turkish Ministry of Trade published the Green Deal Action Plan to harmonize Turkey's efforts with the EU's actual and planned policy changes, specifically the EU Green Deal. The Green Deal Action Plan targets various sectors by the adoption of compliant roadmaps for foreign trade. Following this, in October 2021 Turkey then finally ratified the Paris Agreement ahead of COP26. These significant steps have initiated an approach that actively raises awareness of the critical role of financial regulatory institutions in the transition to a circular economy.

In addition, various other steps were taken. Turkish banks are prioritizing projects that limit the effects of climate change, such as renewable energy projects, by providing local funding for such projects utilizing sustainable finance acquired from abroad. The BRSA also regulated the procedures and principles for banks conducting identity verification processes remotely and executing agreements electronically.

Looking Ahead – What's Next?

Looking forward, the head of the BRSA signaled that it would continue implementing measures to meet Turkey's sustainability goals. The introduction of a green taxonomy, in line with the European Union's Green Taxonomy, has also been agreed to by related ministerial and agency authorities, which will heavily affect the financial

sector. In the scope of digitalization, the BRSA also published a draft regulation specifying the general rules and principles of branchless banking, which it believes will provide faster and more efficient banking services for SMEs, which will eventually help them conduct businesses sustainably. Lastly, the BRSA is expected to share its sustainable banking strategy paper by the end of 2021.



Turkish Capital Markets – Crowdfunding and ESG Drive

2021 was also an exciting and exhausting year for those keeping abreast of new CMA legislation. The CMA started the year with a heavy schedule to firstly establish a bond guarantee fund – unfortunately yet to be realized – which will guarantee that investors can partially collect their investment in the event of default, and secondly to further regulate crowdfunding and incentivize investments in green bonds. After the CMA published its resolution in October 2021 on the types of campaigns in which share-based crowdfunding platforms may not participate and the partnerships with which such platforms may be affiliated, the CMA approved several platforms for the first time in its history. Then, in October 2021, the CMA published a communique regulating crowdfunding platforms, platforms' activities, investment limits, and other principles and procedures for share-based and debt-based crowdfunding.

Naturally, the BRSA was not the only financial regulatory authority to act on Turkey's ESG agenda. After organizing a workshop last July on green bonds and green lease certificates in collaboration with the World Bank, the CMA published its draft guide on green debt instruments and green lease certificates, prepared in line with the Green Bond Principles of the International Capital Market Association, aimed at increasing the issuance of green investment instruments, enhancing investor confidence via transparency and external evaluation, and diversifying investment opportunities in projects contributing to sustainable development.

Looking Ahead – What's Next?

In any case, after a year focused on sustainability, it can be observed that Turkey has prioritized financial sector regulation and facilitation to advance Turkey's ESG agenda, and we expect further regulation, financial products, and incentives in 2022 on the way to a more sustainable and greener Turkey. ■

LITHUANIA: UPCOMING CHANGES TO THE SECURITY INTEREST REGIME

By Eva Suduiko, Partner and Co-Head of Banking and Finance, Cobalt



The initially planned major changes to the security interest regime in Lithuania, which would remove notarial certifications of mortgage/pledge, have not materialized. However, certain amendments to Lithuanian laws governing security interests will enter into force from January 1, 2022.

No Separate Register

Currently, mortgages and non-possessory pledges have to be registered in the Mortgage Register. Sometimes, the security interest is additionally registered in the Real Estate Register. Following the amendments, the Mortgage Register will be liquidated. The new mortgages/pledges will be registered in either the Register of Contracts or the Register of Real Estate. The existing security interests will be transferred to the said registers as well.

The following security interests will be registered in the Register of Contracts: (1) movable property (rights) pledge; (2) mortgage over ships and aircraft; (3) enterprise mortgage; and (4) conditional mortgage. And the Real Estate Register will be used to register the following: (1) real estate mortgage (except for those described above); and (2) pledges of rights related to real estate.

More Flexibility in Pledge Perfection

Under current requirements, a security right in movable property (rights) is created by a pledge agreement. If the collateral is transferred to the creditor's possession (possessory pledge), a simple written form agreement is sufficient. If the collateral is transferred to a third party or remains with the pledgor (non-possessory pledge), the pledge agreement must be notarized and registered in the Mortgage Register. As of January 1, 2022, the following main changes will be introduced:

The possibility to publicly register possessory pledges – currently, this type of pledge is not registrable (collateral transfer serves as a disclosure of security interest). Shortly, it will be possible to additionally disclose such a pledge in the Register of Contracts. It is anticipated that such registration could be achieved in two ways. The parties may submit their request directly to the register, or they may create the possessory pledge and subsequently register it by using IT tools.

The possibility to perfect non-possessory pledges by legal entities without a notary – currently, any non-possessory pledge has to be notarized (the notary confirms the validity of the pledge, *e.g.* checks collateral, compliance with the law, *etc.*) and registered in the Mortgage Register. Otherwise, the pledge is invalid. From January 1, 2022, notarial certification will not be mandatory for pledge agreements between legal entities. Such a pledge could be created using IT tools and thereafter registered in the register.

Although said changes will come into effect shortly, it is not yet clear how entering into pledge agreements by using IT tools will work in practice. The explanatory notes to the draft law indicate that the parties should be able to use the template pledge agreements available at the self-service portal of the Register of Contracts. However, these templates have not yet been published. It is also not clear whether it will be possible to amend such templates or whether any amendments will result in the need to formalize the non-possessory pledge with a notary.

According to the regulations of the Register of Contracts, this register will not verify the validity of pledges created via IT tools. Accordingly, even though legal persons will be able to create pledges without a notary, they might be willing to proceed with traditional (notarial) certification to have more legal certainty.

Simplified Procedure for Security Interest Release

According to Lithuanian law, the security interest is released once the secured obligation is performed or discharged, or if other grounds provided in the law exist. However, this does not automatically result in the security interest's removal from the Mortgage Register. To do that, the notary must be provided with a relevant request and supporting documents (*e.g.*, creditor's confirmation, if the request is submitted by the pledgor or debtor).

As of January 1, 2022, the request to remove a mortgage (in certain cases) or pledge may be submitted by using IT tools (*i.e.*, not through the notary). If the request is submitted by the pledgor or debtor, the creditor's confirmation will have to be provided via said tools.

To conclude, the above changes should, to a certain extent, simplify perfection and release of the security interest. However, further changes might be anticipated shortly – as discussions are still ongoing on the need to significantly reduce the notary's role and use well-developed IT tools and e-services to simplify procedures – and relevant new draft legislative proposals are on their way. ■

AUSTRIA: GREEN AND SUSTAINABILITY-LINKED LOANS – WIN-WIN SITUATION FOR COMPANIES?

By Eva-Maria Segur-Cabanac, Partner, and Robert Wippel, Counsel, Baker McKenzie



Back in 2007, the foundation for sustainable financing was set through the issuance of a green Climate Awareness Bond by the European Investment Bank. This was in part due to the increased awareness of climate change. By

June 2022, Austria wants to issue its first Green Bond. Possible investments for the Green Bond are public transport and renewable energy. Aside from bonds, sustainable financing can be concluded in several other product forms, such as guarantee lines, as well as classic bank loans. The volume of sustainable syndicated bank loans reached EUR 200 billion for the first time, last year.

The Austrian government has committed itself to the greening of the financial sector. To mitigate climate change and to accelerate greening, the Austrian government, as stated in its government program, advocates the introduction of a Green Supporting Factor (GSF) at a European level. The GSF means that banks are required to deposit less equity capital for loans that contribute to the transition to a sustainable climate-neutral economy. According to the government, a GSF will facilitate the granting of sustainable loans and, thus, would help to achieve European climate goals. The GSF is politically controversial though, as it can be seen as a non-risk-based capital requirement.

Furthermore, the Austrian government, as stated in its government program, is intending to facilitate the granting of sustainable loans. Yet, specific implementation measures are still missing. Market practice is already one step ahead of politics at this point. The London-based Loan Market Association, which is responsible for drafting a European market standard for large-volume loan financing, has published guidelines on sustainable loans. The *Green Loan Principles* (GLP) and *Sustainability Linked Loan Principles* (SLLP) are meant to provide borrowers and banks with useful guidelines for the arrangement of the documentation of the loan agreement. However, due to their nature as non-binding recommendations, they cannot replace the currently existing legal framework.

Although these two guidelines are similar, they follow different purposes. The GLP focuses on project-related financings, meaning

that capital is borrowed for a specific, ecological project. The SLLP, on the other hand, prioritizes the ecological footprint of the company and is, as a consequence, eligible for any form of financing. Therefore, the SLLP is generally suitable for any SME operating an ecological business without the requirement of a link to a specific sustainable project.



In both guidelines, sustainability can be measured using key performance indicators (KPIs). When applying for sustainable financing, companies need to address in advance how they intend to measure their own sustainability performance. To be precise, compliance with KPIs has an effect on the costs of financing, whereby, in financing practice, the interest rate is usually adjusted on the basis of pre-agreed sustainability performance measures. If the KPIs, which are agreed upon individually with the bank beforehand, are achieved sustainability-linked loans are particularly interesting, as a reduction of interest rates can be achieved, irrespective of the purpose of financing. For larger projects, sustainability ratings calculated by rating agencies are typically applied. This results in a score comparable to known credit ratings and, therefore, the sustainability rating can be used when calculating interest rates.

Energy company Verbund AG takes a leading role regarding sustainable financing in Austria. In December 2018, the company concluded the first Austrian syndicated loan that provided for the interest calculation on the basis of ESG criteria only.

The trend of steadily increasing lending volumes for sustainable finance demonstrates that the integration of sustainability KPIs in the assessment of a company's creditworthiness will play a key role in financings in the near future. This will allow companies that operate an ecological business model or take measures to improve their ecological footprint to benefit from lower financing costs. The positive effects on the reputation of a company that can secure its capital needs through sustainable finance are also worth mentioning. ■

BELARUS: CURRENCY LEGISLATION IN BELARUS – WHAT'S NEW?

By Dennis Turovets, Partner, and Anastasia Yarokhovich, Senior Associate, Egorov Puginsky Afanasiev & Partners



On July 9, 2021, substantial amendments to Belarusian currency legislation entered into force. We will briefly review the key amendments.

Registration and Conditions of Currency Agreements

One of the key changes to the Belarusian legislation is the introduction of the term “currency agreement,” which is defined quite broadly and covers any agreement on the basis of which currency transactions are conducted. Previously there was a requirement for Belarusian residents – Belarusian citizens (except for those permanently residing in a foreign state); foreign citizens and persons without citizenship permanently residing in Belarus; individual entrepreneurs and legal entities registered in Belarus – to obtain permits from the National Bank of Belarus (NBRB) for conducting certain currency transactions, among which the acquisition of securities from Belarusian non-residents and the provision or receipt of loans to/from Belarusian non-residents. After the introduction of the amendments, such a requirement was canceled, while a registration procedure was introduced.

Currently, Belarusian residents are required to register with the NBRB, on a special website, those currency agreements that cumulatively meet the following criteria: (1) they are concluded between a resident and non-resident of Belarus; (2) they envisage currency transactions of a certain nature specified in the relevant list of agreements subject to registration (for instance, providing for settlements in the export/import of goods, works, services); and (3) the amount of monetary obligations is equal or exceeds 2,000 basic units (approximately USD 23,000) for individuals and 4,000 basic units (approximately USD 46,000) for legal entities.

Belarusian residents need to provide documents and information on amendments to, and the performance of, the registered currency agreement. Failure to fulfill the registration obligation, when such registration is required, entails the imposition of fines on Belarusian residents. However, there are certain risks for Belarusian non-residents – Belarusian banks may deny conducting the relevant currency transactions. Additionally, Belarusian legislation currently requires the inclusion of special provisions into currency agreements, namely: (1) the amount of monetary obligations; (2) conditions of settlements; (3) deadlines for the fulfillment of payment obligations by non-residents and for the return of prepayments made by Belarusian residents (in case of non-fulfillment by Belarusian non-residents of

their obligations); and (4) timeframes for repatriation of monetary funds.

Repatriation of Monetary Funds

Previously existing foreign trade formalities, such as deadlines for the completion of foreign trade transactions, are not effective anymore. Instead, a repatriation requirement was introduced to ensure crediting of funds received from export (or import, in case of a refund due to non-fulfillment of obligations by Belarusian non-residents) transactions to accounts in Belarusian banks. Belarusian legislation does not provide for strict repatriation deadlines – they are determined by Belarusian residents themselves as payment (performance of obligations) terms plus the time needed for bank settlements (not exceeding 30 days). In case such funds are credited to Belarusian residents' foreign accounts, they need to be transferred to accounts in Belarusian banks within five business days from the date of crediting.

Currency Restrictions

According to the new rules, currency restrictions may be imposed by the NBRB jointly with the Council of Ministers of Belarus, for a period not exceeding one year, in case there is a threat to the economic security of Belarus and the situation cannot be resolved by other economic measures. Although not introduced at the moment, such currency restrictions may include a prohibition to conduct currency or foreign exchange transactions, a requirement to obtain special NBRB permits to conduct currency transactions, restrictions on opening and maintaining accounts with foreign banks, and other measures.

Opening Accounts with Foreign Banks

Generally, unless currency restrictions are introduced, Belarusian residents are allowed to open accounts in Belarusian rubles and foreign currency with foreign banks without restrictions and have the right to transfer funds in Belarusian rubles and foreign currency from their accounts: (a) in Belarusian or foreign banks to their accounts in foreign banks and (b) in foreign banks to their accounts in Belarusian or other foreign banks. Nevertheless, Belarusian residents may receive monetary funds to accounts opened in foreign banks only in cases directly specified in Belarusian legislation.

To sum up, the changes were aimed at the liberalization of the Belarusian currency legislation and may be positively assessed, however, it is too early to draw any conclusions. ■



UKRAINE: WHAT'S NEXT ON UKRAINIAN CAPITAL MARKETS?

By Glib Bondar, Senior Partner, and Anastasiya Voronova, Senior Associate, Avellum



The capital markets in Ukraine have been a sleeping topic until recently. On June 19, 2020, the Ukrainian Parliament has restated the *Law of Ukraine on Capital Markets and Organized Commodity Markets (Law)*. The restated Law became effective in July 2021, introducing a whole new framework for the issue of securities in Ukraine. It implements the most important EU capital markets regulations, including *MiFID II*, *MiFIR*, and

CRD IV.

One of the key developments of the Law is that the issues of the bonds have been largely aligned with the procedure followed on international capital markets. In particular, it has introduced a number of changes aimed to protect the bondholders' rights in the most efficient manner. The changes introduced include, among others, (1) strict disclosure requirements applicable to the issuers, (2) procedures for the bondholders' meeting and the exercising of the bondholders' collective rights, (3) the introduction of the concept of the administrator of the bond issue, which is similar to the concept of the bond trustee in the common law jurisdictions.

Local Bonds – What to Expect

After the adoption of the Law, the interest for local bonds issued in Ukraine has increased significantly. However, despite the readiness of the market to test the new framework, quite a few stoppers are still on their way.

The Law provides for the framework regulation of bond issuances in Ukraine. Namely, it introduces key concepts and principles for the issue of local bonds. However, a detailed procedure for the issue of the bonds must be established by the secondary legislation.

As of now, the secondary legislation reflecting the described developments introduced by the Law has not been adopted yet. At the same time, old secondary legislation regulating the issues of the bonds remains in full force and effect and has to be complied with. This creates a situation where the issuers aiming to issue local bonds have to maneuver between the old and the new legislative frameworks.

Despite these problematic aspects, there have been precedents on issuing local bonds after the amendments introduced by the Law. However, those issues were made under the private placement procedure. The public offerings of the bonds have not yet been tested in practice since the Law has entered into force.

Taking into account the existing tendencies and the increased interest of market participants, we anticipate that the fully-fledged Ukrainian local bonds market may kick off in 2022.

Eurobonds by Ukrainian Issuers – Present Trends

Until recently, all Ukrainian issuers (other than the state of Ukraine) had to apply the loan participation notes structure (LPN) for eurobond issuances out of Ukraine. The LPN structures were widely used by state-owned entities, such as Naftogaz of Ukraine, Ukrainian Railways, and Ukreximbank. For the last few years, there were two key reasons why a direct eurobond issuance was not a viable option for Ukrainian entities: (1) currency control restrictions and (2) tax considerations.

In April 2021, the Ukrainian currency control regulations were amended to allow repayments under the debt securities outside of Ukraine, to the applicable annual limit for the cross-border transactions established by the National Bank of Ukraine (which equals EUR 2 million as of today). Such changes had a positive impact on Ukrainian issuers' ability to make a direct issue of eurobonds from Ukraine, however, did not resolve all applicable concerns.

Ukrainian law does not exempt payments of Ukrainian sourced income under eurobonds from the standard withholding tax regime. On the contrary, the LPN structures allow applying a 5% reduced withholding tax rate, subject to compliance with certain criteria. Thus, the LPN structures remain a better solution for the Ukrainian issuers, subject to one exception. In cases where the anticipated eurobond issuance is benefiting from a state guarantee, the direct issue could be a viable option. Payments of interest income under borrowings supported by sovereign guarantees are exempt from Ukrainian withholding tax, therefore tax considerations are not applicable to issuances made under the state guarantee. A great practical example of the direct issue structure is a debut eurobond issuance by the State Agency of Motor Roads of Ukraine (Ukravtodor).

Thus, despite the changes to the local framework indeed improving the conditions for the direct issue of eurobonds from Ukraine, there is still some work ahead before the LPN structures become a thing of the past. We are, however, quite optimistic that Ukrainian legislation is moving in the right direction. ■



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