Year 2, Issue 1
February 2015

# CEE Legal Matters

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

CEE LEGAL MATTERS

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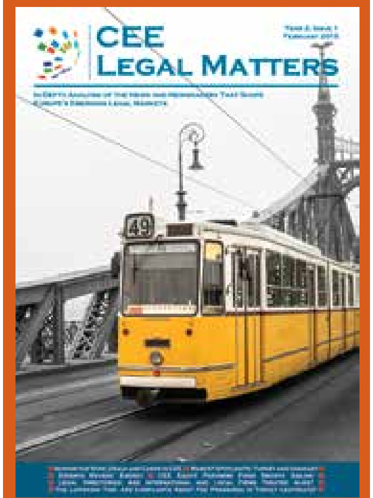


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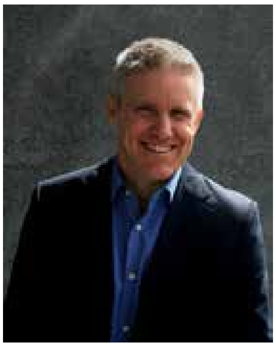
If you like what you read in these pages (or even if you don't) we really do want to hear from you. Please send any comments, criticisms, questions, or ideas to us at:

press@ceelm.com



# Editorial: A Serendipitous Personal Connection



In this, our first regular issue of 2015, you'll notice our Market Spotlight feature focuses on two markets: Hungary and Turkey. Although my personal backstory has nothing to do with why or how these two markets were chosen, I can't deny my pleasure at the serendipitous selection.

Let me explain. I moved to Europe for the third time in 2007, leaving my legal career behind in the United States to join a Budapest-based legal recruiting company which had invited me to help expand and develop its Expatriate recruiting arm. Before long, I was asked to become the Primary Consultant for Turkey, in addition to my other responsibilities. Of course, I accepted immediately. I had only been to Turkey once before, for four days in 2005, and the opportunity to become more familiar with the fascinating, beautiful, and dynamic land was a rare treat.

For most of the next five years, then, I kept my home in the decaying elegance and haunted calm of Budapest, but regularly visited and was fortunate enough to make many good friends in Istanbul's electric frenzy. I had several bright and dedicated Turkish assistants over the years to help me – one of whom eventually granted me the great honor of inviting me to be a groomsman at her 2012 wedding in a palace on the banks of the Bosphorus – and our team quickly established itself on the Turkish market, eventually known and trusted by hundreds of lawyers and all the major law firms. Even though I left the legal recruiting business for the publishing world in 2013 – and left Budapest for Prague in 2014 – both Hungary and Turkey remain central to my personal history, and I revel in the friendships I've been fortunate enough to maintain in both countries.

Of course, I'm hardly the only thing connecting Hungary and Turkey, many of which linger still from the historical conflicts involving the Ottomans, Dracula, and battles on the Trans-Danubia plain. Hungary, in particular, reflects that significant Turkish influence, from the famous Downtown Candlemas Church of the Blessed Virgin Mary in Pec, which was built as a mosque by Pasha Qasim the Victorious in 1546 (as a sort of reversed Hagia Sofia), to Budapest's famous baths, and the prevalence of Turkish food across the Hungarian capital.

More recently, both countries have fallen victim to political controversy. Hungary's Prime Minister Viktor Orban and Turkey's President Recep Tayyip Erdogan have both been criticized by the West for perceived authoritarian tendencies, and both countries have been accused of falling away from Western and "European" values. The economies of both have slowed, and legislative and political developments have caused many foreign investors to consider more carefully than in the past. Not coincidentally, the legal markets of both are in flux.

Many of the articles and interviews in the Market Spotlight of this issue of CEE Legal Matters illuminate those controversies, and consider the status and future of those markets.

But the issue, of course, is hardly limited to the Market Spotlights. Experts Review focuses on Energy, with insightful analysis from Energy experts across the region – including a stand-out summary of the current situation in Russia, famously beset by plummeting oil prices and burdensome Western sanctions. Our featured articles include a consideration of the allegations of bias made against the international legal directories and a look at the leading source of Chinese investment in the region. The Summary of Deals shows dramatic deal activity in the beginning of 2015. And our review of "On the Move" shows a virtual frenzy of senior lateral moves and promotions, as well as international law firm openings in some CEE markets and closings in others.

Really. This issue of CEE Legal Matters is a good one, whether your preference is palinka or raki (or vodka, cognac, or Jagermeister), whether you prefer langos or baklava (or crepes, trdelnik, or sekacz), and whether you like to relax by the Balaton or the Bosphorus (or the Baltic Sea, Lake Baikal, or Lake Butrenti). To all our friends and readers, across CEE, we're glad you're with us in Year 2.

*David Stuckey*

*Correction: On Page 36 of the Special Year-End Issue of CEE Legal Matters, in the CEE Legal Matters Summit Round Table: A True Expert Review, Budapest-based DLA Piper Partner Andras Posztl is quoted as describing DLA Piper as a "Franchise Firm." This was a transcribing error, and Posztl emphasizes that DLA Piper is not a "franchise firm." CEE Legal Matters apologizes for the mistake.*

# Guest Editorial:

# The Turkish Connection – CEE In-house Lawyering at Turk Telekom International

I remember well when, back at the University, not long after the demolition of the Berlin Wall, we learned about possible scenarios expected after the collapse of the Soviet empire. Francis Fukujama's popular theory, expressed in his book *The End of History and the Last Man*, predicted the worldwide spread of liberal democracies and free market capitalism of the West in a world where no wars are fought. In Fukujama's vision such a peaceful era would be coupled with an unquestionable US leadership.

By contrast, Huntington predicted a much dimmer scenario in his Clash of Civilizations thesis. Huntington foresaw a "clash" occurring violently and along the ruptures of cultural, rather than ideological, differences. Until recently the majority opinion gave credit to Fukujama's theory, and while many accepted Huntington's theory as intellectually interesting, not many believed that it predicted a likelier scenario.

I thought it worth starting out with this bird's eye view of the state of affairs in Central and Eastern Europe, as our region has and will be heavily impacted by intentions of great powers to expand their political and cultural influence. While suddenly it may seem that Huntington's predictions better describe the actual happenings in the political arena, I believe such a conclusion can only be drawn if we do not dig into the details and look behind the surface.

What we who live in this region experience is that there are several cooperations among countries of "different cultures" – including many mutually beneficial business initiatives. As the Head of Legal of a Turkish-owned group operating in CEE I am privileged to have a very close perspective of such cooperations on a daily basis.

From the perspective of the legal landscape, we can see that CEE countries have been heavily influenced by legal developments of Western nations, with German and French (particularly in Romania) legal traditions still prevalent. In addition, the influence of Soviet-type legislation still can be found in the legislation of some CEE countries (although this influence is fading).

Looking further South, it is interesting to note that Turkey's legislation following the collapse of the Ottoman Empire was also almost entirely based on European models. Turkey's Civil Code adopted in 1926 was a barely modified translation of the Swiss Civil Code of the time. Sharia law was abolished and the Turkish Penal code was based on Italian models. If one considers that the old Hungarian Civil Code (from 1959) was also heavily influenced by what was at the time the most modern Civil Code – that of the Swiss – it becomes understandable that it is not very difficult to discuss legal matters among CEE and Turkish lawyers.

Unfortunately, Turkey's almost-halted accession talks with the EU recently have triggered a different development, as in some recent cases Turkish legislation consciously opted for non-European solutions.

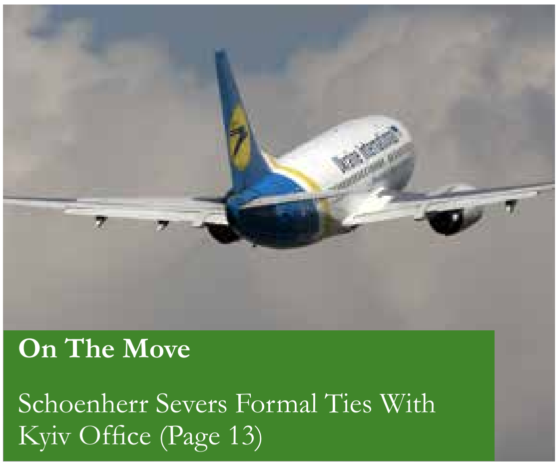
Recent political and legal developments also strengthen the recognition that CEE should be approached as an autonomous region, even if it is far from being homogenous. Many CEE countries which are not yet members of the EU have started accession talks, and one can only hope that this process will not be slowed down by recent developments in Greece.

In addition, there are an increasing number of regional companies focusing their operations exclusively on this region and several multinationals also adopted special approaches to accommodate regional peculiarities. Some law firms have detected this trend and streamlined their operations accordingly. While it is clearly a positive development for a company like Turk Telekom International, I must say that I still have not found one law firm with local offices in all countries where we operate. Hence, even if we would like to use only one firm, we are forced to use different firms. Also a problem that law firms should address is that even within the same firm different offices deliver quite different quality of services which can be annoying and hinders the development of a long term relationship.

In my view the region's catch up with the West is strongly dependent on the EU accession of possible candidates. EU accession would require the adoption of EU legal standards and the establishment of an efficient judicial system, which is inevitable for an investment-friendly business environment. Earlier in Hungary we also experienced the extremely positive effects of quick alignment to EU standards and of the introduction of the Rule of Law principle.

So, has history ended in the CEE? I would say it has not and it is definitely not about to end in the near future, with cultural differences, including legal ones, likely to be with us for a long time. However, we lawyers should also try contributing to avoid "clashes," as our profession in many ways requires us to compassionately understand the different cultural backgrounds of the parties at the table.

*Attila BOCSAK, Head of Legal, Turk Telekom International*



**On The Move**

Schoenherr Severs Formal Ties With Kyiv Office (Page 13)

**Smooth Sailing:**

CEE Equity Partners Head of Legal On an Impressive First Year (Page 22)

**A Lowering Tide**

What Happens When The Tide Goes Out? (Page 34)

**Experts Review**

CEE Experts Review Round-up on Energy (Page 62)

# Legal Ticker: Summary of Deals and Cases

Full information available at: www.ceelegalmatters.com

Period Covered: December 11, 2014 - February 11, 2015

| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| 28-Jan | Wolf Theiss; Zaka & Kosta | Wolf Theiss advised Union Bank, one of Albania's leading banks, on its acquisition of 100% of the shares in the LandesLease financial leasing company. Zaka & Kosta represented LandesLease. | N/A | Albania |
| 11-Dec | Frotz Riedl; Wolf Theiss | Wolf Theiss advised CTPartners Executive Search, a NYSE-listed executive search firm, on its acquisition of the Austria-based Neumann group. The transaction involves Neumann's offices in Germany, Austria, Switzerland, and its operations across much of Eastern Europe. The Viennese Frotz Riedl law firm advised the Neumann group. | N/A | Austria |
| 12-Dec | Ashurst; Schoenherr; Wolf Theiss | Wolf Theiss advised Erste Group on the successful placement of a subordinated bond (Tier 2) with a volume of USD 500 million to institutional investors. The banking consortium was supported by Ashurst. Schoenherr advised the consortium on matters of Austrian law. | USD 500 million | Austria |
| 16-Dec | Wolf Theiss | Wolf Theiss announced that it is advising the owners of the under-construction Huma Shopping Park, which will be located in the Simmering part of Vienna. | N/A | Austria |
| 18-Dec | Kaufhold Ossola & Ass; Weber & Co.; White & Case | Weber & Co. advised Erste Group Bank as arranger and structuring agent on the issuance of EUR 50 million fixed-income notes by a securitization company incorporated under Luxembourg law. White & Case offered legal advice to Erste Group on to German and English law. Kaufhold Ossola & Associates, Avocats acted as legal adviser as to Luxembourg law. | EUR 50 million | Austria |
| 14-Jan | Herbst Kinsky; Wolf Theiss | Herbst Kinsky advised Haplogen on the sale of Haplogen Genomics to the Horizon Discovery Group, which was represented by Wolf Theiss. The transaction had a total value of EUR 7.7 million in cash and Horizon shares, plus earn-out up to approximately EUR 5 million. | EUR 12.7 million | Austria |
| 16-Jan | Herbst Kinsky | Herbst Kinsky advised MIRACOR Medical Systems in a further financing round. | EUR 4.5 million | Austria |
| 19-Jan | Binder Grosswang | Binder Grosswang advised the actress Maresa Hoerbiger, the youngest daughter of a famous acting couple, on the sale of a property that, 80 years ago, was the family seat. | N/A | Austria |
| 20-Jan | Binder Grosswang; Michael Kloter Attorneys; Schoenherr | Schoenherr advised the AIM Software Group on the receipt of an investment from and transfer of a majority interest to U.S.-based private equity firm Welsh, Carson, Anderson & Stowe, which was advised by Binder Grosswang. Swiss law advice was provided by Michael Kloter Attorneys, in Zurich. | N/A | Austria |
| 21-Jan | Hengeler Muller; Kirkland & Elis; Linklaters; Wolf Theiss | Triton, together with co-investor Capvis, has agreed to sell Wittur, one of the world's largest independent suppliers of elevator components and systems, to the U.S.-based private equity group Bain Capital. Triton was advised by Linklaters and Wolf Theiss (on all Austrian law aspects of the transaction), while Bain Capital was advised by Kirkland & Elis and Hengeler Muller. | N/A | Austria |
| 21-Jan | CHSH Cerha Hempel Spiegelfeld Hlawati | CHSH Cerha Hempel Spiegelfeld Hlawati advised red-stars.com data AG in connection with an investment in KiwiSecurity Software, a leading developer of patented high-security solutions for automated analysis of image and video data in real-time. | N/A | Austria |
| 26-Jan | Taylor Wessing; Schoenherr; Slaughter & May | Schoenherr and Slaughter & May have advised GE Jenbacher, a subsidiary of the US-based conglomerate General Electric, on its acquisition of Francesconi Technologie, a technological products firm based in Kapfenberg, Austria. The seller, the Francesconi Private Foundation, was advised by Taylor Wessing's Vienna office. | N/A | Austria |
| 27-Jan | Wolf Theiss | Wolf Theiss helped Bombardier succeed before the Higher Administrative Court in Austria, which upheld the order by Wiener Linien (Vienna Rails) of 156 new trams with a value of EUR 526 million from the Canadian company. | EUR 526 million | Austria |
| 28-Jan | Dorda Brugger Jordis; Wolf Theiss | Dorda Bruegger Jordis advised S IMMO on the sale of the Courtyard by Marriott hotel in Vienna's "Viertel Zwei" district to Deka Immobilien. Wolf Theiss advised Deka Immobilien on the deal. | EUR 35 million | Austria |
| 30-Jan | DLA Piper; Eckert & Fries | DLA Piper advised the Israeli food company ICL on the acquisition of milk protein specialist Prolactal and its German subsidiary, Rovita. Prolactal was advised by Eckert & Fries. | N/A | Austria |
| 9-Feb | Dorda Brugger Jordis; Klemm | Dorda Brugger Jordis acted as Austrian counsel to the French long-term care ORPEA Group on its acquisition of SeneCura Kliniken und Heimebetriebsgesellschaft m.b.H., an Austrian group for nursing care services. SeneCura was advised by the Klemm law firm. | N/A | Austria |
| 11-Feb | Vavrovsky Heine Marth | Vavrovsky Heine Marth advised and represented Immo Kapitalanlage in the acquisition of the Forum Schoenbrunn – Bauteil 1 office building from Credit Suisse Asset Management Immobilien. | N/A | Austria |
| 2-Jan | Gleiss Lutz; Schoenherr; Wolf Theiss | Schoenherr and Gleiss Lutz advised Heta Asset Resolution on the sale of the Hypo Group Alpe Adria, the South-Eastern European banking network of the former Hypo Alpe-Adria-Bank International, to the Advent International fund and the European Bank for Reconstruction and Development. Wolf Theiss advised Advent International and the EBRD on the deal. | EUR 8.4 billion | Austria; Bosnia and Herzegovina; Croatia; Montenegro; Serbia |
| 21-Jan | Binder Grosswang; Willkie Farr & Gallagher | Willkie Farr & Gallagher and Binder Grosswang advised the Wendel Group on the acquisition of a majority interest in Constantia Flexibles, one of the world leaders in flexible packaging. | N/A | Austria; Czech Republic; Poland; Romania; Russia; Turkey |

| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| 27-Jan | Baker Botts;<br>Binder Grosswang;<br>Eversheds;<br>Weber & Co.;<br>White & Case | Weber & Co., Binder Grosswang, White & Case, Eversheds, and Baker Botts advised on the sale of the MeadWestvaco Group's European-based tobacco-folding carton and general packaging business to AR Packaging Group. | N/A | Austria;<br>Czech Republic;<br>Poland;<br>Russia |
| 28-Jan | CHSH Cerha Hempel Spiegelfeld Hlawati | CHSH Cerha Hempel Spiegelfeld Hlawati advised OMV Aktiengesellschaft on the increase of the company's stake in Petrol Ofisi from 41.58% to 95.75%. The transaction was closed on December 22, 2010 with the acquisition of the 54.14% stake held by Dogan Holding. | N/A | Austria;<br>Turkey |
| 28-Jan | Allen & Overy;<br>CHSH Cerha Hempel Spiegelfeld Hlawati | Allen & Overy and CHSH Cerha Hempel Spiegelfeld Hlawati advised Ferrexpo on the acquisition of Erste Donau-Dampfschiffahrts-Gesellschaft. | N/A | Austria;<br>Ukraine |
| 15-Dec | Sorainen | Sorainen advised Idea Bank, a member of the Getin Holding financial group in Poland, on its acquisition of Azimut, a 9,000 square meter business center located in central Minsk. | N/A | Belarus |
| 30-Dec | Sorainen | Sorainen advised Manuli Rubber Industries, an international group based in Italy and specializing in the design, production, and distribution of reinforced rubber for various industries, on its launch of a joint venture in Belarus with Belarusian Steel Works (BMZ) and the Legmash Plant, under the auspices of the Belarusian Industry Ministry. | N/A | Belarus |
| 5-Jan | Sajic | Sajic represented Unicredit Bank dd Mostar in the collection of claims in a bankruptcy proceeding against the company SIMA d.o.o. Aleksandrovac. | EUR 4.5 million | Bosnia and Herzegovina |
| 5-Jan | Sajic | Sajic advised the Lithuanian UKIO BANKAS in the sale of claims against companies located in Bosnia and Herzegovina. | EUR 6.4 million | Bosnia and Herzegovina;<br>Lithuania |
| 14-Jan | Kambourov & Partners | Kambourov & Partners successfully completed the process of obtaining regulatory clearance for the recent merger of the Carrefour and Piccadilly food retail chains on the Bulgarian food retail market | N/A | Bulgaria |
| 14-Jan | PRK Partners | PRK Partners acted as legal counsel to Raiffeisenbank a.s. in connection with a long-term syndicated loan facility in excess of CZK 2.68 billion (EUR 95.3 million) for refinancing the construction costs of an unnamed multifunctional business and shopping center in the Czech Republic. | EUR 95.3 million | Czech Republic |
| 14-Jan | Gleiss Lutz;<br>Baker & McKenzie | Gleiss Lutz advised E.ON SE, Dusseldorf, on the sale of its Italian coal and gas generation assets to the Czech energy company Energeticky a Prumyslovy Holding (EPH), which was represented by Baker & McKenzie. | N/A | Czech Republic |
| 23-Jan | Allen & Overy;<br>CMS | CMS advised the Polish bank mBank on the sale of its 100% stake in the Transfinance factoring business to UniCredit Bank. mBank will remain present in the Czech Republic focusing exclusively on its retail activities. Allen & Overy represented UniCredit in the transaction. | N/A | Czech Republic |
| 26-Jan | Petr Dvorak;<br>Wolf Theiss | Wolf Theiss advised the publicly traded company Rexel, a French group specialized in the distribution of electrical supplies, on the sale of parts of its Czech business to family-owned Elektro S.M.S. The purchasers were represented by sole practitioner Petr Dvorak. TPA Horwath was the sell-side financial advisor. | N/A | Czech Republic |
| 27-Jan | King & Wood Mallesons;<br>Randa Havel Legal | Randa Havel Legal advised EKOL Brno, a leading Czech manufacturer of turbines (with 2014 sales of CZK 1.5 billion (approximately EUR 54.1 million)), on the sale of a 75 per cent share to the Chinese engineering firm Xi'An Shaangu Power, for CZK 1.3 billion (approximately EUR 48.3 million). King & Wood Mallesons represented Shaangu Power. | EUR 48.3 million | Czech Republic |
| 3-Feb | Dentons | Dentons acted as legal counsel to AEW Europe on the acquisition from Panattoni Europe of a 255,000 square meter logistics development in Prague. | EUR 150 million | Czech Republic |
| 20-Jan | Kocian Solc Balastik;<br>Weil, Gotshal & Manges | Kocian Solc Balastik advised the BMM Group, which manages Zdenek and Michaela Bakalas's Czech assets, on its agreement with the other shareholders to sell an 80% stake in Advanced World Transport to PKP Cargo, the largest Polish railway cargo carrier. PKP Cargo was advised by Weil. | N/A | Czech Republic;<br>Poland |
| 20-Jan | Clifford Chance;<br>Erdem & Erdem;<br>Yegin Ciftci | The Yegin Ciftci Attorney Partnership – the Turkish firm associated with Clifford Chance – and Clifford Chance's Prague office advised the EBRD in connection with its acquisition of an equity stake of 15.44% in the Turkish company Pasabahce Cam Sanayii ve Ticaret, a glassware subsidiary of the Sisecam Group. Erdem & Erdem advised Pasabahce on the deal. | EUR 125 million | Czech Republic;<br>Turkey |
| 24-Dec | Sorainen | Sorainen acted as local counsel for International Personal Finance on its intended acquisition of the entire share capital of MCB Finance Group, including control over its subsidiaries in the Baltics. | N/A | Estonia;<br>Latvia;<br>Lithuania |
| 9-Jan | Lawin | Lawin in Lithuania advised SEB Venture Capital, a Swedish venture capital fund, which realized its investment into Molupis & Co., a regional bread bakery and a retail network operator. | N/A | Estonia;<br>Latvia;<br>Lithuania |
| 5-Feb | Lawin;<br>Sorainen | Lawin advised on the BPT Optima real estate foundation on the sale of a real estate portfolio to the Swiss-based Partners Group private equity fund. Sorainen advised the Partners Group and its new investment vehicle together with its operating partner Northern Horizon Capital on the acquisition. | EUR 163 million | Estonia;<br>Latvia;<br>Lithuania;<br>Poland |
| 15-Dec | Kelemenis & Co. | Following an open tender, Kelemenis & Co. was awarded a service contract for the legal and tax support of the Centre for Renewable Energy Sources in the development of the Greek market for energy services | N/A | Greece |
| 3-Feb | Holman Fenwick Willan | Holman Fenwick Willan advised NewLead Holding in relation to the recent delivery of five bitumen tankers (the Captain Nikolas I, the Nepheli, the Sofia, the Ioli, and the Katerina L.) to NewLead's fleet. | N/A | Greece |
| 12-Dec | Lakatos Koves & Partners;<br>White & Case | White & Case advised CEE Equity Partners Limited on its acquisition of a majority stake in BKF University of Applied Sciences, a private higher education business in Hungary. Lakatos Koves & Partners advised BKF. | N/A | Hungary |

| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| 6-Feb | CHSH Cerha Hempel Spiegelfeld Hlawati | CHSH advised CA Immo on the sale of the 6,400 square meter Buda Business Center office complex in the second district of Budapest to an open-ended fund managed by Diofa Fund Management under the terms of an asset deal. | N/A | Hungary |
| 11-Feb | Allen & Overy; Hogan Lovells; Riesz Law Office | Hogan Lovells advised AMC Networks Central Europe on its February 1, 2015 acquisition of the Czech and Slovak feeds of the Film+ channel from IKO Group,which was advised by Riesz Law Office and Allen & Overy. | N/A | Hungary |
| 26-Dec | Herbert Smith Freehills; Lakatos Koves & Partners; OST Legal | On January 14, 2014, Russia and Hungary signed an agreement calling for cooperation in peaceful nuclear energy production. Herbert Smith Freehills, OST Legal, and Lakatos Koves & Partners advised on the matter. | EUR 12.5 billion | Hungary; Russia |
| 17-Dec | Spilbridge | Spilbridge represented Yelverton Investments before the European Court of Human Rights in a dispute against the Republic of Latvia in what the firm describes as "a helpful example to understand certain remnants of the Soviet system in the Latvian judicial system." | N/A | Latvia |
| 22-Dec | Fort | Fort announced that, following a constitutional complaint it drew up, the Constitutional Court of Latvia has determined that the binding regulations of the Riga City Council that stipulated administrative liability for making noise contradicted the Constitution of Latvia and were therefore null and void. | N/A | Latvia |
| 6-Feb | AstapovLawyers; Glimstedt; Vasil Kisil & Partners; | Vasil Kisil & Partners acted as legal advisor on Ukrainian aspects related to the sale of the insolvent Liepajas Metalurgs to the Latvian subsidiary of the Ukrainian KVV Group – and that the EUR 107 million sale has now closed. AstapovLawyers advised the KVV Group. Glimsted advised Liepajas Metalurgs on matters of Latvian law. | EUR 107 million | Latvia; Ukraine |
| 18-Dec | Borenius | Borenius client and plaintiff Ramunas Karbauskis, chairman of the Lithuanian Peasant and Greens Union, was on the losing end of a judgment in a claim he brought before the Vilnius City District Court, which ruled in favor of defendant Andius Kubilius. | N/A | Lithuania |
| 23-Dec | Lawin; Sorainen | Lawin advised the Prosperus Real Estate Fund I on its acquisition of the North Star Office Building from a company managed by the MG Baltic group. Sorainen advised the MG Valda real estate company on the sale of its shares in BCU2 – the company owning the North Star business center in Lithuania. | N/A | Lithuania |
| 2-Jan | Raidla Lejins & Norcous | Raidla Lejins & Norcous advised the shareholders of Cgates, the second largest Lithuanian provider of television rebroadcasting and internet access services, on the sale of their shareholding in the company to the Swedish investment company East Capital. | EUR 56 million | Lithuania |
| 9-Jan | Sorainen | Sorainen Lithuania advised Dezinfa, a leading provider of pest control services and products in Lithuania, on its acquisition via public auction of Kauno Profilaktines Dezinfekcijos Stotis (Kaunas Prophylactic Disinfection Station), a pest control and disinfection services company owned by the Kaunas city municipality. | N/A | Lithuania |
| 9-Jan | Sorainen | Sorainen Lithuania advised Emahool, the owner of exclusive distribution rights of goods and other specialized products branded with the trademarks of Mothercare and Early Learning Centre in the Baltics, on the sale of its Lithuanian subsidiary to one of the largest distribution and trade networks of children's goods in the Baltic Region. | N/A | Lithuania |
| 28-Jan | Sorainen | Sorainen Lithuania advised Hotspring Ventures Limited, a UK company operating an online platform for health, beauty, and wellness services under the Wahanda brand name, on its acquisition of Lemon Labs, a leading mobile applications developer in Lithuania. | N/A | Lithuania |
| 5-Feb | Raidla Lejins & Norcous; Sorainen | Sorainen advised PZU, the largest Polish life and non-life insurer, on the sale of 99.88% of its shares in PZU Lietuva to Gjensidige Forskiring, a leading Nordic general insurance company. Raidla Lejins & Norcous advised Gjensidige Forskiring on the deal. | EUR 54 million | Lithuania |
| 12-Dec | Linklaters | Linklaters acted for Pan European Core Fund, one of the investment funds managed by CBRE Global Investors, in relation to the acquisition of the Ideal Idea logistic complex – a 30,500 square meter property located near the Warsaw Chopin airport. The seller was BPH Real Estate Closed-End Fund 2, General Electric's real estate investment arm in Poland. | N/A | Poland |
| 12-Dec | Greenberg Traurig | Greenberg Traurig was legal counsel to Grupa LOTOS in a rights issue of 55 million new shares with a total value of PLN 995.5 million placed with the company's existing shareholders. | PLN 995.5 million | Poland |
| 16-Dec | Greenberg Traurig | Greenberg Traurig advised Amstar, together with its local partner BBI Development, on negotiating and concluding a general contractor agreement regarding resumption of construction work on Zlota 44, a luxury residential building in Warsaw, with the project's previous general contractor INSO Sistemi Per Le Infrastructure Sociali. | N/A | Poland |
| 17-Dec | Magnusson; Schoenherr | Schoenherr advised the Vienna Insurance Group (VIG) on its acquisition of the Jasna 26 and Libra Business Centre office buildings in Warsaw from Mermaid Properties, which had invested in and developed both projects. Magnusson advised Mermaid Properties on the deal. Real estate advisor CBRE also advised VIG on the sale, which was completed on November 27, 2014. | N/A | Poland |
| 19-Dec | BWW Law & Tax | BWW Law & Tax advised Ideal Idea Formand on the negotiation and conclusion of agreements for the lease of three modules in the Ideal Idea Park III office and warehouse center to Advantech Poland, a leading manufacturer of innovative industrial computers, medical devices, and firmware. | N/A | Poland |
| 24-Dec | Eversheds | Wierzbowski Eversheds announced that it advised Perma-Fix Medical on its reverse merger with CEE Opportunity Partners Poland in the summer of 2014. As part of the transaction, the company conducted a capital increase and listed its new shares on the NewConnect market, a process which was completed in December 2014. | PLN 8.25 million | Poland |
| 24-Dec | Soltysinski Kawecki & Szlezak | SK&S advised UPS on its acquisition of shares in Poltraf, a pharmaceutical logistics company, from the Poland-based ORTIE investment fund. | N/A | Poland |

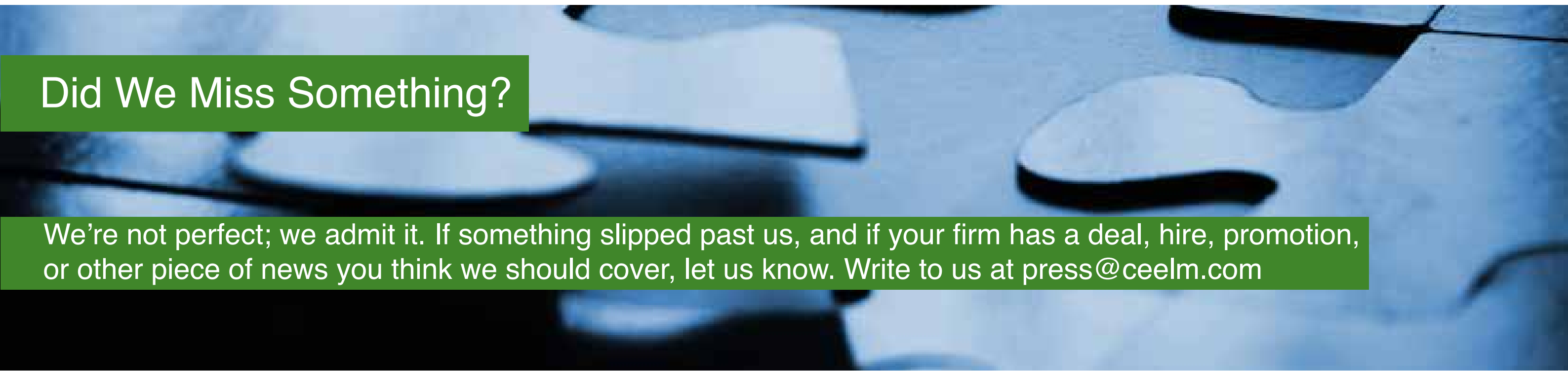
| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| 30-Dec | Domanski Zakrzewski Palinka | DZP announced that the appeal of its victory in the National Appeal Chamber on behalf of a Polish-Spanish consortium in a waste collection dispute has been dismissedt. | N/A | Poland |
| 30-Dec | Dentons; Linklaters | Dentons advised Skanska Property Poland on the sale of its Green Horizon office complex in Lodz to a fund managed by the Griffin-group, represented in the matter by Linklaters. | EUR 66 million | Poland |
| 2-Jan | Weil, Gotshal & Manges | The Warsaw office of Weil, Gotshal & Manges advised Banco Santander on the introduction of 12.5 billion shares to trading on the main market of the Warsaw Stock Exchange. The firm describes this as "the largest-ever listing of a foreign company and the first listing of a Spanish company on the WSE." | N/A | Poland |
| 5-Jan | Dentons | Dentons advised Bank Polska Kasa Opieki, Bank Handlowy w Warszawie, mBank, and ING Bank Slaski on the restructuring of the PLN 495 million multipurpose financing to Inter Cars announced last winter, which was increased to PLN 550 million. | EUR 115 million | Poland |
| 9-Jan | Dentons | Dentons acted as legal counsel to Skanska Property Poland on the preliminary sale of its Dominikanski office building in Wroclaw, Poland, to Union Investment, the Hamburg-based real estate investment manager. | N/A | Poland |
| 14-Jan | BWW Law & Tax | BWW Law & Tax advised the Griffin Group in relation to the acquisition of property located at Miedziana St. in Warsaw, from Zaklady Graficzne "Dom Slowa Polskiego." | N/A | Poland |
| 16-Jan | Gessel; Weil, Gotshal & Manges | Gessel advised Enterprise Venture Fund I, managed by Enterprise Investors, on its investment of up to PLN 33 million (approximately EUR 7.8 million) in J.S. Hamilton Poland S.A., a leading provider of control and analytical services, acquiring approximately 19% of its shares. Weil, Gotshal & Manges advised J.S. Hamilton Poland. | EUR 7.8 million | Poland |
| 19-Jan | FKA Furtek Komosa Aleksandrowicz | FKA Furtek Komosa Aleksandrowicz advised Edyta Jusiel Resource Partners Holdings VI, an entity controlled by funds from the Resource Partners group and Ardian, in its acquisition of 100 per cent of the shares in Chojecki. | N/A | Poland |
| 20-Jan | Greenberg Traurig | Greenberg Traurig acted as legal counsel to Raiffeisen Polbank in the issuance of Series A bonds with a value of PLN 500 million (approximately EUR 115.6 million). | EUR 115.6 million | Poland |
| 9-Feb | Studnicki Pleszka Cwiakalski Gorski | SPCG announced that it won a dispute for the Town of Zakopane involving charges that the Zakopane Council's Resolution of December 15, 1999, No. XV/140/99, on the study of the conditions and directions of spatial management for the town, was invalid. | N/A | Poland |
| 10-Feb | Studnicki Pleszka Cwiakalski Gorski | SPCG advised Centrum Biurowe Vinci spolka z ograniczona odpowiedzialnoscia in relation to a loan the company was given by mBank Hipoteczny to refinance the construction of its Vinci Office Center building. | N/A | Poland |
| 30-Dec | Gessel | Gessel assisted Vigo System during the process of having its company shares admitted to trading on the regulated market of the Warsaw Securities Exchange and their initial public offering, which consisted of newly issued shares as well as shares being sold by key shareholders of the company. | N/A | Poland |
| 19-Jan | White & Case | White & Case advised Metso Corporation, a leading minerals processing and flow control technology and services supplier for the mining, oil and gas and aggregates industries, on the sale of its Process Automation Systems business to Valmet Corporation. | EUR 340 million | Poland; Russia; Turkey |
| 16-Dec | PeliFilip; Schoenherr | Schoenherr counseled the shareholders of Volksbank Romania on their sale of the bank to Romania's third-largest bank, Banca Transilvania, which was advised by PeliFilip. | N/A | Romania |
| 19-Dec | Tuca Zbarcea & Asociatii | The Swiss-based Goldbach Group announced that ownership of Godlbach Media Romania and Goldback Audience Romania has been transferred to the executive leadership of the two companies. Tuca Zbarcea & Asociatii advised on the management buyout. | N/A | Romania |
| 9-Jan | McGregor & Partners | McGregor & Partners announced that it has assisted the British Romanian Chamber of Commerce gain official accreditation as a member of the British Chambers of Commerce Global Accredited Network. | N/A | Romania |
| 9-Jan | Popovici Nitu & Asociatii; Reff & Associates | Popovici Nitu & Asociatii advised Auchan on its takeover of 12 hypermarkets and shopping galleries in Romania that the French retailer was previously renting for its outlets. Reff & Associates, a member of Deloitte Legal in Romania, advised the sellers. | EUR 260 million | Romania |
| 19-Jan | CMS; Popovici Nitu & Asociatii | CMS advised AXA on the finalization of the sale of its Romanian operations to Certinvest and SIF Transilvania. Certinvest was represented by Popovici Nitu & Asociatii. | N/A | Romania |
| 3-Feb | Musat & Asociatii; Nestor Nestor Diculescu Kingston Petersen | Nestor Nestor Diculescu Kingston Petersen assisted Lafarge in connection with the sale of its assets in Romania as part of a selection process won by the Irish company Cement Roadstone Holdings, which was advised by Musat & Asociatii. | N/A | Romania |
| 4-Feb | Allen & Overy; Dentons | Allen & Overy and RTPR (the associate office of Allen & Overy in Bucharest) reported that the sale of CA Immobilien Anlagen's 467,000 square meter logistics portfolio in Romania and Poland to the PointPark Properties fund has closed, after meeting all conditions precedent. RTPR Allen & Overy advised CA Immo on the deal, and Dentons advised PointPark Properties. | N/A | Romania |
| 4-Feb | Vilau \| Associates | Vilau \| Associates announced that the Romanian Supreme Court of Justice and Cassation has dismissed the claim of Carpatair against the firm's client, the Timisoara International Airport. | N/A | Romania |
| 12-Dec | Egorov Puginsky Afanasiev & Partners | Egorov Puginsky Afanasiev & Partners supported Khanty-Mansi Bank Otkrytie in successfully closing a second deal on the securitization of its mortgage portfolio. | N/A | Russia |
| 19-Dec | Egorov Puginsky Afanasiev & Partners | Egorov Puginsky Afanasiev & Partners advised Absolut Bank on the successful completion of a unique securitization of mortgage assets, under which the senior bonds were rated as investment grade by international agencies Moody's and Standard & Poor's. The firm describes the transaction as "unique for the Russian financial market." | N/A | Russia |

| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| 19-Dec | AstapovLawyers | AstapovLawyers advised Rolls-Royce Holdings on Russian and Kazakh law matters in connection with the company's sale of its gas turbine and compressor business for GBP 785 million to Siemens. | GBP 785 million | Russia |
| 26-Dec | Egorov Puginsky Afanasiev & Partners | Egorov Puginsky Afanasiev & Partners announced that it supported Sberbank on the successful completion of its inaugural securitization of mortgage assets. | N/A | Russia |
| 26-Dec | Integrites | Integrites acted as legal advisor in trade financing for TopService, a large Russian company engaged in the import and wholesale of galvanic batteries for household and special purposes. | N/A | Russia |
| 30-Dec | Egorov Puginsky Afanasiev & Partners | Egorov Puginsky Afanasiev & Partners successfully defended the interests of Transammiak in a dispute with Minudobreniya. | N/A | Russia |
| 16-Jan | Nota Bene | Nota Bene successfully defended the interests of the SPS Stroy construction company and recovered RUB 915,000 damages from a subcontractor. | RUB 915,000 | Russia |
| 19-Jan | Herbert Smith Freehills; Linklaters | Linklaters advised on the Kutuzovsky Northern bypass project, which the firm describes as "the first privately financed PPP project in Russia." The project includes financing, design, construction, and operation of the 11 kilometer long toll road in Moscow under a concession agreement. Herbert Smith Freehills announced that it is advising the Moscow government. | N/A | Russia |
| 20-Jan | Allen & Overy; Appleby; Maples and Calder; Vinson & Elkins; Skadden | Skadden advised majority shareholders of Eurasia Drilling Company Limited (EDCL), the largest provider of onshore drilling services in Russia, in its take private and sale of a minority stake to Schlumberger, the technology, integrated project management, and information solutions company. Allen & Overy, assisted by Appleby, advised Schlumberger. Vinson & Elkins and Maples and Calder are advising the Special Committee. | USD 1.7 billion | Russia |
| 22-Jan | Vegas Lex | Vegas Lex won an appeal for the Khanty-Mansiysk Non-State Pension Fund in a dispute over a trust management agreement. | N/A | Russia |
| 27-Jan | Vegas Lex | Vegas Lex has reported that a September 2014 ruling by the Commercial Court of Russia's Stavropol Territory in favor of the firm's client, the Second Generating Company of the Wholesale Power Market, has been upheld on appeal. | N/A | Russia |
| 29-Jan | Vegas Lex | Vegas Lex won an appeal for the Zlatmash (Zlatoust Machine Building Plant) plant in the Urals in an unjust enrichment case. The case was decided in Russia's Eighteenth Commercial Court of Appeals. | N/A | Russia |
| 3-Feb | Baker Botts | Baker Botts successfully defended Gazprom against a claim for USD 1.37 billon lodged in the United States by Moncrief Oil International. | USD 1.37 billion | Russia |
| 3-Feb | Monastyrsky Zyuba Stepanov & Partners | Monastyrsky Zyuba Stepanov & Partners announced that the Moscow Commercial Court has awarded RUB 143 million (approximately EUR 1.9 million) to client IKEA MOS (Retail and Property), as compensation for legal costs incurred in a dispute with suppliers of energy for IKEA shopping centers. | EUR 1.9 million | Russia |
| 6-Feb | Egorov Puginsky Afanasiev & Partners | Egorov Puginsky Afanasiev & Partners announced that it supported AKB Souyz in its successful securitization of a part of the Bank's mortgage portfolio. | N/A | Russia |
| 17-Dec | Zivkovic Samardzic | Zivkovic Samardzic secured a victory for Vojvodanska banka Novi Sad, a member of the National Bank of Greece Group, in a EUR 13.5 million dispute with Sojaprotein Becej, the largest soybean processor in Serbia. | EUR 13.5 million | Serbia |
| 3-Feb | Jones Day; Karanovic & Nikolic; Jankovici Popovici Mitic; White & Case | White & Case and Karanovic & Nikolic advised Mid Europa Partners on its acquisition of a controlling stake in the Danube Foods Group B.V. and Clates Holding B.V. Jones Day advised Danube Foods Group, and JPM advised the warrantors during the transaction. | N/A | Serbia |
| 6-Feb | BDK Advokati; Jankovici Popovic Mitic | BDK Advokati announced that it advised TabTale on the acquisition of Serbian computer and mobile game developer Level Bit, which was advised by JPM Jankovic Popovic Mitic. | N/A | Serbia |
| 9-Feb | Wolf Theiss | Wolf Theiss advised Austria's Gerlinger Holding on the acquisition of the Mitros meat processing plant as part of the insolvency proceedings of Industrija mesa SL Mitros AD Beograd. | EUR 800,000 | Serbia |
| 14-Jan | Allen & Overy | Allen & Overy advised the HB Reavis Group on the sale of the Aupark Kosice shopping center and Aupark Office Tower to New Europe Property Investments. | EUR 165 million | Slovakia |
| 15-Dec | Baker & McKenzie | Baker & McKenzie advised Zorlu Enerji Elektrik Uretim and Zorlu Ruzgar Enerjisi Elektrik Uretim, both part of the Zorlu Energy Group, on financing for two wind power plant projects in Turkey. | N/A | Turkey |
| 7-Jan | Baker & McKenzie; Esin Attorney Partnership; White & Case; Willkie Farr & Gallagher | Baker & McKenzie and the Esin Attorney Partnership, its Turkish arm, advised a group of commercial lenders on the EUR 541 million Adana Integrated Healthcare Campus Project, one of Turkey's first Public Private Partnership hospital projects to reach financial close. Willkie Farr & Gallagher advised the sponsors and White & Case acted for the overall lender group. | EUR 541 million | Turkey |
| 13-Jan | Chadbourne & Parke; Clifford Chance; Fidan & Fidan; Yegin Ciftci | Clifford Chance (on English law matters) and the Yegin Ciftci Attorney Partnership (on Turkish law matters) have advised UniCredit Bank Austria AG, Denizbank AG, and Yapi ve Kredi Bankasi A.S., in a EUR 272 million financing they provided (in the form of a EUR 250 million term loan and a EUR 22 million contingent loan) as mandated lead arrangers and hedging banks for the Mersin Integrated Health Campus project in Turkey. Chadbourne & Parke and Fidan & Fidan advised the borrowers. | EUR 272 million | Turkey |
| 14-Jan | Clifford Chance; Yegin Ciftci | Clifford Chance and the Yegin Cifti Attorney Partnership – the firm's Istanbul arm – have advised the joint lead managers on the third international Rule 144A/Reg S sukuk issuance by the Republic of Turkey: USD 1 billion lease certificates due 2024. | USD 1 billion | Turkey |
| 29-Jan | Baker & McKenzie; Curtis Mallet-Prevost; Esin Attorney Partnership; Stibbe | The Esin Attorney Partnership and Baker & McKenzie have advised the shareholders of Mekanist B.V. on the sale of 100% of shares of Mekanist B.V. and Mekanistnet Internet Hizmetleri Ticaret A.S. to Zomato Ireland Limited. Both Stibbe and Curtis Mallet-Prevost represented Zomato on the deal. | N/A | Turkey |

| Date covered | Firms Involved | Deal/Litigation | Deal Value | Country |
|---|---|---|---|---|
| 5-Feb | Balcioglu Selcuk Akman Keki; Baker & McKenzie; Dentons; Esin Attorney Partnership; | The Esin Attorney Partnership advised Ideal Standard Sanitaryware Holding in connection with its joint venture with Ece Banyo Gerecleri Sanayi ve Ticaret, a manufacturer of Turkish sanitary ware. Balcioglu Selcuk Akman Keki advised Ece Banyo. | N/A | Turkey |
| 6-Feb | Bird & Bird; BTS & Partners; Gencer Law Firm | Bird & Bird advised Armacell International, a world leader in flexible insulation foams for the equipment insulation market and also a leading provider of engineered foams, on the acquisition of the Turkish insulation materials manufacturer OneFlex (Das Yalitim Sanayi ve Ticaret Anonim Sirketi). On matters of Turkish law Armacell was supported by BTS & Partners, the Turkish firm with which Bird & Bird entered into a cooperation agreement in July 2014. The three sellers were advised by Kerem Gencer of the Gencer Law Firm. | N/A | Turkey |
| 16-Dec | Asters | Asters acted as Ukrainian law counsel to the EBRD in connection with a loan of up to EUR 8.5 million to the Farmak pharmaceutical company. | EUR 8.5 million | Ukraine |
| 17-Dec | Baker & McKenzie | Baker & McKenzie acted as Ukrainian law counsel to the European Bank for Reconstruction and Development in connection with a new USD 25 million term loan facility for Nibulon, Ukraine's leading grain trader, logistic operator, and exporter. | USD 25 million | Ukraine |
| 17-Dec | Egorov Puginsky Afanasiev & Partners | Egorov Puginsky Afanasiev & Partners Ukraine advised Leonardo and Univermag Ukraina, a major business center and shopping mall in downtown Kyiv, across what it describes as "a spectrum of transactional and real estate matters." | N/A | Ukraine |
| 18-Dec | Doubinsky & Osharova | Doubinsky & Osharova has persuaded the Supreme Administrative Court of Ukraine to uphold the June 12, 2014 decision of the Kyiv Administrative Court of Appeal in support of the makers of the Flukold Plus cough and cold remedy, made by Nabros Pharma in India. | N/A | Ukraine |
| 24-Dec | Lavrynovych & Partners | Lavrynovych & Partners successfully defended the interests of Silski Tradytsiyi in a lawsuit against the State Ecological Inspection of the Poltava region of Ukraine. | UAH 13 million | Ukraine |
| 30-Dec | Egorov Puginsky Afanasiev & Partners | Egorov Puginsky Afanasiev & Partners Ukraine successfully represented Johnsons Controls Ukraine, a part of the Johnsons Controls Group, in a tax dispute initiated by the Ukrainian tax authorities over the company's alleged failure to pay UAH 3 million in value-added tax in connection with its corporate reorganization. | UAH 3 million | Ukraine |
| 30-Dec | Avellum Partners | Avellum Partners advised the Nadezhda Group, which operates in the liquefied petroleum and gas industry, on tax planning for the holding structure of the Group, as well as all legal and tax aspects of corporate restructuring and acquisition finance issues, aimed at obtaining finance from international finance institutions. | N/A | Ukraine |
| 14-Jan | Avellum Partners | Avellum Partners acted as Ukrainian legal counsel to Deutsche Bank AG, London Branch, and ING Bank N.V., London Branch, acting as Dealer Managers, in connection with the exchange offer of Metinvest B.V. | USD 789.7 million | Ukraine |
| 21-Jan | Egorov Puginsky Afanasiev & Partners | Egorov Puginsky Afanasiev & Partners announced that it supported OTCPharm Public Company, a subsidiary of Pharmstandard, in the successful December 2014 completion of the procedure for listing of its shares. | N/A | Ukraine |
| 28-Jan | Asters | Asters provided legal advice in connection with the exit of minority shareholders of the Ardis Group, a Ukrainian importer and distributor of food products. | N/A | Ukraine |
| 28-Jan | Aequo | Aequo successfully persuaded the Superior Commercial Court of Ukraine to grant the cassation appeal of the Reverta asset management company in a case involving the title to a mortgage for commercial premises located in downtown Kyiv. | N/A | Ukraine |
| 30-Jan | KPD Consulting | KPD Consulting advised Eurobank Properties in connection with the sale of several buildings in the central business district of Kyiv. | EUR 4.4 million | Ukraine |
| 2-Feb | Avellum Partners | Avellum Partners acted as Ukrainian legal counsel to the First Ukrainian International Bank (FUIB) in connection with the solicitation of consents of holders of its outstanding 11% Loan Participation Notes due 2014 issued by but without recourse to Standard Bank Plc, for the sole purpose of funding a loan to FUIB. | USD 252.4 million | Ukraine |
| 5-Feb | Ilyashev & Partners | The Economic Court of Kyiv granted in full the claim of Bradwin Trading Limited – represented by Ilyashev & Partners – in a case regarding disputed ownership in Lira-2000 LLC and an office building on Kyiv's Slavy Square that is leased by the World Bank. | N/A | Ukraine |

Full information available at: www.ceelegalmatters.com

Period Covered: December 11, 2014 - February 11, 2015



# On the Move: New Homes and Friends

## Edwards Wildman and Locke Lord Combine

Following the approval of the two firms' partners, Locke Lord and Edwards Wildman Palmer merged the two firms effective January 10, 2015.

The only office either firm has in CEE is Edward Wildman's office in Istanbul, where it is affiliated with the Turkish Ismen-Gunalcin Law Firm. Partner Ted Cominos, who manages the firm's operations in Turkey, commented to CEE Legal Matters: "We are excited about this opportunity, as the combined firm will have more than 1,000 lawyers in 23 cities around the globe. Our office in Istanbul has a focus on private equity and cross-border transactions and serves a large region encompassing Central & Eastern Europe, the Middle East, and northern Africa, which will nicely complement Locke Lord's strengths in energy, private equity, and other practice areas. The combined firm will offer a distinctive focus on the middle market, offering clients an extremely strong middle market offering across a broad range of practices, industries, and geographic locations around the world."

The new firm operates as Locke Lord Edwards, and will have gross revenues of approximately USD 675 million. Jerry Clements is serving as Chair of the combined Firm. Alan Levin, who previously served as Managing Partner of Edwards Wildman, has become one of the three Vice Chairs of the newly-combined firm, along with Locke Lord's Dan Schlessinger and Bill Swanstrom.

Locke Lord was established in 1891 and grew over the past 100-plus years in the United States and internationally through strategic lateral hires and mergers in 1987, 1999, and 2007. Edwards Wildman traces its roots back to 1880.

## New CMS-Spin-Off Boutique in Warsaw

Tomasz Jedwabny, until recently a Partner at CMS in Warsaw, has established a new boutique – JedwabnyLegal – specializing in banking, infrastructure finance, PPPs, public financing, derivatives, and bank regulation.

Jedwabny left CMS in November 2014 after spending a little over 3 years with the firm. Previously, he was a Counsel in the Warsaw office of Clifford Chance, a firm that he joined in 2000. Between 2000 and August 2011 – when he joined CMS – he was also on secondments at Morgan Stanley and the European Investment Bank.

Jedwabny told CEE Legal Matters that ex-CMS senior lawyer Magdalena Brzozowska has joined him as a Partner at JedwabnyLegal. Brzozowska left CMS in July 2014 and has worked in solo practice for several months. Prior to CMS, she worked for Allen & Overy, the Polish Office for Competition and Consumer Protection, and the Office of the Committee for European Integration. She specializes primarily in property finance.

## bpv Grigorescu Stefanica Establishes BACG


bpv Grigorescu Stefanica has announced the launch – in association with BAC Investment Banking – of BAC Grigorescu Capital Advisors (BACG), which is certified as one of the 22 organizations selected as Authorized Consultants by the Bucharest Stock Exchange (BVB) to advise on the new AeRO alternative system dedicated to SMEs.

According to the BVB, the AeRO alternative transactional system was set up to offer a market with fewer reporting requirements for issuers while still offering "sufficient levels of transparency for investor so as not to deter transactions." It is not regulated by European Directives or Romanian Capital Markets legislation, and instead is regulated by rules and requirements set by the Bucharest Stock Exchange.

BACG claims that it will provide a unique service in the Romanian market by offering a "one-stop-shop" solution for companies, investors, and entrepreneurs interested in private placements or public listings on the AeRO platform, by bringing under the same umbrella both financial, management, evaluation, and tax consultancy as well as legal advice. As a result, the new consultancy aims to meet the needs of start-up and SMEs looking for support both in the process of the initial placements as well as ongoing support on implementing post-listing procedures.

## Sichenzia Ross Friedman Ference Ties Up Budapest Office

The U.S. law firm Sichenzia Ross Friedman Ference (SRFF) has announced its affiliation with the Fabry Law Office in Budapest (which until recently was affiliated with the Czech PRK Partners law firm). The Hungarian firm will operate as SRFF-Fabry, and will be led by Managing Partners Agnes Fabry and Gyorgy Feher. The affiliation, which became official on January 1, 2015, represents the first office outside of the U.S. for SRFF, known for its securities and corporate practices.

For more information on this tie-up, please look at the "From New York to Budapest" article on page 54.

## Dentons Merges With Chinese Law Firm

大成 DENTONS

Dentons has announced that it has merged with one of the largest law firms in China (although we cannot print Chinese pictograms, the firm's name is pronounced "da CHUNG"). According to Dentons, its tie-up is the first combination of a leading Chinese firm and a top 10 global firm, and a statement released by the firm reports that: "the result will be the only firm to offer seamless service across Africa; Asia Pacific; Canada; Central Asia; Europe; the Middle East; Russia, CIS and the Caucasus; the United Kingdom; the United States; and all 34 of China's regional administrative divisions."

Founded in 1992 and headquartered in Beijing, the Chinese firm had more than 4,000 licensed attorneys and professionals working in more than 51 branches and offices. Combined, then, the new firm has more than 6,500 lawyers and professionals in 120 locations in more than 50 countries. It has five regions – Asia, Canada, Europe, the UK and the Middle East, and the US – each led by a regional chief executive officer. A 19-member Global Board – comprised of 14 members from Dentons, and five from the Chinese firm – includes representatives from each region, and a Global Advisory Committee is comprised of all members of each region's board. The new firm is structured as a Verein.

## Schoenherr Severs Formal Ties With Kyiv Office

*Artur Buibarov / Shutterstock.com*

On February 1, 2015 Schoenherr concluded the formal relationship with the team operating its office in Kyiv, which will, going forward, operate as a separate and independent Ukrainian firm. Schoenherr will continue to serve clients via its Ukrainian desk, headed by Austria-based Alexander Popp.

A Schoenherr representative explained to CEE Legal Matters that the main reason for the move is "the substantial change in demand in the Ukrainian market for legal services by foreign investors." The feeling of the firm was that, given the unique state of developments in the country, "demand in the local legal market does not address its full range of services, but is instead very much focused on a small range of services, such as competition, litigation, and criminal law matters," areas that "Schoenherr did not extensively market in Ukraine."

As a result, Schoenherr's Partners and Ukrainian Partner Sytnyk decided that "the best solution for the special situation in Ukraine lies in the local team owning and running the Kiyiv-based business, as they can address the unique challenges in the Ukrainian market with far more flexibility than an international firm like Schoenherr."

Peter Klopf of Schoenherr says that, although the Ukrainian team will not be exclusively allied with Schoenherr, "the network is there, the relationships are old and the connections are strong, and to the extent possible, most work will be carried out in collaboration between the Kyiv desk and the former Kyiv office."

Klopf explained that clients "will benefit from a smooth transition from the previous office constellation in Kyiv to the local team-driven solution. Otherwise, it will be 'business as usual' and clients will continue to be serviced by the same lawyers who have advised them over the past few years."

The move follows Chadbourne & Parke's retreat from the market in August of 2014, following that firm's conclusion that "unfortunately, the Ukrainian economy has struggled over a number of years, leading to a severe drop-off in outside investment. The recent turmoil and economic climate have only made the situation worse. In view of the currently difficult legal marketplace and the problematic long term outlook, it was not practicable for us to continue our operations in Kyiv."

## Karanovic & Nikolic Adds Office in Slovenia

Karanovic & Nikolic has announced that Slovenian Banking & Finance lawyer Marko Ketler has moved from the ODI Law Firm to open K&N's Slovenia office.

According to K&N, Ketler has over 7 years of Corporate/M&A and Private Equity experience with niche experience in acquisitions with financing aspects. He obtained his law degree from the University of Ljubljana in 2007 and received an LL.M. from the London School of Economics and Political Science in 2012. He started his career with Rojs, Peljhan & partners in 2008 before joining ODI in August 2012.

A Karanovic & Nikolic statement claims that, with the move, the firm becomes the first from Serbian to open an office in Slovenia, and declares that the firm now "will officially cover all territories of the ex-Yugoslavia."

## Partner Leaves Vilau | Associates To Set-Up Own Practice

Ionut Lupsa has left Vilau | Associates – after joining the firm in its September 2014 split from Vilau & Mitel – to open the Lupsa & Associates office. Senior Associate Ioana Buru join Lupsa in the move. Dragos Vilau, Managing Partner of Vilau | Associates stated: "We regret the departure of our colleague, whose contribution to the successful launch of Vilau | Associates was and is appreciated by the entire team. Personally, I regret the departure of a business associate that I have appreciated and supported in recent years and, together with whom we took on the challenge of creating a new model of success in the business legal field through the continuous push for the highest ethical and professional standards. We respect his right to opt for a different professional path and wish him success going forward. As for us, we remain committed to the professional and ethical standards that we have been promoting until now and remain convinced that only through them we'll be able to further consolidate the strong reputation we enjoy today."

## Summary Of New Partner Appointments

| Date Covered | Name | Practice(s) | Firm | Country |
|---|---|---|---|---|
| 2-Feb | Christine Dietz | Competition | Binder Grosswang | Austria |
| 2-Feb | Ingeborg Edel | Dispute Resolution | Binder Grosswang | Austria |
| 2-Feb | Angelika Pallwein-Prettner | Labor | Binder Grosswang | Austria |
| 2-Feb | Bernd Schneiderbauer | Corporate/M&A | Binder Grosswang | Austria |
| 3-Feb | Thomas Kulnigg | Corporate/M&A | Schoenherr | Austria |
| 9-Feb | Veit Ohlberger | Corporate/M&A; Dispute Resolution | Dorda Brugger Jordis | Austria |
| 16-Dec | Stefan Huber | PPP/Infrastrucutre; Energy; Dispute Resolution | CHSH | Austria |
| 30-Jan | Dmitri Zikratski | Corporate/M&A | Peterka & Partners | Belarus |
| 9-Jan | Nihad Sijercic | Corporate/M&A | Karanovic & Nikolic | Bosnia and Herzegovina |
| 12-Dec | Tomas Jine | Banking/Finance | White & Case | Czech Republic |
| 12-Dec | Marketa Stafkova | Banking/Finance | White & Case | Czech Republic |
| 14-Jan | Piret Jesse | Corporate/M&A | Tark Grunte Sutkiene | Estonia |
| 26-Jan | Leho Pihkva | Real Estate | Glimstedt | Estonia |
| 8-Jan | Zoltan Nadasdy | Corporate/M&A; Real Estate | Noerr | Hungary |
| 26-Jan | Sergej Butov | Corporate/M&A | Sorainen | Lithuania |
| 6-Feb | Povilas Karlonas | Corporate/M&A | Averus | Lithuania |
| 4-Feb | Marijanti Babic | Corporate/M&A | Prica & Partners | Macedonia |
| 2-Jan | Jan Jarmul | Corporate/M&A | Soltysinski Kawecki & Szlezak | Poland |
| 2-Jan | Pawel Moskwa | Corporate/M&A | Soltysinski Kawecki & Szlezak | Poland |
| 23-Jan | Katarzyna Bilewska | Dispute Resolution | Dentons | Poland |
| 23-Jan | Elzbieta Lis | Real Estate | Dentons | Poland |
| 23-Jan | Ewa Rutkowska-Subocz | Energy | Dentons | Poland |
| 10-Feb | Aldona Kowalczyk | PPP/Infrastrucutre | Dentons | Poland |
| 12-Dec | Rafal Kaminski | Capital Markets | White & Case | Poland |
| 8-Jan | Mihai Macelaru | Corporate/M&A; Capital Martets; Private Equity | Noerr | Romania |
| 9-Jan | Simona Petrisor | Banking/Finance | Bondoc & Asociatii | Romania |
| 3-Feb | Adriana Radu | Corporate/M&A | Schoenherr | Romania |
| 17-Dec | Sebastian Radocea | Corporate/M&A; Energy | Tuca Zbarcea & Asociatii | Romania |
| 8-Jan | Victor Gerbutov | Dispute Resolution; TMT/IP | Noerr | Russia |
| 2-Feb | Anna Grishchenkova | Dispute Resolution | KIAP | Russia |
| 10-Feb | Anastasia Saveliova | Corporate/M&A; Capital Markets | Nektorov, Saveliev & Partners | Russia |
| 12-Dec | Nikolay Feoktistov | Corporate/M&A | White & Case | Russia |
| 12-Dec | Anastasia Putilova | Corporate/M&A | White & Case | Russia |
| 17-Dec | Kirill Belyakov | TMT/IP | Nota Bene | Russia |
| 9-Jan | Senka Mihaj | Dispute Resolution | Karanovic & Nikolic | Serbia |
| 30-Jan | Nikola Vukotic | Real Estate | JPM Jankovic Popovic Mitic | Serbia |
| 30-Jan | Andrea Butasova | Corporate/M&A | Peterka & Partners | Slovakia |
| 10-Feb | Peter Kubina | Banking/Finance; Dispute Resolution | Dentons | Slovakia |
| 10-Feb | Eva Skufca | Corporate/M&A; Competition | Schoenherr | Slovenia |
| 10-Feb | Petra Smolnikar | Corporate/M&A; Labor | Schoenherr | Slovenia |
| 2-Jan | Sezin Guner | Capital Markets | Pekin & Pekin | Turkey |
| 2-Jan | Ceyda Tapsin | Capital Markets | Pekin & Pekin | Turkey |
| 2-Jan | Yegan Liaje | Corporate/M&A | Pekin & Pekin | Turkey |
| 2-Jan | Firat Yalcin | Tax | Pekin & Pekin | Turkey |
| 7-Jan | Hakan Ozgokcen | Competition | ELIG | Turkey |
| 7-Jan | Ilay Yilmaz | TMT/IP | ELIG | Turkey |
| 7-Jan | Nazli Nil Yukaruc | Corporate/M&A | ELIG | Turkey |
| 14-Jan | Ahmet Akguloglu | Dispute Resolution; TMT/IP | Gur | Turkey |
| 5-Feb | Devrim Ergun | Capital Markets | Verdi Law Firm | Turkey |
| 21-Jan | Oleksiy Demyanenko | Corporate/M&A | Asters | Ukraine |
| 21-Jan | Alexey Khomyakov | Tax | Asters | Ukraine |

## Summary Of Partner Lateral Moves

| Date covered | Name | Practice(s) | Firm | Moving From | Country |
|---|---|---|---|---|---|
| 28-Jan | Vitaly Kachelya | Corporate/M&A | N/A | Glimstedt | Belarus |
| 30-Jan | Zdenek Bajar | Corporate/M&A | N/A | Peterka & Partners | Belarus |
| 7-Jan | Kvetoslav Krejci | Banking/Finance; Capital Markets | Kinstellar | White & Case | Czech Republic |
| 28-Jan | Richard Eordogh | Corporate/M&A | Eversheds | Bird & Bird | Hungary |
| 9-Feb | Judit Szoradi | Banking/Finance | SRFF-Fabry | Erste Bank | Hungary |
| 22-Jan | Ansis Spridzans | Corporate/M&A | Varul | Privatisation Agency | Latvia |
| 12-Jan | Marcin Lolik | Corporate/M&A | Garrigues | Taylor Wessing ENWC | Poland |
| 19-Jan | Jean Rossi | Real Estate | PWC Legal | White & Case | Poland |
| 16-Jan | Serban Patriciu | Corporate/M&A | Bondoc & Asociatii | Popovici Nitu & Asociatii | Romania |
| 21-Jan | Roxana Popel | Tax | CMS | PWC | Romania |
| 5-Feb | Ionut Lupsa | TMT/IP | Lupsa & Associates | Vilau \| Associates | Romania |
| 28-Jan | Scott Antel | Hospitality & Leisure | Berwin Leighton Paisner | DLA Piper | Russia |
| 11-Dec | Varvara Knutova | Dispute Resolution | Goltsblat BLP | Pepeliaev Group | Russia |
| 3-Feb | Marko Ketler | Corporate/M&A; Private Equity | Karanovic & Nikolic | ODI Law Firm | Slovenia |
| 10-Feb | Onur Ergun | Corporate/M&A; Capital Markets | YaziciLegal | Taboglu & Demirhan | Turkey |
| 2-Feb | Denys Sytnyk | Banking/Finance; Capital Markets; Real Estate; Competition | Sytnyk & Partners | Schoenherr | Ukraine |

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Period Covered: December 11, 2014 - February 11, 2015

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Letters should include the writter's full name, address and telephone number and may be edited for purposes of clarity and space.

## Summary Of In-House Appointments

| Date covered | Name | Company | Moving From | Country |
|---|---|---|---|---|
| 28-Jan | Judit Miskolci | Teva (Legal Director for Hungary) | Sanofi-Aventis | Hungary |
| 2-Feb | Paula Cristea-Bendescu | Asset Portfolio Servicing (Head of Legal and Compliance) | Poppa & Asociatii | Romania |
| 4-Feb | Monica Constantin | Danone (SEE Legal Affairs Manager) | Caroli Foods | Romania |
| 23-Dec | Dogan Cosgun | Turk Telekom Group (Chief Legal Officer) | Turkuvaz Radyo Televizyon Haberlesme ve Yayincilik | Turkey |
| 22-Jan | Leonid Antonenko | National Bank of Ukraine (Head of the Registration and Licensing Department) | Sayenko Kharenko | Ukraine |

## Other Appointments

| Date Covered | Name | Firm | Appointed to | Country |
|---|---|---|---|---|
| 12-Jan | Julia Mair | Dorda Brugger Jordis | Head of the firm's business crime team, part of the firm's dispute resolution desk | Austria |
| 28-Jan | Darya Zhuk | Glimstedt | Managing Partner of the Glimstedt Belarus office | Belarus |
| 30-Jan | Dmitri Zikratski | Peterka & Partners | Director of the firm's Minsk office | Belarus |
| 23-Jan | Toomas Prangli | Sorainen | Co-Managing Partner of the firm | Estonia |
| 26-Jan | Marko Tiiman | Glimstedt | Managing Partner of the firm | Estonia |
| 28-Jan | Peter Knight | Bird & Bird | Managing Partner of the Bird & Bird Hungary office | Hungary |
| 22-Jan | Janis Zelmenis | Varul | CEO of Varul Across Baltics | Latvia |
| 23-Jan | Laimonas Skibarka | Sorainen | Co-Managing Partner of the firm | Lithuania |
| 29-Jan | Wojciech Koczara | CMS | Head of the firm's real estate practice in Central and Eastern Europe | Poland |
| 19-Jan | Yury Pilipenko | YUST | President of the Federal Chamber of Advocates of the Russian Federation | Russia |
| 30-Jan | Monika Simunkova Hoskova | Peterka & Partners | Head of the firm's Russian desk | Russia |
| 2-Feb | Victoria Bortkevicha | Clifford Chance | Managing Partner of the firm's Moscow office | Russia |
| 5-Feb | Tatiana Prokopova | Squire Patton Boggs | Office Managing Partner in Bratislava | Slovakia |
| 7-Jan | Tarkan Erdal | Erdal Law Firm | Managing Partner of the firm | Turkey |

Full information available at: www.ceelegalmatters.com

Period Covered: December 11, 2014 - February 11, 2015

# Legal Matters: The Buzz

## The Buzz

In "The Buzz" we offer our readers a short summary of the major and relevant topics of interest in Central and Eastern Europe, provided by those best positioned to know: law firm partners and legal journalists/commentators on the ground in each CEE country.

## Austria

*"Hypo debacle going strong"*

The Hypo/HETA/BayernLB debacle is currently occupying the time of a significant part of the legal market in Austria. According to Uwe Rautner of Rautner Attorneys at Law, the issue can be traced back to the Carinthia guarantees given out to Hypo Bank decades ago. A privatization, several recapitalizations, a nationalization, and several insolvency procedures later, BayernLB – the bank that owned Hypo for a few years, and is now looking to recover the EUR 2.4 billion in funding it provided to the bank (which it stands to lose as a result of the "Hypo" law recently passed by Austria) – has filed suit against the Austrian government, which in turn has filed a counterclaim, alleging that BayernLB withheld critical information related to the bank's capitalization needs. At the same time, according to Rautner, Hypo bondholders – and about a third of the Austrian Parliament – have filed claims in the Austrian Constitutional Court contesting the constitutionality of the "Hypo" law that allowed for these insolvency procedures to commence at the disadvantage of certain types of bond holders. On top of it all, Rautner says, there are hundreds of civil court claims bring brought against HETA – created as an asset resolution entity for the distressed Hypo Bank – in both Austria and Germany.

The banking sector in Austria is not the only one raising considerable questions in the market. According to Mark Krenn, Partner at CHSH, the real estate business is "a particularly interesting one these days." According to Krenn, the market tends to be very tenant-friendly with courts lately tending to favor them regardless of the nature of the tenant. On the long run, this raises concerns as to whether landlords, in particular in the case of shopping centers, are able to charge the fees they need to. At the same time, Krenn reports, the market has changed since last summer into a sellers' market again with many players looking for good investments, but generally being faced with lower yields. "As far as investor thinking is concerned these days," Krenn says, "investors are prepared to pay a higher price again, but they will tend to take a closer look at the assets. This is symptomatic for the real estate business across the region, really."

## Belarus

*"General slow-down but a potential light at the end of the tunnel in terms of foreign investment"*

The Managing Partner of Borovtsov & Salei, Vassili Salei, was caught up working on legal due diligence related to the sale of a Russian bank in Belarus (which he chose not to identify) to a foreign investor. This sale is atypical, according to Vassili, with overall investments towards the country slowing down considerably in the recent period, primarily as a result of the "Russian situation" and the resulting currency devaluation. According to Salei, the Belarusian Ruble has not yet been hit as hard as its Russian counterpart, but long-term developments are expected to lead to the same result.

The real "bread-winner" for firms in the country, according to the Borovtsov & Salei Partner, is the "day-to-day" general advisory work to clients already present in the country.

In term of pending legislation, Salei says, "there is not much to be excited about." The one notable development is the pending discussions around potentially introducing the possibility to set up limited liability companies with only one shareholder. At the moment, he explained, they can only be set up with a minimum of two shareholders which forces potential investors to involve other subsidiaries from other jurisdictions or involve a local partner or local management. An update (which will potentially be implemented in the spring) would "greatly simplify setup procedures and create quite a few new opportunities for businesses and lawyers advising them alike," he said.

## Croatia

*"Government stepping in on loans and associates stepping in on Government concession plans"*

The first of two things the Croatian market is buzzing about relates to private borrowers being hit hard by the increase in value of the Swiss Franc. With many loans being issued in the foreign currency, the Government had to step in to set a fixed exchange rate applicable to foreign currency for the purpose of loans given out to natural persons. It is unclear at the moment whether this will provide a long-term solution and what next steps the country will take to address the issue.

The second major subject of conversation relates to the Citizens' Initiative call for a national referendum it hopes will prevent planned concessions of the motorways in the country meant to allow for private investor management. The representative of the Citizens' Initiative is arguing that the Government could benefit considerably from directly managing and collecting fees rather than "giving the motorways away to private hands" – but not all agree.

## Czech Republic

*"C.C & C: Civil Code & Consolidation"*

According to Martin Kubanek, Managing Partner of the Czech Schoenherr office, the Czech market is primarily focused on two things. The first is connected to a series of proposed "technical amendments" to the still relatively-recently introduced Civil Code. Kubanek explained that these amendments are likely to be implemented this upcoming spring (and then come into force in July), but there is "a considerable part of the legal industry" that is arguing that many of the proposed amendments are not really necessary and the current legislative package should be allowed to play out over the next 2-3 years before any changes are made.

The second topic of discussion, according to the Schoenherr Partner, is a topic all too commonly heard in CEE legal markets: consolidation (see page 34 for an analysis of this issue in the Turkish market). Kubanek commented: "There are a great deal of rumors running around that we will likely witness a further consolidation of the legal market in the Czech Republic." The likely scenario, in his mind, is that some Anglo-Saxon firms might pull out of the market – or at least are seriously considering doing so (following the 2014 departures of Norton Rose and Hogan Lovells).

According to Kubanek, this is a result of two factors. First, "there are a number of hungry young spin-offs from international firms that are eating up market share in terms of bread and butter work by engaging in the type of price dumping that a firm with global overheads simply cannot sustain." The second factor is that "big-ticket work [over EUR 500 million], where these international firms have a comparative advantage" is simply not as common in the country as it used to be.

## Hungary

*"What's the next step?"*

According to Szabolcs Mestyan, Partner at Lakatos Koves & Partners, the Hungarian finance transaction market is basically dead at the moment, except for subsidized loans. "This is not a new development – for new money financing has been this way for 4 years now. The question, as time passes, is when it will restart," Mestyan explained. According to him, Hungarian banks simply are not lending these days, and even though some foreign banks are, there are no real projects to finance. "The only real activity in the market seems to be related to refinancing and restructuring deals, primarily in real estate," he added.

*"Surprisingly…M&A, M&A, M&A."*

The most interesting phenomenon, according to Mestyan, is that although most imagined that no M&As would be taking place in Hungary primarily as a result of perceived political risk, there is in fact a surprising amount of M&A work happening. He explained that it is likely equally due both to a drop in asset prices – what he called "business as usual" M&A work – and to the high number of original investors trying to exit the market.

Despite the spike in M&A work, Mestyan believes that, unfortunately, foreign investors are becoming increasingly aware of the country's risk profile. "It did not use to be the case a few years ago," he says. "Then, it was usually the lawyers who raised the issue of country risk (retrospective legislation, discriminatory legislations, nationalizations, etc). These days, investors are the ones raising the issue before we even get around to it." He explained that it is not just a matter of unfortunate media coverage in the country – though such coverage does not help. Rather, Mestyan explained, many are influenced by both past negative experiences directly as well as by investors sharing experiences.

## Romania

*"Busiest Kick-off to The Year in The Last 10 Years"*

"I have never seen a January that was this crazed," said Serban Patriciu, a new Partner at Bondoc & Associates, who has moved recently from Popovici Nitu & Associates (see page 16). "Don't get me wrong, being fresh in the team, I'm happy to have a lot of work on my plate."

According to Patriciu, there are a number of potential causes for the uptake in work in recent months. First, he pointed to recent presidential elections, which he believes – at least as far as business perception is concerned – went in the right direction. "I think a considerable chunk of the transactions we are seeing in the market at the moment represent investors who were 'on hold' for a few months waiting to see the outcome of the elections in the country," he said. Another potential cause, in his view, could be the recent increase in the number of high profile corruption cases being brought (see Buzz Section – Romania – Issue 1.6.), which adds to the feeling that the country is moving in the right direction for businesses "by slowly ridding the market of the cancer that corruption has represented for so many years." A last – but hard to quantify – reason, in Patriciu's mind, is linked to recent events in Russia, which he believes may be redirecting investors towards other CEE markets.

Speaking specifically about his area of expertise, Patriciu also noted an increase in the real estate sector. "I think the real estate market is slowly picking up – with some noticeable deals on the horizon. Probably it has to do with the fact that potential investors have realized that the market has hit rock-bottom in terms of pricing and if there was ever a time to make acquisitions, it is now."

**We thank the following for sharing their opinions and analysis:**

Mark Krenn – Partner – CHSH

Martin Kubanek – Managing Partner – Schoenherr

Milan Lazic – Partner – Karanovic & Nikolic

Serban Patriciu – Partner – Bondoc & Associates

Szabolcs Mestyan – Partner – Lakatos Koves & Partners

Vassili Salei – Managing Partner – Borovtsov & Salei

Uwe Rautner – Partner – Rautner Attorneys at Law

Yuliya Chernykh – Partner – Arbitrade

## Serbia

*"Striking no more"*

After more than four months on strike (see Buzz Section – Serbia – Issue 1.5.), the Serbian Assembly conceded to the demands of the legal profession, according to Milan Lazic, Partner at Karanovic & Nikolic. According to Lazic, on January 21, 2015, the "disputed provisions of the law on Notary Public, as well as the set of accompanying laws," were amended. "The legal profession's request to reduce the taxation of the profession was met as well," he added.

According to Lazic, the latest amendments have reduced the role of the Notary Public so that they maintain exclusivity for drafting only three types of legal documents: (1) Sale and Purchase agreements regarding real estates of persons without legal capacity; (2) Agreements on legal support, in accordance with the law; and (3) certain types of Mortgage Agreements and pledge statements.

## Ukraine

*"All talking about sporadic successes"*

Everyone in Ukraine is talking about their successes here and there, according to Yuliya Chernykh, Partner at Arbitrade, but few firms openly discuss how much the market (and the firms in it) are hurting these days. "While the press releases will always focus on successful representations of client x or client y," Chernykh said, "the reality on the ground is that the outlook for most firms in Ukraine is rather bleak with many registering budget cuts."

According to Chernykh, with international investments steering away from the country, the focus for many firms tends to turn inward with dispute resolution and restructuring projects tending to lead in terms of the busiest practices.

There are also several pending reforms that will leave a strong mark on the legal market – reforms that will target the judicial system directly. "For example, a potential liquidation of commercial courts in Ukraine is in focus (although it is fiercely opposed by a number of litigation lawyers and other professionals)," Chernykh said. "There are also ongoing debates as to whether only lawyers admitted to the Ukrainian Bar should be allowed to represent clients in courts going forward, as at the moment, bar membership is not a requirement with only criminal proceedings requiring an advocate [a Bar-admitted lawyer] to represent parties."

A big sign of the general state of the market is a recent vacancy that the firm posted for a "minor, mid-level lawyer" in litigation. According to Chernykh, over 400 individuals applied in little over a week. "We're not used to such numbers, but this is a big indicator of the high competition in the market with a lot of lawyers scrambling for work."


# Digesting Insolvency Law In CEE

The *Handbook on Central and Eastern Europe Insolvency and Restructuring Laws*, edited by Christian Hoenig and Christian Hammerl, and recently published by Wolf Theiss, is an introduction into the local insolvency and restructuring laws of 14 CEE countries. CEE Legal Matters spoke with Hoenig about the challenges involved in putting together such a survey of this size and scope.

Christian Hoenig is a Partner in the Vienna office of Wolf Theiss, specializing in Corporate/M&A, private equity and venture capital, and insolvency and restructuring.

## Addressing a "White Spot"

Hoenig believes that the Handbook was prepared to address what he describes as a "white spot" in coverage of the region. In his opinion, the critical element in filling this gap was providing a similar level of analysis and insight in all markets. He explained: "One of the most important aspects for us was consistency. Specifically, we tried to make sure we provide the same structure across all chapters [each of which address one jurisdiction] and attempted to develop a standardized terminology. The goal for this was to offer a guide which, if, for an example, an Austrian insolvency practitioner would look at the Austrian chapter, he/she could then easily understand the logic and structure of each chapter and much more easily digest the briefing on any other jurisdiction. The basic assumption was that it is easier to follow if you see familiar concepts and are able to use them to create a structural map for analyzing other jurisdictions."

Hoenig also believes that the topic – insolvency and restructuring law – "is at the crossroads between the legal field and general economic issues." According to him, what really drives insolvency law is the same everywhere: striking the right balance between being fair towards creditors and making sure that businesses can survive. Drawing a comparison with tax law, which "can make or break a great economy," Hoenig explained: "In the case of insolvency law, the bottom-line questions are how to best distinguish between viable businesses and artificially propped up businesses – no one wants economic zombies roaming around – and how to create a system that is both not too harsh on creditors to cause a backlash and doesn't drive viable companies into liquidation proceedings." Because the handbook addresses issues that are particularly relevant in current market conditions, this was a prime period to undertake the project, according to the Wolf Theiss Partner.

## Ensuring Quality Control

When asked how the editors ensured quality control over the accuracy of the information in the handbook, as neither had much regular interaction with rapidly evolving insolvency codes across the variety of CEE jurisdictions the guide covers, Hoenig said it was "not easy" – especially, as he pointed out, because the many contributing authors had different expertise and backgrounds.

He explained that, in some markets, the practice of insolvency law "hardly exists." To illustrate he pointed to Albania, which "has a full code comparable with any Western country, but the legislative/administrative bodies have not passed regulations for some reason (the law is designed to come into force with the issue of its implementing regulations)." Another example he gave was Serbia, where "insolvency is very much dependent on solving things out of court" since court proceedings "tend to not yield the best results," meaning that, where possible, courts are avoided.

How was this overcome? First, the editor of the handbook explained that, with Wolf Theiss Vienna being the firm's hub, there was a collective body of knowledge based on coordinating many multi-jurisdictional proceedings and restructurings over the years. However, with respect to jurisdictions where such

Hoenig, middle, flanked by team members Doris Buxbaum and Christian Hammerl

experience was limited, authors with "some form of relevant experience" such as having obtained good results in informal proceedings, litigation, and other venues were chosen. Second, a four-eye policy was implemented, with each of the countries covered by two authors.

Finally, Hoenig and his colleague, Hammerl (who, in a previous position, oversaw the EMEA operations of a large consumer electronics company for almost a decade and thus had a sense of the commercial realities on the ground), "read through every single line – more than once – and had each chapter read by a group of experienced, and thankfully, rather patient colleagues." Hoenig also pointed to an extremely thorough editing process, in which he spent many hours working side by side with the contributing authors in front of the computer and, when necessary, could challenge them directly: "Hah, that sounds rather strange. Are you sure that is how it works in your country?"

"It was a considerable challenge but also a learning processes which we will use when we launch subsequent editions of the handbook," Hoenig stated. "We do not see this as a one-off project and are excited to build on what we have learned and address pending ambiguities based on both developments in the law as well as discovering new case law – all to increase the value of the handbook going forward."

*Radu Cotarcea*

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# Smooth Sailing:
## Judith Gliniecki, Head of Legal at CEE Equity Partners, Reflects On an Impressive First Year

**The China Central and Eastern Europe Investment Co-Operation Fund, established by the China Export Import Bank in partnership with the Hungarian Export Import Bank and other institutional advisors from CEE, is off and running. And Judith Gliniecki, General Counsel at CEE Equity Partners Ltd., investment advisor for the Fund, is getting rave reviews for her work on its behalf. With Gliniecki's help, the most significant source of Chinese investment in CEE is finding smooth sailing.**

Judith Gliniecki, Head of Legal, CEE Equity Partners

## The Right Call

"And for me, as external counsel, working with a group that knows what it's doing, gets to the point, and executes, and they know what they need from me, so they know what to expect, and when I ask for something … the things I should obtain on my own, I did, but when it's more efficient for the company to do it, Judi took care of it absolutely. Anticipated it and took care of it."

– Dorothy Hansberry-Biegunska, Partner, Hansberry Tomkiel

Born in the American Midwest and educated at Harvard, American lawyer Judith Gliniecki had long hoped to work in what she called "the new exciting world" that followed the fall of the Iron Curtain. Pursuing that goal, in 1994, after a few years in private practice in Ohio, Gliniecki joined Hunton & Williams in Warsaw. She has been in Warsaw ever since, first with eight years at Hunton & Williams, then another five as partner at a pair of Polish firms, before moving over to Wierzbowski Eversheds, where she was Head of the firm's Corporate/M&A practice for almost 7 years.

One day in May, 2014, Gliniecki – who, despite her impressive Polish career still refers to herself modestly as "just an Ohio lawyer" – received a phone call out of the blue from Dario Cipriani, one of CEE Equity's Investment Directors, who said to her, simply, "we're thinking about doing something new, and we'd like to talk to you."

Gliniecki recalls that "it was so interesting, what they were doing, and I had been at a point in my life where I was interested in change. At that point I was actually thinking about wanting to transition back to the United States at some point, probably in an in-house role, so the idea of taking on a GC role here in Warsaw, doing transactions – which I love to do, and which certainly plays on my strengths – was an irresistible temptation, so I didn't hesitate long."

She accepted the challenge and moved to CEE Equity.

## A Remarkable First Year

"There's always a lot of interest in Central Europe from China, and the potential of Chinese investment is exciting ... but so far it has come to zero as far as I can see."

– Helen Rodwell, Partner, CMS, speaking at the December 3, 2014, CEE Legal Matters Summit.

Well, maybe a little bit more than zero.

The Fund – initially seeded with USD 500 million – was established in the beginning of 2014 to capitalize on investment opportunities in Central and Eastern Europe. It focuses particularly on four sectors: Infrastructure, Energy, Telecommunications, and Specialized Production.

The Fund focused on Polish investments in its first year, but Gliniecki insists that "the China-CEE Fund has a mandate to invest in 16 Central and Eastern European countries" (the Fund's definition of "CEE" does not include Austria, Russia, Ukraine, Belarus, Greece, Turkey, and Kosovo), "and our goal is to invest in each of these countries." As evidence she points to the Fund's most recent acquisition in a country that happens to be home to the Fund's second largest sponsor – the Hungarian Exim Bank: "the transaction we did with BKF, that was part of our strategy of looking very seriously at Hungary, given who one of our investors."

Although the Fund's primary sponsor is Chinese – Gliniecki concedes that the China Exim Bank contributes "more than the lion's share" of the Fund's capital – there is no sign of deeper political or cultural motives in its creation. Gliniecki, for instance, insists that when CEE Equity evaluates a potential investment, "there is no requirement that it has to be politically correct or have a Chinese angle." And there are no Chinese nationals working with CEE Equity. Instead, Gliniecki says that the company is made up of "Brits, Americans, a bunch of Poles, Octavian Vidu in Romania, [and] Tamas Szalai in Hungary." She explains that, "the whole idea was to have a multi-national group … because we're the investment advisor, the idea was to provide that bridge between local people sourcing deals."

The Fund's sponsors await at the other end of that bridge, and Gliniecki makes sure they're fully informed and involved. She says, "I do all the backend work to make sure that all of our sponsors – particularly China Exim – understand the deal, are comfortable with the deal, feel comfortable with the legal parameters, and I think that's one of the keys

## The Deals

- September 1, 2014: The Fund's first deal was a USD 77 million acquisition of a 16 percent stake in the newly-created Polenergia, S.A. – the result of a simultaneous merger between Polish Energy Partners and Polenergia. Upon its creation, Polenergia S.A. immediately became the largest independent vertically integrated utility in Poland.
- November 3, 2014: The Fund completed the first stage of an equity investment of up to USD 84 million in three Polish wind projects as part of a joint venture with Enlight Renewable Energy Ltd., an Israeli developer and investor in renewable energy projects (the Fund holds 49.9% of the joint venture, and Enlight holds 50.1%). The JV will invest in up to 250 MW of wind projects that are being developed by GEO Renewables, a private Polish company. In December, the Fund exited (its first-ever exit) from the first stage of the project.
- December 5, 2014: The Fund acquired a majority stake in BKF University of Applied Sciences, a private higher education business in Hungary. Financial details were not disclosed.
- January 7, 2015: CEE Equity announced that the Fund plans to acquire a controlling stake in Electronic Control Systems, an engineering company providing services for the telecommunications sector in Poland and other markets. The Fund is waiting for the Polish Office of Competition and Consumer Protection's permit and plans to acquire the controlling share. Gliniecki says she hopes the deal will close before February 17, 2015. Financial details were not disclosed.

of our success, is that our group makes that happen – makes sure that all the parties are on the same page when you're looking at the transaction."

## The Lawyer Guiding Lawyers

"It was a real pleasure to work with them. They are a highly demanding client, but they've got a clear picture of what they want from an external legal advisor. It's really a bank of very professional and dedicated people …. sometimes we have to work around the clock, but they deliver."

– Maciej Zalewski, Partner, White & Case

Both Gliniecki and the external counsel she instructs on behalf of CEE Equity point to her background as a significant strength. Gliniecki says, "as I was in private practice until joining CEE Equity, I think that I am well-placed to work with our external counsel to deliver legal services that my business team needs." Maciej Zalewski at White & Case, who advised CEE Equity on the Fund's exit from the first stage of the GEO Renewables/ Enlight deal, makes the same point: "Judith has the background of working as a lawyer and a partner with a global law firm … so with this experience she knows exactly what is needed, and she knows how demanding the transaction might be. She is demanding, that's true, but this is justified from her experience from working on these transactions, and she is perfectly aware where the potential threats might be."

Gliniecki's professionalism draws compliments as well. Zalewski points out: "She also works on transactions with the lawyers. From the very beginning to the end of the transaction. So if we have to work overnight before the closing, she is there." Zalewski also says that Gliniecki's attention to detail doesn't end at closing. He reports that CEE Equity "has a wrap-up session with you after the completion of the transaction, and they brief you on what they liked, and on what they did not like. I really appreciate this feedback, which allows us to build a closer relationship and make our cooperation with the client more effective the next time." (He laughs: ""We were fortunate enough to get a positive review").

Gliniecki says that the Fund has "a very strict budgeting process," which means it operates with external counsel almost exclusively on a fixed fee or capped fee basis. As a result, Gliniecki says, wryly, "I've had to have many 'heart-to-heart' conversations with some of the law firms that have sort of assumed that the work gets done and we'll settle up at the end, and I just don't have that kind of flexibility." She elaborates: "It does mean that upfront I've had to do a lot of work with the firms to make sure it's been scoped correctly, we have the right elements being taken care of on the legal side, so that there aren't surprises at the end on the legal end, because I simply don't have any more budget if there's a surprise at the end."

As a result, Gliniecki is committed to ensuring that external lawyers are used efficiently, by not wasting their efforts or time on things she herself is in a better position to handle. "I try to take care of internal matters myself," she says. "There is no sense in paying external lawyers to help us get our ducks in a row, to get internal approvals or to provide corporate documents or other Fund deliverables."

Thus, for instance, referring to the request for approval from the Polish Competition Authority relating to the Fund's acquisition of a controlling stake in ECS, Gliniecki recalls, "because China Exim has the lion's share of the Fund, I ultimately had to get information about China Exim with respect to the filing."

Dorothy Hansberry-Biegunska, the Competition expert who Gliniecki instructed on the matter, was highly impressed by Gliniecki's dedication to fulfilling her own obligations. "In terms of them getting approval and the directions, I have to say, it was absolutely cut and dry, and according to our time line, everything we needed, Judi got. There was a plan, and it needed to be executed, and everything we needed, we got before the internal deadlines." (For her part, Gliniecki says "I've known Dorothy for a long time and brought her in to do our first filing, as I wanted it done right").

Edward Keller, who led the White & Case team advising CEE Equity on its December acquisition of a stake in the BKF University of Applied Sciences in Hungary (which he describes as "the first sizable private equity investment in a higher education institution in the region"), doesn't mince words when expressing his respect for the Fund and its

Dorothy Hansberry-Biegunska, Partner, Hansberry Tomkiel

representatives. "I hope CEE Equity is a sign of things to come," he says, "because if you look at how they started this fund, and the incredible professionals that they've hired … on the last transaction I worked with Judi and with the Hungarian person on the ground [Investment Director] Tamas Szalai, [who] is one of the top investment professionals I've ever worked with, and that they've managed to attract a person of his caliber, and also Judi, who was a partner at an international law firm, well-known in the industry, and to be able to attract her in-house, I think is an enormous success on their part. They really picked the right people."

## The Future Is Bright

The Fund's successful first year has not gone unnoticed by its sponsors. On December 19, 2014, Li Ruogu, the China Exim Bank's Chairman and President, announced that the bank would be allocating an additional USD 1 billion to investment in CEE. Gliniecki admits that she and her colleagues are excited about the news, but cautions that "it's a very early stage, you know, [and] final decisions haven't been made yet." She won't deny, however, that "we're excited to hear that even the Chinese premier has taken note of our little efforts here."

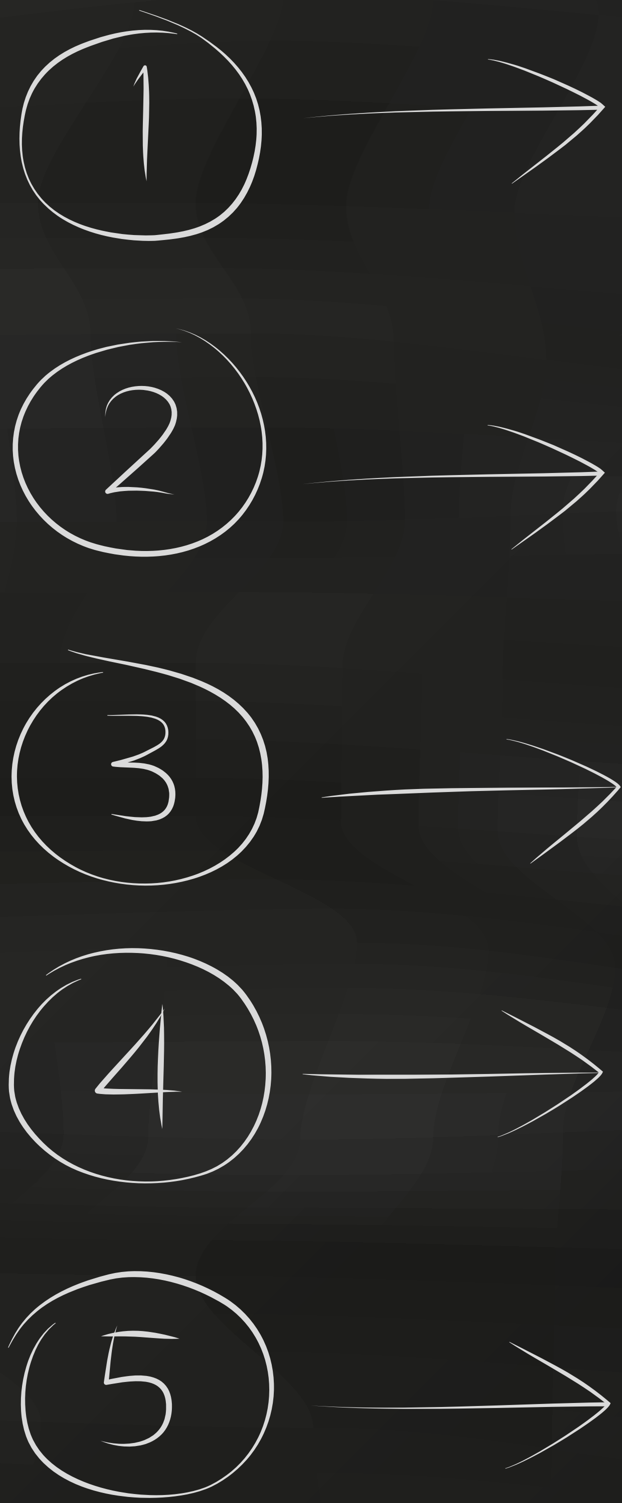
So times are good. Already in 2015, Gliniecki says, "we have a number of deals that are hot." And Polish lawyer Magdalena Tyszkiewicz has just joined the team as well, which Gliniecki expects will help her stay on top of everything going on. She'll need that help, she says with a smile: "Particularly if we get the one billion coming through, for the next few years I anticipate I'm going to be running around like crazy trying to close out the transactions the guys are bringing in the door."

* Thanks also to Pawel Bajno, Partner, Norton Rose Fulbright, for his assistance on this article.

*David Stuckey*

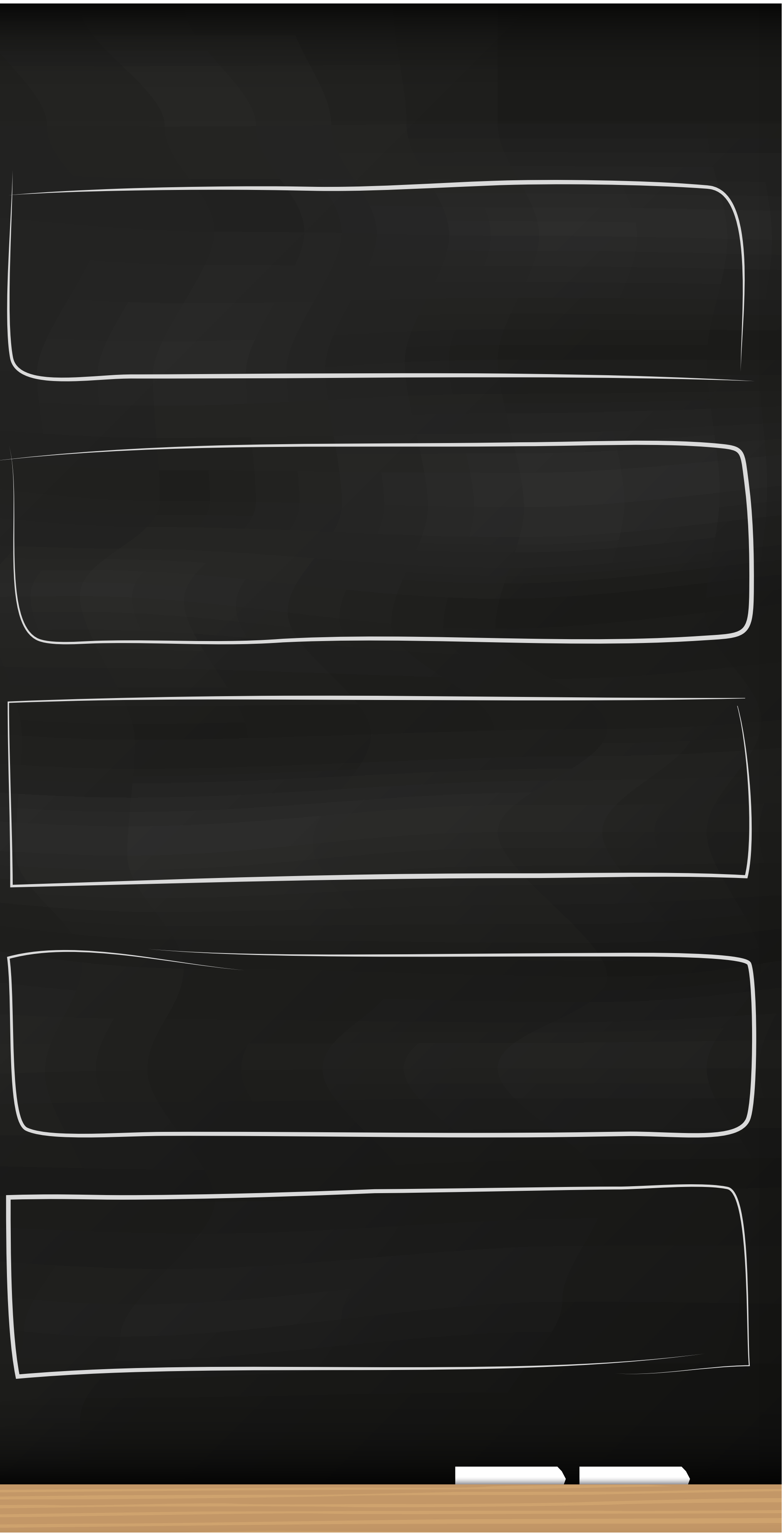
# Legal Directories:

## International vs. Local Firms in CEE Rankings




**"It's B.S. … when we were an international firm, we were a tier 1 firm. The year after we became a local brand, despite having the same team and continuing to work on the same types of projects, we dropped two tiers, only because we no longer had an international-sounding name," a Hungarian Partner at a leading law firm complained to us recently.**

**Our curiosity piqued, CEE Legal Matters decided to explore a well-known but sometimes controversial element of the process by which external counsel is selected: The legal directories.**



## The Story In The Numbers

First, we looked at Legal 500 and Chambers & Partners, to see if evidence supported the Hungarian partner's implicit allegation of bias. We considered three practice areas, to make sure we captured those in which international firms are traditionally strongest and those in which local firms are often assumed to have an edge: Corporate/M&A (Table 1); Litigation/Dispute Resolution (Table 2); and Banking/Finance (Table 3).

And some of the numbers, while not completely unexpected, jump out. For instance, 100 per cent of the firms ranked in Banking/Finance in both Russia and Poland are regional or international in Chambers (95% and 91% in Legal 500, respectively).

On a regional basis, in the Corporate/M&A practice, in 14 of 22 covered CEE jurisdictions, 50 per cent or more of the firms listed by Chambers & Partners were regional or international brands, and 9 out of 15 CEE jurisdictions covered by Legal500 had the same characteristic. In Litigation/Dispute Resolution, 8 out of 20 for Chambers & Partners and 7 out of 14 for Legal 500 listed 50 per cent or more regional and international firms, while in Banking/Finance the numbers were 12 out of 17 for Chambers & Partners and 7 out of 14 for Legal 500.

## But The Numbers Don't Tell The Whole Story

We reached out to Matthew James, Deputy Editor of Chamber & Partners, and Mike Nash, Editor - The Legal 500 EMEA, to better understand the reason why international firms – which, for the purposes of our conversations with them, include those firms we consider "regional" – make up such a large part of their listings.

Not surprisingly, both Nash and James expressly rejected the suggestion that, in evaluating the submissions, there was any bias towards international firms. Nash was emphatic: "I would say no. In fact, we make it very much a point to train our researchers to coax the best information out of local firms even if the submission is poor (or there is no submission at all), and we make an effort to seek out and emphasize good local law firms wherever possible because they are usually able to provide services at a good price point, which is attractive to many clients."

## Submissions Are Critical – Especially For Local Firms

While both James and Nash emphasized that their rankings are not solely based on law firm submissions, they clearly represent a major part of the calculus. Nash said that the Legal500 rankings are made "on the merits of available evidence," and although he explained that Chambers also ranks firms that do not make submissions, he pointed out that in CEE markets, "local firms often do not have much information in the public domain, particularly in markets where websites are not really used as a tool by law firms." For his part, James pointed to submissions to Chambers, "as a form of hard evidence of work," described client feedback as "the critical component," and noted that it can be difficult to obtain that feedback without a submission.

Nash explained that, "the single most important point from this is that any law firm which makes a submission immediately enhances its potential to be ranked because it provides data that is not available in the public domain or through third parties such as clients." Indeed, local bar regulations in many CEE jurisdictions prevent domestic firms from advertising client work – even with client permission – which can make it even more difficult to get information from sources other than submissions. This presumably at least partially accounts for Nash's suggestion that the positive effect of providing a submission "is probably bigger for local firms than it is for international firms" (which can more easily advertise completed client matters in other places and fora).

### Difference In Numbers?

Despite the greater need to provide the rankings with the evidence of their work in the form of submissions, James highlighted that, "while in overall terms the number of submissions from local firms would be higher, a greater proportion of the international firms in any given market will probably submit than will local firms." (Nash also asserted that "definitely the majority of submissions are from local firms if you look at pure numbers, but his is simply because there are fewer international firms").

When asked to explain why local firms do not make submissions at the same level as the international firms, James referred to fewer resources available to local firms, both in terms of smaller budgets and the fact that many do not have dedicated marketing teams to assist those lawyers who "out of habit" might still be keeping track of their work.

Both Nash and James rejected the suggestion, however, that ignorance of the directories themselves was the cause. James noted that CEE markets had a number of "strong local spin-offs from international firms who have retained their awareness and practice of making submissions," and Nash said about Legal500 that "we've been researching CEE for 25 years and firms know of our existence by now."

James also drew attention to the fact that, while international firms have the "marketing institutions in place" to enter submissions across the board, many local firms, for reasons of their own, limit their submissions to those practice areas where the international firms are particularly strong. He elaborated: "Since the assessment is done on a practice area individually, it is unfortunate that many [local firms] choose to focus on Corporate/M&A, which is a highly competitive field with international firms tending to be better positioned in it." By implication, then, if more local firms made a point of submitting their work in litigation, or labor/employment, or other fields which many offices of international firms tend to ignore, more of them

**Table 1: CEE Law Firms Ranked in Tiers 1-3 (Corporate/M&A) (Chambers & Partners and Legal 500)**

| | Chambers & Partners | | | Legal500 | | | | |
|---|---|---|---|---|---|---|---|---|
| Country | International | Regional | Local | International | Regional | Local | % International and Regional (Chambers & Partners) | % International and Regional (Legal500) |
| Albania | 0 | 1 | 4 | N/A | N/A | N/A | 20.00 | N/A |
| Austria | 3 | 3 | 5 | 5 | 3 | 18 | 54.55 | 30.77 |
| Belarus | 0 | 3 | 6 | N/A | N/A | N/A | 33.33 | N/A |
| Bosnia and Herzegovina | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Bulgaria | 1 | 0 | 11 | 1 | 2 | 14 | 8.33 | 17.65 |
| Croatia | 2 | 1 | 7 | 2 | 1 | 17 | 30.00 | 15.00 |
| Czech Republic | 6 | 2 | 7 | 8 | 3 | 9 | 53.33 | 55.00 |
| Estonia | 1 | 9 | 1 | 1 | 12 | 7 | 90.91 | 65.00 |
| Greece | 1 | 0 | 13 | 3 | 1 | 36 | 7.14 | 10.00 |
| Hungary | 4 | 0 | 5 | 8 | 5 | 7 | 44.44 | 65.00 |
| Kosovo | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Latvia | 1 | 5 | 0 | 1 | 14 | 6 | 100.00 | 71.43 |
| Lithuania | 0 | 7 | 2 | 1 | 10 | 4 | 77.78 | 73.33 |
| Macedonia | 0 | 1 | 6 | N/A | N/A | N/A | 14.29 | N/A |
| Moldova | 0 | 0 | 5 | N/A | N/A | N/A | 0.00 | N/A |
| Montenegro | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Poland | 12 | 0 | 7 | 10 | 0 | 8 | 63.16 | 55.56 |
| Romania | 2 | 0 | 7 | 4 | 3 | 14 | 22.22 | 33.33 |
| Russia | 15 | 1 | 10 | 12 | 1 | 5 | 61.54 | 72.22 |
| Serbia | 1 | 3 | 6 | N/A | N/A | N/A | 40.00 | N/A |
| Slovakia | 3 | 0 | 5 | N/A | N/A | N/A | 37.50 | N/A |
| Slovenia | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Turkey | 3 | 0 | 16 | 5 | 0 | 25 | 15.79 | 16.67 |
| Ukraine | 0 | 5 | 2 | 3 | 4 | 18 | 71.43 | 28.00 |

*Data Collected on December 20, 2014*

**Table 2: CEE Law Firms Ranked in Tiers 1-3 (Litigation/Dispute Resolution) (Chambers & Partners and Legal 500)**

| | Chambers & Partners | | | Legal500 | | | | |
|---|---|---|---|---|---|---|---|---|
| Country | International | Regional | Local | International | Regional | Local | % International and Regional (Chambers & Partners) | % International and Regional (Legal500) |
| Albania | 0 | 1 | 4 | N/A | N/A | N/A | 20.00 | N/A |
| Austria | 3 | 3 | 5 | 5 | 3 | 18 | 54.55 | 30.77 |
| Belarus | 0 | 3 | 6 | N/A | N/A | N/A | 33.33 | N/A |
| Bosnia and Herzegovina | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Bulgaria | 1 | 0 | 11 | 1 | 2 | 14 | 8.33 | 17.65 |
| Croatia | 2 | 1 | 7 | 2 | 1 | 17 | 30.00 | 15.00 |
| Czech Republic | 6 | 2 | 7 | 8 | 3 | 9 | 53.33 | 55.00 |
| Estonia | 1 | 9 | 1 | 1 | 12 | 7 | 90.91 | 65.00 |
| Greece | 1 | 0 | 13 | 3 | 1 | 36 | 7.14 | 10.00 |
| Hungary | 4 | 0 | 5 | 8 | 5 | 7 | 44.44 | 65.00 |
| Kosovo | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Latvia | 1 | 5 | 0 | 1 | 14 | 6 | 100.00 | 71.43 |
| Lithuania | 0 | 7 | 2 | 1 | 10 | 4 | 77.78 | 73.33 |
| Macedonia | 0 | 1 | 6 | N/A | N/A | N/A | 14.29 | N/A |
| Moldova | 0 | 0 | 5 | N/A | N/A | N/A | 0.00 | N/A |
| Montenegro | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Poland | 12 | 0 | 7 | 10 | 0 | 8 | 63.16 | 55.56 |
| Romania | 2 | 0 | 7 | 4 | 3 | 14 | 22.22 | 33.33 |
| Russia | 15 | 1 | 10 | 12 | 1 | 5 | 61.54 | 72.22 |
| Serbia | 1 | 3 | 6 | N/A | N/A | N/A | 40.00 | N/A |
| Slovakia | 3 | 0 | 5 | N/A | N/A | N/A | 37.50 | N/A |
| Slovenia | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Turkey | 3 | 0 | 16 | 5 | 0 | 25 | 15.79 | 16.67 |
| Ukraine | 0 | 5 | 2 | 3 | 4 | 18 | 71.43 | 28.00 |

*Data Collected on December 20, 2014*

### The difficulty in categorization

For the purposes of our review: a local or "domestic" firm is one in which all of its offices are located in one country; a "regional" firm is one with offices in more than one country in continental Europe – but not in London or anywhere outside Europe; and finally, an "international" firm is one with at least one office in CEE, and an office in London, New York, or elsewhere outside Europe.

No matter what definitions one uses, however, line-drawing can become difficult. For example, in a number of jurisdictions, because of local bar regulations, firms are sometimes associated/affiliated with an international firm yet keep local names (examples include Bogdanovic, Dolicki & Partners, the associated firm of Hogan Lovells in Croatia, or the Esin Attorney Partnership, the Turkish arm of Baker & McKenzie). We opted to classify these "local firms" as international firms where we knew the working relationship involved exclusivity. By contrast, TSAA in Romania is defined as a "local" firm despite its association with Magnusson.

Furthermore, the markets are in a state of flux, and relationships change frequently. Thus, for instance, despite the fact that YukselKarkinKucuk in Turkey is no longer affiliated with DLA Piper, we still counted them as "international" in our tables, since the affiliation was still in place at the time the most recent rankings were published.

And differences of opinion are inevitable. Nash at Legal 500, for instance, says: "I am not sure I agree with your definition of what is international and what is local unless you are saying that any Russian law firm which becomes internationalized loses its right to call itself Russian. For example, in my view, Goltsblat BLP and Egorov Puginsky and Partners would count as Russian. That makes 7 of the 18 firms (39 per cent) in tiers 1-3 in dispute resolution: litigation." It is worth noting that, even under his definition, the number of local firms in the Legal 500 ranking for Russia is still under half.

might appear in the rankings.

## Difference In Quality?

Nash at Legal500 described the need for attention to detail and thoroughness: "The difference in quality comes down to the time devoted to the submission, language capability, familiarity with the research process, and modernity of the lawyers to appreciate the value in participating in good independent directories."

James at Chambers provided the general rule about the difference between international firms and local firms, saying that "international firms will almost always provide all of the information that we ask for, as will a number of local firms, but some other local firms who are less familiar with our process might not be as thorough."

Nash, then, completing the exercise, explained the exceptions to the rule: "Some local law firms provide excellent submissions while some international firms fail to make submissions. International law firms usually have bigger business-development teams to make submissions, but it does not always mean that the submissions have higher quality. A local firm with an interested partner can produce excellent submissions. Smaller law firms can struggle to provide up-to-date information if they have not been involved in a particular type of matter recently, but that in itself is a useful differentiator."

## Nature of the firms and the directories

Finally, of course, the target audience of the directories themselves may affect their findings, and cross-border competency is therefore of particular importance. James noted that "we do emphasize cross-border work in the Global guide, and a cross-section of domestic and international work in Europe." Nash elaborated: "The Legal500 Guide is mainly aimed at an international audience coming into a market, so that cross-border element can be important. A Hungarian company is less likely to read the Legal500 in English to decide which law firm to instruct but a company going into Hungary is going to want a neutral opinion. Some of the local firms will suit the need of a US company but the company's international policies are going to mean that international law firms are likely to be attractive. Some Hungarian firms will be attractive too, but only if they meet certain standards of size, quality, code of ethics, and other criteria."

Accordingly, Nash suggested, those local firms that appear in the rankings should be particularly proud. "I would say it is a credit to local law firms that so many are ranked," he said, "because local firms are usually smaller and do not easily gain access to the international clients that international firms enter the market with."

## Conclusion

Was the Hungarian Partner who made the accusation about bias correct? Who knows? Certainly James and Nash reject the suggestion out of hand, and without information about the thoroughness and quality of the firm's submissions (and other evidence of successful client service) there's no way of knowing for sure.

But one thing is clear: In this highly competitive profession, where the fight for clients is fierce and the criteria employed by those clients in selecting outside counsel so opaque, every detail counts. The upshot will surprise no one: Firms should take the submission process seriously, and be thorough, complete, and comprehensive in their submissions.

*Radu Cotarcea*

### Table 3: CEE Law Firms Ranked in Tiers 1-3 (Banking/Finance) (Chambers & Partners and Legal 500)

| | Chambers & Partners | | | Legal500 | | | % International and Regional (Chambers & Partners) | % International and Regional (Legal500) |
|---|---|---|---|---|---|---|---|---|
| Country | International | Regional | Local | International | Regional | Local | | |
| Albania | 0 | 1 | 4 | N/A | N/A | N/A | 20.00 | N/A |
| Austria | 3 | 3 | 5 | 5 | 3 | 18 | 54.55 | 30.77 |
| Belarus | 0 | 3 | 6 | N/A | N/A | N/A | 33.33 | N/A |
| Bosnia and Herzegovina | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Bulgaria | 1 | 0 | 11 | 1 | 2 | 14 | 8.33 | 17.65 |
| Croatia | 2 | 1 | 7 | 2 | 1 | 17 | 30.00 | 15.00 |
| Czech Republic | 6 | 2 | 7 | 8 | 3 | 9 | 53.33 | 55.00 |
| Estonia | 1 | 9 | 1 | 1 | 12 | 7 | 90.91 | 65.00 |
| Greece | 1 | 0 | 13 | 3 | 1 | 36 | 7.14 | 10.00 |
| Hungary | 4 | 0 | 5 | 8 | 5 | 7 | 44.44 | 65.00 |
| Kosovo | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Latvia | 1 | 5 | 0 | 1 | 14 | 6 | 100.00 | 71.43 |
| Lithuania | 0 | 7 | 2 | 1 | 10 | 4 | 77.78 | 73.33 |
| Macedonia | 0 | 1 | 6 | N/A | N/A | N/A | 14.29 | N/A |
| Moldova | 0 | 0 | 5 | N/A | N/A | N/A | 0.00 | N/A |
| Montenegro | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Poland | 12 | 0 | 7 | 10 | 0 | 8 | 63.16 | 55.56 |
| Romania | 2 | 0 | 7 | 4 | 3 | 14 | 22.22 | 33.33 |
| Russia | 15 | 1 | 10 | 12 | 1 | 5 | 61.54 | 72.22 |
| Serbia | 1 | 3 | 6 | N/A | N/A | N/A | 40.00 | N/A |
| Slovakia | 3 | 0 | 5 | N/A | N/A | N/A | 37.50 | N/A |
| Slovenia | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Turkey | 3 | 0 | 16 | 5 | 0 | 25 | 15.79 | 16.67 |
| Ukraine | 0 | 5 | 2 | 3 | 4 | 18 | 71.43 | 28.00 |

# Weighing Pros and Cons: Investing in Belarus

CEE Legal Matters reached out to Ivan Martynov, the Managing Partner of Archer Legal in Belarus, to describe the current investment market in his country.

**CEELM: From 20,000 foot perspective, what is the status of the investment climate in Belarus at the moment?**

I.M.: It depends on the perspective you take in analyzing this question. From a legal point of view I'd say there are few constraints left in the country in this regard. In fact, much in line with the High Tech Park (the 124-square acre plot in Minsk specially set aside by the government for the development of modern technologies and attraction of both Belarusian and foreign technological companies (see Buzz Section – Belarus – Issue 1.6.)), over the last few years, Belarus has done a lot to make itself an attractive investment jurisdiction in terms of investments (or at least has made systematic efforts in this direction).

**CEELM: What are the most promising steps taken to attract investors?**

I.M.: Quite a few. There are several ways you can set up a new operation in the country, plus several preferential regimes (based on zones). Such "free economic zones" are designed primarily for manufacturing businesses, which tend to export most of their production outside of Belarus. Examples include the regional free economic zones located in each of Belarus's six provinces – called "oblasts" – and in certain rural areas, where residents are exempt from either certain taxes or restrictions. For example, there are exemptions from profit tax that are made available, or exemptions on land tax, or exemptions from foreign exchange controls. The latter is something many business people may not be familiar with to in other Western markets, but in Belarus we have such exchange controls set up in order to prevent foreign currency from being syphoned out of the country, due to substantial dependency on Russian imports of raw materials.

There are several other incentives, ranging from one preferential regime to another. Residents of the High Tech Park, for example, also benefit from employees paying only 9% income tax (compared to the usual 12%) and are able to receive payments from offshore jurisdictions that are normally blacklisted. There are, in fact, several very successful companies that have resulted from these kinds of exemptions, the most famous of which is EPAM, the first – and I think still only – company from Belarus to have an IPO in the West.

Another preferential regime revolves around manufacturing in rural areas (towns with a population of less than 50 thousand) where companies receive similar tax exemptions as long as they employ a local workforce. Investment agreements represent yet another preferential regime offering a number of tax advantages, a much quicker process of obtaining compensation on the value added tax related to greenfield and other construction investments (asset development, investments in equipment, etc.), and exemptions from the right to lease.

**CEELM: The right to lease?**

I.M.: Yes. I think this is rather specific to Belarus but here the state is the predominant landowner and, as a greenfield investor, you would lease land from the state. Normally, as the investor, you'd need to pay a certain amount of money for the "right" to lease but, if an investment regime is signed, companies are exempted from this as well.

**CEELM: Have all these yielded results so far?**

I.M.: There are notable investment projects with funding coming predominantly from the Gulf Countries, Russia, China, and neighboring countries such as the Baltic States, Poland, and the Balkans. There is also investment from Western European states, but I would say the business in the country has higher expectations for investment regulations.

**CEELM: Why is that?**

I.M.: There are several potential reasons in my mind, thought I am not sure I'd be able to quantify which ones have the most impact. There is, unfortunately, an issue related to reputation. Over the last several years, there has been a great deal of negative (and

Ivan Martynov, Managing Partner, Archer Legal

in my opinion, unwarranted) press about the political system in the country, which has, of course, Western European investors worried.

At the same time, there are several high profile cases where the government repossessed investments. In many of these instances, it comes down to the manner in which these are portrayed in the media. If you take a careful look at what actually happened I think it is more a matter of foreign investors not taking into account the unique expectations of them in the Belarusian market, in terms of social effects. Specifically, in most instances where an investor signs an investor agreement here, it is expected that it commits to a presence of x years and that it will employ x people. The expectation is that it will invest in upgrading relevant infrastructure and relevant production tools and not engage in massive layoffs and restructuring. The core scope of this is to further the enterprise receiving the investment and minimizing the potential for social harm. At the same time, while there are several tax exemptions available, it is expected that the investor will help build up the business into a profitable one and that it will, at least in the long run, contribute to the overall budget of the country. Perhaps the most unreasonable expectation is that the investor should undertake what we call a "social burden." You need to realize that many potential target enterprises date back to Soviet times and are made institutionally responsible for other social institutions, such as kindergartens, health resorts, etc. The government generally expects that this support will continue even following the sale of the business, which, one can imagine, spooks many potential investors away.

**Table 1: Which Forms of Companies Are Popular in Belarus?**

| Form of Company | Number of Participants (Natural and Legal persons) | Minimal Capital Requiremets |
|---|---|---|
| Limited liability company | From 2 to 50 (a bill is being discussed to provide far a limited liability company with a single participant) | There are no minimum requirements |
| Unitary company | 1 | There are no minimum requirements |
| Closed joint-stock Company | From 2 to 50 (a bill is being discussed to provide for a limited liability company with a single participant) | 100 base units (which is 1,200 US dollars approximately) |

*Data Source: investinbelarus.by*

Last, but surely not least, proximity with Russia (an immense market) has mixed impacts on potential investor attractiveness. On the one hand, it does help in that entering Belarus can offer a cost-effective entry point into the Russian market. On the other hand, when potential investors are choosing between Belarus, Russia, or Kazakhstan, towards the same end, other elements end up being factored in, such as which country has a more stable currency and would be easier to leverage. Unfortunately, in relative terms, Belarus often loses out on this comparison. At the same time, the answer to the question of where the potential for getting additional equity support is higher is always Russia.

On the other hand we see industrial investors even from Russia opting to develop their manufacturing facilities in Belarus because of cost efficiency in terms of prices of labor, real estate, construction, and land rental payments. Very importantly, investors working in Belarus always recognize the high quality of engineering and technical personnel in the country.

Unfortunately, few Western investors seem to recognize what the Russians understood a long time: due to the international agreements between Belarus, Russia, and Kazakhstan, the three countries are basically a single market at this point – so establishing a business in Belarus provides access to the major markets of Russia and Kazakhstan as well.

**CEELM: I take it Russia is a bit of an investors' black hole – too big for its gravity not to attract potential investors looking at the region?**

I.M.: To some extent, yes, that seems to be the case.

**CEELM: While on Russia, are current events turning these investors who would otherwise consider the Russian market toward Belarus, or do you feel they affect the region as a whole and negatively impacting Belarus as well?**

I.M.: That is really hard to say. The Russian economy at the moment is highly uncertain (which affects both the Russian and Belarusian Rubles), but it comes down to whether the government is able to build a good case for companies, especially in manufacturing where there is a lot of potential to invest here as opposed to more – for lack of a better term – politically kosher countries. The country's overall neutrality and its role as a platform these days for the parties may help build that needed positive image for us and, hopefully, that will pan out in the near future. There are other positive independent developments though that might further help build that image as well.

**CEELM: What is that?**

I.M.: Well, for a long time, investors were faced with a rather uncertain situation, with most foreign companies tending to turn towards US and UK law for their contracts, and it was unclear whether a decision in the US or UK would be enforceable in this country. Recently, however, there has been an instruction from the Superior Court in Belarus that mutuality with the American/English systems is presumed unless proven otherwise. That is definitely a positive sign and a good first step at addressing this uncertainty.

**CEELM: What about people who do turn towards the country? What are the main types of work you see coming in?**

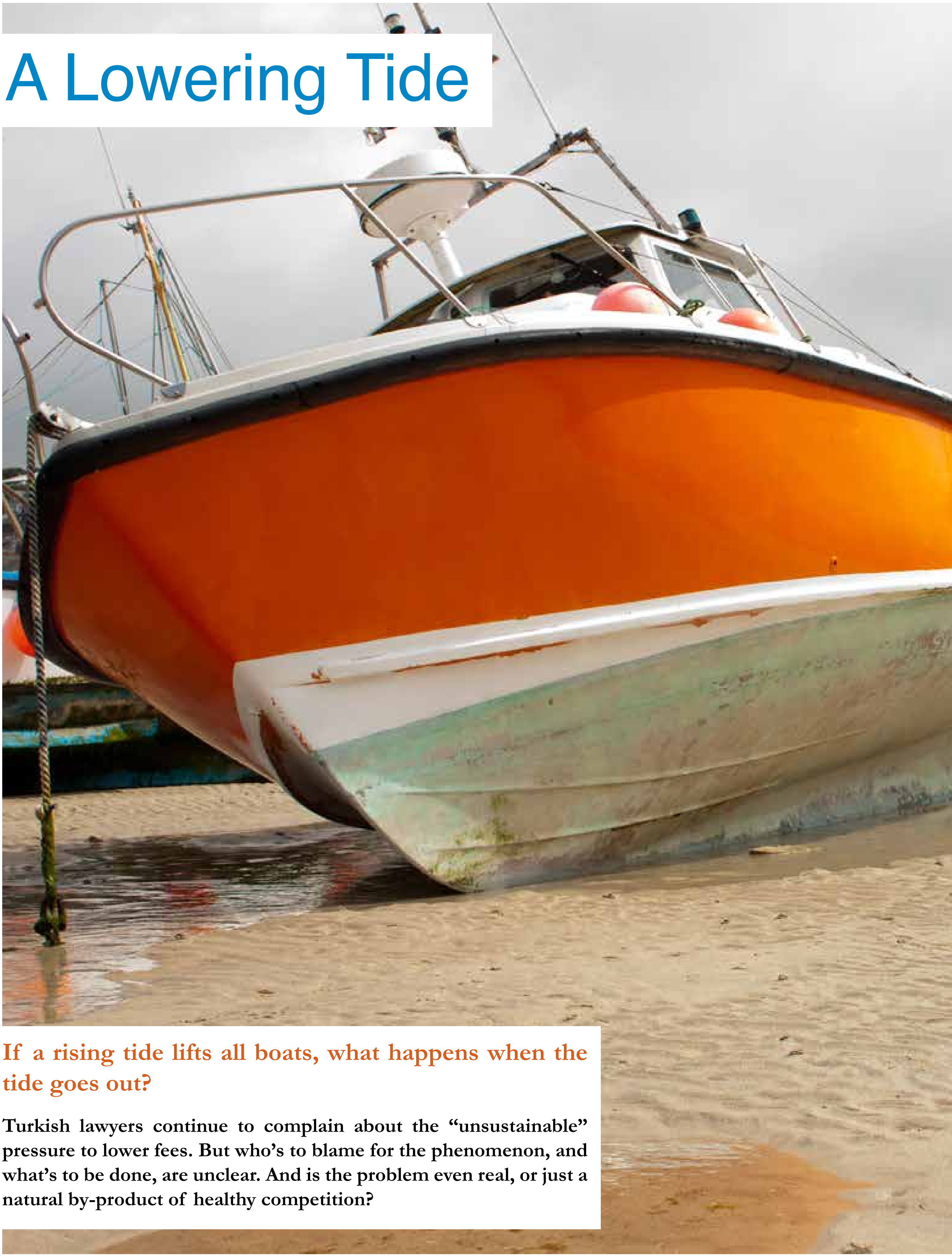
I.M.: We focus primarily on working for investors in construction or who are looking to make greenfield investments in the country – perhaps looking to build a hotel, a shopping center, or a manufacturing plant in Belarus. But we're also advising several new potential players looking to enter the market. The bulk of advisory work is focused on securing the investment preferences and exemptions I spoke about earlier – especially since there are different tiers in place for these exemptions. Another type of work we are dealing with is litigation. We're seeing a number of investors with a very high risk-appetite who come in the market and rarely have experience in working with the government. Lastly, taxation matters are a regular area we are asked to advise on, since, like any other type of investment, transactions are not only assessed based on the business/litigation risks but also based on international and local taxation regimes.

Radu Cotarcea

# Market Spotlight Turkey

## In this section:

# A Lowering Tide



**If a rising tide lifts all boats, what happens when the tide goes out?**

**Turkish lawyers continue to complain about the "unsustainable" pressure to lower fees. But who's to blame for the phenomenon, and what's to be done, are unclear. And is the problem even real, or just a natural by-product of healthy competition?**

## Shrinking Elbow Room

The past decade has seen the sleepy Turkish legal market come to life, as the four international law firms with long-established presences (White & Case, Gide Loyrette Nouel, Salans, and Denton Wilde Sapte (the latter two of which merged in 2013)) have been joined by over 10 more since 2009 alone. CMS, the most recent arrival, opened its office in 2013.

But the boom may be over. Not only was 2014 the first year in many in which no new ILFs arrived on the shores of the Bosphorus, but the number of international law firms in Turkey actually shrank for the first time ever, as DLA Piper ended its formal association with Yuksel Karkin Kucuk (YKK) and allowed its Foreign Attorney Partnership in Turkey to expire. (It doesn't appear DLA Piper is planning to return anytime soon, either, as the firm has allowed its foreign lawyers in Turkey – Partners Jonathan Clarke and Tamsyn Mileham – to transfer over to YKK).

Eda Cerrahoglu Balssen, Partner, Cerrahoglu Law Firm

While some Turkish lawyers believe the arrival of more ILFs is inevitable, Eda Cerrahoglu Balssen, a Partner at the long-established Cerrahoglu Law Firm, says that "as far as I know, the foreign firms that have entered the market recently – not the old ones – they have not really found what they're looking for, or met their expectations from a few years ago. For various reasons. One is the pricing in the market, which is pretty different than what European law firms are used to. The clients are cost conscious. So that's one area that is disappointing for the foreign firms."

One partner at an international law firm (as he requested to remain anonymous, we'll call him "Partner 1") disagrees. He says, "I think there are good opportunities for international firms. The difficulty for them is finding the right partner. It's a slower game; it's not an overnight success, but if you look at what Allen & Overy are beginning to build, you can see that, if you find the right partners, you can make a success out of the Turkish market. You can still be very, very profitable, because the fee pressure may be more severe in certain sectors, but the cost base is still relatively low, and you don't have to pay people exorbitant amounts."

And Partner 1 thinks the future for international firms is bright. "I think a new generation of lawyers is coming through. People are a lot more savvy, a lot more Western-oriented, and that again represents an opportunity for the international firms ... and I think clients are beginning to understand that they need to use them, and not go to the gray-haired guy with 50-years of experience." In his opinion, the fight is over, the battle won: "the banks are rarely using Verdi, Yazici, any more, compared to White & Case, Clifford Chance, and Allen & Overy." Thus, he concludes, "the international firms are taking a market share, even if that market is not so massive at the moment because of the fee pressure."

Ah, the fee pressure.

## Fee Pressure Remains Intense – or Does It?

"There's real [fee] pressure .... There is premium work in Turkey, but not enough to feed the entire market. And lawyers are fighting over these premium deals by sometimes offering huge discounts. It's a buyer's market at the moment, and clients feel confident that just giving the work is enough, to get the credit of working for X company, and for X deal. It's, of course, not sustainable"

– Zeynep Cakmak, Managing Partner, Cakmak Attorneys at Law

If the battle is over, it appears the news hasn't filtered through the market yet, as long-established Turkish firms and an ever-increasing number of spin-offs – smaller offices started by partners with ILF experience – continue to jostle for space with their newer international law firm neighbors. As a result, complaints about the pressure on fees resulting from what many believe to be an unsustainable number of firms are a common feature of any conversation with lawyers.

As is true so often in Turkey, however, everybody characterizes the problem, and assigns the blame, differently. The "spin-offs" are often accused of undermining the traditional fee structure by offering subpar services at unsustainable rates. One managing partner at a top tier law firm ("MP 1") notes that, "of course when it comes to important and critical legal matters, clients still look for quality, but most of the time they want to pay very low fees, and they are happy with mediocre legal service they get from law firms, and that of course makes those split-off law firms survive."

Hakki Gedik, Managing Partner, Gedik & Eraksoy

Hakki Geddik, who in 2012 split off from market-leading Herguner Bilge Ozeke with colleague Gokhan Eraksoy and a team to tie up with Allen & Overy, describes a similar phenomenon. In Geddik's opinion, Turkish clients can be divided into two groups: those who make their decision about external counsel primarily on price, and the "growing number of more sophisticated Turkish clients" who factor in other relevant criteria. "Whenever I go into an RFP I try to anticipate whether the client falls into the first or the second category," Geddik says. He sighs, "Many Turkish clients fall into the first category."

A foreign partner at an international law firm suggests that the pressure to cut fees is especially acute in the Project Finance field, "because the international law firms that are here are mainly focusing on that area." He admits to concern: "I don't really know where that's going to go, because there comes a low point where you can't charge any less."

Another common complaint is that many firms "buy" client work at unsustainable levels as part of a long-term strategy that smaller firms can't match. Like the other proposed

**Graph 1: International Law Firms in Turkey and Associated Turkish Firms**

| International Firm | Local Firm |
|---|---|
| Allen & Overy | Gedik & Eraksoy |
| Baker & McKenzie | Esin Attorney Partnership |
| Brandi Partners | Gurhan & Partners |
| Chadbourne & Parke | Bilgic Avukatlik Ortakligi |
| Clifford Chance | Yegin Ciftci Attorney Partnership |
| CMS | Yalcin Babalioglu Attorney Partnership |
| Curtis Mallet-Prevost | Ak Law Offices |
| Dentons | Balcıoglu Selcuk Akman Keki Avukatlik Ortakligi |
| Gide Loyrette Nouel | Ozdirekcan Dundar Senocak Avukatlik Ortakligi |
| Kinstellar | CCAO Law Firm |
| Locke Lorde Edwards | Ismen Gunalcin Attorney Partnership |
| Schoenherr | CTK Law Office |
| White & Case | Akol Law Offices (Istanbul) and Cakmak Law Offices (Ankara) |

causes, there's obviously a basis in fact. One well-established managing partner in the market complained that: "I don't want to give a name, but I know an international law firm that's making a 70% discount on the rates of one of its named partners. It's incredible. It's lower than a mid-level associate, just to get the premium work."

And it's not just the international firms, of course. A managing partner at a well-known local firm ("MP 2") refers to the rankings produced by the legal directories (see page 26) in conceding that, "since our position is in the second tier, this year we decided to give huge discounts to get huge projects."

## "The Game"

Erim Bener, Managagnig Partner, Bener Law Office

To some extent, however, the constant pointing to fee pressures has – after all these years – itself become a cliché. Erim Bener, for one, says with a smile that fee pressure has always been an issue in Turkey, perhaps with the exception of the early 2000s, and that "this is part of the game in Turkey."

In response to complaints about deliberate "buying" of deals, one managing partner at an international law firm in Istanbul laughed that there's nothing new under the sun – and pointed out that a number of now-strong Turkish firms originally elbowed their way to the top of the market by doing just that. He said, "and so the culture is very familiar with working up the ranks, even if at times that means buying deals, so I can say, this is nothing new for us."

Selin Ozbek Cittone, Managing Partner, Ozbek Attorneys at Law

It's also been suggested that some of those complaining the loudest may be confusing a global problem for a local one. Selin Ozbek Cittone, the Managing Partner at Ozbek Attorneys at Law, refers to the global financial crisis that hit all European legal markets back in 2007/2008. According to Cittone, fee pressure is "a problem," in Turkey as everywhere else, but "somehow everyone has gotten used to the fact that you have to cap budgets, and things like that, since 2008. This is a habit not only for lawyers in Turkey, but also in Europe." Ultimately, Cittone says, the market has more or less adapted to the new reality, and "we've gotten used to the idea that we need to somehow rationalize our fee, and reasonably explain why we need to charge a certain amount of Euros or dollars for certain projects."

And in any event, not everyone identifies fee pressure as the defining characteristic of the market. Geddik says, "I don't think the challenge is really on the pricing side. I think the challenge of the Turkish market is on the service-level side." He believes that many partners at local firms focus exclusively on the generation of the work, leaving its execution to the associates. "So," he says, "I really think that the main challenge that we as Turkish lawyers face is the need to convince clients that even seasoned practitioners are still willing to fight the battle in the trenches and do not see themselves as managers sitting in the office behind the desk and having junior lawyers doing the actual work."

Onur Kucuk, Partner, Bener Law Office

Other lawyers believe that they see signs that clients are beginning to notice the difference. Several partners at international law firms described what they see as a "slide towards quality" in the market. Partner 1 elaborated that, "for the first time you're beginning to see the big Turkish industrialist groups looking for international law firm capability, rather than the old Turkish guard, so you're seeing a decline in my view of the traditional Turkish firms, and a rise of the more savvy international law firms."

## It Takes Two to Tango

"There's so much diversification, and a split between local law firms. At one point it will become saturated. It has to. It can not continue like this. This is not healthy. There's a cake. It's not a very big cake. And everyone's trying to take a slice from it. Consolidation must happen."

– MP 1

Regardless of who's to blame, many believe that firm mergers are inevitable. Levent Celepci, Managing Partner at the CTK Law Office – the firm tied up with Schoenherr – calls consolidation "the obvious answer" to the "huge increase in competition we've seen within a short period of time."

And right on time, 2014 witnessed the first-ever merger of two Turkish firms, as former White & Case Partner Cem Davutoglu agreed to subsume his eponymous firm into the larger Bener Law Office, which as a result grew to over 50 fee earners. Although both Erim Bener and Davutoglu describe the merger as a remarkable success, no other firms have followed suit so far.

Is consolidation the answer? Well, it wouldn't hurt. More elbow room means higher fees. But of course nobody suggests that they themselves are considering merging with another firm – the suggestion is always that others should sacrifice their personal and professional goals for the betterment of the market as a whole.

In fact, it appears that many of the Turkish lawyers who call for others to merge may be remembering the "golden days" when competition wasn't as fierce. On the other hand, competition is the familiar by-product of dynamic and bustling markets, and few Turkish lawyers wish to see those markets dry up.

So can lawyers look forward to a time when Turkey will remain as popular with investors as it is today, but fees will be back where they were 10 years ago? As Jake Barnes responded in Hemingway's *The Sun Also Rises*: "Isn't it pretty to think so?"

Thanks also to Tolga Ismen, Serhan Kocakli, and Begum Ozaydin for their help in the preparation of this article none of whom were quoted anonymously in this story.

*David Stuckey*

### Turkish Experts Disagree on Outlook for 2015

- Senior Partner at Leading Turkish Law Firm: "Foreign investment has definitely slowed. That's how it should be. I think if a company has not yet entered the market and is now considering it, I think they should have a good plan and do all their research, and take all their time before deciding to do so. Because it's horrifying in a way – unfortunately, and it's not something I'm proud of, but unfortunately that's the case. But new entries should be … they're right to be careful."

- Zeynep Cakmak: "We certainly have seen a slow down in the entry of foreign investors into Turkey due to the political developments in the past 2 years. The constant election environment has also affected the appetite of foreign investors. This environment will likely continue until the June general elections.

- Hakki Geddik: "From my very subjective personal experience I haven't seen one deal that's been put on hold because of political developments, neither from the Gezi protests or more recently, so from my personal experience, I can say that there has been no hesitance on the part of foreign investors to invest in Turkey. As far as I can see, financial investors take the view that the elections are a done deal. I don't see any clients postponing a decision to invest in Turkey based on the elections."

- Onur Kucuk: "I spoke with a number of Turkish PE managers in the past couple of weeks. I was fairly pessimistic about 2015 until I spoke with them, but their expectations for 2015 were surprisingly positive. And now I'm more confident and more optimistic about 2015. There will be a few large deals this year in Turkey, and the legal market this year will be growing."

- Selin Ozbek Cittone: "It's hard to tell, because you don't know how the country is going to react to the elections and all these things. It's hard to say, we know that foreign investment is slower, compared to the past. But I'm also not pessimistic, to be honest. We have a lot to do. In the beginning of 2014 we said the same thing – 'we don't know how it's going to go' – but it went well for us, and ended up being better even than 2013!"

- Managing Partner at International Law Firm: "I don't want to be too pessimistic, because this country has recovered from such periods before, and it will recover at one point, but next year will be a difficult year, I think."

- Hakki Geddik: "Yes. I'm pretty optimistic that 2015 will be better. Every year for us has been better than the year before it, so we expect this to be much better as well."

- Levent Celepci: "We're not very, very bullish for 2015, but things should be better by the second half of the year. We're going to have a slow first part of the year, until election time, and then 2-3 months that will be quite exciting, and then the summer months that are always slow. So we're basically going to lose one quarter, but after that things should come to normal."

# Market Snapshot: Turkey

## PPP in Turkey: Turkey Reforms Healthcare PPPs to Encourage Investment

Daniel Matthews, Managing Partner, Baker & McKenzie (Istanbul), and Batuhan Uzel, Associate, Esin Attorney Partnership

To enhance the quality of public services, Turkey is striving to increase investment in areas such as transportation, energy, and healthcare through build-operate-transfer or public private partnership ("PPP") structures. There are 16 PPP hospital projects in 14 cities in Turkey, with a total capacity of 24,000 beds, already under construction; additionally, the tender process for PPP hospital projects in the cities of Denizli, Samsun, Sanliurfa, Tekirdag, and Kutahya, approved by the High Planning Commission, will be finalized in early 2015. The ultimate goal of the Ministry of Health ("MoH") is a total of 90,000 new beds throughout Turkey by the end of 2018.

So far, PPPs in Turkey have only been used in the healthcare sector. As there is no general PPP law in Turkey applicable to projects without regard to sector, healthcare sector PPP projects are regulated by rules enacted specifically for healthcare projects. To establish a legal basis for healthcare sector PPP projects, the Turkish Parliament amended the Health Services Basic Law (No. 3359), supported by a regulation issued on July 22, 2006. To address constitutional challenges to the law, which led to injunctions by the Council of State, the Health Services Basic Law was later reformed into the Law on Construction of Facilities, Renovation of Existing Facilities, and Purchasing Service by the Ministry of Health under a Public Private Partnership Model (No. 6428) (the "Hospital PPP Law") issued on March 9, 2013. The implementing regulation was similarly replaced by a new regulation on May 9, 2014.

The Hospital PPP Law and the regulation of May 9 introduced specific requirements for healthcare PPP project agreements. For example, the term of a project agreement between a project company and the MoH is limited to 30 years, plus the construction period. Furthermore, payments under the project agreement are paid out of MoH working capital and the central government's budget, giving comfort to lenders providing finance for these projects. Other provisions intended to encourage third-party financing include permitting the parties to amend the project agreement – subject to MoH approval – including the price, in response to a force majeure event, and to reconcile contradictions between the project agreement and its annexes.

In conjunction with the Hospital PPP Law, the Law on Public Financing and Debt Management (No. 4749) was amended to introduce debt assumption by the Turkish Treasury for healthcare PPP projects, whereby, in the case of the termination of a project agreement, the project company's debts payable to foreign lenders can be assumed by the Treasury upon a decision of the Council of Ministers. Additionally, the Hospital PPP Law relaxed the conditions for obtaining a government guarantee for healthcare PPP projects, lowering the investment threshold to TRY 500 million from TRY 1 billion.

The Hospital PPP Law also imposes new requirements intended to increase local content in the projects. Now, for example, at least 20% of the medical equipment installed in the projects must be domestically manufactured. The MoH, however, in the tender documentations, may specify an even higher local content requirement.

Addressing the ever-changing and developing nature of PPP models, the Hospital PPP Law will serve to keep project agreements in effect despite any operation and financing difficulties.

## Banking in Turkey: An Overview of The Turkish Banking Sector

Gozde Cankaya, Counsel, and Sait Eryilmaz, Associate, Yegin Ciftci Attorney Partnership

Despite the continuing volatility in international capital flows and an increased foreign exchange exposure stemming from persistent exchange rate depreciation, the Turkish banking sector managed to remain strong in 2014. A considerable account deficit and inflation made the Turkish economy relatively more vulnerable and resulted in a tighter fiscal policy for the 2015 budget program. Yet, thanks to high capitalization (total assets of the banking sector increased by 15.1% in December 2014), low non-performing loans portfolios (down from 5.27% in December 2009 to 2.85% in December 2014) and good liquidity buffers, the Turkish banks stayed resilient despite a slight downturn in their expected profits (mainly due to the increase in consumer protection measures (i.e., an increase in provisioning on credit cards and limits on their ceilings and installments)). In order to maintain the sector's strength, it appears to be essential that the Banking Regulatory and Supervision Agency (BRSA) continue imposing solid regulatory requirements on the Turkish banks to maintain their financial stability.

### Recent Regulatory Changes

In 2014, the BRSA issued a handful of new regulations and introduced amendments to existing legislation to implement the BASEL III requirements in line with the EU directives. The implementation of BASEL III requirements is expected to continue, along with other necessary actions to ensure sustainability of the banks' strong capital structure. However, it remains to be seen whether the common criticism that the foreign exchange risk is inadequately addressed by applicable legislation will be satisfactorily resolved.

The two outstanding regulatory changes in the sector in 2014 involve liquidity coverage ratios and leverage ratio measurement and evaluation.

### Liquidity Coverage Ratios Regulation

This regulation aims to ensure that adequate levels of non-collateralized, high-quality liquid assets are preserved, so that they can be easily converted into cash to meet liquidity needs for a 30-day period. Basically, the ratio of high quality asset stock to net cash outflows should not fall below 100% for total consolidated and non-consolidated liquidity and below 80% for total consolidated and non-consolidated foreign exchange liquidity. Failure to comply with these ratios will only be tolerated a couple of times (6 for unconsolidated and 2 for consolidated) within a calendar year.

### Leverage Ratio Measurement and Evaluation Regulation

The principles for the maintenance of equity by the banks are stipulated in this regulation to prevent risks that may arise from exposure to leverage effects. The leverage ratio (total equity divided by total amount of risk), and the consolidated leverage ratio (total consolidated equity divided by total consolidated amount of risk), should be calculated monthly, and the average of each ratio should be maintained at a minimum of 3% for March, June, September, and December.

## Recent Market Activities

### Mergers and Acquisitions

Although some European and American banks exited the Turkish banking sector during the last couple of years for reasons of their own, the strength of the sector continues to attract big international players. In 2013, the BRSA granted an operating permit to the Bank of Tokyo-Mitsubishi UFJ and authorized Rabobank International Holding B.V. to establish a deposit bank. Recently, the market witnessed the acquisition by Industrial and Commercial Bank of China Ltd. of 75.5% of Tekstilbank and by Banco Bilbao Vizcaya Argentaria of an additional 14.89% of Garanti Bank, resulting in it becoming the majority shareholder of a major Turkish bank.

### Participation Banking (Islamic Banking)

The benchmark set by the debut sukuk issuance of the Turkish Treasury in 2012 ignited sukuk issuances by the participation banks. These issuances allowed participation banks to diversify their portfolio and reach alternative fund sources, especially from Gulf countries. The participation banks in Turkey (only 4) are all in the private sector. However, the prospects for strong growth (notwithstanding the recent BRSA finding that Bank Asya had violated banking regulations on transparency in its organizational and partnership structure that resulted in the Savings Deposit Insurance Fund of Turkey taking over its control) and possible access to future diversified investors – in particular in the Gulf region – has attracted the attention of the government, and three flagship state-owned banks are expected to establish participation banks in 2015.

# Competition in Turkey: Rising in Importance

Sena Apek, Partner, Gur Law Firm

Turkey, like most emerging markets, did not adopt a Competition Law until the 1990s. The completion of the Customs Union with the EU was the main driver behind the December 12, 1994 enactment and subsequent implementation of Law no. 4054 on the Protection of Competition.

Since 2012, a number of developments have increased the importance of the Competition Law for all enterprises doing business in Turkey. First, the Turkish Competition Authority (TCA) adopted Communique no. 2012/2, which laid down admissibility rules with respect to complaints, and Communique no. 2012/3, which increased turnover thresholds for concentrations requiring prior authorization. As a result, the case load of the TCA dropped by nearly one third, enabling the Authority to concentrate on more significant issues.

Second, through a legislative amendment in 2012, the administrative courts of Ankara, Turkey's capital, were established as first instance courts competent in appeals of decisions of the Competition Board. Previously, the competent court was the Council of State – the supreme administrative court – and this created a backlog of cases spanning many years. However, appeals at Ankara administrative courts, while significantly reducing the duration of lawsuits, has created a body of divergent jurisprudence, including some highly questionable decisions. TCA had to initiate/re-initiate investigations in several cases as the result of court rulings. This situation provides a strengthened motivation for complainants to apply to courts against unsatisfactory decisions, requiring the targeted enterprises to take part in the proceedings.

The TCA also made a serious effort to develop competition legislation. Several guidelines as well as a new communique concerning specialization agreements were adopted. Furthermore, proposals for the amendment of Law no. 4054 and the Fining Regulation were prepared, and a proposal concerning the Motor Vehicles Block Exemption Communique is under development. These efforts aim to deepen the alignment of Turkish competition law with that of the EU – and further decrease the TCA's workload. However they fail short of addressing certain contentious issues, such as the legality of the Fining Regulation that sets down aggravating and mitigating circumstances with respect to fines and limits the discretion of the Competition Board. Critics argue that the Fining Regulation infringes both the Constitutional principle requiring punishments to be determined through law, and that Law no. 4054 does not provide a legal basis for the restriction of the Board's competences.

Turning our attention to enforcement activities, the last two years witnessed the toughest ever period in the TCA's history. Most prominently, in 2013 the Board found 12 Turkish banks – including those owned by the state – guilty of fixing interests, and levied a total of TRY 1.2 billion (approximately USD 670 million) in fines, the most in its history. In 2014 the TUPRAS Petroleum Refinery was found to have abused its dominant position by excessive pricing and was fined TRY 412 million (approximately USD 182 million), the largest fine ever imposed on an individual enterprise. The Board diverged from international practice by not taking into consideration the costs of production, and relied on comparative prices (which were determined to be decreased more slowly than global prices). However the Board did not concentrate exclusively on major cases, and also fined driving courses all over Turkey for fixing prices. Because of the size of these enterprises, in some cases the fines were probably less than the money spent by the TCA on the investigations. The Board also fined TTNET, the dominant internet service provider, TRY 15.5 million (approximately USD 8 million) because certain files were deleted from a directory being reviewed by a TCA officer during a dawn raid.

However the TCA did continue its softer policy against vertical infringements, and preferred to issue decisions calling for the amendment of agreements unless hardcore breaches were discovered.

With respect to concentrations, 2014 witnessed the most number of transactions being subject to phase-II investigations and this resulted in commitments as well as the collapse of two sizable deals. The proposed amendment in Law no. 4054 involves changing the legal test applicable to concentrations significantly lessening competition, and may result in further scrutiny of such concentrations in the future.

Summing up, recent developments in Turkish Competition Law necessitate that all enterprises doing business in Turkey be more prudent with respect to compliance issues.

## Real Estate in Turkey

By Alican Babalioglu, Partner,
CMS' Turkish arm, Yalcin Babalioglu Attorney Partnership

Considering the continuing global effects of the economic downturn, Turkey's consistent growth is a respectable victory. Turkey's booming real estate sector has been aided by multiple legislative advances aimed at attracting both domestic and foreign investment. FDI in particular has benefitted from the abolishment of the reciprocity principle and amendment of the Land Registry Law, which have eased the process of acquisition of real estate by foreign companies and Turkish companies with foreign shareholding. This, combined with the profitability and available opportunities in the sector, has led to an increase in high value real estate transactions (in the form both of pure asset transfers and of share transfers in SPVs holding real estate).

An attractive medium for investors to take a slice of the Turkish real estate market is through real estate investment companies ("REICs"). These are special portfolio management companies incorporated solely for purposes of investing in real estate/real estate projects with a high return potential, obtaining income from sales, acquisitions, or rental. The number of REICs and their portfolio value have steadily increased, thanks, in part, to the enactment of the Communique on REICs on May 28, 2013. The Communique: (i) reduces the bureaucracy surrounding the incorporation of REICs and the conversion of ordinary companies into REICs; (ii) eliminates the requirement that share transfers not resulting in a change of control obtain the permission of the Capital Markets Board; and (iii) expands financing options by allowing REICs to issue real estate certificates. Combined with tax incentives already in place, such as an exemption from corporation tax, the allure of the REICs is anticipated to continue.

One of the most significant trends of the past few years is the construction, sale, and/or operation of shopping malls. Istanbul alone has 91, and the forecast for 2015 is for over 350 nationwide. While the construction of shopping malls separate from other functions is probably here to stay (especially in the yet-unsaturated Anatolian cities), the residential and workplace requirements of an ever-increasing population with more disposable income has resulted in the logical step of combining shopping malls with residences/offices.

The booming import and export sectors of a country which won the geographic lottery also has an impact. Turkey has a large portion of global markets covered by its export network, especially the Gulf states, Europe, and Northern Africa. The rising appetite of increasingly wealthy citizens for imports sets the scene for an expanding logistics sector in need of more infrastructure (ports, airports, warehouses, etc.). The current construction of the third airport in Istanbul, which is set to be the largest in the world, is a prime example.

Turkey's vulnerability to earthquakes had led to many years of discussions on options regarding safeguards for the country's citizens, eventually concluding with the enactment of the Urban Development Law on May 31, 2012. The Law allows municipalities and the state-owned Collective Housing Administration to expropriate real estate that must be rebuilt. This has resulted in Turkey – and Istanbul in particular – becoming a major construction site for residential, commercial, and recreational projects. The Turkish government has pledged to rebuild/strengthen 6,500,000 existing buildings at risk of destruction from natural disasters with a budget of USD 400 billion, turning urban development into an unexpectedly lucrative business.

In line with Turkey's policy of attracting more foreign investment and constituting the most intriguing development in the real estate sector this year, the Communique on Real Estate Investment Funds, enacted on January 3, 2014, allows the incorporation of real estate investment funds in Turkey for the first time. These funds enable the securitization of and provide liquidity to large scale real estate, increasing the access of investors to owners of real estate, may be incorporated by portfolio management companies as well as real estate portfolio management companies. As is the case with REICs, real estate investment funds are also exempt from corporation tax, making them more attractive to larger investors. As the Communique entered into force in July 2014, the first of these funds have only just begun to be incorporated. Many more are expected within 2015.

While the first half of 2015 is expected to be dominated by a wait-and-see attitude to upcoming general elections, we anticipate a year full of foreign investment, especially from foreign real estate investment funds.

## Private Equity in Turkey: 2014 Analysis and 2015 Insights to the Turkish PE Market

Itir Ciftci, Partner, and Kemal Aksel, Senior Associate,
Yegin Ciftci Attorney Partnership

Although mid-market M&A activity was dynamic in 2014, the overall market was primarily driven by privatizations such as the National Lottery and Kalamis Marina. Certain private sector deals – such as BBVA's minority stake acquisition in Garanti Bankasi, Khazanah's acquisition of Sabiha Gokcen, and Anadolu Holding's Migros acquisition – were also significant. The total estimated value of 2014 M&A transactions – about USD 20 billion – was increased compared to 2013. Outbound investments, such as Yildiz Holding's acquisition of United Biscuits, were also noteworthy. Investors showed interest in the consumer goods and retail, financial services, energy, and infrastructure sectors.

Although strategic investor activity dominated the number/volume of M&A, the activity of financial investors was also considerable. Private Equity houses continued to be selective for new acquisitions, focusing on expanding through small/mid-size add-on investments and diversifying by replacing other funds in exits. Venture capital was directed towards TMT (i.e., e-commerce/payment systems). International financial institutions such as the EBRD, IFC, and GS, also made notable minority stake investments in Turkey.

### Highlights on Investments & Exit Transactions by Financial Investors

Noteworthy transactions by financial investors and PE houses in 2014 included: the co-investment of the EBRD and Abraaj in Yorsan; EMF Capital Partners' and Deutsche Investitions' acquisition of Aviva; Esas Holding's and Actera's co-acquisition of U.N Ro Ro; the EBRD's EUR 125 million investment in Pasabahce; the IFC's USD 170 million investment in Gama Enerji; the Partners Group's minority investment in Enerya; Abraaj's minority stake acquisition in Hepsiburada; and Goldman Sachs' USD 250 million acquisition of a 30% stake in Petlim.

2014 was also relatively active compared to previous years for exit transactions, which included BC Partners' exit from Migros, KKR's exit from U.N Ro Ro, the IFC's exit from Finansbank, and

Turkven's exit from Tekin Acar.

### 2015 Climate/Market Trends for M&A and PE

Considering Turkey's resilience to the impact of the declining activity in the Eurozone, it appears that Turkey – with its strong banking system and EU-compliant legislative environment – will remain an important regional hub. Turkey's GDP growth expectations and high population will continue to create high IRR investment opportunities. Activity is currently held back by the upcoming general elections, yet we expect that these positive factors may nevertheless keep the M&A climate vibrant and increase overall activity in Q4. We believe that the sizable/long-awaited privatization of infra-assets (for instance, that of the Istanbul gas distribution company IGDAS), may fuel the volume.

There are various growth opportunities for private equity in Turkey and we expect their appetite to continue. International PE houses were cautious about the Turkish market in 2014 due to the country's presidential and local elections, and the upcoming general elections and limited number of big-ticket assets may lead to a similar approach for 2015. That said, Turkish PE houses are expected to be more active compared to their large international peers once again due to their greater risk appetite and knowledge of Turkish markets/businesses and acquaintance with local management.

Mid-market activity will likely continue to increase and be dominated by domestic players. We expect global players to be target/sector specific and focused on sizable transactions. That said, certain global players may diversify their focus and target mid-market deals as well. We expect PE investments to focus primarily on consumer goods/retail, financial services, and healthcare in 2015. Growth areas may also include energy/infrastructure and TMT.

Almost all assets/investments of Turkish conglomerates are in Turkey and there is a need for risk diversification. Turkish investors are learning to operate from a distance and have observed successful outbound investments, despite their noteworthy passion for close control. Therefore, we expect an increase in outbound investments by Turkish investors in 2015.

We also expect PE houses to adopt buy+build strategies using add-on acquisitions to build market share and generate value through consolidation. PE houses are increasingly considering co-investing with international financial institutions in their investments (e.g. the co-investment of the EBRD and Abraaj in Yorsan), which could also support the increase in overall activity in the Turkish M&A market.

Finally, 2015 may also be a year of exits. Turkven and Actera may kick-start exit plans for their prize-jewels in retail (Dominos and Mars Cinema).

# Energy in Turkey: General Outlook of Turkey's Electricity Market

Gozde Cankaya, Counsel, and Irem Su, Senior Associate,
Yegin Ciftci Attorney Partnership

With an expected growth rate of 3% in 2015, Turkey has one of the fastest growing economies in the world. This growing economy has translated to a growing demand for energy. Gross electricity consumption in Turkey in 2012 reached 242.4 billion kWh, and increased by 1.3% in 2013. Electricity consumption is expected to increase by 5.5% annually and reach 375.4 TWh in 2020.

However, the rate of local energy production is too low to cover the increase in demand, and thus Turkey is forced to depend on energy imports – primarily of oil and gas. As a result, increasing domestic electricity generation capacity is a priority for Turkey.

## Priorities

In 2009, the High Planning Council adopted the Electricity Energy Market and Supply Safety Strategy Paper, which established the following general policies: (i) an increase in the variety of resources with an emphasis on local resources, (ii) an increase in renewable energy resources' share, and (iii) an increase in energy efficiency.

By implementing these policies, Turkey aims, by 2023, to have: (1) all local lignite and coal resources used for electricity energy generation; (2) two nuclear power plants operating and the construction of a third nuclear power plant begun; (3) the share of renewable energy increased to 30%; (4) total hydroelectric potential used for electricity generation; (5) established wind energy power increased to 20,000 MW; (6) a total of 600 MW geothermal potential in use; (7) established power capacity for electricity energy exceed 100,000 MW; and (8) total electricity generation increased to 440 billion kWh.

## Liberalization

Historically, state-owned enterprises have dominated the domestic production of energy in Turkey. However, the need to satisfy demand in the energy sector and increase the use of domestic resources requires increasing the involvement of the private sector. The milestone for the liberalization in the energy sector was the enactment of the electricity market law and establishment of the Energy Market Regulatory Authority in 2001. In this new era, the energy market opened up to competition (albeit not to the complete satisfaction of the private sector). A second set of material regulatory changes came with the new electricity market law in 2013 and its secondary legislation. The private sector awaits a fully liberalized and competitive market to be effected under this legislation.

Currently, approximately 33% of domestic production is carried out by EUAS, a state-owned generation company. However, privatization of the state-owned generation assets operated by EUAS is ongoing on a portfolio basis (i.e. investors bid for portfolios rather than individual plants). The portfolio groups have prepared by taking into account factors like market share, geographical location, and certain common factors such as shared coal reservoirs. The share of greenfield projects by the private sector has also increased steadily since 2006.

As for distribution, 21 distribution regions in Turkey have been privatized through the transfer of operation rights agreements with TEDAS, the state-owned distribution company. Transmission activity, on the other hand, is conducted as a monopoly by TEIAS, a state-owned transmission company, and it is not expected to be privatized. A further increase in the involvement of the private sector is expected as per Turkey's energy policies.

## Renewables

Since 2010, diverse incentive schemes have been implemented in the renewable energy market in order to encourage the use of renewable energy resources. The renewable energy generators commencing their operations before December 31, 2020, can benefit from a purchase guarantee over the feed-in tariffs (which includes an additional domestic equipment incentive) for 10 years. Other incentives include priority in connecting to the national grid, discounts in applicable license application fees, exemption from annual license fees for 8 years following the commencement of commercial operations, and facilitation in the use of state-owned lands.

Water has been the leading renewable resource, but wind and solar are also expected to have considerable market share in the near future. An important set-back for increasing the available wind and solar capacity is the limitation of the grid infrastructure, and network expansions are necessary to integrate more wind and solar resources into the market.

# Inside Insight: Pinar Aksakal Aydin

## Legal Counsel at Zorlu Holding

*Pinar Aksakal Aydin is Legal Counsel at Zorlu Holding, one of the largest corporate groups in Turkey, where she leads Zorlu Energy, managing a team of 11 lawyers and reporting directly to the Zorlu Holding Head of Legal. Zorlu Group companies are active principally in the areas of textiles, electronics manufacturing, energy, and financial services. Aydin joined Zorlu Holding in January 2009 and – with the exception of a brief period at Avea Iletisim Hizmetleri in 2012 – and has been there since. Before joining Zorlu Holding she spent a year at the well-known Eryrekli & Fidan law office, and a little over a year at the Salih Zeki Bayten law office.*

**CEELM: Why did you decide to work in-house, and why/how did you join Zorlu Holding?**

P.A.: Actually it was not a deliberate decision, but I can say that it was a good coincidence. In 2008 I was working for a small law firm the primary activity area of which specialized in project finance deals. In that year most of the projects that the law firm was retained on were energy projects, and so I started working on these projects. Due to the financial crisis at the end of 2008 the partners of the law firm had to split their ways. Simultaneously I learnt that Zorlu Enerji was looking for a lawyer, and considering my energy projects background, I applied for this position.

**CEELM: How big is the legal team there, and what are your responsibilities on the team?**

P.A.: For the entire Zorlu group of companies there is a legal team of 45 persons working under the management of the Chief Legal Officer. This team consists of lawyers, legal managers, secretaries, and paralegals. For the energy group of companies I manage a team of 11 persons. My primary responsibilities are providing legal services to all energy group companies, ensuring that the legal services are provided in a proper manner, determining the strategy of the department together with the Chief Legal Officer, maintaining relationships with other departments of the group companies, reviewing, negotiating the agreements which have strategic importance for group companies, preparing the budget of the department, and representing the companies before courts and public authorities.

**CEELM: Many partners at law firms in Turkey complain that the market is over-saturated, and as a result the fee competition is unreasonable and unsustainable. How much do the fees offered by a firm factor into your selection of external counsel?**

P.A.: Since we are working on a determined budget, it is unreasonable to say that fees are not important for us. While selecting a law firm we pay attention to their fee proposal, but apart from that in our view the firm's experience on the selected project or deal and its references have more importance than their proposal.

**CEELM: What changes would you like to see in the Turkish legal market?**

P.A.: I believe that the entrance of international law firms into the Turkish legal market is a big step in terms of developing the market. In the future I would like to see more international law firms in the market so that the working environment becomes more professional.

**CEELM: What are the best tools in your experience in assessing the quality of service provided by law firms when picking who you will outsource work to (do you rely on rankings, referrals/recommendations, initial proposals, etc)?**

P.A.: Of course we give importance to rankings and initial proposals, but the determinant factor for us is the referral/recommendation. If, in the past, a law firm worked for one of our group companies and this company was content of their work we may be inclined to select them.

**CEELM: Since you are operating in a regulated market, what best practices have you developed to stay apprised of legislative updates?**

P.A.: Every morning before starting to work we check the websites of the official gazette, the Energy Market Regulatory Authority, and the Capital Markets Board. In this way we keep ourselves updated.

**CEELM: What upcoming legislation do you expect will impact your work in the next 12 months most?**

P.A.: There will be a change in the natural gas legislation. We expect that this change will impact the natural gas market and in turn our work in a substantial way.

**CEELM: Throughout your time with the company, what was your favorite matter to work on at Zorlu Holding, and why?**

P.A.: Zorlu has a fast moving environment. In Zorlu every day is a new challenge. That's why I cannot make any distinction on my assignments, but I can easily say that working for Zorlu is a pleasure for me in itself.

**CEELM: What's your favorite part of working at Zorlu Holding, and why?**

P.A: The dynamic working environment is my favorite part of being at Zorlu. It keeps me alive and updated.

*David Stuckey*

# Inside Insight: Ekin Sungur

## Head of Legal at BNP Paribas Cardif Turkey

*Ekin Sungur is the Head of Legal at BNP Paribas Cardif Turkey. She received her law degree from Galatasaray University in 2004, and then received an LL.M. from the University of Paris I: Pantheon Sorbonne in 2005. She then started her professional career with two and a half years at Moroglu Arseven Ozdemir before moving over to Gide Loyrette Nouel, where she spent the next three years. She then moved in-house with Akkok Sanayi Yatirim ve Gelistirme for a little more than a year, before joining BNP Paribas Cardif in February of 2012.*

**CEELM: Can you describe your career path leading up to your current role?**

E.S.: Following my graduation from Galatasaray University, I obtained a scholarship from the French Government and went to France to pursue a master's degree at the Sorbonne University in international private law and international commercial law.

Before starting my career in Turkey, my main objective was to work for either a foreign law firm or a local law firm with international clients. After submitting my thesis on the law applicable to e-contracts and obtaining a second master's degree, I returned to Turkey and started to work for a local law firm. At the same time I completed my compulsory internship and got my bar license. At that time Moroglu Arseven was a local boutique law firm, so I had the opportunity to work directly with the partners and also take responsibility for and an active role in all major projects (i.e., m&a, due diligence practice, contracts, litigation, arbitration). Afterwards, I continued my career at an international law firm, where I had the opportunity to be a part of cross-border transactions as consultant and work in an international environment with standardized service levels. My years spent at Gide Loyrette Nouel developed my professional and client management skills significantly, as our clients were top companies in their sectors and satisfying their needs required significant presentation/legal drafting skills.

After 3 years at GLN, I wanted to enter into a new challenge as in-house at Akkok, a holding company consisting of 17 companies with different operating scopes, such as aviation, insurance, carbon-fiber industry, energy, and construction – among which there were also quoted companies. Being at the center of this delicate structure allowed me to observe the backstage of the companies and discover their needs when working with external lawyers. When practicing as external consultant, sometimes the real needs of clients can be overlooked, but when practicing as in-house you are at the heart of the company and understand better the mechanisms triggering the needs for legal advice, so it is easier to provide legal services matching exactly with the needs of the companies.

I believe that this position at Akkok was very important in my career path leading me to my current position. After experiencing the in-house practice at Akkok, I told myself that I was ready for a decision-maker position in-house and I started to look for a company which would match my profile. Then I was informed that Cardif was in search of a Head of Legal for its Turkey entities. Although I had had numerous clients operating in the insurance business, I was more of a multi-practitioner than an insurance law specialist. Even so, I applied and got the position after series of interviews. My first year was quite challenging as I was both learning the business and establishing the legal department from scratch, but once the department was functioning with all local policies, service levels, archive, etc., I began to receive the fruits of my hard work.

**CEELM: Was your plan always to move in-house, or was there something specific about the opportunities at Akkok and then BNP Paribas Cardif that drove your decision?**

E.S.: When I decided to work in-house, my main objective was to discover the other side of the legal world. I wanted to centralize my legal experience to one and only client and also evaluate whether the service provided by law firms/external lawyers was effective. In addition, I wanted to discover and get a better understanding of the financial/commercial reasons leading the companies to take strategic decisions. Mostly, law schools do not give us the necessary vision to evaluate the economic reasons behind the transactions that we face during our careers. Without having a good perspective, it is not always possible to provide your clients with effective legal advice. Being in a company, especially working for big groups like Akkok and BNP Paribas, gave me the chance to work with experienced professionals having deep expertise in different areas of the business, and I can say that the knowledge acquired this way is as important as the academic background. Now I don't limit myself to legal expertise only, and I give priority to the commercial effect of my advice.

**CEELM: Do you miss any elements of private practice?**

E.S.: In our job, multi-practice is a key element as well as specialization. Sometimes I miss working in very original projects that I have no legal expertise in. However, I think the difference between private practice and working as in-house is also related mainly to your working principles. Coming from a private practice background, I consider each and every department of the company as a different client. I have adapted the service standards I gained from private practice to in-house life. Accordingly, the way I work has not changed significantly between different career paths.

**CEELM: How large is your legal team at BNP Paribas Cardif and how is it structured? Do you tend to specialize your team members or try to rotate them to develop them as generalist professionals?**

E.S.: Currently we are a small sized department with 3 people. When establishing the department, first I internalized all of the services in order to evaluate the work load and determine in a better way which areas we needed external assistance in. I think being specialized in one area is important, but having a general knowledge of all aspects of the company is also very important as you face all kind of legal matters. Hence, I try to make a balance between them.

**CEELM: When you hire lawyers for your team, do you prefer them to come from other insurance company, or from a private practice background? Why?**

E.S.: When hiring a new lawyer former experience is important, and having a lawyer with insurance law knowledge can ease his/her adaptation to our companies and may give me comfort. However I think that the most important thing is to put your heart into your job. We are doing a very difficult job where there is no limit in learning – and especially in Turkey the legal environment changes so quickly. After a certain point, vis-a-vis these quick and sudden changes, your previous experience become worthless. Accordingly, the ideal team member for me should have an eagerness to succeed and enjoy the complexity and legal gaps by starting each working day with a desire to learn like an inexperienced trainee, with the ability to quickly adapt to new developments.

**CEELM: With only seven years of legal experience under your belt since you passed the bar in 2007, you're fairly young to be the Head of Legal at an international company. Did your youth present any challenges or opportunities?**

E.S.: In our job, whether you practice as a private lawyer or in-house, you become valuable and credible with your age. Hence being a young lawyer is always challenging vis-a-vis your clients. In order you prove yourself and gain their confidence, you should work very hard, evaluate all aspects of a matter delegated to you, be sure of yourself and take responsibility for your acts. Everyone faces difficult times at all stages of professional life. I think what is important – and what mostly comes with age – is the way you handle crisis situations. The sooner you learn to react in such situations, the better you become in your career. A Head of Legal position requires being both prudent/risk averse and the possession of speedy decision-making skills. I think my head position in Turkey was a great opportunity for me to improve my professional skills and take advantage of the dynamism of my age; I took each challenge as an opportunity.

Buyukada, Istanbul

According to internal customer satisfactions survey conducted in 2014, our legal department is ranked above the average satisfaction level of companies in the areas of work quality and general satisfaction – and was elected as the most successful department of this company. This result also shows that I managed to transform the challenges of my youth into opportunities.

**CEELM: When you outsource legal work, what are the main criteria you use in picking the firms you will be working with? Do you have a panel – or does the BNP Paribas HQ guide your use of external counsel – or do you select your firms on a project-specific basis?**

E.S.: According to BNP Paribas Cardif group procedures, we have a panel consisting of a list of international law firms having global service agreements with BNP Paribas Group. The choice of the law firm is made locally once the outsourcing decision is made. My main criteria in choosing the law firm to assist us is their expertise. For each topic that we need external advice on, I do market research before making my decision. Respect for the deadlines and working with dedicated people also are very important for me. We collaborate with local law firms after getting the approval of the Head Office as well. In specific local matters, especially which do not require the involvement of the headquarters, working with the local offices is more advantageous as they have more local contacts and knowledge and are cost effective.

**CEELM: From a legislative stand-point, what are the recent or upcoming changes that will impact or have impacted your work the most?**

E.S.: Turkey may be considered a developing country in the field of its regulatory environment. On the one side, new laws are still being enacted to adapt the legal system to European standards – while on the other side, the side effects of these newly-implemented rules result in sudden system changes. Because of this unstable environment, we are obliged to adapt ourselves quickly to new requirements. Furthermore, these changes influence case law as well, and following the position of the courts while applying such legal provisions is also critical. For my practice, the entry into force of the New Commercial Code (although it has been two years) and the new Consumer Protection Law are the most important changes in our sector. Now we are awaiting the enacting of secondary legislation in line with these laws which will enlighten our practice.

**CEELM: On the lighter side, what's your favorite place in Istanbul, and why?**

E.S.: My favorite place in Istanbul is Buyukada (big island), the biggest of the prince islands in the Sea of Marmara. Once you take the ferry leading you to this magical place, you are totally detached from busy city life and you find yourself in a untouched peaceful place with no traffic (the only transportation is horse drawn carriages and bicycle), pine forests, cats, and beautiful historic buildings. I am especially fond of the island in autumn when the island becomes almost deserted. Each time I visit the island, I find some hidden places to discover.

*David Stuckey*

# Inside Insight: Nilhan Buyurgan

## Chief Legal Officer at Kibar Holding

*Nilhan Buyurgan is the Chief Legal Officer at Kibar Holding, which has subsidiaries in the metal, automotive, food and packing, construction materials, real estate, logistics, and energy industries. It was founded in 1984 and is based in Istanbul, with offices in Bursa, Turkey, and Kyiv, in Ukraine.*

**CEELM: Can you describe your career path leading up to your current role at Kibar Holding?**

N.B.: I started my career as an in-house legal intern at Liberty Sigorta. After a couple of months of working in-house, I decided I needed to expand my experience and knowledge so I moved on to private practice. I held Associate and Senior Associate positions at two leading law firms. I was then offered the opportunity to work as an In-House Legal Counsel for Sabanci Holding. After three years of working for Sabanci Holding, I had two children and consequently took a voluntary career break for a year and a half. After this break, I took up an offer to work as a Partner and Head of the Corporate/M&A Department at a law firm I had previously worked for. My transition was atypical in that I moved to private practice from in-house. As it turned out, it was a difficult and drastic transition.

I soon decided I needed to work in a corporate and structured environment. It was then that I was offered the opportunity to work as the Chief Legal Officer for Kibar Holding, which I gladly accepted. I had represented Kibar Holding as an outside counsel for many years and was very familiar with the Group and the management team. The Group was undergoing a corporate restructuring at the time, which made the offer even more intriguing and appealing for me. It has now been one year and two months since I started working for Kibar Holding and it has been the most fulfilling experience in my career thus far.

**CEELM: You've alternated in your career between in-house and private practice roles. Why is that?**

N.B.: During the first few years of my career, I wanted to gain as much experience as I could in a wide variety of legal fields. Private practice seemed to be the best way of improving my experience and expanding my horizons. During the time I worked as a private practitioner, Turkey was one of the most popular emerging markets – the economy was booming and foreign investment was flowing in. It was a perfect time to be in private practice. I had the chance to represent some of the largest multinationals in major M&A deals, in countless industries. At this point, I must emphasize that I have never had a problem with demanding working hours or maintaining a work/life balance. Contrary to common belief, in-house practice is just as consuming as private practice, if not more so. The main reason I chose working in-house over private practice was structure. In my experience, I have found that even the largest and most established law firms are unstructured or moderately structured when compared to corporations. Apart from my inclination to work in a structured and corporate environment, another reason I prefer to work in-house is that it gives me the opportunity to work closer to the business. As an in-house counsel, you get to understand markets and industries in much more fundamental ways than private practitioners.

**CEELM: Do you miss any elements of private practice?**

N.B.: Being in private practice gives you the chance to interact with many different clients and counter-parties, from tiny start-up companies to global corporations. Working in-house means less interaction with the outside world, so to speak. Private practice also allows you to gain experience in countless industries, whereas an in-house counsel's work is inevitably limited to the business of the corporation s/he works for. These are the two main elements I miss, although in my opinion the pros of working in-house far outweigh the cons.

**CEELM: How large is your legal team at Kibar Holding, and how is it structured?**

N.B.: I have a legal team of two lawyers and one legal intern. We will have a third lawyer join the team soon. The in-house team members deal with the day-to-day legal work. We manage the legal affairs of 25 companies within the Kibar Group. We work with outside counsel for matters requiring specific expertise, such as IP law and competition law. One of my team members specializes in corporate law, while the other specializes in dispute resolution. We are now in the process of hiring another litigator, who will mainly deal with employment disputes and enforcement proceedings. I am a firm believer in specialization and I personally specialize in corporate law, although my role as the Chief Legal Officer at such a large corporation requires that I make decisions in practically every legal field, from administrative law to criminal law.

**CEELM: When you hire lawyers for your team, do you prefer them to come from in-house or from a private practice background?**

N.B.: I prefer to work with lawyers that have experience both as an in-house lawyer and as a private practitioner. Generally speaking, junior and mid-level lawyers with a private practice background often have better time management skills and can tackle demanding projects with more ease. Lawyers who have in-house experience, on the other hand, generally have a better understanding of business and do not get sidetracked by day-to-day tasks.

**CEELM: Many believe the Turkish market is overcrowded, leading to especially fierce competition for fees. As the CLO of a company that presumably benefits from that phenomenon, I wonder what your thoughts are on the fees, level of competition, and differing capabilities in the market at the moment.**

N.B.: There is indeed fierce competition in the Turkish legal market. Many large law firms have undergone spin-offs, there are many new boutique law firms and pretty much all the major international law firms have opened branches in Turkey. I find that boutique law firms are generally more client-oriented than large law firms; whereas large law firms are able to offer you valuable experience in a vast array of industries. When it comes to outsourcing legal work, the driving force is often experience and credentials, rather than legal fees. As such, although the competition in the Turkish legal market has led to more flexible rates, I cannot say that we really benefit from this phenomenon.

**CEELM: When you outsource legal work, what are the main criteria you use in picking the firms you will be working with?**

N.B.: I select firms on a project-specific basis. As a strong believer in specialization, I prefer to work with lawyers that have expertise and experience in specific legal fields, rather than full-service law firms. That being said, I am not at all against working with full-service law firms, as long as they do not have a one-size-fits-all approach. Generally speaking, I prefer to work with proactive and aggressive firms who do not have a problem meeting deadlines.

**CEELM: From a legislative stand-point, what are the recent or upcoming changes that will impact or have impacted your work the most?**

N.B.: The new Commercial Code was definitely the most prominent legislative change of the decade. It has impacted (and continues to impact) our work significantly. The new Commercial Code will inevitably overturn some of the long-standing precedents of the Turkish Supreme Court – therefore the impact is likely to be far more substantial than it currently seems. I do not anticipate any new legislative changes in the near future that will have as big an impact on Turkish corporations as the new Commercial Code.

**CEELM: On the lighter side, what's your favorite place in Istanbul, and why?**

N.B.: The Bosphorus. Without a doubt. There is something magical about it and I enjoy being anywhere as long as I have a view of the Bosphorus. Not surprisingly, Ulus 29, Zuma, and Sunset [popular Istanbul restaurants along the Bosphorus] are among my favorite places.

*David Stuckey*

# Expat on the Market: Matthieu Roy

*Matthieu Roy is a Partner at Gide Loyrette Nouel and heads the firm's Istanbul office, where he specializes in Corporate/M&A, corporate restructuring, and the setting up of joint ventures. He has gained extensive experience in cross-border operations thanks to his experience in Gide's Moscow, Paris, and Istanbul offices. Roy is member of the Paris Bar and graduated from the HEC business school (Ecole des Hautes Etudes Commerciales) in Paris.*

**CEELM: How did you get from France to your current role in Turkey?**

M.R.: As a partner specializing in M&A, I worked on many cross-border deals when I was based in Paris, including deals involving Turkey. I also spent three years at Gide's Moscow office from 2004 to 2007. Given this international background, I was very keen to have another experience abroad. I knew that our Istanbul office had been set up in 1997 and was therefore a respected outfit in the country, and I was familiar with the dynamism of the country and the quality of our local team, with which I had already worked in the past. Therefore, I had no hesitation when Gide's management committee put my name forward to join our Istanbul office and become its Managing Partner. That was almost three years ago, and I have no regrets!

**CEELM: Was it always your goal to work in other countries? How much longer do you expect to do it?**

M.R.: To be honest, at the time I passed the bar exam, I had no idea that I would spend so many years abroad. It was not in my career plans. But then, if you really want to work abroad, becoming a lawyer would not be your first choice!

As a junior lawyer, I started working in one of Gide's M&A teams in Paris, mainly on major and often very sophisticated domestic deals (mainly private equity and corporate restructurings). Then I felt the need to diversify my experience, to work on different kinds of transactions with a different role, maybe more "operational." To me, going abroad was the way to achieve this. As France's leading international firm, Gide gave me this opportunity.

Now, I have no precise idea regarding the duration of my stay in Istanbul. I will very likely return to Paris after my current experience in Turkey as I think it is preferable to "reconnect" from time to time with my home market (as I did after my experience in Russia). But I do not exclude the possibility of returning abroad at a later time. Gide being present in many different countries (with 17 offices including several in CEE), so there are many possibilities.

**CEELM: What idiosyncrasies or unique challenges have you observed in the legal industry in Turkey, compared to France?**

M.R.: In general, the Turkish legal system is a civil law system, so not all that different from the system I learned about during my studies in Western Europe. The main laws and codes that were adopted in the first years of the Turkish Republic (in the 1920s) were all inspired by European continental law (mainly Swiss, German, and French laws). Obviously, to master certain local legal peculiarities and the latest changes of Turkish law, you need to rely on a very good team of Turkish lawyers.

The greatest challenge for lawyers in Turkey stems from the very practices and mindsets of many players on the Turkish market. In particular, they need to be fully convinced that they have obtained the best possible deal (and not only from a financial viewpoint) before signing anything. This specificity means that negotiations are often very long and very complex. In this context, lawyers are required to help find tailor-made solutions that contribute to bridging the gap between opposing parties.

This being said, from a more commercial point of view, the legal industry is not different from other industries in Turkey: it is a very competitive market, difficult to penetrate. However, with our longstanding presence in Turkey – again, Gide has been present in Turkey since 1997 – and the team we have trained since then, we have been able to face this challenge.

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

M.R.: I think that there are three main values an expatriate lawyer can bring. First, when a partner moves to an international office, it helps strengthen the link between that office and the firm worldwide, making sure that all lawyers share the same values, within a true partnership ethos, thus building a strong internal culture of trust and collegiality, and provide the same high quality of services to our clients, whether they are provided in Paris, London, or any other location.

Second, as regards the files on which I am more particularly involved as an M&A lawyer, I can obviously share with our local teams certain techniques and practices learnt from my previous experience in other countries.

Finally, being an expatriate lawyer in Turkey helps to create a connection between our clients (I work mainly for foreign companies) and Turkish parties, by setting up a combined team. In order to provide the best possible service to our clients, we combine my experience and the knowledge of the local business environment of our local lawyers.

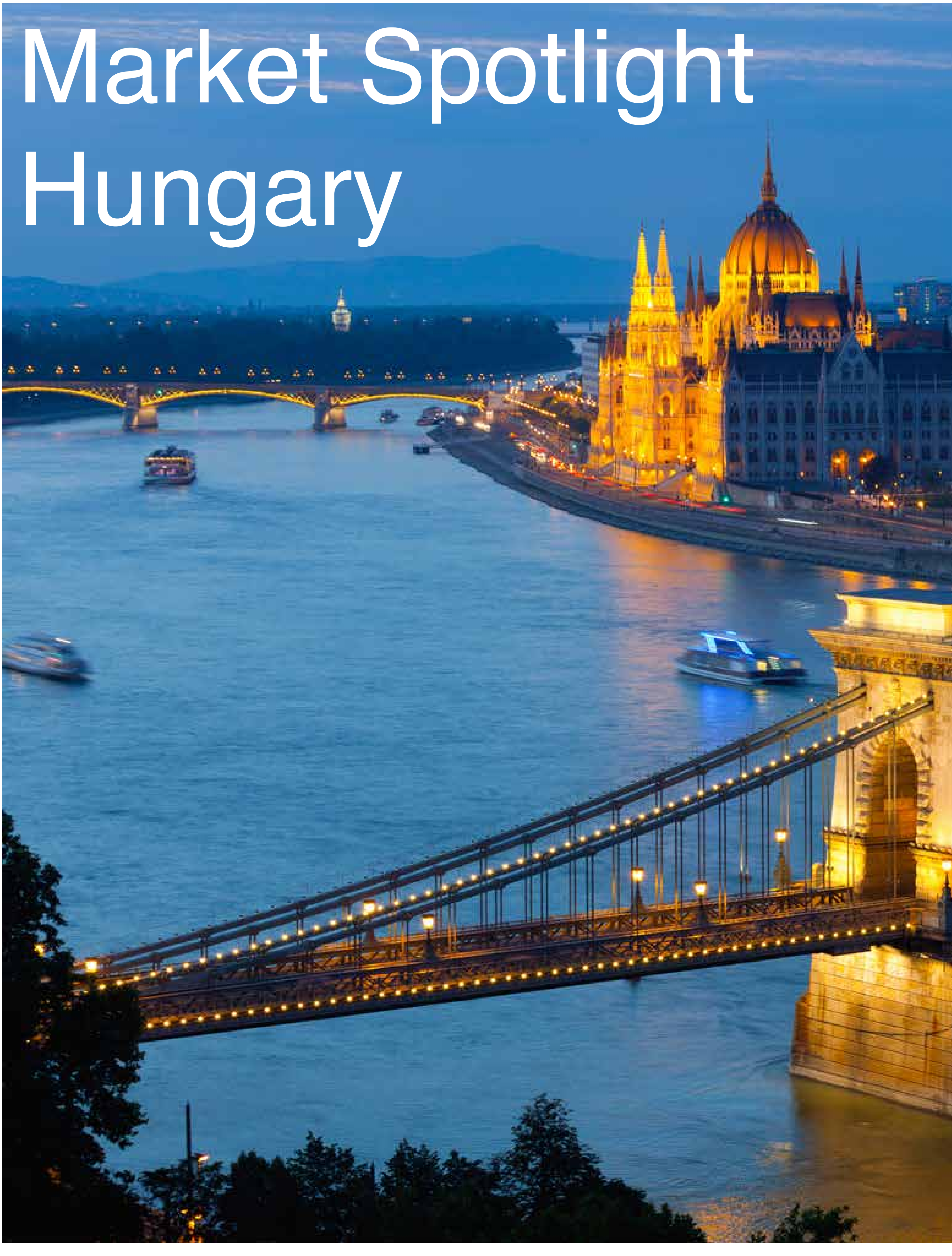
**CEELM: *Other* than Turkey, which CEE country do you enjoy the most?**

M.R.: I have wonderful memories of my stay in Moscow. I spent three fantastic years there, working on very different and exciting files. I become very happy whenever I have the opportunity to return to Moscow. This happens from time to time as I still continue to work on files involving Russia. It is interesting to note that Istanbul and Moscow have many similarities: both are megalopolises (with their traffic problems!), with the history and heritage belonging to their huge empires, and both are located in countries spanning two continents. Although you are geographically in Europe, you do not always really feel like you are in Europe …

**CEELM: What one place in Istanbul do you most enjoy taking visiting guests/family to?**

M.R.: Without hesitation: the Bosphorus, a magnificent stretch of water between the Black Sea and the Marmara Sea that separates the European and the Asian shores of the city. Few things are more enjoyable than having lunch on the shores of the Bosphorus or taking a cruise along it and observing its intense activity: merchant ships coming from the far side of the world, ferries, fishermen, and sometimes pods of dolphins. For me, this is the real soul of Istanbul. Whenever I can come down from Levent (one of the main business districts of Istanbul, where Gide's premises are located) for lunch on the Bosphorus, I feel like I am leaving business life behind and move in a different world. I would like to be able to do it more often.

*David Stuckey*



# Market Spotlight Hungary

# In this section:

# 25 Years In Hungary: A CMS Story

- 1989: Established
- 1996: Grew to 6 lawyers; started specializing lawyers
- 1999: Grew to 30 lawyers
- 2005: Grew to 49 lawyers; created special teams for the "specialist areas"
- 2018: Grew to 60 lawyers
- 2014: 10 partners and 65 lawyers
- 2014: Winner of the Chambers Europe Awards for Excellence for Hungary
- 2014: Winner of the Hungarian Pro Bono Awards by the Hungarian Bar Association and PILnet

CMS recently celebrated 25 years of presence in Hungary. CEE Legal Matters sat down with Gabriela Ormai, the Managing Partner of the Budapest office, for a walk down memory lane. In light of the office's acknowledged strength in banking/finance, we took the opportunity to discuss the many and controversial developments in that sector this year with the firm's Banking/Finance Head, Erika Papp.

Gabriella Ormai, Managing Partner, CMS Hungary

**CEELM: Your office has been present in the Hungarian market for 25 years now. What was the initial rationale for opening up an office in the country, and how has the business drive for it evolved over time?**

G.O.: Like many stories that date back so long, this one starts with a young man, Douglas Wardle. In the summer of 1989, he was sitting in Greece on the beach and was reading about what was happening in Eastern Europe. When he went back to London, he spoke to the Partners at McKenna about the need to set up operations in the region.

On our end, on April 1, 1989, we opened our office here in Budapest. Due to specific limitations at the time, it was difficult to join the Budapest Bar and we were part of a separate "secondary-if-you-wish" Bar – called Bar of Legal Advisors, which had us registered, like everyone else, as a simple number. If I recall right, we were "Legal Advisors Office No. 113." My first client was the foreign trade company "Komplex," and we soon started working for Samsung Electronics, which had just started a joint venture in the country. It was that summer that I met Douglas and, a few months later he showed up with a big box of files and said I should review it all and give him a report – it was the first due diligence report we carried out, since no one in Hungary at the time was working on such matters. After finalizing that project with him, we set up a cooperation agreement with McKenna. I still recall fondly how he brought his supervising Partner, Robert Windmill, to Budapest, and I remember Robert saying that we needed to have an office 10 minutes walking distance from the Stock Exchange and me replying simply: "There isn't one in Budapest."

**CEELM: How has the office grown over that time – what were the main "boom periods" and what were their drivers?**

G.O.: From one person in 1989 we grew to six lawyers by 1996. In the first 2-3 years the privatizations going on in the country provided much of the work. We were initially working for the state privatization agency but then changed to "the other side," working primarily for investors. The move seemed like a natural one, since the aim was to keep the clients following the privatization process, and we were positioning ourselves well to do so since we were able to identify potential issues during the due diligence process and, as a result, were best equipped to support them in managing them after the acquisition was completed. That's really the mechanism through which we started building up our "day-to-day" advisory practices.

In 1996, we decided to take it to the next level and moved our office into the Bank Center. What followed was a period of very strong growth, which allowed us to reach 30 lawyers by 1999. This was also the period when we started to dedicate people to different practices – a rather natural evolution in light of the growth.

**CEELM: What was the engine for that growth period?**

G.O.: The economy definitely helped, and so did our interaction with London, with considerable amounts of work coming from there, but I think we had reached a "hungry" phase where we were very active in acquiring work on our own.

**CEELM: We got to 1999.**

G.O.: By 2000 we had all the practice groups we have now: Banking, Property, Energy, Corporate and Commercial. It really was steady growth from that point on (with the exception of a slower period between 2001/2002) and by 2005 we increased our headcount to 49 lawyers. In 2005 we started creating what we call "specialist areas within the Commercial practice group: IT, IP, Competition, Employment, Litigation, Tax, etc. We reached 60 lawyers in 2008, and the number has stayed steady between 60 and 65 until today, with 10 partners.

**CEELM: How do you account for your office's longevity, when so many other international firms have pulled out of Hungary, and the region?**

G.O.: A global footprint, including in the CEE region, is definitely a driving force at a macro level. I think many of the firms that left followed the privatization work, and I am unsure how many planned a long-term presence after it dried up. We had a different model in that we didn't focus only on that business. Out of the 65 lawyers currently in our office, 30 are working in our CDR team (commercial, dispute resolution), which also includes tax, employment, life sciences, public procurement, competition – all areas that clients need on a day-to-day basis.

This means that even in cases of economic slowdowns when big transactions disappear there are plenty of other sources of work, and we have the capabilities to refocus based on the market. For example, our banking team is now more focused on restructurings and regulatory work, the property team focuses on property litigations, the energy team was small enough to have enough work, all this while the commercial day-to-day team was kept busy. I have to admit, I did not advertise our approach in London too much since the City was heavily transactional-work-focused as well – we just did it.

**CEELM: Recently when we were trying to identify who worked on a banking deal, a partner from a different firm identified CMS as "one of the usual suspects on banking matters" – what do you believe was the key to positioning yourself in such a manner in Hungary?**

E.P.: The reality is that, when I joined in 1996, CMS was already identified as a banking firm. Yes, we were working on other areas as well, but with the existing base on banking, it was not hard for me and my Partner Alex Doughty to take the team that Gabriella led and had grown until that point and develop it further, especially since the booming years helped considerably. After 2008, growth went in a different direction. We had to refocus a bit, but once that was done, a lot of work on liquidations and insolvency kept us busy. At the same time, it helped that the team over time had developed regulatory capabilities in banking, not just transactional, which has been one of the USPs that helped greatly both in terms of growing during the good years and not being hurt by the bad. Not many firms focus on this side as well.

Implementation of certain EU regulations such as the AML, AIFMD, BRRD and other EU directives tends to be seamless, and it comes down to supporting our clients on understanding them and providing them with sound and informed advice. Hungarian regulations have been a bit more dramatic in 2014, since Hungarian financial institutions were effected by new legislation requiring them to change their FX portfolios into HUF and there were new laws setting up parameters for "fair banking."

**CEELM: Indeed, with everything that has been going on in the business sector in Hungary this year, this practice has no doubt been kept quite busy. What were some of the most challenging and interesting projects you worked on and why?**

E.P.: If I had to pick one, I'd say the most challenging aspect is that some of our clients are leaving the country, and I'm thinking here of players who have been in the market since the 80s and 90s, meaning that some of them have been our clients for 10-20 years now. Their exits are not just challenging in terms of advising them how to sell, but can also be quite emotionally challenging, since we feel we are losing a partner with whom we've worked a great deal.

In terms of what I think might be the most interesting for me as a lawyer, I'd probably point towards portfolio transfers, which these days tend to be sold out piece by piece. The tricky aspect here is caused by the fact that the legal framework under which such transfers should be carried out is a bit unclear.

G.O.: To illustrate that, the portfolios need to be sold, but there is a big question mark in terms of what happens with the hundreds, if not thousands, of ongoing litigations. It is uncertain now if many of them will be suspended or terminated as a result of recent legislation.

**CEELM: Do you find that banks in Hungary are now more cautions in providing financing as a result?**

E.P.: Project finance is not in a good state for sure, with banks being quite cautious as a result of recent regulations and the bank tax. There are some initiatives that are trying to put some life into lending. Having said that, there is a bit of movement on the property financing market, with 5-7 considerable ongoing cases at any point. This is a result of some players leaving and being by others, who are pulled in by the low prices.

**CEELM: Why is that the case with real estate only and not others who would usually attract financing attention – say energy?**

E.P.: The simple answer to that is that it is not a regulated market meaning that this type of risk is lowered considerably.

Erika Papp, Partner/Head of Banking/ Finance, CMS Hungary

**CEELM: What, if any, further developments do you expect in the sector in the near or mid-term?**

E.P.: Much of the impact of the regulatory changes I mentioned has settled down by now. There are still some pending administrative tasks to be concluded, but generally things should be calmer. One interesting aspect will be the new SPV set up by the Hungarian National Bank (called "Mark Zrt."), through which the National Bank will offer to acquire institutional troubled assets.

G.O.: By releasing these bad debts, in theory, the loans market should ease as well, and if good projects come along, we might see some financing work – but in many sectors these projects are simply not in the pipeline (although we see some manufacturing and export finance deals happening).

**CEELM: What are your firm's expectations going forward in Hungary in these challenging times?**

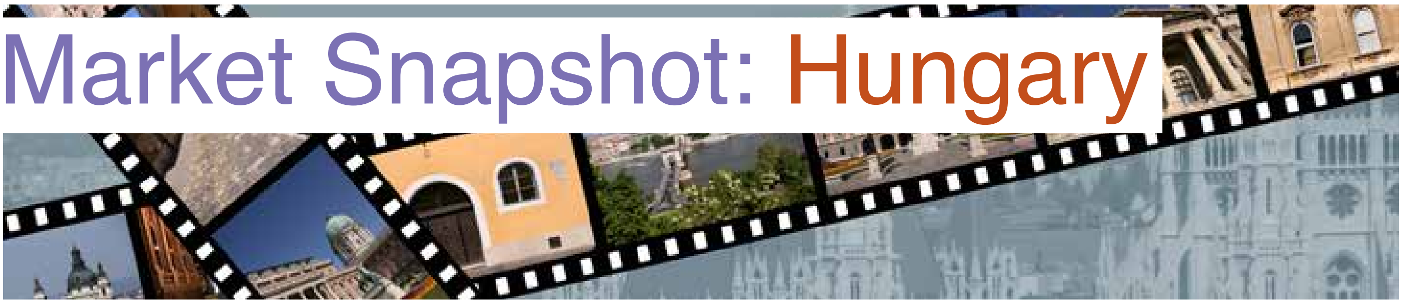
G.O.: At the end of the day, new deals are coming in, and there still is quite a bit of movement. Yes, there will be consolidations, but even in banking these portfolio transfers will keep us all busy. At the same time, litigations are always going to keep us busy also – many clients are contemplating investment arbitrations as well – and there is work to be done even before the decision is made in order to explore the variety of solutions.

Lastly, we'll continue our approach of specific sector focus and we are strengthening our cooperation throughout the region to maximize the large number of panels that CMS is already a part of globally.

We do need to put quite a bit of work in each local market to get even the work from these panels since, if we are not working with the local people, we stand to lose a lot of work. That considered, I'm quite optimistic about our upcoming 2-3 years, despite the uncertainties in the market.

*Radu Cotarcea*

# Market Snapshot: Hungary



## Capital Markets in Hungary

Zoltan Hegymegi-Barakonyi, Managing Partner,
and Barnabas Simon, Associate,
Kajtar Takacs Hegymegi-Barakonyi Baker & McKenzie

Market participants of the Hungarian capital market have witnessed some substantial developments recently. First of all, the Central Bank of Hungary took over the supervisory powers of the Financial Services Authority. Second, one of the biggest discount airlines in CEE, Wizz Air, which was planning to be listed on the Budapest Stock Exchange ("BET"), shut down the process at a late stage due to market volatility issues.

Quite the reverse happened to Btel, as shortly after being classified to the BUX-basket (a selection of shares on which the official stock market index of shares listed on the Budapest Stock Exchange is based) the telecom company was fined by the Hungarian watchdog, which resulted in its being placed on the lower ("standard") category of the BET.

Although it certainly was not the best year for the Hungarian capital market, private markets performed pretty well. A number of venture capital accelerators and entrepreneurial societies were established, encouraged by success stories such as Prezi, Ustream, and LogMeIn. These companies followed very similar strategies: establishing on a Hungarian intellectual basis and expanding towards well-developed economies (maybe supported by a listing on a major stock exchange), while preserving a substantial market presence in Hungary. As a result, more than 100 venture capital and private equity-related investments were realized between Q3 2013 and Q3 2014, demonstrating that the VC/PE environment is market friendly and continuing to develop.

This environment has also been boosted by legislative measures – primarily the composition of a comprehensive and (more importantly) a consistent regulatory framework. Investment fund regulation in Hungary is not separated by the type of the funds, but is compressed into one coherent act. Moreover, this act – Act XVI of 2014 on Collective Investment Forms and Their Managers – provides small venture capital and private equity fund managers with eased provisions regarding capital and organizational requirements, administrative and technical requirements, and valuation methods, in order to reduce fund operation costs. Additionally, the new Hungarian Civil Code introduced the concept of a fiduciary asset management agreement, which is a similar legal institution to a trust. Under a fiduciary asset management agreement, a fiduciary asset manager undertakes to manage the assets entrusted to him/her by a principal in his own name and on the beneficiary's behalf, and the principal undertakes to pay the previously agreed fee. Despite the fact that the Hungarian market has not yet experienced how this alternative investment solution will work in practice, it is worth pointing out that fiduciary asset managers may easily generate severe competitive pressure on classic fund or asset managers.

In summary, while the Hungarian capital market in the classical sense did not perform well in 2014, the private equity/venture capital markets are strong, so start-uppers/entrepreneurs can find the forms that fit them best in a genuinely innovative, fizzy environment, and should strongly consider scanning the Hungarian VC/PE market for investment and fund raising opportunities.

## Energy in Hungary: Recent Legislative Developments and Prospective Challenges of Hungarian Energy Law

Pal P. Takacs, Partner, and Balazs Hegedus, Senior Attorney,
Kajtar Takacs Hegymegi-Barakonyi Baker & McKenzie

### Legislative Developments

The area of Hungarian domestic energy law went through various important changes as the result of several significant legislative amendments that entered into force at the end of 2014. The nature of these changes makes it essential that industry participants become familiar with them.

Laws on electricity and natural gas supply were amended and the legislator introduced strict requirements relating to organizations certifying IT systems used by energy market participants for the issuance of invoices. These certifying organizations are required to meet new minimum requirements: (1) they must be accredited for a minimum of 3 consecutive years, (2) they must have at least three references, with at least 2 coming from adequately educated/trained professionals with at least 2 years of certification experience, and (3) they must obtain a "security certificate" for their branch offices (if any). According to market information, it is likely that only a few organizations are capable of meeting the new requirements. Industry participants should be aware that an invoice issued from a system that has not been properly certified shall be deemed invalid as of February 28, 2015 or June 30, 2015, depending the number of invoices to be issued by the respective industry participant.

The amendment of the Act on uniform image of invoices of public service providers also entered into force at the end of 2014. This amendment introduced smaller technical changes relating to mandatory content requirements of the invoices issued by public service providers. The aim of this amendment is to facilitate the easier identification of the invoices and to assist in the provision of a wider range of information. Industry participants are obliged to harmonize their billing practices with the new requirements, as failure to comply could result in serious sanctions against infringers.

The so-called "network access fee" is also affected by the new regulatory developments. Under the previous regime, a two-tier regulatory system applied to the network access fee, and regulatory competence was divided between the competent minister and the president of the

Hungarian Energy and Public Utility Regulatory Authority (HEPURA), which made regulatory transparency quite problematic. The legislator, in order to remedy this situation, discontinued the two-tier regulatory system, and the network access fee is now determined by a single decree issued by the president of the HEPURA.

In addition, the licenses issued pursuant to the Act on natural gas supply have been also amended so that property rights over natural gas kept in natural gas storage operated as a public customs warehouse may now be freely transferred and no natural gas-trading license or limited natural gas-trading license is required for this purpose.

### Prospective Challenges.

The Hungarian energy market is facing major changes in the short and mid-term, and this presumably will result in the subsequent modifications of energy laws.

### Hungarian Government Entering the Market.

On the domestic level, it is significant that the Hungarian Government intends to establish a national utility holding company in 2015. A recently published Government Decree appears to reflect this intention, as it calls upon the Minister leading the Prime Minister's Office to examine the options the Hungarian Government has to enter the electric supply and district heating market (as a universal service provider). The Minister, in accordance with the requirements of the national public utility system, is obliged to introduce a proposal to the Hungarian Government containing the most viable options.

### EU Regulatory Developments.

In the medium term, from the Hungarian energy market perspective, it will certainly be of great importance that the European Counsel recently approved the policy framework for climate and energy up to 2030 proposed by the European Commission (describing concrete goals in relation to the reduction of greenhouse gas emissions and the increase of the ratio of the use of renewable energy) and adopted implementing regulation on so-called REMIT data reporting requirements prescribed by Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency by the European Commission.

# Life Sciences in Hungary: Investment Opportunities in the Hungarian Healthcare Sector From a Regulatory Perspective

Andras Posztl, Country Managing Partner, and Gabor Papp, Senior Associate, Horvath & Partners DLA Piper

The relatively low level of health spending in Hungary – 8% of GDP compared with the 9.3% OECD average – means there is a certain latitude for a potential increase in the market as a whole. According to the OECD, despite volatile health-spending trends in Hungary over the past decade, the macroeconomic prudence of recent years and encouraging growth prospects are causes for optimism.

Owing to its geographical location, Hungary provides ideal regional headquarters for life science companies aiming to invest in and/or expand their activities in the SE European region. Investors in the Hungarian life sciences market may find ambitious biotechnology companies, talented research institutions. and renowned R&D capabilities, along with a skilled labor force with relatively low wage requirements. Investors in the Hungarian healthcare sector may also benefit from EU-related or government cash subsidies, tax incentives, and low-interest loans granted by the Hungarian Central Bank.

Nevertheless, investment in the Hungarian healthcare sector has its ups and downs; therefore it is crucial to have an in-depth and up-to-date understanding of the market before making investment decisions. From a regulatory perspective, based on recent legislative trends, the following activities may all provide promising investment opportunities in Hungary.

## Health Insurance Sector - Opening Up in the Midterm

According to current government plans, private insurance services will be welcomed within the Hungarian health insurance system in the midterm. As a result of recent regulatory changes, private healthcare services may not be performed in public healthcare institutions. Private healthcare providers are encouraged to create their own infrastructures. To this end, a two-tier health insurance system is envisioned in Hungary, where the first tier would consist of basic healthcare services equally available to everyone on a social solidarity basis, with a supplementary or second tier consisting of private insurance services organized by private capital-based health insurance funds, aiming to provide extra welfare, and additional services on an optional basis. Should the legislative framework be prepared in the coming months in line with this goal, the first strategic investors in the opening private insurance system might well see a return on their investments.

## Appetite for Medical Devices

Hungarian healthcare institutions have been traditionally – and deliberately – under-financed, and have therefore generated revolving debts. As a result, the under-financed nature and the obligation for repayment of ever-growing debts have often paralyzed the medical device development programs of hospitals. It seems now that the Government is committed to consolidating major parts of the current debts of hospitals. According to the Y2015 state budget, on top of the normal budget for the healthcare system, an additional EUR 200 million has been allocated to consolidate debts of healthcare institutions owed predominantly to market suppliers. This consolidation may relieve the tight budgetary constraints on hospitals and make way for the strategic acquisition of medical devices and appliances.

## Potential Targets for Private Healthcare Service Providers

In parallel with the consolidation of the debts of hospitals, the Government has launched a restructuring plan for healthcare institutions. Although the details of the restructuring program are not yet publicly available, it seems clear that the main goal is to eliminate redundancies in the healthcare system and reduce the number of hospitals providing general inpatient services. It is likely that one priority hospital will be appointed – instead of the current many – with general responsibilities per region supported by specialized hospitals. As a result of the restructuring, several healthcare facilities may become redundant and hence serve as a potential target for brownfield investments.

## R&D Incentives in the Pharmaceutical Sector

Both refundable and non-refundable incentives are available for investors coming to or expanding in the life sciences sector in Hungary. One of the most important of these incentives is that pharmaceutical companies may, in certain circumstances, deduct a high proportion of their R&D expenditures from their tax obligations. An R&D investor may be entitled to further government subsidies if, in relation to its R&D-related investment, it creates new jobs n Hungary.

# From New York to Budapest:
## The Story Behind an Unusual Choice for a First Office Across the Atlantic

Stories about new firms moving into CEE countries are rare these days – definitely rarer than those about international firms pulling out. Nonetheless, in January 2015, the US law firm Sichenzia Ross Friedman Ference (SRFF) announced its affiliation with the Fabry Law Office in Budapest (which until recently was affiliated with the Czech PRK Partners law firm) – which will operate as SRFF-Fabry going forward. The affiliation, which became official on January 1, 2015, represents the first office outside of the US for SRFF, known for its securities and corporate practices. We reached out to Gregory Sichenzia, Founding Partner of SRFF, to learn more.

Gregory Sichenzia, Founding Partner, SRFF

### Why Budapest As a First European Footprint?

"I found myself in Budapest quite often," explained Sichenzia. "I had a lot of different connections – both business and personal – with the city and I thought the opportunities for a firm like ours are excellent in the market."

According to Sichenzia, the "obvious answer" to questions about the move was that he knew Agnes Fabry and Gyorgy Feher very well and believed they were simply "the perfect guys." The SRFF Partner added: "over time we've built a great deal of respect and familiarity with them. Gyorgy was also educated here in New York so he has a lot of familiarity with the NY/US market."

### "Not a Lot of Competition"

"I agree, Budapest is not the first city most firms think of in terms of a first European expansion, but we have a lot of confidence in the move based both on our experience in the market and the track record built by our local colleagues." He added that another reason he's optimistic is the general lack of real competition on the ground.

Sichenzia concedes that a number of international firms are in the market, but claims that "we have a different model. We do not aim to service primarily established US businesses looking to break into Hungary but the other way around – we're looking to support more entrepreneurial organizations in Hungary and other CEE markets who are keen to obtain financing from the US market."

### Build Up, Cross the Ocean, Finance

The US firm is looking to leverage its experience in Private Investment in Public Equity (PIPE) issuances in the US in its new affiliation.

"A great deal of Hungarian companies are quite entrepreneurial in nature and depend on financing to grow. We are well positioned to support them on the ground now until they hit a certain stage where we can bring them across the Atlantic to a market where the valuation of financing available is better," Sichenzia explained. "We have an excellent farming system for young companies in Hungary which our local colleagues help develop now."

And following the move, the local team is looking to further add to its capabilities in this sense. According to Feher, the local team is just adding a new banking partner – Judit Szoradi. "Our office has always been relatively small and we like our rather informal business culture, which fits perfectly with that of our colleagues from across the ocean," Feher stated.

Gyorgy Feher, Managing Partner, SRFF-Fabry

Commenting on the impact that the new affiliation is having on their business, Feher said: "We're very happy with the new arrangement and are already seeing it pan out for us. With Gregory's excellent contacts we've already registered 5 times more referral work than from our previous affiliated firm."

### Building Block For The Future

According to Sichenzia, the firm has plans to expand further, both in CEE and other complementary markets, the affiliation with the Fabry Law Office will not only be a critical learning opportunity in that process but, with the expansion, he expects the local office to become all the more critical for the firm as a whole as its first non-US venture.

We only wish their venture the best of luck and hope to see more firms turning their sights on CEE.

*Radu Cotarcea*

# Inside Insight: Zoltan Fenyi

## General Counsel at Sberbank Hungary

*Zoltan Fenyi is the General Counsel for Sberbank Hungary. As he describes it, he had a "simple career line leading up to today and was lucky enough to be in this position at the relatively young age of 31." He first started working while still in law school as a Trainee Lawyer at the Metropolitan Court in Budapest, which offered him an experience he characterizes as "extremely important, especially for a young law student." After 3 years there, and after graduating from law school, he began working in-house with CIB Bank, where he stayed for about 1.5 years. In 2009 he joined Volksbank. In 2012 the bank had a change in indirect shareholding structure resulting in him joining Sberbank. He fondly recalled two tutors within the organization, Krisztina Lantos and Tamas Nadasi-Szabo, who helped him to develop within the company. His first managerial role came in 2012 as Deputy Head of the Legal Team, and he became General Counsel in 2013.*

**CEELM: How would you define the role of a Head of Legal?**

Z.F.: In my case, I find there are several aspects to the role. First you need to act as a partner to the Managing Board and as a counsel to the CEO (the latter, by the way, is legally prescribed in Hungary as the General Counsel has to be directly subordinated to the CEO). The role also has a strong managerial position requiring me to lead, make decisions, spread out work, and support my team members with their problems – be they professional or private in nature.

Of course, the role also implies acting as a legal counsel. On this I would say that it is critical to stay involved in the daily legal problems of the company and to stay close to the business, from product development to sales channels and so on. To facilitate this, we follow a policy (which is also a personal policy) of an "open doors" approach.

**CEELM: You mentioned acting as a partner to the Managing Board. How do you find communicating and relating with the Board is most effective to carry out your role?**

Z.F.: Communication depends a lot on the personality of the CEO. In our case, it tends to be quite informal and open – critical for building a relationship of mutual trust. Naturally, the Board meetings themselves are rather formal, in accordance with internal and external regulations, but the material communication tends to be quite informal.

**CEELM: What are the main challenges posed by your role?**

Z.F.: In terms of the biggest challenge, the one that stands out in my mind is managing the constant and inevitable conflict between the business and legal risk functions. Managing the balance between the two is one of the trickiest things I deal with on a regular basis, not only in terms of coming up with solutions, but also managing the situations to ensure that a professional conflict does not become a personal one. In terms of managing this conflict I think personal communication and building relationships are key in order to position ourselves as trusted advisors. In fact, we spend a lot of time supporting staff from other functions, even on personal matters. Naturally, this is done outside of normal "business hours" and it is not an official function of the legal team, but we do get approached on a regular basis for such support and we are happy to lend a hand. We feel that a mutually supportive approach is in line with and further builds the corporate culture in our organization. We have to be counsel to the whole company, knowing and representing all of its sometimes contradictory interests than be simple lawyers. In fact, this is an area that I cannot fully empathize with, having never worked in a law firm, but I do see a big difference in their approach and sometimes it is hard to get them out of a purely legal mindset.

**CEELM: How large is your team and how do you structure it?**

Z.F.: There are two types of positions within the legal team. The first is related to administrative work and includes four colleagues. The second is the actual legal matters and includes seven colleagues. Within the latter there is no formal split of responsibilities. Informally, there are differences in focus – may it be more corporate-work-related or retail. Overall, all my team members have to be able to handle all kinds of legal issues, but the priority is these two. I think that this variety is why an open position at this department is quite interesting for many lawyers, which leads to a flood of CVs any time we have an opening.

**CEELM: The banking industry in Hungary has seen a number of regulatory changes – both at the national and EU level. Of these, which ones prove to be most challenging for your legal team, and why?**

Z.F.: Unfortunately, it's not hard at all to pick one. The new consumer law issues and the fair bank package in Hungary pose big challenges, as we are still struggling to interpret a great deal of them. We fear recent changes represent a dangerous bug for the system for the future. I feel much of them were developed without a concept behind them and without taking enough time to reflect on potential consequences and ramifications. As a result we ended up being confronted by hasty legislation without a lot of time to implement it, and I worry about it as a final solution since it will likely cause a lot of problems in the mid to long-term.

One of the main concerns in the industry at the moment is the consumer lending part, which many players might perceive as becoming much more risky these days. There are two possible theoretical answers to this: (1) not dealing with this kind of business altogether; or (2) increasing prices to reflect the additional risks. Both have adverse affects for the industry and economy as a whole, so we have to work on precise techniques to manage the additional risks. On the other hand, I see potential with the corporate and SME business. Based on the work flow that my in-house team has had to deal with lately, I see a lot of potential in this direction in terms of the increasing number of deals and the increased size of the transactions.

**CEELM: What type of work do you tend to carry out in-house and what types do you prefer outsourcing to external counsel?**

Z.F.: The general rule for me is to try to handle entry problems in-house as much as possible. There are some exceptions, such as labor law litigation, since in such cases we may be exposed to hidden relations/conflicts of interest in-house – a risk that cannot be taken. Of course, if we have to use or give opinions on transactions/deals requiring foreign law we involve external support. In some instances, there are also some specific questions where the Managing Board decides to request external opinions, such as when there is large liability, where it seems to be necessary to seek an external/objective opinion – or if there is a potential perceived reputational risk. The last ones are not frequent.

**CEELM: When you do outsource, what are the main criteria you use in selecting the firms you will work with – and what tools do you use to learn more about their capabilities?**

Z.F.: We have a panel and we tend to choose one of the firms from it. Cost awareness is natural a highly appreciated consideration from the management team. We tend to run tenders when the matter involves specific tasks/projects, and usually we choose the best price offer but, of course, we also factor in past experiences and the firms' expertise. In terms of the panel used, we have a local panel, in which we take into account the group one. We just finished establishing the new panel and the previous one was set in 2012.

**CEELM: In what way, if any, do you think the role of a GC is unique in Hungary as opposed to any other jurisdictions?**

Z.F.: The main difference, based on my experience relative to colleagues from other countries, is that in Hungary a much higher involvement in the business side is expected of the General Counsel. I do not have a serious feel of other companies in the country to see whether this applies, but I suspect it does. I say this in light of the overall uncertainty in the legal system due to significant and quick changes of material laws that were recently passed (e.g. the Civil Code). With regulatory change being the norm and with the increase in risk that brings, I think businesses are more prone to turning to their legal counsel and involving them directly in the decision-making process.

**CEELM: On the lighter side, what is your favorite spot in Budapest, and why?**

Z.F.: I am a BIG fan of Italian cuisine. As a result, my favorite place is a little Italian restaurant in the Buda side of the city: Alessio.

*Radu Cotarcea*

# Inside Insight: Daniel Szeszler

## Group Legal Director at Magyar Telekom

*Daniel Szeszler is the Group Legal Director of Magyar Telekom. His first role after graduating from law school was with White & Case Budapest, where he focused primarily on disputes and regulatory matters. His tenure with the firm was interrupted to carry out an LLM at University College London and an internship with the ICC International Court of Arbitration (Paris). In 2010, Szeszler joined Magyar Telekom in a senior expert role where he was soon exposed to "very stimulating matters, including an out-of-court settlement with U.S. government agencies over FCPA investigations relating to Telekom and a lawsuit against the Hungarian telecoms regulator over the market entry of a new, state-owned mobile operator." In January 2013 he took on the role of Head of General Legal Department – one of the then three legal departments at Magyar Telekom – and was appointed the Group Legal Director effective July 2014.*

**CEELM: Magyar Telekom was the first company with which you took up an in-house role. Did the company itself play a part in your decision to move in-house or did you simply decide it was time to work in-house?**

D.Sz.: After five years in private practice, I was striving to do something different. You know, in private practice, you rarely have the opportunity to see the big picture. In contrast, if you step closer to the business and go in-house, your job consists of more than merely advising business decisions: you are often an integral part of the decision making process. I thought I would enjoy this working style more and I have not been disappointed.

The opportunity I got from Magyar Telekom came at the perfect moment and was simply unrefusable. I got the chance to work with the top management of a company which operates in a number of exciting markets: mobile and fixed-line telecommunications in all customer segments, IT, media, energy retail, and other distinct fields such as e-health or e-payment solutions. This company is huge, diverse and inspiring, and it allows you to learn, to grow, and to show off your talent. Telekom has invested EUR 8 billion in Hungary through the past twenty years, serves nine million customers and employs over twelve thousand people. It is a majority shareholding of Deutsche Telekom Group but is a publicly-listed company. It has several subsidiaries abroad and in Hungary, including Origo, a major media company and T-Systems, a leading provider of B2B ICT services. I guess all this explains why accepting a job offer from such a stimulating company was a no-brainer.

**CEELM: In July 2014, you took on the role of Group Legal Director. How is the role different and what new responsibilities did you take on from your previous role?**

D.Sz.: As the head of the department, I managed a team of six, responsible for procurement/contracting, real estate, commercial litigation, and a number of other areas. As the Group Legal Director, I am responsible for all legal work of the company (except for labor law). In addition to the topics I just mentioned, our service portfolio includes supporting all of the company's product development, marketing, and sales activities, providing sector-specific legal advice concerning all of our markets, as well as advisory in corporate and M&A, internal regulations, and privacy.

**CEELM: Do you report to the local board of Magyar Telekom or to the GC of Deutsche Telekom? When interacting with your Board Members, how do you find it is most efficient to communicate potential legal risks?**

D.Sz.: I report to Magyar Telekom's Chief Legal and Corporate Affairs Officer, who is a member of our Management Committee.

There are a number of ways to communicate about legal risks and any available mitigation possibilities. On the formal side, I have to pre-approve any decision our Management Committee takes, a process that gives me and my team the opportunity to review all management-level decision materials and signal any risks relating to proposed decisions. Yet I find the in-house lawyers' informal, everyday consultative role to be even more crucial. This role is best fulfilled if the working relationship between business and legal is open and builds on trust and mutual acknowledgment of common goals. Legal must go beyond signaling risks. We must be able to think together with the business and to be valued partners, to be engaged in joint efforts to arrive at solutions where business goals are best fulfilled while legal risks are mitigated to the extent possible. This requires the ability to listen to and – more importantly – to actually hear each other.

**CEELM: How is your legal team structured? Do you tend to specialize your team members or try to rotate them?**

D.Sz.: We have two legal departments within the Group Legal Directorate. The Service Support Legal Department advises Telekom's customer-facing units. This team deals with all business and product development, marketing, and sales activities in all relevant industries where we operate. The Corporate Governance and General Legal Department is responsible for all other legal activities, including M&A, corporate, internal regulations, procurement, real estate, and commercial disputes. Data privacy, as a separate function, reports directly to me.

Most of our lawyers are specialists in their respective fields. There is very limited room for rotation; therefore, my lawyers often work as teams and consult one another, while one specific colleague often acts as a one-stop shop to our internal clients.

**CEELM: Do you have dedicated compliance/regulatory departments, or are these functions integrated in your legal team? Do you supervise them directly, or do they have different reporting lines?**

D.Sz.: Both are distinct functions, independent from Legal. Traditionally, Regulatory has been a separate unit within the organization (Magyar Telekom operates in a highly regulated industry). The Regulatory Directorate is our key interface to legislative and government bodies. Compliance, on the other hand, is an independent control-and-advising function reporting to the Audit Committee of the Company.

**CEELM: When you do decide to outsource legal work, what are the main criteria you use in picking the firm(s) you will be working with?**

D.Sz.: In Hungary, there are so many excellent lawyers and firms that making a choice is often quite tough. The most important factors influencing our decision are professional credibility, track record, and specialized knowledge in the relevant practice areas and sectors. If we have good experience with a particular lawyer or firm, we of course like to engage them over and over again. On the other hand, I have to say we are extremely price sensitive.

We do have a pool of around ten major Hungarian law firms whom we regularly work with, but we occasionally engage firms beyond this pool. As a general rule, we pick external lawyers for any specific engagement through highly selective procurement tenders.

**CEELM: What challenges do you expect to face during the next year or so?**

D.Sz.: There are a number of internal and external challenges impacting our work. Magyar Telekom recently announced sizeable headcount cuts to be implemented by the end of this year. Not surprisingly, these cuts hit the legal team quite hard. At the same time, the ever-accelerating and vibrant market environment in which we operate requires the legal team to be more and more adaptive, innovative,and responsive. This tension between diminishing resources and rising bars urges us to rethink who we are and how we operate. We as the legal function are working on our new identity, our revised vision, and our modus operandi. I and my heads of department have to find novel ways to motivate our teams and to make our colleagues see the glass half full rather than half empty. Naturally, this change-management process is challenging, and requires patience and persistence for all those involved.

At the same time, we as a company face a number of challenges which of course greatly impact the legal function. There is a clear global trend of integration and market consolidation in telecommunications. In Hungary, a new player is about to enter the mobile market. Telekom is engaged in intense fixed-line and mobile infrastructure development. New products and innovative solutions are being developed on existing technology platforms. These trends of course have a clear impact on the legal function. On another note, legislation in Hungary has been quite unpredictable lately; based on experience over the last few years, we must be able to move fast, to interpret and implement radically new legislation and adjust our corporate processes and practices over surprisingly short periods of time.

**CEELM: On the lighter side, when you get a chance to get out of the city for a weekend get-away, what's your favorite destination and why?**

D.Sz.: When I have a long weekend, I enjoy visiting European cities. My ever favorites are the two cities I used to live in: Paris and London. Of course I also like to target new destinations to diversify my "portfolio" of life experiences: last year I visited Istanbul, this year I may easily spend a few days in Oslo for instance. On "regular" weekends I often drive to Lake Balaton to spend a few days at a nearby wine hill or to go sailing with friends and family.

**CEELM: What about when you don't get the opportunity to escape the city?**

D.Sz.: I am a big theatre fan and I go to see movies at least twice a month. During the last year or so I took up regular physical exercise again. For instance, I do Kangoo Jumps, which is a real endorphin booster and perfect way to let off steam. Also, when the weather is nice, I like to run; a great personal challenge this year will be my first half marathon, which I plan to run at the annual Telekom Vivicitta race in April.

*Radu Cotarcea*


# Face-To-Face

*In the Face-to-Face feature, we invite a Partner from a leading law firm to interview a General Counsel from his or market. In this issue, Schoenherr Budapest Managing Partner Kinga Hetenyi speaks with Gergo Budai, the General Counsel of Invitel.*

Gergo Budai, General Counsel, Invitel

**K.H.:** What is the biggest challenge for you as GC?

**G.B.:** It's hard to say, since "the biggest" challenge changes often for us. Currently, it's coping with the range of tasks on our plates. This year started early and quickly, and the amount of things on our "to do" list, from legal to regulatory, compliance, and quality control, all skyrocketed. The trick is then how to deal with all these plates up in the air in a balanced manner.

**K.H.:** How big is your legal department and how do you structure it?

**G.B.:** My entire team is approximately 20 people, working across the board: legal, regulatory, quality assurance, compliance.

**CEELM:** Why did you choose to structure all these functions under one department rather than keep them separate as some other organizations do?

**G.B.:** They were separate at one time but when I came to Invitel the CEO preferred them working under the same umbrella since the feeling was that there is a great deal of inter-dependence and they all go hand in hand.

**K.H.:** In many ways regulatory and legal do overlap and different organizations define them in different ways. For example, within our office "regulatory" means mostly state administrative law matters, but within the AmCham "regulatory" basically means "law-making issues." What does the distinction between them mean to your organization?

**G.B.:** The way I would differentiate between them is that "legal" handles all types of work that a law firm would normally cater to: contracting, litigations, etc. Regulatory is the branch that, for example, would be engaged with regulatory bodies and comment on a piece of draft legislation. Often, we're talking about technical matters and we need to get information from our tech guys, translate their input to legal or regulatory language, and "push it" to the regulatory bodies (and vice-versa). Most of the times these guys (in "regulatory") have a specialist degree, and there is a lawyer assigned to work with them. Other components that the regulatory team deals with are ongoing procedures from regulatory bodies, such as competition investigations. I am talking here about the initial investigation stage rather than formal GVH proceeding or related litigations, which are handled by either the legal team or external counsel. There is, of course, a lot of synergy between the two functions – hence our decision to have them operate under the same umbrella.

**K.H.:** What kinds of legal work do you tend to outsource to law firms?

**G.B.:** Our basic aim is to try to do everything in-house. However, we turn to law firms if special or cross border expertise is required or we simply do not have the capacity to deal with a specific matter.

**K.H.:** And when you do outsource work, do you tend to use the "good old tested firms" or ask for offers on a case-by-case basis?

**G.B.:** We do have a number of firms that we usually work with – especially if it involves our shareholders who have their own preferred firms – but, of course, we do work across the board with multiple firms and "try out" new firms on a regular basis.

**K.H.:** What is the most important source of information for you in terms of current legal issues?

**G.B.:** Partly, the informal conversations that we have with authorities, outside counsels, and our regulatory team, whose partial responsibility it is to constantly monitor "what's on the horizon" in terms of legislative updates. We need to know of such matters well in advance to both engage regulatory bodies through available channels and provide input and shape it (naturally, within the boundaries of regulations), and to prepare for it. Basically, we need to be aware from the moment that the spark of an idea exists – if we learn of it when we see it as a draft piece of legislation on the Parliament's website, we're too late.

**K.H.:** What about various newsletters and client briefs?

**G.B.:** I usually skim through headlines to see if there is anything potentially of interest. If not I tend to just delete them, as unfortunately I have little time to read these kinds of things. Even with colleagues, I prefer a conversation (and my door is always open) than a 2-page e-mail that requires me to write up a 3-page e-mail response. Unfortunately I've had to learn to focus on the executive summary as much as possible. Naturally if I need to I will dive into the details but I cannot afford doing that on a regular basis despite my professional interest in the legal details of every matter.

In fact, I remember working in a law firm as a junior associate and drafting a 5-page memo for a client. The partner looked over it and highlighted 3 lines only and told me to send that to the client only.

**K.H.:** What are the main aspects you factor in when choosing a law firm (price, references, directories, international experience…)?

**G.B.:** Good sound legal advice is our end goal. We're looking for firms/lawyers that prove a good understanding of the local issues at hand and good business acumen. A reliable and responsive lawyer who understands the business and our needs is simply critical. That is why communication is very important. The outside counsel should have a proper understanding of what she or he will be working on, and what our intent is with the work product.

**CEELM:** How do you carry out a post-project assessment of the firm you have worked with?

**G.B.:** I wouldn't say we have a formal procedure in place, nor explicit/formal KPIs. Usually, after the project is done, we sit down and carry out an internal SWOT-type of an assessment of how the project was carried out and of the firm we worked with. We do tend to provide our findings from this exercise to firms as feedback but it is not based on a formal formula per se.

**CEELM:** Do you keep a record of these findings and refer to it next time when picking firms?

**G.B.:** Again, not a formal record of this per se, but what we do keep and use is the documentation of the project itself. This is primarily in case issues related to it come up in the future – and, for example, we are now reviewing documentation we stored from 2008 with a similar purpose.

**K.H.:** I imagine the best sign of well-executed project then is if such matters never resurface.

**G.B:** In most cases I agree but in certain instances they are inevitable. Recently we've had to pull up records from a matter that dates back to 2005 (we were joking internally that we should get a 10 year birthday cake for the case).

**K.H.:** What is the most common problem you face when working with law firms?

**G.B.:** After working with external counsel for several years, I have a few good examples. One instance that I can think of is a time when we received quality work – but what followed was a huge over-invoice. Even if you agree on a strong cap, you can't precisely judge ahead in all instances and a 10-20% flexibility is an acceptable ballpark, but a triple invoice over original projections is always upsetting. Similarly – and this was probably the funniest instance – I remember receiving an invoice in one instance that included a charge for two hours of "preparing the billing."

I also tend to be quite disappointed when a certain expertise is presented and you find early on that it is not really there. I appreciate firms that are open and tend to say: "let's try to cover that learning curve together." I appreciate the honesty as opposed to learning later that it doesn't pan out.

**K.H.:** I can imagine why invoicing can cause most disappointment towards external counsel. I still remember working as an in-house counsel and challenging one invoice I received from a law firm. What followed was a lengthy explanation accompanied with an invoice for the time spent to justify the original invoice. It had gone as far as to receive the full printed texts of all relevant laws and even being charged with the delivery service to my office.

**CEELM:** This gives rise to an interesting point. What best practices are there to keep track of billing on both sides and ensure as accurate an estimate as possible?

**K.H.:** On our end, when I have to provide a fee estimate, I sit down and estimate how much time it will take for my colleagues and me to execute a project. The more of an expert you are, the better the estimate is and the lower the estimated time tends to be. When doing so, various considerations are critical: (1) understanding the issue and the possible impact that it may have on the client's business, (2) having an accurate feel of both their needs and how long it will take to fully instruct them (e.g., if it is a foreign client, do they already know the basics of Hungarian law?), and (3) assessing your internal capabilities. For example, if you feel a standard associate should be able to deliver on a component within two days but, maybe because of capability or work-load, he or she will need 3, you need to factor that in and make sure both the estimate and the final bill reflect the under-rate. Usually, clients will not tolerate paying for learning curves, unless the matter is something really unique, or for law firms internal issues like, for example, that their expert is unavailable due to capacity problems.

**G.B.:** On our end, communication is critical. That's why we try to talk to our external counsel on a daily basis. It helps us check in on progress and have an overview of the work carried out – and also helps us see how contingencies impact (or should impact) the final bill.

**K.H.:** What are the three pieces of advice you would give a law firm in order to improve their services?

**G.B.:** I wouldn't dare do that [smiles]. I would

Kinga Hetenyi, Managing Partner, Schoenherr Budapest

say it's all about communication and managing expectations – making sure both sides get on the same page and there is a clear and full understanding of the need. If that's ticked together with the right legal knowledge, you can't go wrong as an external counsel.

I'd also say that pro-activeness is very important. Tombstones of firms reading that they are #1 on something I tend to shrug off. If they send a newsletter about updates, that's a good start, but it's less important than a call along the lines of "look, this development is in the works and you might want to make sure you are aware of."

Drawing on the earlier discussion, I'd also suggest making sure an invoice is double checked before it is sent out to a client to make sure you avoid awkward instances.

**K.H.:** How does you see the legal market in the last 3 years? What kind of trends do you expect to see (quality, quantity, prices) going forward?

**G.B.:** It has changed a lot and it is continuously changing. Certainly, the big international firms came in and enjoyed the privatization era, and only a number stayed following the "glory days." Indeed, many qualified lawyers trained in those environments stayed behind and set up their own practices. That competition combined with the economic situation means that law firms simply cannot charge the hourly rates of EUR 500-700 they were used to. It is without a doubt a smaller market these days, and marked by uncertainty, but while that is not necessarily ideal for businesses, it does help the legal market since that increased risk creates more of a need for external advice. On the companies' side, when they first moved in, in-house teams tended to be large. Once they stabilized in the markets there simply was no need for teams of 5 lawyers any more. Now, when things are rocky again, we started rebuilding in-house teams. Really, summing it up, the one word I could use to describe it all is constant change.

*Radu Cotarcea*

# Expat on the Market: Richard Lock

*Richard Lock is one of the founding Partners of Lakatos, Koves & Partners. An English lawyer, with extensive experience of European and Hungarian cross-border issues and of the corporate law matters that dominate our practice, he has been a resident of Hungary for the past 20 years.*

**CEELM: How did you get from the UK to your current role in Hungary?**

R.L.: I was working in London with Clifford Chance in 1992. The London market was quite depressed, I was recently married and we were looking for something different and Central Europe was where interesting things were happening. I came to Budapest initially on a one-year secondment into a firm which had been recently established by Peter Koves. At the end of that year Clifford Chance formally entered the market and it made sense to me to stay. Peter Koves, Peter Lakatos, and I became Clifford Chance Partners, which we remained until 2009, at which point Clifford Chance pulled out of the Hungarian market, and we continued the office as an independent firm, Lakatos, Koves & Partners. Having been in Hungary at that point for 17 years, it was not a difficult decision to stay in Hungary, because it both had become home and was and remains a fascinating place to live and work. The last 5 years have been dedicated to establishing the firm as an independent and international player in the top tier of firms here.

**CEELM: How has the practice of business/commercial law in Hungary changed since you first arrived?**

R.L.: The one word answer to this would be "a lot" (and that is also true for the practice of law around the world, in the last 20 or so years). The longer answer could take volumes. Technology would be one of the areas to focus on, and when I came here the lawyers I was working with were more IT sophisticated than lawyers in London at that time. Laptops and mobiles were commonly used earlier here (encouraged by the desperate shortage and low quality of land lines). One of Hungary's advantages of that time was that the concept of an independent legal profession was quite well and proudly established. That, combined with the massive influx of international law firms wanting to do business here – I remember in 1994 going to meetings of foreign law firms at which more than 40 law firms were present – provided a great environment for rapid development both in the legislation and in the way transactions were implemented. Now, among the leading firms, the work performed is broadly the same as you would find in any developed market.

**CEELM: What idiosyncrasies or unique challenges have you observed in the legal industry in Hungary?**

R.L.: (Apart from the challenge presented by the language) I would draw attention to two issues. Firstly, a love and respect for complexity (could this be linked to the language?!) and a corresponding suspicion and distrust of simplicity. Secondly, and particularly recently, a problem for lawyers is the weakening of the concept of the rule of law. It is not unusual for a commercial lawyer anywhere in the world to advise his clients that "this is what the law says, but there may be some issues of interpretation, and what actually happens may be slightly different"; it is another, and worse, situation if the message is that "the law is continuously changing, is badly drafted, and too often what the law says does not matter if the politics is against you" which, unfortunately, is often the message that one needs to give in Hungary today. The challenge for us as lawyers is to help our clients navigate safely through that situation, or at least to mitigate risk. We have a history of innovation and creativity in helping our clients. It is interesting to me that although among our international clients we have some whom we are helping in their exit from the market, many stay, and we have several who are entering Hungary this year for the first time.

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

R.L.: I hope that my experience over many years both here and in other jurisdictions – the UK before I came here, and around the region while I have been here – is useful. As a foreigner I am well placed to review and question my team of lawyers' work from the outsider's perspective. The majority of our work is in English for foreign clients. I can oversee advice standing, as it were, in the client's shoes. I may provide some antidote to the love of complexity I referred to above – I like things to be clear and see simplicity as a virtue! Our relationships with law firms around the world is important to us, and I play an important role in maintaining and developing those. Peter Lakatos, the firm's Managing Partner, sometimes refers to me as the firm's foreign minister! Within any country an expatriate has a privileged position and in some ways I think I am able to ""network" more easily than someone more embedded in the local scene. In a country in which there has been so much change in the last 25 years I sometimes find that I provide a continuity of experience that is quite unusual and can be useful.

**CEELM: *Other* than Hungary, which CEE country do you enjoy the most?**

R.L.: Croatia for sailing, Austria for skiing, the Czech Republic for walking.

**CEELM: What one place – a restaurant or a tourist attraction, or anything, really – do you most enjoy taking visiting guests/family to in Budapest?**

R.L.: Gerloczy Kavehaz, the Citadella, Szechenyi Baths, a morning walking in Pest and an afternoon in the Buda hills.

*Radu Cotarcea*

# Next Issue's Market Spotlights

## Russia

## Ukraine

# Experts Review: Energy

In this issue of CEE Legal Matters, at least, size definitely matters.

The Experts Review articles are presented, this time, according to the size of the countries they represent. So the article from Russia, not surprisingly, is first (even the European part of Russia is the largest in Europe). And the article from Turkey (the second-largest country in CEE, though only the 37th largest country in the world), is next. But did you know that Serbia is bigger than the Czech Republic? That Moldova is bigger than Albania? Now you do.

## In this section:

## Russia

### Western Sanctions Blowing Winds Of Change Into Russian Energy Sector

Following Russia's "annexation" of Crimea in March 2014 and the ongoing fighting in eastern Ukraine, a swathe of western powers, including the EU, US, Canada, and Japan, imposed a range of sanctions targeting the Russian economy. The Russian energy sector has been amongst the hardest hit.

The three main Russian energy companies – Rosneft, Gazprom, and Transneft – were targeted on two fronts in the September 8, 2014, round of EU sanctions. First, the EU prohibited the supply into Russia of certain oil- and gas-related equipment, technologies, and services for use in specified projects. Second, the EU impeded the ability of these companies to fund both existing and future projects by restricting access to EU financing.

So what has this meant for the Russian energy sector, and what is it likely to mean in the future?

Autumn 2014 saw two global energy majors, ExxonMobil and Shell, announce their suspension of joint projects in Russia, and leading offshore rig company Seadrill suspend its cooperation with Rosneft, forcing Rosneft to announce that it would continue its Arctic development projects on its own. Other Russian companies have sought to step in and fill the voids that have been left in such projects, but major Russian players are also looking further afield for viable new partnerships.

In May 2014, Gazprom signed a USD 400 billion landmark gas supply agreement with China, while Rosneft is continuing to invite both Chinese and Indian companies to join Russia's top projects. The construction of pipelines that will connect Russia to Asia, such as the Power of Siberia and Altai pipelines, have become a priority, contrasting sharply with the loss of interest on the South Stream pipeline that was intended to further connect Russia with Europe.

China and India are not the only beneficiaries, however. Rosneft closed a deal to acquire Kyrgyzstan's Bishkek Oil Company in October 2014, consolidating Rosneft as a considerable market force in the country. South Korean companies have expressed their interest in participating in the financing of petroleum projects in Russia, and Rosneft has agreed to establish a joint venture for the development of hydrocarbons in the Arctic with PetroVietnam. Brazil and Mexico have shown an increasing openness to Russian energy firms as well, and Gazprom is discussing a cooperation agreement with Argentina's state oil company YPF.

Nevertheless, it is clear that the deterrent effect of sanctions is not confined to European and American companies. Energy companies from other regions are also exercising caution in light of the political and economic uncertainties in the region. India's ONGC reneged on the proposed acquisition of a stake in a major Russian LNG project immediately following the introduction of EU sanctions, and although they did not identify the sanctions as the reason for the withdrawal, the timing would appear to be more than coincidental.

Kuwait Energy Company recently sold all of its assets in Ukraine – symptomatic of the downturn of business in the region. The economic and political climate in Ukraine, previously a steady and reliable trading partner, is clearly also having an impact in Russia.

Russian energy companies are therefore losing a substantial amount of revenue for reasons that a year or two before would have been unimaginable, and they are being forced to rapidly adjust their biggest projects against the sudden lack of foreign technology and funding.

Russia, true to form, is trying to put on a brave face.

Gazprom has announced plans to boost its investments to RUB 1.026 trillion this year, and Rosneft plans a 30% increase of its 2015 investment program.

Despite their confident budget announcements, Rosneft and Gazprom have challenged the legitimacy of the EU sanctions and have admitted to sizeable declines in profits for 2014. Further, in October 2014 Rosneft publicly requested financial aid from the Russian government, claiming RUB 2 trillion (USD 49 billion) is needed to address being locked out of international capital markets and the substantial foreign currency debt maturities that it is facing in 2015.

As if the sanctions were not enough for the Russian economy to bear, in yet another cruel twist of fate the OPEC cartel has abstained for several months now from cutting its production of oil, creating a significant glut in the market. Oil prices have tumbled worldwide, and since oil and gas sales represent half of Russia's national budget, the Russian economy has too. If Russia decides to stop pumping oil in an attempt to reduce supply, the country's wells will freeze. Further, there are no viable storage facilities for the extra oil. Russia seemingly has no choice but to continue putting this oil on the market, even if the current price it will sell for is about half of what the country needs to support its economy.

Unfortunately for the Russian energy sector, it seems that America (and by extension therefore, the EU) has no plans to lift its sanctions anytime soon. EU sanctions are to be extended to September 2015, with Western attitude towards Russia and its perceived involvement in the Ukrainian crisis still cold. In the absence of a lasting political solution in the region, it is questionable whether sanctions will in fact be lifted in 2015.

Russian energy companies know that they cannot count on the government to bail them out of this situation. Insisting on going it alone is also not an economically sustainable option. In the longer term, the Russian energy sector will find a way to continue developing without the cooperation of western players and will instead likely enter into partnerships with Asian and Latin American investors.

The West has seemingly turned its back on Russia and so Russia has decided to look elsewhere. It remains to be seen whether Russia will welcome its Western partners back with open arms if and when the sanctions are lifted.

*Jean-Francios Marquiare, Managing Partner, and Gregor Kennedy, Senior Associate, CMS,*

## Turkey

### Solar Electricity Generation in Turkey

Turkey enjoys an optimal geographic location for developing solar power plants with the average daily solar insolation of 2,640 hours, and average daily solar radiation of 1,311 kWh/square meter. Yet its solar potential remain unexploited. The Turkish government has been formulating policy changes to encourage solar generation, not necessarily because it is the most environmental-friendly electricity generation system, but also (and primarily) because of its need to diversify its energy portfolio, which is currently dependent on fossil fuels.

According to the information available on the web site of the Unlicensed Electricity Generation Association, a total of 1995 unlicensed solar electricity generation applications have been accepted by Turkey's Energy Market Regulatory Authority ("EMRA"), with a total installed capacity of 1,476 MW since the introduction of the "unlicensed electricity generation" concept at the end of 2010. However, there is not any available information on how many of the 1995 applications actually became operational.

The process with respect to licensed solar electricity generation activities, on the other hand, has been introduced more recently. In June 2013, 496 solar pre-license applications were received by the EMRA for the first time, for a total capacity of 600 MW, divided into 27 regions. Currently, only three pre-licenses have been granted by the EMRA as a result of those applications, and none of those solar power plants have become operational.

In general, legal entities wishing to conduct electricity generation activities can submit pre-license applications to the EMRA at any time of the year. However, pre-license applications concerning wind and solar electricity power plants can be made only at pre-determined periods. According to applicable legislation, the Turkish Electricity Transmission Corporation ("TEIIASS") should inform the EMRA before April 1st every year of the capacity available for the connection of electricity generation facilities based on wind or solar energy to connection points and/or on a regional basis, for the following five and ten years. As per the information provided by the TEIIASS, the EMRA should accept pre-license applications based on solar energy within the last five business days of October each year. As an exception to this rule, in 2015 (as they were in June 2013), pre-license applications based on solar energy will be received by the EMRA on April 1, 2, 3, 6, and 7.

Since solar pre-license applications are made only in relation to pre-determined connection points and/or regions, it is highly likely that there will be more than one application for the same connection point or region. In such cases, the TEIIASS holds a competition to determine the applicant(s) that would be connected to the system. The determination is made based on the highest bid per MW submitted by the pre-license applicants. The winning bidder is obliged to pay the contribution amount, which is to be calculated by multiplying the installed capacity of its project with its bid per MW. The contribution amount should be paid to the TEIIASS within the first three years after the relevant generation facility becomes operational.

After receipt of the first set of pre-license applications by the EMRA, the TEIIASS held competitions with respect to the so called first, second, and third packages. The competition with respect to the first package was in relation to two of the 27 regions (namely 24-Elazig and 26-Erzurum), and was held on May 12, 2014. The competitions with respect to a total of nine additional regions (4-Antalya, 5-Antalya, 9-Burdur, 14-Mugla/Aydın, 16-Denizli, 22-Siirt/Batman/Mardin and 25-Sanliurfa/Diyarbakir within the second package and 1-Konya and 2-Konya within the third package) were held on January 29 and 30, 2015. Although there is no time limit set forth under the legislation, the TEIIASS is expected to hold competitions for the remaining 16 regions (357 MW in total) within the first half of 2015.

The highest bid submitted for a region within the scope of the first three packages is TL 2,510,000 (approximately USD 1.04 million) for the 1-Konya and 2- Konya regions, and the lowest winning bid is TL 68,000 (approximately USD 230,000) for the 26-Erzurum region. The successful winning-bidder legal entities of the first package were granted pre-licenses on November 20, 2014. If everything goes as planned, one of them is expected to obtain a generation license around the end of 2016, and the other within the first half of 2017.

The aim of the Ministry of Energy and Natural Resources is to have solar power plants with a total installed capacity of 3,000 MW by 2019. In line with this ambitious aim, it is a very lively time for the Turkish electricity market. The TEIIASS is expected to hold competitions for the remaining regions, and the second set of solar pre-license applications would be received by the EMRA within a couple of months. The competitions already held by TEIIASS prove that investors are very keen to be among the first to be licensed to generate solar electricity in Turkey.

We are hopeful that the problems faced with respect to the first set of solar pre-license applications will not be repeated, and that an established practice encouraging especially foreign investors regarding the implementation of the applicable legislation will be developed soon. Supported by solar-energy specific policies and with significant technical developments that reduce investment costs, solar power may become a solution to many of our energy-related problems.

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## Ukraine

### In Need of Immediate Gas Sector Reform

The Ukrainian gas market suffered significant changes in 2014. Russia's actions put energy security high on the agenda in the country. Events that were completely unimaginable in 2013 now appear to be the harsh reality: brutal military conflict in the Eastern Ukraine, a halt in continuous gas supplies from Russia for Ukraine's internal needs, the prospect of a cold winter without sufficient reserves of gas in storage, and finally a last-minute winter deal between Naftogaz and Gazprom, which is to expire on April 1.

2015 may appear to be an even more difficult test for Ukraine's energy security. Gazprom not only promises to halt gas supplies to Ukraine in case of Naftogaz's failure to pre-pay for further deliveries but also threatens to re-direct the gas flow to the EU from Ukraine to other routes. Even if not all of that is going to happen, Ukraine must initiate immediate reforms in the energy sector and rethink its gas relationship with Russia.

**Reform of Naftogaz.** The endemic problems of the Ukrainian gas sector mostly have to do with Naftogaz, a state-controlled gas giant with a colossal company budget deficit (USD 6.5 billion, against a state budget deficit which is only USD 4.3 billion), and are caused by the price disparity between the prices at which Naftogaz purchases the gas from the EU or Russia and sells it to the population or heating companies with subsidies by the Government. The long-standing practice of setting artificially low natural gas prices for households and heating purposes (much lower than what Naftogaz pays for the imported gas) led to the state company incurring chronic losses of billions of dollars. The Government uses every administrative opportunity to provide funding for imported gas; for example, the National Bank of Ukraine has recently provided Naftogaz with USD 1.7 billion from its reserves in order to finance natural gas imports.

The Energy Community, the International Monetary Fund, and other international partners have been underlining the need for Naftogaz's reform and particularly for the unbundling of its gas-transportation and gas-production businesses. Ukraine can choose one of three classical market models: Ownership Unbundling, Independent Transmission Operator, and Independent System Operator. Both the OU and ITO models imply radical changes to Naftogaz's current structure, but the Government tends to prefer the ISO models. In their view, the gas assets (pipelines and storage facilities) will be owned by two state companies but separate operators (where Ukrtransgaz would have controlling stake) will be in charge of the daily management of the assets. These operators will be responsible for granting and managing third-party access, while the state companies – the owners of the assets – will be responsible only for the technical condition of the networks. Given Naftogaz's current influence over its 100% subsidiary Ukrtransgaz, it would be extremely important to ensure the legal and functional separation between Ukrtransgaz and Naftogaz. Numerous detailed rules should also apply in order to ensure non-interference in the operators' businesses. For example, the operators must be fully equipped with their own financial, technical, and human resources, and personnel of the asset-owning companies may not be involved in the decision-making process. Currently Ukraine does not have in place the necessary legislation to effectively implement this model. and this legislation is yet to be carefully drafted and adopted by the regulator.

**Access to the Ukrainian Gas System.** Ukraine intends – once Naftogaz's reform is successfully completed – to offer access to its gas transportation and storage assets to international investors. The Parliament has already adopted a law to allow European and American investors to acquire up to a 49% share in companies that would be operating pipelines and storage. The tender is scheduled for 2015, and if this initiative is implemented, it will be the clearest demonstration of Ukraine's firm intention to comply with European Union standards for the gas market.

On the other hand the Government still lacks consistency in liberalization of the oil and gas market in Ukraine and, making one step forward, always makes two steps back. For example, early in 2014 Ukraine raised domestic gas prices by 50 per cent in order to meet IMF demands, resumed import of natural gas from Europe, and voted for a change in the ownership structure of the gas transportation system. However, at the end of the year the Government directed its efforts in the opposite direction by doubling the gas production tax rates and introducing Naftogaz's monopoly over gas supply to the largest industrial consumers on the market.

**Possible Outcomes.** Given this state of affairs, one may expect two possible scenarios for further development of the Ukrainian oil and gas market. The first one assumes that various political forces may want to stall the reform process in the oil and gas sector, as fear of a social outburst due to a potential cancellation of the subsidized tariffs for households is something that politicians are always afraid of. The drop in world oil prices that are leading to adecrease in gas prices may play a secondary role in that as well.

The second scenario requires the Government and population to be ready to undergo painful reforms under strict supervision of international institutions. The Energy Community could be a big factor in helping Ukraine honor its commitments to implement European energy market rules. Opening of access to Ukraine's GTS and gas storage, its gas market, and significant gas production potential could be advantages in further Ukraine-EU trading and market integration perspectives.

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# Poland

## Poland's New Act on Renewable Energy Sources

Renewable energy sources are one of the priorities in the EU's energy policy, which strives to substantially increase the amount of energy obtained from renewable sources in total energy consumption. However, as obtaining energy from renewable sources is more expensive than from traditional sources, the development of the sector requires substantial public support.

On January 16, 2015, after five years of legislative process, the Sejm – the lower house of the Polish Parliament – adopted the long-awaited Act on Renewable Energy Sources (the "RES Act"). The RES Act will now be submitted to the Senate, which may propose amendments to, reject, or accept it. In the event of its amendment or rejection by the Senate, the RES Bill will be returned to the lower house for reconsideration. In any case it is expected that the RES Act will be finalized in February 2015. The RES Act will generally enter into force 30 days after its official publication, although the application of some of its provisions will be postponed until the beginning of 2016.

The Polish RES Act addresses in a complex manner all issues relating to the conduct of business activity in the renewable energy sector.

One of the fundamental changes pertains to the system of support for the providers of renewable energy. Currently the Polish Energy Law provides for rules applicable specifically to RES, including (i) special rules regarding connection to the power grid as well as transmission of electric energy generated by renewable energy power plants; (ii) sale of electric energy generated by renewable energy power plants; and (iii) the issuance and trade in certificates of origin (so-called green certificates) issued for producers of renewable energy. The RES Act changes this support mechanism. Existing installations – installations that will have started operation before January 1, 2016 – will continue to benefit from the current support system in the form of certificates of origin; however they will be entitled to opt into the new auction system. All new installations in which energy is produced for the first time after the RES Act has entered into force will however be required to participate in the auction system. The Polish government will set the amounts of the renewable energy required to meet climate protection goals (for example), as well as its and the maximum prices for such energy. The quota will be apportioned among different technologies, such as wind, hydro-energy, biomass, etc. The RES Act provides that all renewable energy technologies shall compete together in the auctions, though there will be separate auctions for installations of up to 1 MW and for those of over 1 MW. In these "after the reverse" auctions, the energy will be purchased from the lowest bidder. The operators of the installations with the capacity of up to 1 MW will be obliged to sell all tendered energy to the seller of last resort at the auction price. The support awarded in auctions for projects from 1 MW and above will – on the other hand – be in the form of a feed-in premium for 15 years (i.e., the guaranteed difference between the market price and the guaranteed price awarded in auction), paid by the Renewable Energy Settlement Operator, a special entity established by the State Treasury for the purpose of settling the obligations incurred by the government during the energy auctions.

The transition to the new support system will likely disrupt ongoing investments in renewable energy sources. The auction system will launch only in 2016, and new investment decisions will be contingent on the award of support required to obtain the financing for the project. Moreover, as a result of the new auction system, new projects will need to be both more cost-effective and able to generate more turbine work time in order to be competitive. It remains also to be seen what the impact on various technologies will be, and in particular whether the auction system will make the more costly renewable energy installations not profitable in Poland.

The RES Act, as adopted by the Sejm, also introduces new rules to give incentives to households to invest in renewable energy. Installations (in particular solar panels) with the power less than 40kW will not require any public permits. Local energy operators will be obliged to acquire the surplus energy generated by such installations into their network for a guaranteed purchase price in the amount of 100% of the average wholesale price. In return, the support of the renewable energy sources will be borne by the end consumers, who will need to pay the extra fee in order to support the development of the sector together with their energy bill.

Finally, it should be noted that the Polish Parliament is currently considering four different draft bills involving increased zoning requirements for wind farms that increase the zoning requirements for new projects. Their adoption would significantly impair the feasibility of the new wind energy projects; fortunately their adoption before the end of term of the current parliament is highly unlikely.

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## Romania

### Shale Gas in Romania: Still Waiting For The Results of Exploration

Romania is among the EU jurisdictions supporting shale gas investments (along with Poland and the UK) in a bid to address the concerns related to its increased dependency on imported natural gas. Several shale gas concessions have been granted so far in the east and southeast parts of the country, with the main investor in the field being the local subsidiary of the US oil & gas giant Chevron.

During the Fall of 2013, however, the Romanian Government's policy faced strong opposition in certain areas from both local communities and green activists from non-governmental organizations (NGOs) that opposed shale gas investments in the country. Several clashes between the riot police and NGOs occurred in relation to the shale gas explorations.

Despite the riots, the shale exploration process continued while the Romanian Government maintained its commitment to shale investments. The communities opposing shale gas investments moved the clashes to a legal ground and attempted to prevent shale gas explorations by: (i) refusing to issue certain pre-requisites necessary in order to obtain permits; and (ii) adopting local council decisions forbidding the exploration and production of shale gas in their areas. This approach forced the Government's county representatives to challenge these actions in court.

During the trials, the communities argued that "shale gas resources" was not clearly defined in the current Romanian Petroleum Law 238/2004, and that shale plays (the term "play" is used in the oil and gas industry to refer to a geographic area which has been targeted for exploration due to favourable geo-seismic survey results) were not part of the "natural gas resources," falling under the authority of the Government – and thus, accordingly, were not of national interest, but local. Following this argument, it was argued, local communities alone were entitled to decide whether any exploration and production activities could be performed, giving them the power to ban the activities should the local public interest require.

So far, a large majority of judgments have been made in favor of the Government, and the counties' prohibitions of shale gas activities cancelled. The battle in the courts continues, as local authorities and green NGO's have appealed against these decisions, and a number of cases remain pending before superior Romanian courts.

Public opinion focused again on the shale gas topic in November 2014 when the Prime Minister (running for President) stated during his election campaign that Romania might not have shale gas reserves, meaning that the fights over definition and jurisdiction could have been for nothing. The representatives of the main shale gas concession holder (Chevron) declined to comment on the statement, telling the press that experts were still in the process of assessing the outcome of exploration in the concession areas. As petroleum-related information is confidential by law, the data can only be made available to the National Agency for Mineral Resources.

After the end of the electoral campaign, rumours quickly spread across the Romanian energy sector making some of the investors uncertain about gas opportunities in Romania. Moreover, the international press announced in early February 2015 that Chevron was withdrawing from its shale gas projects in Poland – persuading many in Romania that it is only a matter of time before local shale gas projects face the same fate. This, combined with the significant decrease in oil barrel prices, further increased pessimism. According to the press, however, the major oil companies (ENI, Exxon Mobile, Total, and Chevron) concluded that the Polish subsoil consists of very hard rock (unlike in the US) and were therefore poor in shale gas.

Thus, Chevron recently announced that its exploration activity in Romania is continuing and that the company is still assessing the data collected so far. Should the outcome be reasonably positive, small and/or medium investors might also become interested in Romanian shale gas projects, which could open the door for smaller-size rather than large-size shale concessions. This would of course imply that the cost of exploration is manageable by small/medium investors. In addition, Romanian petroleum legislation will need to be revised in order to address the specifics of shale gas development and production in Romania.

And the current Romanian Petroleum Law 238/2004 is first in line for reform, as it doesn't make any explicit distinction between conventional and unconventional resources. At the same time, a long list of legal issues wait to be addressed, including: public property issues (clarifying that shale gas is part of the country's national gas resources); private property issues (i.e., Not in My Back Yard - NMBY); concession agreement issues (adjusting the concept of commercial discovery, duration of compulsory works programs, optional programs and production period); tax (special constructions tax and royalties), and environmental aspects (environmental impact assessment and water consumption issues).

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## Belarus

### Energy Sector in Belarus: Any Room for Private Investments?

The Belarus energy sector is seen by many investors, both domestic and foreign, as a market niche with high potential. The nation of almost 10 million people was arguably the most industrialized region of the former Soviet Union, and the government of independent Belarus deserves some credit for preserving and developing those industrial assets. This is one of the main reasons why today Belarus has a well-developed electric power system, with a total capacity exceeding 9,200 MW, grid length of over 240,000 km, and over 63,000 industry employees.

To date, the energy sector has remained an almost 100-percent state monopoly. Transmission and distribution of energy are completely controlled by the state entity Belenergo and its regional branches. So far, it is only in generation where the government allows for private investment. This system on one hand guarantees acceptable power tariffs for end customers (especially households, where over 60% of power tariffs are subsidized by the government) and a stable power supply in rural and other less-populated areas. On the other hand, the model kills competition and makes the sector less attractive in the eyes of the foreign investors.

The Belarusian Government did follow and analyze energy sector reforms in other countries of the region, and several reform concepts were elaborated in the early 2000's. However, none of them was implemented in real life. None of the current sector development strategies adopted by the government nor any of its public statements implies abandonment of the state monopoly in grid operation and power distribution. On the other hand, private investment is welcomed in generation, especially renewable energy.

Belarus seeks to obtain greater independence in the area of electric power supplies. By 2019, the Ostrovets nuclear power plant (initially, two blocs with 1082 MW net output each) should be put in operation. For about a decade, special emphasis has been put on renewable energy resources and local fuels for the power plants. Belarus is trying to make use of its numerous rivers, and a state program to develop hydroelectric power plants is being implemented, the largest project thus far being the Grodno power station (output 17 MW, operating since September 2012). Other good examples of foreign involvement in the Belarus energy sector are wood chips-fueled CHPs in Pruzhany, Zhlobin, and Shklov, constructed by Finland's MW Power in 2007 – 2009, several landfill gas facilities constructed and operated by Sweden's Vireo Energy AB in Eastern Belarus, and a waste-fueled power plant in Brest constructed by Austria's Strabag.

Market participants, however, seem to be pessimistic about the near future of renewable energy in Belarus, sensing opposition from the state monopoly Belenergy. This opposition has resulted in some adverse steps, such as recent reduction of the feed-in coefficients for hydroelectric power plants 1.3 to 1.1, and solar energy power plants 3 to 2.7. Obviously, the government to a great extent is driven by short-term financial limitations (currently, it is easy to argue that renewable energy appears to be much more expensive than that generated from traditional sources, especially Russian gas), possibly to the detriment of potential strategic gains.

Another factor which is holding back foreign investment in the sector is the immaturity and instability of the legal framework, which makes long-term projects riskier in the eyes of potential investors. A peculiarity of the legal system in Belarus is that decrees issued by the President have superior legal power to laws passed by the Parliament. These decrees may be dedicated to specific investment projects (for instance, granting special exemptions and privileges or establishing key objectives), or regulate a whole industry or important area of relations between state and business, such as privatization, employment, and stock market operations. They may even sometimes have retroactive effect and thus present unpleasant surprises to both foreign and local businesses. The good news here is that the number of Presidential decrees issued each year is decreasing (e. g., only 6 in 2014 versus 14 in 2004, versus 41 in 1999), and their purpose is often to deregulate business relations. This is in line with a general trend towards increasing the competitiveness of Belarus as an investment destination and further stabilizing the legal system; the quality of the laws has also increased notably during the past decade.

Many investors seek remedy against risks in making an investment agreement with the Republic of Belarus, attempting to receive additional tax and customs privileges, guarantees of fair trial (international arbitration), and protection against nationalization and requisitioning of their investments. In practice, the majority of such agreements merely repeat provisions of investment laws, and thus far none of them has been tested in courts. Inclusion of any extra investment incentives requires approval by the President. At the same time, the state seldom hesitates to resort to penalties established by the agreement or even avoid the agreement in case of breaches by the investor. According to the latest 2015 statistics, there are now 1,182 registered investment agreements, with a total investment volume exceeding USD 22 billion; 331 projects have been implemented successfully. In addition, a total of 555 investment agreements have been terminated for various reasons. No separate figures for the energy sector are published, but in any event the statistics quoted above show that quite often an investment agreement is hard to make use of. Also, some investors in the energy sector complain that they have to hire at least one dedicated employee just to file all the reports related to the implementation of the investment agreement throughout each financial year.

In the light of the foregoing, a summary of recommendations to an investor considering a venture in the Belarus' energy sector could be as follows: (1) Do a thorough market reconnaissance via existing project owners, local advisors, embassies, the National Agency for Investment and Privatization, etc. (2) To the extent possible, approach top-level authorities with your proposals – the Ministry of Energy, a Vice Prime Minister in charge of the energy sector, Presidential Administration, or at least a local executive committee (Minsk / regional government). At lower levels, you may face a lack of authority and procrastination in decision-making. (3) By all means make an investment agreement with the Republic of Belarus, but do not consider it to provide be a carte blanche or panacea against all risks. (4) Consider a reliable local partner, but be prepared for a lower quality of local management. (5) Do not fully rely on your experience in seemingly very similar markets (Russia, Ukraine, Lithuania, etc). In many ways, things are regulated and done in practice differently here. Recognize the difference.

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## Greece

### How an Ambitious Energy Policy Scheme In Greece Could Shift The Balance Of Power in South East Europe

Almost seven years since the outbreak of the debt crisis and the subsequent recession in Greece, the country's energy sector is now in the midst of a structural shift, forecasting timid signs of growth. The old players in the region seem to be gradually pulling out and potential game changers are taking up the slack, shifting the current alliances both at regional and national levels.

Benefitting from its geographical embeddedness and its role as a strategic transport node among the countries of South East Europe (SEE), Greece has managed to secure a strong comparative advantage towards neighboring countries, as it strives towards emerging as an energy hub for the European Union and a true gateway to Europe, Asia, and Africa.

Greece has always been the focal point of Europe in terms of energy policy and energy efficiency, harnessing a set of traditional and increasingly popular alternative energy sources and carriers. Despite having been saddled with harsh financial realities over the last years, Greece remains a major oil producer in Europe, home to billions of oil barrels and generating high revenue potential over the next decades. While Greece's energy balance is significantly dependent on the oil industry, national energy experts are now setting their sights on enhancing the country's energy agenda by upgrading Greece to a natural gas transport hub in the SEE region. Greece's participation in the Turkey-Greece natural gas pipeline and its proposed participation in the Italy-Greece natural gas pipeline, along with its role as a way-station in the expected route of the Trans Adriatic Pipeline (TAP) confirm, inter alia, the country's vital geography and strategic positioning.

In addition to the oil and gas industry, Greece demonstrates an abundant supply of renewable energy sources (RES) and a large potential for wind and solar energy. Thanks to its favorable climate, which ranges from continental to Mediterranean, Greece is a top-ranking viable energy supplier in terms of installed RES capacity from both wind farms and solar power plants. The renewable energy sector multiplies the likelihood of a Greek "energy explosion" in the SEE region by virtue of the deployment of new wind and solar projects, the performance of R&D activities on all aspects of solar photovoltaic energy, the existence of favorable – though currently reduced – feed-in tariffs, and the enhancement of the current national and European legal framework on RES licensing.

In light of the role Greece plays in SEE energy policy and system, it comes as no surprise that Greece should reintroduce itself as the most reliable energy partner in the region, capable of attracting new investors and strengthening Europe's bargaining power in energy negotiations. From its side, Europe should ensure that new key partnerships are built with international players, large-scale energy projects are spurred, and legislation on energy is harmonized, improving thereby energy efficiency and security and delivering economic benefits for both SEE countries and continental Europe.

Despite the good environment and encouraging prospects of enhancing the country's energy export activities and leadership position in SEE, Greece appears to lack an innovative, fresh, and well-structured energy policy framework, failing to meet the high expectations created by its extremely beneficial positioning in the region and its unique indigenous energy resources. The long period of recession and fragile political stability manifested at a national level through constantly changing policies, legal and financial regimes, and governance frameworks chipped away investors and eliminated the country's energy efficiency standards. Even on the home side, in terms of energy infrastructure, the national power grid system seems to be run-down and poorly maintained, whereas uneven and asymmetrical loads injected to the grid mainly by RES have led to power grid imbalances and calls for urgent modernization of the grid system through the dynamic balancing of energy supply and demand (i.e., "smart grids") as per the latest international energy standards.

Although the national legal framework on energy has been recently modernized and is sufficiently harmonized with relevant European legislation, its implementation remains a source of uncertainty and sets challenging technical barriers to the deployment of national and European energy projects. More concerns stem from the reluctance of local administration authorities and from major bureaucratic issues when it comes to the implementation of ambitious energy plans; individual government agencies often fail to respond immediately to project needs and insufficient resources doom promising energy investment options for small-scale undertakings.

The recently-elected government should undertake as a matter of utmost priority the setting up of a vibrant policy scheme that will pitch into the achievement of international energy standards and the development of ambitious and large-scale projects, aiming at the resiliency and viability of key energy assets and the security and restoration of the national energy infrastructure. By linking its strong geopolitical comparative advantage with an innovative policy framework and modernized infrastructure, Greece can become an energy champion in South East Europe and an attraction pole for long-term foreign investments in the region.

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## Bulgaria

### Recap of The Bulgarian Energy Policy: Reversals, Reconsiderations and Relapse

Repetitive policy upheavals and misguided and often divergent regulatory responses have led the Bulgarian energy sector into a cyclical condition of underperformance. The energy industry has somewhat consolidated against the Bulgarian state as investors now seek opportunities for domestic litigation and/or international investment arbitration. In the meantime, policymakers have been attempting to appease discontent and provide fresh remedies to the mismanagement of the sector. Regretfully, any solution to industry woes has proven to be a zero-sum game, and remedial policy efforts have simply resulted in a re-allocation of winners and losers.

Three major streams of ongoing policy issues may be identified in the Bulgarian energy sector:

**Renewable Energy.** Achieving EU-set targets on renewable energy (i.e. Directive 2009/ 28/ EC) requires significant policy making. The renewable target for Bulgaria is 16% of renewable energy sources in final consumption by 2020.

From the outset, Bulgaria provided generous incentives for investments in renewable energy, especially in the years 2007-2011. The incentives came in the form of inflated feed-in tariffs. The price-support mechanism for wind and solar energy generously exceeded investment costs combined with long-term power purchase agreements (25 years for solar power and 12 years for wind and hydro power). As a result, there was a rapid growth in renewable energy that caused serious financial strain on households and businesses.

The regulatory response in the years from 2011 to 2014, following the boom of renewable energy capacity, was a sequence of amendments to the Law on Energy and the Law on Energy from Renewable Energy Sources. Some of the most radical changes affected grid interconnection (a moratorium on interconnection of new plants), the formation of feed-in tariffs (substantially reduced since 2011), fees on access to the grid (repealed later by court) and a fee on the generation of renewable energy (also repealed later by court).

Despite this hostile environment, a decent number of renewable power generators have managed to stay afloat and honor their financing arrangements. According to a 2013 report from the Bulgarian Ministry for the Economy and Energy, the 2020 target of 16 % had already been achieved. Some of the successful plants, still operating at profit under long-term power purchase agreements, are expected to change hands through mergers and acquisitions in the years leading up to 2020.

**Distribution and End Supply.** The current situation for distribution and end supply is largely the result of the attempts of SEWRC to retain lower regulated tariffs driven by political and social considerations. SEWRC has failed to keep the regulatory tariffs in pace with the expansion of renewable energy (priced-in by pass-through) and other costs for distribution and end supply. Despite the efforts of policy makers to impose measures that withhold revenue from renewable energy generators, the drastic expansion of renewable energy and associated costs for the distribution and supply companies has not been adequately reflected in regulated tariffs. In order to artificially retain tariffs at lower levels, SEWRC often disregarded the applicable statutory provisions on tariff setting. One of the foreign-owned energy groups in Bulgaria – EVN – has already filed an ICSID claim.

**Long-Term Purchase Agreements.** The long-term power purchase agreements are generally considered to be transitional to the stage of complete liberalization in the electricity market in Bulgaria. Currently, there are two long-term power purchase agreements operated between the National Electricity Company (NEK, public supplier), on the one hand, and AES Maritsa East I (AES) and ContourGlobal Maritsa East III (ContourGlobal) (coal power plants), on the other hand.

As a result of the constant political pressure to lower regulated tariffs, SEWRC opted for the overhaul of the long-term power purchase agreements. These attempts interfere first and foremost with the provisions of the long-term power purchase agreements on minimum dispatch requirements and the agreed payments, respectively. AES, ContourGlobal and NEK have been urged to undertake renegotiation of the price under the agreements and contracted capacity.

**International Investment Arbitration.** There have been strong allegations that the Bulgarian state has failed to maintain the initial conditions for investment in the energy sector. The measures adopted against electricity market participants may serve as a ground for an arbitration claim.

It is well known that the concept for creeping (indirect) expropriation captures a multitude of inappropriate regulatory acts, omissions, or other conduct that undermines the normative framework created by international investment treaties and by which host governments may be deemed to have expropriated a foreign investment.

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## Hungary

### Changing Recent State Activity in The Hungarian Energy Market

In the last couple of years, a change has been observed in the activity of the Hungarian State in the Hungarian energy market. The regulated energy and public utility prices for household residential customers have been gradually decreased, and price cuts are planned to be extended to industrial customers. Following the reinforcement of its position as a significant player in the Hungarian electricity sector, the Hungarian State entered the Hungarian natural gas market by acquiring ownership stakes in several energy companies. Meanwhile, a new state-owned public utility service system is being created in Hungary.

Hungarian residential customers have been enjoying decreased energy and public utility prices since 2013, as the end prices of electricity and natural gas universal service, district heating, water utility, chimney sweeping, and waste management services have been gradually decreased by law in Hungary. To ensure that customers are actually able to reap the benefit of these price cuts, new consumer protection rules have been implemented. There are plans to extend the price cuts to a certain extent to industrial customers as well.

The Hungarian State recently acquired ownership interests in several Hungarian natural gas companies. Since 2013, when MVM, the fully state-owned energy holding company, acquired a significant part of the natural gas business of the Hungarian subsidiaries of the German E.ON group, the State, already an important market player in the Hungarian electricity market, has established itself as one in the natural gas market as well.

The newly acquired natural gas portfolio consists of a major natural gas trading company and a natural gas storage operator. The major long-term natural gas import contracts involving the channeling of natural gas from Russia's Gazprom belong to the now state-owned natural gas trading company, which supplies natural gas to other natural gas traders, universal service providers, power plants, and industrial customers, thus covering a significant part of the Hungarian wholesale and retail natural gas market.

The other part of the newly acquired natural gas business consists of four underground natural gas storage facilities located in Hungary, which are used for commercial purposes.

Subsequently, the State acquired a stake in MMBF, another Hungarian natural gas storage operator. As a result of this acquisition, the State is now the majority owner of the so-called "strategic" natural gas storage, which is intended to supply natural gas to residential household and certain public customers in the event of a natural gas crisis. The majority stake in the strategic storage operator was acquired from Hungary's MOL, and the State became co-owner alongside the Hungarian Hydrocarbon Stockpiling Association, which is responsible for managing natural gas in the strategic storage.

For regulatory reasons, the strategic storage operator belongs to the state-owned MFB Hungarian Development Bank. MFB will also become the majority owner of FOGAZ, enabling the Hungarian State to enter into the natural gas universal-service market and to supply natural gas to residential household customers and certain non-residentialhousehold customers with lower consumption. In addition, the territorial scope of FOGAZ's universal service license will be extended to the entire country, making it possible for the State to provide natural gas universal-supply services to all eligible Hungarian customers.

In addition to this series of acquisitions, the Hungarian Government laid down by resolution the foundation of a new state-owned public utility service system in Hungary, the framework of which includes the provision of natural gas, electricity, and district heating supply services by the State on market terms and measures to ensure sustainable operation in the long term. ENKSZ Elso Nemzeti Kozszolgaltato Zrt., the new state-owned company to be incorporated in early 2015, will be responsible for implementing this public utility service system.

With the above-mentioned acquisition of FOGAZ, which holds a natural gas universal service license, the establishment of the public utility service system in the field of natural gas supply is ahead of the electricity and district heating segments, since the review of the conditions of the State's entry into the electricity universal-service and district-heating markets is expected by mid-2015.

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## Serbia

### Supporting Renewables in Serbia

Serbia is a contracting party to the Energy Community Treaty (ECT), signed in October 2005 between the European Union (EU) and nine South Eastern European countries. Since then, Bulgaria, Romania, and Croatia have ceased to be parties upon their accession to the EU and thus are no longer parties to the ECT, while Moldova and Ukraine have become parties to the agreement.

One of the explicit aims of the ECT is to support the development of renewable energy. As renewable energy is still not competitive compared to conventional energy, the development of renewable energy in the ECT countries is heavily dependent on the implementation of support schemes for renewable energy in their legal systems.

Serbia implemented a support scheme for renewable energy in its legal system for the first time in 2009. The initial scheme underwent notable improvements with the adoption of the 2011 Energy Law, the accompanying bylaws which were adopted in early 2013, and model power purchase agreements (PPAs) in the summer of 2013. Renewable generators were, for the first time, given by explicit provisions of the law the right of priority access to the grid and the right to sell the entire quantity of generated electricity to the state-owned purchaser under guaranteed, preferential prices.

Even though the framework was notably improved compared to the initial one, the renewable energy sector has not witnessed any concrete, significant developments.

**Why?** If we disregard the fact that the framework still faces numerous shortfalls (which are generally mendable), the main reason for the absence of concrete developments in the sector is a lack of confidence from investors in the permanence and reliability of the support scheme introduced in 2011.

Investors in renewable energy develop and operate long-life, capital-intensive projects. Therefore, confidence that a project will be able to generate revenues during its life is essential in order to get it developed.

A PPA concluded between a renewable generator and state-owned purchaser for a period of 12 years provides the main revenue stream for a renewable project; thus, the PPA has to have characteristics which ensure permanence and reliability of revenue.

Primarily, it needs to be concluded at an early stage of the development of a project in order to give investors certainty of the terms by which electricity will be purchased. The PPA should be concluded by the time construction is commenced, at the latest.

As the development of renewable projects is subject to heavy permitting procedures, the PPA should provide reasonable deadlines for the development of a project.

Further, the PPA needs to provide adequate protection for the generator against risks that a generator cannot control, avoid, or minimize. Typical examples for such risks are grid constraints. If a generator is unable to deliver its electricity to the purchaser due to an interruption or restriction of export of electricity onto the grid, the purchaser should be required to pay for the volume of electricity which would have been generated had there been no such interruption or restriction. Other risks generators cannot control or minimise include the risk that a law will change or acts and omissions of the competent authorities will impact the development and operation of renewable projects. The PPA should also provide a mechanism which will allow generators to withdraw from the PPA and to be compensated for their losses, if, without their default, circumstances outside their control occur which make it impossible or unlawful to maintain the PPA. These circumstances include defaults and breaches of the PPA by the purchaser, changes in the law after which the generator cannot be put back in substantially the same economic position. or unlawful acts and omissions of the competent authorities.

Also, considering that the generators will finance a significant portion of the development costs through loans procured in the financial market, the PPA should allow the generator to assign the PPA to lenders providing financing for the project. Furthermore, the PPA should provide a mechanism giving lenders the opportunity to step into or take over a project together with the rights and obligations of the generator under the PPA.

Currently applicable PPA models, which were prepared and published in 2013 on the basis of the 2011 Energy Law, do not provide for the protections discussed above. Consequently, investors have been (justifiably) suspicious of the permanence and reliability of the Serbian renewable-energy support scheme based on the 2011 Energy Law.

At the very end of 2014, the Serbian Parliament adopted the new Energy Law which became applicable starting from January 1, 2015. The new Energy Law laid down grounds for the improvement of the support scheme and, even more important, improvement of currently applicable PPAs. One may hope that these improvements will not remain only on paper, but that they will finally lead to a boost in the development of the renewable energy sector.

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## Austria

### The 2014 Austrian Energy Efficiency Act: New Challenges for Energy Suppliers in Austria

**General.** In July 2014, the Austrian legislator passed the new Energy Efficiency Act (Bundes-Energieeffizienzgesetz, hereinafter: "EEA"), transposing the 2012 EU Energy Efficiency Directive into Austrian law in order to meet the European Union's 2020 target of reducing energy usage by 20%. In the new law, Austria put the main burden on suppliers delivering all sorts of energy for payment to end consumers in Austria, irrespective of their place of incorporation. Therefore, foreign energy companies also have to comply with the new law. Most of the provisions of the EEA applicable to energy suppliers entered into force on January 1, 2015.

**Obligation to Effect Energy Efficiency Measures.** Pursuant to section 10 of the EEA, energy suppliers are obliged to initiate and prove energy efficiency measures equivalent to at least 0.6% of their total energy supply to end consumers in Austria in the preceding year. At least 40% of the required efficiency measures have to be implemented at the household level. For energy suppliers active in the mobility sector, however, the "40% household" requirement may also be fulfilled by proving energy efficiency measures in the mobility or public transportation sector.

Suppliers that delivered less than 25 GWh of energy to end consumers in Austria in the previous business year are exempted from the obligation pursuant to section 10 EEA.

These measures have to be documented and reported to a national monitoring body by the supplier together with a notification of the total amount of energy supplied in Austria by the supplier on or before February 14 of the following year, starting with February 14, 2015. The monitoring body will be competent to decide whether and to what extent to take the reported measures into account. Measures can either be taken by the suppliers themselves or be transferred from third parties.

**Compensation Payments and Administrative Fines.** Compensation payments in the amount of 20 cEUR per kWh become due if energy suppliers fail to provide proof of the required energy-efficiency measures. The Austrian regulator E-Control will be competent to adjust the exact amount of the compensation payments each year on the basis of this minimum amount (which may not be reduced), thereby taking into account the average marginal costs.

Furthermore, the EEA provides for administrative fines ranging from EUR 10 thousand to EUR 100 thousand, depending on the nature of the offence committed by an energy supplier. In particular, fines of up to EUR 100 thousand may be imposed on suppliers that fail to fulfil their individual energy-saving obligation or fail to make compensation payments in time.

**Specific Challenges for International Suppliers Active in Austria.** The activities of international energy suppliers in Austria are often confined to industrial and commercial customers. As most international players are not active in the household sector in Austria, they will probably struggle to achieve 40% of their 0.6% savings obligation at this level.

Obviously, compliance with the requirements of the new law will trigger additional costs for energy suppliers. The EEA, however, does not include any transitional and/or amendment provisions with respect to existing supply contracts. Amendments of existing contracts will only be possible where such contracts provide for price adjustment clauses or other general provisions on the transfer of all sorts of taxes and other costs arising out of or in connection with the fulfilment of the supply contract. It is, however, conceivable that the respective margins of the suppliers are lower than the costs of compliance with the EEA, in particular in highly competitive (industrial) segments. When introducing respective adjustment clauses in new contracts, suppliers should be aware that the exact cost of compliance with the EEA depends on numerous factors that will only be known after the evaluation by the monitoring body – which might be completed more than a year after delivery.

**Further Turmoil Anticipated.** In order to reach the 20% reduction target, Austria has chosen a highly sophisticated and complex regulatory system, including the establishment of a new monitoring agency, which will lead – as far as can be judged so far – to numerous legal and administrative issues.

The Ministry for Science, Economy and Research recently published a document of more the 70 pages on FAQs in connection with the interpretation of the EEA. However, instead of solving the problems so far identified, the document appears to give rise to even more questions.

In addition, the appointment of the monitoring agency, which according to law should have started its work by now and should already be playing a decisive role in the administration of the EEA, has successfully been challenged. As a result, for the time being, at least, the Ministry is acting in its place, without any legal basis.

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## Czech Republic

### Turbulent Waters in the Czech Energy Market

It may be quite clear to people from the energy community, but it is worth repeating: the Czech energy market is not isolated from global trends, and those who understand the trends can better anticipate what will comes next. This applies to business people as well as to lawyers and other advisors. We can see the impact of global trends on almost all energy-related deals in the Czech Republic and indeed the wider CEE market. What are the key trends which affect the Czech and wider CEE energy markets?

First is the phenomenon of global warming. Irrespective of whether global warming is scientifically proven or not, some regulators across the globe have reacted with legislation supporting the reduction of carbon dioxide emissions. The EU regulator has been in the forefront, adopting the famous 20:20:20 target: the ambition to reduce carbon dioxide emissions by 20%, to increase renewables to 20% of the energy mix, and to decrease energy consumption by 20% – all by 2020. EU states have expressed a clear interest to carry on with further measures with another target date of 2050. The impact on the CEE energy market has been tangible. The generous support of renewable energy has led to the creation of a sufficient number of installations and to the achievement of the EU renewables target. It has also created disincentives for investing in conventional power generation. For example, no new conventional power plant has been commissioned in the Czech Republic in the last decade.

The second key trend is the Fukushima Daiichi nuclear accident. In Europe, this has helped a number of states – including Germany and Italy – to express a clear "no" against keeping nuclear sources in their energy mix. Importantly, the German nuclear phase-out has led to increased M&A activity in the CEE energy market, with large German incumbents leaving the market. RWE's sale of NET4GAS, the Czech transmission system operator, could be a primary example of this. Another side effect of the Fukushima Daiichi nuclear accident is increased pressure on nuclear safety, resulting in increased costs for commissioning and operating nuclear power plants. An example of this could be the ever increasing costs of the commissioning of Unit 3 and 4 at Mochovce in Slovakia.

The third key trend is environmental protection. Increasingly strict EU rules on emissions of, among others, SO2, NOX, and dust will lead to higher costs for the operation of conventional (coal) power plants post-2016. In recent years, most of the operators of conventional power plants in the EU have been facing the dilemma of whether to commit to large investments in the refurbishment of power plants or to close them. Again, this has led to increased M&A and construction activity on the Czech energy market. Due to the stigma of conventional power, some operators have even been leaving the conventional power segment completely. A recent possible example is the contemplated sale of conventional assets by the Vattenfall group on the Czech, German, and Polish borders.

The fourth trend is linked to specific EU liberalization rules and rules on protecting the free market economy. The third EU energy package, combined with antitrust rules and rules against state aid, has created a relatively hostile environment for incumbents, with great incentives for new entrants. Again, this has had a material impact on the Czech energy market. An example of this is the unbundling of the RWE group, the gas incumbent, in the Czech Republic. CCEZ's failed tender for the construction of a new nuclear power plant could be another example – due to strict EU state aid rules restricting the use of guaranteed off-take prices, the commissioning of new nuclear and other power plants is proving to be a challenging area.

Last but not least, the slowdown of the global economy in recent years has led to a drop in commodity prices and the major restructuring of regional energy groups. It has also almost halted investment in new capacity in the EU. This has clearly stimulated M&A activity in the CEE market, creating interesting opportunities for new entrants. Examples of this are the acquisition by EPH of SPP, the Slovak transmission system operator, from GDF and E.ON, and the potential sale by Enel of a 66% shareholding in Slovenske elektrarne, the Slovak power incumbent.

In sum, global trends are making the waters of the Czech and wider CEE energy markets considerably more muddy and turbulent. The regulatory and political framework has become complex, and commercial decision making has become more difficult. This obviously creates challenges, but also opportunities – and it is great to be able to look out for these.

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## Lithuania

### Lithuania Towards the Security of Gas Supply

Lithuania, Latvia, and Estonia, like many other countries in Europe, are facing challenges in the energy sector in three main dimensions: security of energy supply and competitiveness and sustainability of the energy sector.

The development of the gas sector in all three Baltic countries was determined by the same historic and political circumstances, as well as scarce energy resources. After the collapse of the Soviet Union, all three countries had only one gas supplier, Gazprom, which has also partly privatized the gas transmission system operators in these countries. Because all natural gas resources used in the Baltics until the end of 2014 were imported from Russia by Gazprom, the three Baltic countries were not able to satisfy their internal gas demand at competitive prices. The natural gas markets of Lithuania, Latvia, and Estonia were not integrated into the European natural gas markets and therefore remained isolated from the other European Union member states. Consequently, the currently operational cross-border interconnections exclusively allow for natural gas imports from Russia without any other pipeline alternatives for diversified supplies. By the end of 2014, the natural gas markets of all the three countries were absolutely concentrated, i.e. were fully dependent on the single external natural gas supplier, Gazprom.

The situation has led to unreasonably high gas prices in the Baltics and only one supplier with no other alternatives. The market monopoly possessed by the single external supplier of natural gas resulted in unreasonable, discriminatory, and excessive pricing for imports of natural gas. The exclusive market position of Gazprom and its commercial influence upon dominant internal market participants (importers and suppliers) allowed for unilateral marketing and pricing policies without any regard to market-based processes worldwide.

While significantly overpaying for gas, Lithuania has made few important decisions: to go for full ownership, unbundling the gas transmission system operator when implementing the European Union Third Energy Package and developing a liquefied natural gas (LNG) terminal. Both of the decisions were finally implemented in 2014.

The transmission system operator, in which Gazprom had part of the shares, was unbundled from the supply activity, and the shares owned by Gazprom in these companies were bought back from it by the Lithuanian state and state-owned enterprises.

As to the LNG terminal, in the summer of 2012, the Lithuanian parliament adopted the Law on Liquefied Natural Gas Terminal, which provided for the basic legal requirements and principles for LNG terminal construction, activity, and operation. One of the fastest implemented projects in the Baltics, the LNG terminal in Lithuania was launched on December 3, 2014 and now operates successfully. The Lithuanian LNG terminal is based on FSRU (Floating Storage and Regasification Unit) technology provided by Hoöegh LNG. FSRU is permanently moored to a jetty built in the Curonian Lagoon in the southern part of the port of Klaipeda. The LNG terminal is of 4 bcm capacity, enough not only for Lithuanian consumption but potentially by the other Baltic countries. According to the LNG terminal operator's information, when operating on a full load, the LNG terminal is capable of filling 75% of the whole gas market of the Baltic States.

Thus, following the implementation of these decisions and the launch of the LNG terminal in Lithuania, the situation has changed. Lithuania has ensured the diversification of gas supply sources and is now is one step closer towards the security of gas supply. Based on the adopted regulations, there is a designated supplier, UAB Litgas (a company responsible for LNG supply and trading via the LNG terminal), which has an obligation to import at least a minimum gas quantity necessary for uninterruptedible LNG terminal operation. In the summer of 2014, UAB Litgas has signed an LNG supply contract with the Norwegian company Statoil, which offered the most favorable terms during the tender. Statoil will be supplying annual volumes of 540 million cubic meters of natural gas to ensure the continuous operations of the LNG terminal. The LNG terminal and Statoil LNG supplies will ensure a new gas pricing policy which will be linked to the international markets.

Even though the LNG terminal capacity is enough to serve the Baltic countries, there is still a way to go until the other two Baltic countries can fully benefit from this project. There is still a need for infrastructure development to allow Latvia and Estonia to benefit from the Lithuanian LNG terminal. The underground gas storage facility in Incukalns, Latvia, could serve as a balancing point for the LNG terminal, however, Latvia must finalize the implementation of the European

Union Third Energy Package in the gas sector.

Therefore, regionally, in order to ensure security of supply to all the Baltic States, the situation still requires implementation of joint additional measures by all the three partners.

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## Latvia

### Constitutional court proceedings regarding new subsidized energy tax in Latvia

In the past few years Latvia has implemented several support schemes to increase renewable energy's share of total production as required by EU law. The two main schemes are a mandatory procurement of electricity and a guaranteed payment for installed capacity. The mandatory procurement (feed-in tariff or FIT) is a guaranteed right to sell a certain annual amount of electricity to the public trader for an increased price (exceeding the market price) for a fixed period of time. Guaranteed payment for installed capacity is the right to receive a fixed monthly payment for the installed electric power capacity for a fixed period of time notwithstanding the actual amount of produced electricity. This support was granted to combined heat and power (CHP) plants of high efficiency and producers using renewable energy.

However, in 2011 the Cabinet of Ministers began to implement a policy that disrupts renewable energy producers, investors, and the renewable energy industry as a whole. It did this by implementing several restrictions on them, such as refusing to grant new support; restricting periods of support; imposing new obligations on producers; canceling support to several producers; and miplementing administrative barriers. The main argument for this policy was that the high costs of support had had a negative impact on electricity price for the end consumers.

One of the most recent restrictions was a new tax imposed on renewable energy producers receiving any kind of support (FIT and guaranteed payment for installed capacity). In response to pressure from high electro-intensity consumers the Parliament of Latvia adopted amendments to the Law on Taxes and Duties which introduced a subsidized energy tax from January 1, 2014 until December 31, 2017. The Parliament also adopted a Law on Subsidized Energy Tax.

Although the new tax and related compensation system is still not consistent with the European Commission in terms of state aid rules, collection of the new tax and related compensation to electricity end consumers began in Latvia on January 1, 2014.

The new law stipulates differentiated tax rates, including 15% for natural gas producers, 10% for renewable energy producers, and 5% for plants that supply heat to centralized systems (and various others).

The new tax was applied to revenue received in the form of support, i.e. FIT and guaranteed payments for installed capacity. In particular, the tax covers both the market price for electricity and the amount of support on top of the market price. Thus the actual amount of support is decreased by 15%, 10%, and 5% respectively.

By implementing the new subsidized energy tax Latvia was following the recent experience of Spain and the Czech Republic, although both of these states were in different circumstances and thus had different reasons to implement the tax in different manners. However, both states experienced a common reaction: – litigation proceedings. In addition to claims submitted by energy producers to the international court of arbitration against Spain and Czech Republic.

Latvia experienced a similar reaction. Both producers of renewable energy and producers of natural gas decided to challenge the aforesaid legislative changes, as the new tax and other imposed restrictions significantly decreased their income. Ninety energy companies submitted claims to the Constitutional Court of Latvia regarding the implemented subsidized energy tax. Following these claims, constitutional proceedings were initiated.

Without doubt one of the most important elements for successful energy support policy is ensuring long-term stability for national and international investors in the sector. Rapid or unexpected changes in payment levels or policy structure damage investors' confidence and significantly impede the pace of renewable energy growth. Thus, both price certainty and policy certainty are important. Unfortunately, this reasoning was not sufficient to stop the legislative changes affecting national and international investors in the energy sector in Latvia.

Energy producers are supporting their claims with arguments that the new tax negatively affects the support received by all energy producers. The right to receive full support is protected by the principle of legal certainty, the principle of proportionality, and the rights to property under the Constitution of Latvia and the European Convention on Human Rights. The Constitutional Court of Latvia accepted these arguments as sufficient enough at first glance in order to initiate constitutional proceedings.

The Constitutional court is preparing to finalize the review of the case in spring or summer this year. Energy producers remain optimistic, as they believe that their arguments are well substantiated and the breach of constitutional law quite obvious.

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## Croatia

### Energy Efficiency Performance Contracting in Croatia – A Way to Contract for Green Energy

In 2012 the EU set its 20/20/20 goal: Cutting greenhouse gas emissions by 20%, increasing the use of renewable energy by 20%, and cutting energy consumption through improved energy efficiency by 20% – all by the year 2020.

Energy performance contracting is an important tool in achieving this goal. By contracting energy service the client is not buying new equipment, installations, upgrades, or refurbishments – the client is buying energy savings.

Energy service involves the implementation of an energy efficiency project on the basis of an Energy Efficiency Performance Contract (EnPC) under which an energy service company (ESCO), guarantees to the client that the project implementation will result in verifiable and measurable (or estimated) improvement of energy efficiency and/

or in savings in energy consumption.

Energy efficiency performance contracting is a way to refurbish buildings and to upgrade public infrastructures in a budget neutral way. An ESCO finances a project and the client is free of any investment. The ESCO is paid an energy service fee exclusively from savings achieved as a result of its investment – and only if the savings are actually achieved. This is particularly beneficial to public clients because, when ESCO guarantees the energy savings up to the amount of the energy service fee charged to the public client, such fees are not classified as public debt. As a result, public clients build a financial capacity which can be potentially used for other projects.

Many European countries have come far in developing their energy performance sector, while Croatia is still in an early stage. The first company specialized in providing energy services was established in 2003, and now, more than 10 years later, there are still fewer than 10 ESCOs in the market. The market is relatively small: just over USD 113 million. Due to the financial crisis the market was stagnant between 2008-2010, but since 2013 the market has shown growth.

The growth has been largely fueled by growing demand (due to a steady rise in energy prices), public awareness of the importance of energy savings, and political will.

In the 2nd National Energy Efficiency Action Plan of February 2013, the Government set an expected energy saving target of 3,554 GWh by 2020, assuming that every year 1% of the building surface will be renovated – approximately 1.5 million square meters of residential buildings per year until 2020 – which should be realized with an investment volume of USD 339 million/year. At the same time, the public sector has large potential. Most public buildings were constructed between 1945–1990, under building codes enacted before 1987. The assumed renovation volume is around 479,000 square meters per year, which is expected to be realized with USD 108 million/year. ESCOs are expected to contribute significantly to these targets. The majority of energy efficiency projects have been implemented in school buildings, hospitals, commercial buildings, and street lighting refurbishment. The savings have been significant: in schools between 20-30% of the baseline consumption, and in street lighting between 19-47%.

Clients are contracting the energy service under the Public Procurement Act of 2014 (PPA) and the Energy Efficiency Act of 2014. While private clients are free to contract for the energy service, public clients are required to run a public tender under the PPA and apply MEAT criteria (i.e., the most economically advantageous tender) as the award criteria. The energy service is tendered either in an open or in a restricted procedure. A negotiated procedure or competitive dialogue seems more appropriate as is allows the EnPC to be awarded to the ESCO with the most expertise, sufficient experience, and available financial resources. However, due to legislative restrictions such procedures are rarely used.

The market has barriers beyond the legislative. ESCOs in Croatia still need financial assistance from the State or other sources because commercial banks are not yet in possession of sufficient expertise and capacities to financially support ESCOs. In addition, the lack of trustworthy and reliable data collected in environmental audits prior to the initiation of projects often discourages ESCOs from applying to a tender or engage in an investment. If ESCOs invest in non-reliable environmental audits, there is a great risk under-achievement and contract failure.

For these reasons, ESCOs are calling for amendments of the legislative framework to make energy efficiency performance contracting an efficient and leading tool in achieving the 20/20/20 goal.

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## Bosnia and Herzegovina

### Bosnia and Herzegovina's Gas Market – Window of Opportunity

It might be the New Year, but the problems in Bosnia and Herzegovina's (BiH) gas sector are old, cumulative, and seemingly unsolvable. A closed market, underdeveloped infrastructure, and supplier monopoly might sound dissuasive to some, but – at the risk of sounding pretentious – it may be a window of opportunity to others.

Following its obligations under the Energy Community Treaty, BiH had to ensure full opening of the natural gas market as of 1 January 2015. However, all natural gas consumers in the country still remain to be supplied by existing companies at regulated prices. Foreclosure of the market and lack of alternative gas supplies eliminate the possibility for consumers to choose and to change their suppliers. Apart from legal and regulatory reforms in the sector, investments in the natural gas infrastructure should be targeted as a key priority to guarantee secured supplies corresponding to the national consumption demand.

The EU Third Energy Package, which requires, inter alia, a complete opening of the gas market and unrestricted third party access, has to be transposed and implemented without any delay. This will lead to a number of regulatory and corporate reforms, including unbundling of market incumbents, thus establishing an overall framework for the functioning of the market and its regional integration. However, without diversified supplies and actual competition, such a framework would have little or even no practical effect.

Currently, natural gas is imported to BiH by a single external supplier from Russia via the only available transit route (through Hungary and Serbia) and enters the national system at a single entry point in Zvornik. Obviously, such a dependency, at the level of both gas sales and transit capacities, significantly decreases the ability of BiH gas companies to negotiate for more favourable supply conditions, including the gas price and transit costs, and has an overall negative effect on the security of supply.

The recent collapse of the South Stream project and failure of any cooperation initiatives in this regard leaves BiH no other choice than turning back to its European partners in order to gain from ongoing or projected gas infrastructure developments in the region.

Diversifying the natural gas supply to BiH relies on its cross-border connection capacities and access to alternative supply sources and transit routes. In this regard, interconnection with the Croatian gas system is of a crucial importance. Prospective developments should be focused, first of all, on connecting existing infrastructures from Zenica (BiH) to Slobodnica (CRO), and, second, on ensuring the participation of BiH in the Ionian Adriatic Pipeline (IAP) project, including the south-directed Sarajevo-Mostar (BiH)-Ploce (CRO) connection.

Cross-border capacities between BiH and Croatia would ensure access to gas supplies from Central Europe, or at least for alternative transit routes for gas exported from Russia. On the other hand, projected gas infrastructure developments in the region are even far more promising. Participation by BiH in the IAP would allow for an access to the gas market segment to be formed after the commissioning of the Trans Adriatic Pipelines (TAP) project. Moreover, gas traders in BiH would also stand to gain from planned LNG capacities in Croatia and Albania, even if this is seen as a very long-term potential.

Setting aside direct physical connections with neighbouring gas infrastructures, the entrance to the gas markets of Central Europe would allow for virtual gas trading, including spot markets, swaps, and financial trading, thus aiming for far-reaching diversity potential and market liquidity.

Another crucially important aspect is the expansion of an internal gas network, which would ensure an efficient gas penetration to the country. In 2012, supplies through a newly-built distribution pipeline from Sepak to Bijeljina were authorised, and in December 2013 a transmission pipeline from Zenica to Travnik was completed. However, current network developments are localised at the entity level exclusively and the State's strategy in this regard is still missing, not to mention the absence of a State gas law. This clearly precludes a systemic and economically prudent prioritisation of any developments in the sector.

Eventually, everything comes down to the financing of new projects. Being a non-EU member country, BiH has no direct access to EU energy infrastructure funding under the Connecting Europe Facility (CEF), and the funds cannot be secured by the Energy Community since it has no such financial instruments. Even if several BiH relevant gas infrastructure developments are labelled as Projects of Energy Community Interest (PECIs), any possible instrument for their financial assistance is still only at the level of discussions. Thus, available financing alternatives lie in the creation of an investment-friendly environment, enabling the stakeholders to finance the projects and rely on other international donors.

Whichever of these mentioned options should play out for BiH, the reform of the regulatory and legal framework remains critical as the country's pre-requisite. The expansion of European gas markets should be a significant push for those reforms that would eventually result in a win-win situation for BiH with much-needed alternative gas sources and, consequently, security of supply on one side, and market opportunities for new players on the other.

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## Slovakia

### New Energy Policy in Slovakia

In November 2014, the Slovak government approved a new Energy Policy, which sets out medium and long-term policy guidelines for the Slovak energy sector. This strategic document (and the process leading to its adoption) reflects the competing interests in the Slovak energy sector, the willingness of the government to prioritize nuclear energy in the energy mix, and general uncertainties in the sector resulting from prevailing trends in energy consumption, the pace of development of energy technologies, and geopolitical conflicts in regions vital for the supply of primary energy sources to Slovakia.

The Energy Policy is a strategic policy document – prepared and regularly reviewed by the Ministry of Economy – which defines the principal objectives and priorities in the Slovak energy sector for the next 20 years (currently until 2035 with an outlook until 2050). After its approval by the government, the Energy Policy should be reflected in the government's proposals for new legislation. More specifically, it serves as a basic point of reference in the authorization of new energy installations by the Ministry of Economy.

To a large extent, the current Energy Policy, adopted more than eight years after its predecessor, reflects EU energy policy and sets out the following principles as its basic "pillars": security of supply, energy efficiency, competitiveness, and sustainability. These principles are then translated into a number of proposed measures, both on a cross-sector basis and with respect to specific areas (e.g., coal, oil, natural gas, renewable energy sources, electricity, heat, transport, research and development, and education and awareness raising).

The policy framework outlined in the Energy Policy is based on forecasts of key consumption indicators (including gross domestic energy consumption, final energy consumption, and electricity consumption). These forecasts provide estimates for several scenarios – all assuming a long-term increase in energy consumption. In light of the falling trends in energy consumption since 2005 (although arguably reinforced by the 2009 economic crisis), however, it remains to be seen whether the actual figures in the coming years will confirm the correctness of the estimates and thus the relevance of the adopted policy priorities.

Among the many topics of the new Energy Policy, the future approach to the energy mix features prominently. In line with the climate change-related objective of achieving a "decarbonized" economy, the Policy places significant emphasis on the current and future role of nuclear power plants. The Energy Policy counts on the completion of two new units of the Mochovce nuclear power plant (with an installed capacity of 471 MW per unit) and contemplates the possibility of a new nuclear power plant construction in Jaslovske Bohunice to be put into operation after 2025 (with an installed capacity of 1,200 MW, although alternatives of 1,700 MW and 2,400 MW are also being considered) and the potential extension of operation of the V2 Jaslovske Bohunice nuclear power plant until 2045 (with an installed capacity of 1,010 MW).

These assumptions regarding the potential development of nuclear energy sources carry several important implications for the Energy Policy. Given the resulting electricity generation overhang, the Energy Policy foresees the need to export surplus electricity, which may require investment in the Slovak electricity transmission infrastructure (and which depends to a large degree on the generation and transmission infrastructure in neighboring countries). A high share of nuclear power plants in the electricity generation mix may also limit the regulation capability of the Slovak transmission system and conflict with the currently guaranteed off-take of electricity from renewable energy sources and co-generation power plants.

Significantly, the Energy Policy does not count on the construction of large scale gas-fired power plants, as only limited construction of smaller co-generation power plants is expected.

Several policy shifts announced in the new Energy Policy closely relate to the issue of high electricity prices in Slovakia. While ultimately within the powers of an independent regulator, final electricity prices are considerably influenced by support schemes defined by government sponsored legislation, including those dedicated to renewable energy sources, co-generation of electricity and heat, and electricity generation from domestic coal. As a result, the Energy Policy signals certain measures aimed at decreasing final electricity prices, including the phase-out by 2020 of feed-in tariffs for electricity from renewable energy sources, focus on the use of renewable energy sources in the production of heat, and certain efficiency-enhancing changes to feed-in tariffs applicable to the co-generation of electricity and heat. The commitment to support electricity generation from domestic coal remains unchanged.

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## Estonia

### The Future of Renewable Energy in Estonia

The climate is rough in Estonia. From autumn to spring, strong winds are accompanied by low temperatures and intense precipitation. People have lived in the small maritime country on the Eastern shores of the Baltic Sea for thousands of years and have learned to cope with the climate. They have put the weather into service by, for example, using frozen water bodies as motorways (the longest ice road in Europe is the 26.5 km route between the main land of Estonia and the island of Hiiumaa) and grinding flour in windmills. While recent winters have been mild in Estonia, storms and cyclones have become a common sight. Even though this has caused considerable damage due to floods, people have also benefited from stronger winds. In January 2015, during the cyclone Hermann, a new record for electricity produced from wind power was set at 22% of the country's consumption. Perhaps this record shows a bright light for the future of energy production in Estonia.

Estonia has promised the European Commission that 25% of its energy will be produced from renewable sources by 2020. While this is above the overall target of the European Union (20%) and the 8th largest figure among the member states, it is not impressive in the context of the Baltic Sea region. Latvia and Finland, the two member states closest to Estonia, have set their targets respectively at 40% and 38%. Sweden, situated just across the Baltic Sea, aims to produce 49% of its energy from renewable sources by 2020. Thus, compared to its neighbors who share the same climate and a similar landscape, Estonia is lagging behind. Considering the favorable winds of Estonia and the abundance of biomass in the country, Estonia could produce a lot more renewable energy with lower costs than other European countries.

However, there is no need for Estonia to produce renewable energy, as it possesses cheaper alternatives. The country has large deposits of oil shale, an organic-rich rock that can be burned as fuel. The mineral has been used industrially in the country since 1916, and nowadays approximately 90% of the electricity produced in Estonia is from the oil-shale- powered Narva Power Plants. In addition, Estonia is connected through Finland with Nordpool Spot, the largest electricity market in Europe. This allows Estonia to take advantage of the cheap hydro energy of the Nordic countries. Due to the existence of low-cost alternatives, renewable electricity production is only viable with the help of subsidies.

Renewable electricity has been supported in Estonia since July 2003. While initially the renewable energy production subsidy was fixed, since 2007 renewable energy producers have received EUR 53.7 for each MWh on top of the market price. Highly efficient combined heat-and-power plants have been receiving EUR 32 for each MWh on top of the market price. The market price for electricity has risen steadily in Estonia and currently stands at approximately EUR 43 for each MWh. While the renewable energy target has still not been achieved, the profitability of renewable-energy producers has been deemed too high by some – for example, the internal rate of return of the Iru cogeneration plant is alleged to be 10-12%. For this reason, the government of Estonia plans to amend the support system and support renewable energy through a competitive bidding approach similar to public procurement processes. The companies that show that they can produce enough renewable energy to meet the 2020 target at the lowest cost will win the bid. However, this amendment does not affect producers who are already supported under the present model. Both the existing and planned renewable-energy-subsidizing models were recently assessed to be lawful state aid by the European Commission, as they were deemed to be necessary to reach the renewable energy goals.

However, there are doubts concerning the proposed renewable energy support plan. Offering different types of aid to different competitors distorts competition. Under the proposed model, existing producers are likely to receive more subsidies from the state for each MWh than new producers. Moreover, renewable electricity subsidies differ across Europe. Even if it would be cheaper to produce renewable energy above the 2020 goal in Estonia than in somean other country, there is no incentive for Estonia to subsidize further production of renewable energy. Despite opening the electricity markets of the European Union de jure, due to electricity subsidies markets are de facto still separated and this creates inefficiency.

In conclusion, Estonia is well on its way to meet the renewable energy target of 2020 due to the climate, nature, and policies of the country. However, perhaps the country could do even more.

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## Moldova

### Solar Parks in Moldova: Regulatory Aspects

Currently, the Moldovan power system has a generating capacity of approximately 500 MW, and around 3,000 MW if the MGRES and Dubasari hydropower plants (HPP) in self-proclaimed Transnistria are included). Most of this capacity (excluding Transnistria's power stations) is supplied by combined heat and power plants. The generating capacity of renewable energy power plants in the territory controlled by Moldovan authorities, for which the regulator has approved tariffs, is around only 18.5 MW.

In the Renewable Energy Law no.160/2007 (the "Renewables Law"), the Moldovan Parliament set an ambitious renewables generation target for 2020, namely that their output should amount to 20% of the total energy originating from conventional sources. The target is backed by the favorable climatic conditions in Moldova, especially for sun-powered electricity: the country has up to 3,000 sunshine hours per annum, according to the Moldovan think-tank IDIS-Viitorul.

Notwithstanding its strong climatic potential for the development of renewables, Moldova's legal climate, including underdeveloped and somewhat unclear regulations, is not yet sufficient for triggering a boost of renewable power generation in the country. The situation could change quickly, however, as the local Government is eager to improve, and where there is no governmental initiative, the private sector and market economy often does it on its own.

Below is a series of legal aspects to be taken into account when considering constructing and operating a solar power plant in Moldova.

**Construction Authorization.** Besides the Renewables Law, the core instruments governing the construction of power stations in Moldova are the Electrical Energy Law no. 124/2009 (the "Electrical Energy Law") and the Governmental Decision 436/2004. Both documents require governmental approval for the construction of power plants with a capacity over 20 MW. The Electrical Energy Law also provides that the Government shall establish the grounds and the procedure for approving the construction of such plants. However, the scope of GD436/2004 appears to be broader than that mandated by the legislature in the more recent Electrical Energy Law. Pursuant to GD436/2004, the scope also applies to plants of a lower capacity; however, GD436/2004 does not define the minimum capacity for its applicability.

The procedure for authorizing the construction of a power plant under GD436/2004 is rather complex and in particular requires approval by the governmental energy commission. Given the purported inconsistency between GD436/2004 and the primary legislation, the legal significance of the former for the construction of plants of lower capacity, including solar power stations, remains unclear.

**Licensing.** Electricity generation in Moldova is subject to licensing. A license must be procured when the plant's installed capacity is at least 5 MW if the produced electricity is designated for public consumption and of at least 20 MW if the produced electricity is for own consumption. The relevant licenses are issued by the National Agency for Energy Regulation ("ANRE") for a period of 25 years. License holders for electricity generation may not concomitantly hold transmission or distribution licenses.

**Access to the Grid.** Moldovan law provides for non-discriminatory connection to the power grid and the priority dispatch of electricity from renewable sources as long as this dispatch does not affect the safety of the power system. Connection to the grid is performed on a contractual basis between the transmission/distribution operator and the electricity producer. The transmission/distribution operator issues warranties of the electricity's origin to producers of renewables generated by plants with a capacity of at least 10 kW.

**Feed-in Tariffs.** The possibility of obtaining adequate feed-in tariffs is an essential incentive for investment in renewable energy. In this respect, the Renewables Law requires the ANRE to annually approve basic tariffs for electricity supplied from renewable sources. Feed-in tariffs are calculated on the basis of the ANRE's methodology and approved for each individual producer. These tariffs are to be set by factoring into account the relevant prices existing in the international markets and the possibility of recovering the investments within 15 years, provided that the profitability rate would not exceed twice the profitability rate in the conventional energy sector.

So far, ANRE has approved tariffs for seven photovoltaic plants with capacities between 15 kW and 500 kW; accordingly, the tariffs range between MDL 1.88 and MDL 1.92 per kWh without VAT.

**Electricity Off-Take.** According to the Renewables Law, Moldovan renewable energy producers, alongside cogeneration plants, have priority in selling electricity in the Moldovan market. Furthermore, imported electricity generated from renewable sources shall be deemed to be included in the share of electricity generated from local sources if the exporting state has established the same rule.

However, the manner in which that priority is to be exercised is not entirely clear. While the Renewables Law requires electricity suppliers to off-take electricity from renewable sources in proportions set by the ANRE, the Electrical Energy Law empowers the Government to appoint a supplier aimed at off-taking energy from renewable sources, from which local electricity suppliers and eligible consumers would have to buy electricity in to-be-set proportions. So far, the Government has not appointed the off-taker of renewables, nor has the ANRE set proportions for purchasing electricity from renewable sources. As a result, it is not clear at the moment in which volumes/proportions local suppliers must absorb energy generated from renewables.

It will be interesting to see to which extent the new renewables bill that is currently in the pipeline will clarify the above uncertainties and trigger the inflow of investments into Moldova's renewable energy sector.

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# Albania

## An Overview of The Energy Sector in Albania

Albania has given a high priority to the investments of foreign companies and firms by liberalizing its foreign investment, reflecting this policy with applicable legislation in force. In the process, it has provided a number of basic guarantees and protections for foreign investors. Foreign and domestic firms have equal treatment under the law, and almost all sectors are open to foreign investment, especially the energy sector. Consequently, the actual legislation in the Albanian free market has resulted in increased investments by foreign companies in the energy sector. In particular, with the Concession Law, secondary legislation, and related concession procedures, the Albanian Government has reconfirmed its policy of attracting private investment in the hydropower plant sector.

The energy sector in Albania has always faced serious difficulties in supplying its consumers with electricity because of the full dependence of its power production on hydro resources, coal, and fossil fuels. In the effort to improve this sector during the last few years, Albania has been working to change energy efficiency policy, supporting the use of renewable energy sources, making that a part of the country's energy strategy. The interest of our country in renewable energy sources is increasing day by day because of Albania's significant renewable resources potential, due to its favorable geographic position on the Mediterranean Sea.

The Albanian national strategy (2007-2020, regularly updated) is an important document in the energy sector. It analyses and recommends future changes to be introduced in the energy sector in Albania designed to increase the security of the energy supply and to optimize energy resources in order to meet the demand and achieve sustainable economic development in the future. The national strategy has addressed not only classic fossil fuel, coal, and hydro exploitation but also energy efficiency and renewable energy sources, as part of a comprehensive strategy to improve the country's energy sector. Renewable energy resources have been included to be in close coordination with the objective of efficient exploitation of all energy resources and energy security. It seeks to encourage the use of renewable resources, which will impact not only the safety of supply but also the use of clean energy, including hydro energy, solar panel systems and wind energy, to make possible the maximal use of local resources. Due to the importance that the Albanian government has given to the generation of energy from wind, including it in the Albanian national strategy, a number of private entities have shown interest in investing in wind energy production, and several investors already hold licenses for the construction of wind farms for electricity generation.

The most important law that provides for the energy sector in Albania is Law no. 9072, titled "On Energy Sector in Albania" and dated May 22, 2003. The law's purpose is to ensure conditions for a safe and reliable electricity supply through an efficiently functioning power market. The law provides for some privileges to those power producers generating electric power using renewable energy sources, who will enjoy prioritized treatment by the Transmission System Operator.

The approval of the Albanian market model is an important step towards the consolidation and steady development of the Albanian electricity market. This approval is part of the reform that the Government of Albania has undertaken for the reconstruction of the electric power sector, pursuant to the Law on the Power Sector and the policies of the Government for the development of this sector. The Albanian Market Model has been developed according to the European Union Directives on Electricity and the requirements of the Energy Community Treaty of South Eastern Europe for the creation of the Regional Market of Electrical Power, as ratified by the Parliament of Albania in 2006. Energy policy integration is an Albanian government obligation under the Stabilization-Association Agreement due to the legal framework harmonization. Albania has created a wide legal framework aimed at safe development of actual resources as well as the involvement of renewable energy as an important source.

The Albanian regulatory authority in the energy sector is the Energy Regulatory Entity (in Albanian Enti Regullator i Energjise, abbreviated ERE). This is an independent body, the main competencies of which are the issue of licenses for different activities in the energy sector, regulating electricity fees, and other decisions on relevant policies, including but not limited to prices, cost evaluation, consumer protection, transparency, and nondiscriminatory procedures.

Albania has set up a legal framework and other administrative facilities that are very attractive for investors intending to operate in the energy sector. This is a sector that offers high profits and is the focus of the Albanian government, which is looking to attract serious investors.

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## Slovenia

### Slovenia's Energy Law Reform: One Year Later

It has now been almost a year since Slovenia's new Energy Act came into force, substantially amending the previous law and repealing more than 100 regulations.

The reform was needed so as to implement certain EU directives that had been adopted after the previous law was enacted (i.e., Directives 2009/72/EC, 2009/73EC, 2010/31/EU, 2009/28/EC, 2012/27/EU), as well as to bring the law into compliance with decisions of the Slovenian Constitutional Court, which had declared the previous law unconstitutional in relation to certain aspects of the determination and calculation of network charges.

On a framework level, the new Energy Act provides for a national energy program, the "Energy Concept of Slovenia" ("ECS"), which will be adopted by the Slovenian National Assembly upon the proposal of the Ministry of Infrastructure. The goal of the ECS is to ensure a reliable, sustainable, and competitive supply of energy over a medium-term period of 20 years and a long-term period of 40 years. In the past, it has been argued that Slovenia lacks a clear energy concept. Thus, it is expected that adopting the ECS will be a challenging task for the Ministry of Infrastructure, which has set doing so as one of its top priorities.

A public discussion on the ECS was held at the National Assembly in January 2015, where industry experts provided their views on the further development of the energy sector in Slovenia. It has been widely agreed that a strategic document is needed shortly. At this moment the preparation of the ECS is ongoing, and it is expected that the program will be adopted by the end of 2015.

At the public discussion, the Ministry of Infrastructure identified the two main objectives of the ECS: (i) the elimination of greenhouse emissions by 2050 (the long term goal being carbon-free energy), and (ii) the reduction of energy dependence on imports (which currently account for 50% of total use).

On a regulatory level, the new Energy Act provides for the abolishment of all licensing requirements for – among other things – production, supply, and warehousing. As of March 2014, the Energy Agency no longer keeps a public register of issued and revoked licences and all previously-issued licences automatically expired at that time.

This abolishment of licences provides a significant relief of the administrative burden entities seeking to conduct energy-related activities in Slovenia faced. However, certain administrative barriers to entering the Slovenian energy market still exist. In particular, in order to conduct energy-related activity on a permanent basis, the competent Ministries still require the establishment of a branch office in Slovenia, notwithstanding the EU-wide application of the freedom of establishment and the freedom to provide services.

The most controversial provisions of the Energy Act are those related to the requirement that, as of January 1, 2015, each building must obtain an energy-performance certificate if they are sold or leased for more than one year. In Slovenia, the energy-performance certificate is a public document, issued by a certified independent expert, containing information on the energy efficiency of a building and recommendations to increase its energy efficiency. This new requirement faces significant public opposition, as it is expected to result in significant additional costs on average consumers.

In relation to the electricity sector, the new Energy Act implements the key change brought about by the EU Third Energy Package: the unbundling for transmission network system operators; i.e. the separation of the operator's generation and supply operations from its network. The EU Third Energy Package provides for three unbundling models, among them the ownership unbundling model. This model provides for a sub-category of state ownership, in which the state retains ownership of both the generation and supply operations in a network, provided that there are separate public bodies exercising control over each.

As the Slovenian state owns the network operator on the one hand and the majority of the electricity generation and supply undertakings on the other, it unsurprisingly chose this model. The network operator ELES, d.o.o. was removed from the authority of Slovenian Sovereign Holding, the entity managing the state's capital investments, and is now managed by the Ministry of Infrastructure. Electricity generation and supply undertakings, however, remain under the authority of Slovenian Sovereign Holding.

To conclude, it is important to note that most of the underlying regulations necessary for the operation of the new Energy Act have not been adopted yet. Until their adoption is complete, the regulations under the old legislation apply. The delay in adoption of regulations generates some uncertainty as to the applicability of some of the new Energy Act provisions. As many of the existing regulations are not in compliance with the provisions of the new Energy Act, their enforceability may be limited.

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## Montenegro

### Offshore Exploration and Exploitation of Hydrocarbons in Montenegro

The tender for the award of a concession for the offshore exploration and exploitation of hydrocarbons in Montenegro ("Tender") is nearing its completion. On December 18, 2014, the Government of Montenegro has adopted a negotiation strategy, and negotiations are expected to be completed by the end of February. The bidders already had an opportunity to comment on the transaction documents during the bidding phase; therefore, the scope of post-bid negotiations is going to be limited to defining the actual exploration area, the duration of various phases, the content of the work plan, the amount of performance guarantees, and the scope of the concessionaire's obligation to educate the public sector on the specifics of the upstream operations. Upon completion of negotiations, the tender commission is supposed to inform the Government on the outcome of negotiations and recommend the concessionaire/concessionaires, with the final decision to be made by the Parliament.

The Hydrocarbons Exploration and Production Act allows for the possibility of awarding concession to more than one bidder. The bids were submitted in May 2014 by three consortiums: 1) Marathon Oil Netherlands One B.V. and OMV Montenegro Exploration GmbH, 2) Eni International B.V. and Novatek Overseas Exploration & Production GmbH, and 3) Energean Oil & Gas SA and Mediterranean Oil & Gas Plc. The Government and its Ministry of Economy have not yet proceeded with the award procedure, since they had to resolve several outstanding issues first.

On the regulatory side, the Parliament has adopted the Hydrocarbon Tax Act, thereby completing the fiscal framework necessary for implementation of hydrocarbon projects. Back in 2012, prior to launching the tender, the Government issued a Fiscal Policy Paper, a non-binding document setting forth the basics of the fiscal approach to the hydrocarbons operations. According to the Fiscal Policy Paper, the main source of income for the state should come from a special income tax, applicable to the revenue achieved through upstream operations. The recommended tax rate set forth in the Fiscal Policy Paper was 59%, consisting of 50% special income tax and standard 9% Corporate Income Tax (CIT). The alternative solution provided by the Fiscal Policy Paper was to exclude CIT altogether and apply only the special income tax at the rate of 59%. The Hydrocarbon Tax Act opts for the latter and excludes the application of the Corporate Income Tax Act to the income achieved through upstream operations, but goes with a lower special income tax rate of 54%. The Act introduces a set of special rules for determination of tax base, most importantly those related to norm pricing, cost recognition, and cost ring-fencing.

In addition to the special tax, the concessionaire will also be obliged to pay an annual surface fee in an amount ranging from EUR 300 to EUR 3,000 per square kilometer of the awarded concession area, as well as a monthly royalty fee for oil ranging from 5%-12% of the value of produced oil, depending on the quantity of daily production.

The Government is supposed to propose a law establishing a special fund to receive 85% of the special tax proceeds,but still has not fulfilled this obligation. Delay in setting up this fund, however, should not suspend the concession award process.

Another regulatory issue the Government has been dealing with in the meantime was the preparation of the Strategic Environmental Impact Assessment Study for the exploration and production of hydrocarbons. The study is not completed yet and it seems that the Government intends to push the concession award process forward before the SEIA study is completed. Several environmental NGOs have been very vocal in disputing this intention of the Government.

On the political side, the realization of the Tender has been affected by the unresolved status of the border between Montenegro and Croatia. The Tender initially included a number of exploration/exploitation blocks covering the disputed area between the two countries. Croatia argued that inclusion of these blocks is against the Protocol on Provisional Border Regime from 2002. Following several public exchanges with Croatia, the Montenegrin Government decided to exclude the disputed blocks from the Tender and award the concession only for the blocks in the south, near Ulcinj. The latest announcements from the Montenegrin and Croatian officials suggest that a memorandum on joint exploration of hydrocarbons in the disputed area is being negotiated.

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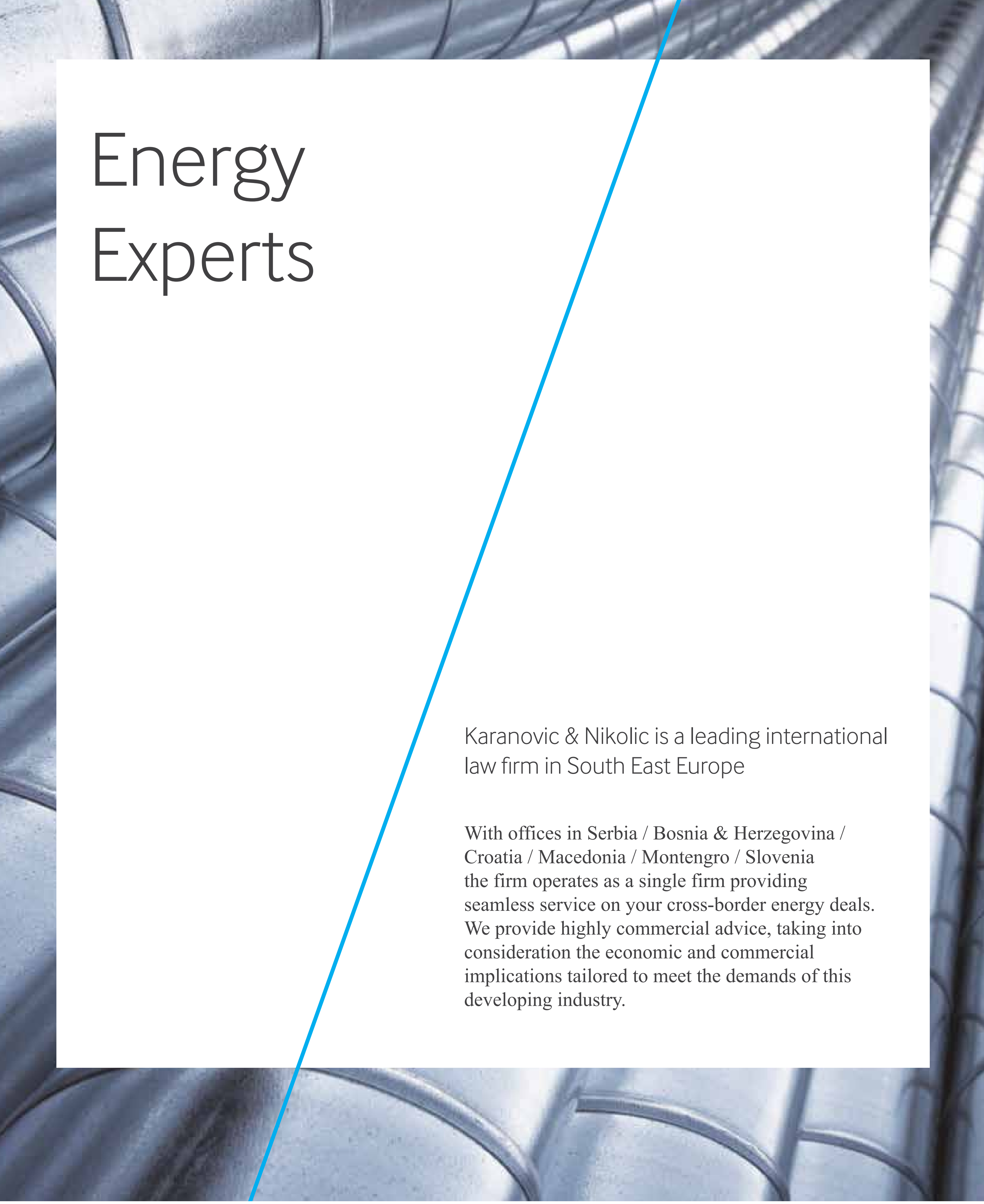

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