

CROSS BORDER DEAL MAKING IN CENTRAL & EASTERN EUROPE

Stretching from the Baltics in the North to the Balkans in the South, the Central and Eastern European region spans a vast geographical area. Although the term CEE provides a convenient shorthand to describe the former Communist states that fall between western Europe and Russia, it overlooks the fact that the countries that make up the region differ dramatically in terms of culture as well as economic makeup. One unifying factor however is the economic restructuring and mass privatisation wave that has taken place, to a greater or lesser extent, in each country since the early 1990s.

Despite the diverse states of economic development amongst CEE countries, so far there has been little sign of the economic slowdown which is bearing down on western European economies. Given that growth in the CEE region as a whole is expected to be 5% in 2008 and 2009 according to the Centre for European Economic Research, well above predicted growth in Western Europe, M&A players are cautiously optimistic about the buoyancy of the deal market in the region.



BOGA & ASSOCIATES
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with cross-border M&A in Albania are mainly connected to the lack of knowledge of the local investors for understanding complex transactions. The lack of business law firms with strong Albanian experience also means incorrect or incomplete advice may be given to investors. Other difficulties could be associated to the local reality and specifics of the country in connection with the legislation in place which is very young, untested before courts and at times ambiguous.

Boga & Associates leverages its depth and diversity to understand and meet clients' needs. The firm provides clear picture of the legal environment and optional solutions, along with their respective pros and cons so that the clients may properly assess and mitigate risks while making informed decisions. "We assist our clients while negotiating the deals by approaching the proper attitude with the adversary party in the transaction, trying to understand also the needs of such party in order to help negotiations to be concluded successfully," said Mr Elmazaj.

Boga & Associates has assisted foreign insurance companies and banks in acquiring equity in local insurance companies, banks and other companies. To facilitate these transactions, the firm conducted tax and legal due diligences of the target entity and tailored the transaction documents according to the client needs considering also findings of said due diligence. It has also advised and assisted foreign shareholders in selling their equity stake of an Albanian bank to a foreign bank.

ALBANIA

Since its transition into a free market economy two decades ago, Albania has evolved into a country with abundant foreign investment opportunities. Investors, whether foreign or domestic, also enjoy full legal protections in regards to their Albanian investments. Private investments cannot be nationalised, expropriated, or subject to any similar measure, except in special cases provided by law such as public interest. Parties to a dispute may agree to submit claims for consideration by an arbitration institution. Foreign investors have the right also to submit disputes to an Albanian court.

Recently, the Albanian government introduced the Private Public Partnership (PPP) concept, within a new Concession Law, that guarantees more transparency and competitiveness. The government has started using PPPs to grant concession to a number of small hydro-powers.

Hydroelectric power is just one facet of the promising energy sector. The country possesses considerable quantities of other natural resources, including oil, gas, coal, iron, copper and chrome deposits. The target for investors in power sectors these last years has been concessions awarded by the Albanian government for building and operating hydropower plants. Foreign investors have been cooperating with their local partners.

Tourism also offers great investment prospects. Albania has spectacular mountain scenery, a beautiful and pristine coastline, and ancient history and culture. Tourism could be one of the main attractions for foreign investors in the future, but currently Albania lacks the proper infrastructure to promote investments in this sector.

According to Sokol Elmazaj, the key difficulties associated

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CROATIA

Law Offices Nogolica provides high quality professional service delivered with a personal touch that provides our clients practical, clear, and effective solutions to their legal and strategic challenges. Whereas many of our competitors offer their clients tactics, we distinguish ourselves from the competition by providing superior situation analysis that is essential in developing a comprehensive strategy to guide our approach to tactics in a unified and skilful manner.

Croatian deal flow has slowed in recent months due to the ongoing effects of the economic turmoil worldwide, but the more challenging environment has also impacted asset and opportunity pricing that yields better value for investors. The crisis has pulled many unseasoned investors out of the market, leaving ripe opportunities for those that were waiting to acquire distressed assets at rock bottom valuations.

They will also be encouraged by Croatia's legal and regulatory frameworks which are quite supportive of M&A activity. This comes as the government has recognised the need to promote business evolution through an injection of capital and knowledge. This should lead to improved competitiveness of Croatian businesses. Significant opportunities for operational improvements also exist in a large number of Croatian businesses, who are not fully exploiting their current market opportunities. Croatia also has exciting opportunities for greenfield investment in Croatia which may be best exploited by leveraging the existing hard and soft infrastructures of going concerns through M&A. Sell-side valuations of many Croatian companies are often lower than expected due to their limited view of current and future market/profit potential, which make many opportunities a good value for sophisticated and experienced M&A practitioners.

One key issue that investors or acquirers may encounter when operating in Croatia is cultural alignment between both sides of a transaction. Cross border M&A clients experience significant cultural differences, but a key factor to successfully complete the transaction is to educate clients and make them acutely aware of social issues from the outset. Croatia's deal making environment is also still hindered by decades-old problems. In its Global Competitiveness Report 2008-2009, the World Economic Forum ranked Croatia 61 out of 134 countries. The report cited inefficient government bureaucracy, corruption and tax regulations as the country's three main barriers for doing business.

When Law Offices Nogolica acts on behalf of a client during a transaction, it continuously consults and updates them on events and procedures so that they are knowledgeable owners of the situation and not just passive observers. As legal and strategic advisers for some of the most successful investors in Croatia, Law Offices Nogolica believes that a client's ability to understand is the most important indicator to a deal's success. Therefore, Law Offices Nogolica does not merely describe procedures and regulations, but thoroughly explains them and their consequences to clients.



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CZECH REPUBLIC

The number of cross-border deals completed in the Czech Republic has declined according to Richard Gürlich. This has been due to the economic downturn, which has hit European Union states particularly hard. However, Mr Gürlich believes there are still good opportunities to be had by cash-rich investors with many company valuations being depressed.

Czech banks have been reluctant to provide financing to deal makers. The lack of liquidity has been acutely felt in real estate market where many property developments have been postponed due to an inability to secure funding.

Gürlich & Co's cross border experience is wide-ranging. It works with a diverse range of foreign clients, most of which originate from the UK, USA and the Asian continent. It recently acted on behalf of a Korean client who was the sole proprietor of Beroun Golf Resort, the newest and most luxurious golf complex in the Czech Republic. It also represented the interests of clients based in the Middle East; it is presently engaged in a real estate purchase that will be the location of an Arabic state's embassy.

Mr Gürlich feels there are no legal difficulties with cross-border deal making in the Czech Republic. This is because differences in the international M&A marketplace between the Czech Republic and Western countries are very slight. He said: "I don't think there are any difficulties."

Gürlich & Co is one of the Czech Republic's standout law firms. Gürlich & Co works with small to medium enterprises with a market cap of up to €100 million. It renders a broad range of professional legal services to clients across many industries and sectors. Its services are provided in accordance with all applicable legal statutes and take in account any forthcoming relevant regulation. The firm treats each client and project on a case-by-case basis, enabling it to offer a highly bespoke and individualised service.

Gürlich & Co is also on the advisory board for the International Association for Commercial & Contract Management, or IACCM. "Our membership in this exclusive network allows us access to larger deals through utilising the network's connections," said Mr Gürlich. The IACCM also provides extensive forums, where members frequently engage in legal discussions, subsequently enhancing their knowledge and expertise in all departments. Gürlich & Co are also members of ATA Royal, an association of independent law firms from the United Nations. "Our presence in this group allows us to provide our clients with much higher quality in solving legal issues over

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HUNGARY

The current lack of financing is putting a downer on Hungary's deal marketplace says Dr Zoltán Martonyi. As the country falls deeper into its worst recession in over a decade, he said: "It is a difficult moment for financing, M&A and private equity transactions in Hungary, either domestic or cross border."

Recent developments have spooked would-be investors. Their confidence has been dented by perceived weaknesses in the Hungarian economy. In a bid to stabilise the floundering market, Hungary obtained a massive £15.6 billion loan from the IMF, EU and World Bank. The emergency loan, one of Europe's biggest, has not improved business sentiment as investors continue to shun the country. "Risk aversion of investors in respect of the Central Eastern European region makes deal making a hurdle these days," said Dr Martonyi. He says that as a consequence of the marketplace's issues, investors seek straightforward, simple transactions which do not contain any structured element and can be easily understood.

Like other markets that are contracting, many company valuations have dropped. Though there are opportunities for acquiring good businesses at rock bottom prices, Dr Martonyi believes that over-eagerness in purchasing distressed debt or companies has deferred attention from the good investment possibilities. Hungary still has promising industries that will help its economy climb out of the quagmire. Interest in the alternative energy sector is gathering pace as state support for renewable technologies increases. Bio-mass, geothermal and solar power continued to see investment interest from overseas.

Martonyi Law Firm has actively participated in the regional expansions of some major Hungarian banks and companies. "We are working with only those law firms which Bolton May Ltd. (with whom we are associated) considers as being the best local firms providing the highest standards in each respective jurisdiction," said Dr Martonyi. The firm has built up a network of high quality associates that enables the firm to gain deep insight and high quality expertise in respect of most of the Central Eastern European jurisdictions at a very reasonable price. Presently, obtaining financing is one of the most important

challenges during a deal. Martonyi Law Firm has excellent relationships with all Hungarian banks, having regularly represented them in various major transactions.

"We cooperate with Bolton May Hungary Consulting Ltd., thereby we can provide a combined business and financial structuring and legal services to our clients, at a very reasonable price," said Dr Martonyi. He explains that his firm provides a single point for all services necessary in a transaction, from financial to legal advice. "All comes in one," he said before adding: "Such capabilities make us utterly different from our competitors."

Recently, Martonyi Law Firm has advised on the acquisition financing for Arena Plaza, the largest shopping mall in Central Eastern Europe, in a deal worth approximately €400 million. The firm has also advised on the purchase of a hotel in the Seychelles and the recent sale of a Hungarian windmill farm.



KOSOVO

Kosovo's M&A marketplace mirrors the country's potential amid its ongoing transition. As the world's newest state, there exist myriad opportunities for profitable transactions to take place. Virtyt Ibrahimaga says that Kosovo has produced its own legislation during the last decade. He said: "The legal framework is very flexible and favourable for transactions." Transaction volume had been historically low due to Kosovo's unresolved political status, which dissuaded foreign investment. This uncertainty has now been resolved following the declaration of independence in February 2008. Kosovo is now looking ahead towards economic development.

There are significant investment opportunities emerging in Kosovo. The energy generation sector is especially promising with a new €3.5 billion coal-fired power plant due to come online in 2012. The ongoing privatisation process will also open up possibilities in the sectors of agriculture and tourism. Mining is also expected to be a key economic driver as Kosovo is believed to have some of the largest lignite coal deposits in Europe. Almost 200 enterprises are expected to be privatised through public tenders in the near future.

Mr Ibrahimaga states that Law Firm I.O.T. has

been involved in several cross border deals in the past and provided reputable international companies with legal guidance. "We have tight cooperation with other international law firms and have a staff educated in Western European countries." Law Firm I.O.T. is the largest law firm in Kosovo and has a team of attorneys with distinguished expertise in the commercial law. The firm has worked on M&A transactions across a diverse range of sectors, including insurance, banking and the privatisations of so-called 'social owned' properties. Mr Ibrahimaga said: "The international legal education of our lawyers and international experience of some of them allows us to approach and transmit cultural and technical differences between local businessmen's and international investors."

According to Mr Ibrahimaga, difficulties surrounding Kosovo M&A are the level current level of economic development, lack of a stock exchange, lack of local experience in M&A, lack of proper legal infrastructures and also poor overseas awareness of investment opportunities in Kosovo.

Cross-border transaction requires an assistance of teams consisting of experienced lawyer with clear understanding of the commercial transaction. Law Firm I.O.T. has a network of local contacts that allows it to provide international investors with the best assistance. "With our experienced attorneys, we can provide our clients with a very secure and efficient legal advice," said Mr Ibrahimaga. "Our expertise and the network of local contacts in Kosovo allow us to provide our clients with much other information relevant for the transactions." Law Firm I.O.T. provides comprehensive assistance to foreign investors interested in acquiring businesses in Kosovo, including preliminary advice on procedures for incorporation and legal requirement, as well as guidance on preparation of incorporation documentation.



REPUBLIC OF MACEDONIA

Sanja Veljanovska, junior partner at Mens Legis Law Firm, explains that Macedonian M&A is largely regulated by competition law. She said: "The Law on Protection of Competition was adopted on 11 January 2005 and was amended several times in order to make its implementation easier and more efficient." She adds that the law was derived

from European Commission competition laws and is intended to ensure free competition among companies on the market.

"The application of competition rules has as a purpose of establishing a market on which all undertakings are equal under equal conditions and their position on the market is rated according to the quality of the goods and services they offer," stated Ms Veljanovska. She noted that the Macedonian administration also adopted a number of related bylaws to complement the Law. These include regulations on the block exemption granted to: vertical agreements; vertical agreements in the automotive sector; horizontal specialisation agreements, R&D agreements, the insurance sector; and technology transfer agreements. She said: "The drafting process was conducted in participation and important contribution with foreign experts from EU-funded project, managed by the European Agency for Reconstruction whose mission was, in particular, to support the government and Commission for Protection of Competition in drafting the law and secondary legislation."

During the past decade, Macedonia has intensified reforms targeted at improving the business environment and developing the country's private sector by eliminating the minimum capital requirement for business start-ups, speeding up the process for getting construction permits, lowering the taxes and simplifying tax payment procedures. Ms Veljanovska said: "This general intention to open the market for foreign investors and to harmonize all the laws and regulation with those from the EC makes the investment business climate attractive for foreign investors." The liberalisation of its marketplace was duly recognised by the World Bank. The organisation's 2008 Doing Business Report ranked Macedonia as the fourth-best reformatory state among 178 countries and listed it as the best consecutive reformer over the last two years in South Eastern Europe.

Mens Legis Law Firm is the leading law firm in Macedonia. It has acted as legal adviser in many cross-border transactions, including some of the largest projects in the country and abroad. These include Telekom Slovenije's acquisition of the country's second largest mobile network operator in Macedonia Cosmofon AD Skopje in a deal worth €190 million, and the acquisition of Serbian automotive factory Zastava Kragujevac by FIAT Italy. The experienced team of lawyers offers clients a full range of services in each phase of a transaction. Ms Veljanovska said: "We practice an individual and committed approach to each and every client, which allows us to meet their business needs."

Mens Legis Law Firm has rich experience in advising on all aspects of acquisition transactions, including entity formation, tax structuring,

financing and risk management. "The proactive approach to our work and aim to provide user friendly services at all time, makes our team a step ahead before our competitors," explained Ms Veljanovska. "The quality, speed and accuracy of our services will give you the best value for money."



ROMANIA

Cosmin Stavaru, partner at Bulboaca & Asociatii SCA, says that the economic downturn has affected Romania enough to shed some uncertainty over otherwise a promising business environment. He says that state support over the economy is not yet fully coherent but the private sector will be able to absorb the shocks of the crisis. "The business in Romania is moving well forward under the signs of increased caution and moderate optimism," he added.

However, an ongoing lack of liquidity in the market has forced many transactions on the backburner with less deals occurring overall. Mr Stavaru states that this has been especially true of the real estate and private equity sectors, which are highly dependant upon bank financing. However, the market is favourable to strategic investors sitting on cash to the extent they tend to gain the upper hand over sellers during negotiations. Mr Stavaru illustrates this: "We have seen an increasing interest for investments in the energy sector, especially renewable energy, despite a slight fall in energy prices."

According to Mr Stavaru, the bureaucratic process of obtaining regulatory approvals from public authorities to complete transactions is a key difficulty in Romanian M&A. He also explained that lack of experience and absence of corporate culture means target acquisitions may be unfamiliar with traditional deal practices such as due diligence. Finally, he added that excessive financial assistance regulations may be burdensome.

"One of our strong competitive advantages resides in the ability to conjugate the international and local dimension," said Mr Stavaru. Bulboaca & Asociatii SCA

offers transaction assistance at the highest standards and is able to team up with top international law firms in multi-jurisdictional transactions.

After successful completion of a deal, the firm also provides guidance on the day to day activities of an international client's Romanian operations. "This complement between Romanian and international dimension, on one hand, and, transactional and ongoing business advice capabilities, on the other hand, represents a source of growing success for our firm," said Mr Stavaru.

Bulboaca & Asociatii SCA's lawyers have broad experience in M&A deals forged in complex transactions and training programs. Its cross-border M&A expertise is varied and particularly client-oriented. "Our goal is to deliver clients practical advice," explained Mr Stavaru. "We therefore train our lawyers to be business-oriented and proactive in overcoming obstacles," he added. From the onset of a deal, the firm communicates with other parties involved in the deal and with public authorities to ensure swift progress. The firm also keeps up to date with the latest management and organisational research to make sure it functions as efficiently and professionally as possible.

Bulboaca & Asociatii SCA has recently acted on behalf of companies on the sale of their businesses to Vodafone and Verbund respectively. It has also advised global fruit producer Dole in its acquisition of Romania's largest fruits distributor.

The Russian deal making landscape is undergoing an unprecedented period of upheaval says Salomons partner Anton Klyachin. He says that the transaction market has seen lower transaction volume and values compared with previous years. However, he points out that the most dramatic change has been in the type of deals being concluded. He said: "Almost all M&A activity we are currently involved in pertains to either fire sales of assets or to restructuring of distressed assets."



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The economic distress has significantly depressed company valuations in Russia. Mr Klyachin said that it has become commonplace to ask for substantial discounts on the initial purchasing price of a target. Activity has slowed as a result, while investors attempt to negotiate the lowest possible valuations. "The negotiations of such transactions have become significantly harder for all parties involved," he added. The market's problems are also compounded by an ongoing lack of liquidity for deal financing. Mr Klyachin said: "Almost all on-going transactions involve negotiations with target's creditors."

President Medvedev's administration introduced the Strategic Sectors Law in April 2008. The legal framework was intended to regulate foreign investment inside Russia but Mr Klyachin says it has significantly delayed some transactions. He explained: "The problem with its implementation was that not all procedural and technical issues were decided simultaneously after its enforcement. Therefore, in the first months of its passage, the mechanism of state approval for applicable transactions has not worked and the parties were to wait." Although the situation has improved, it still takes a long time for authorities to check and authorise any deals that fall under the law.

Salomons' cross-border M&A practice blends the high quality standards of a large law corporation with the precise and client-tailored approach of a small outfit. "We work with many firms in other jurisdictions that follow the same approach, thus allowing our clients to reach all desired jurisdictions through one contact and with the same standard of quality," said Mr Klyachin. Salomons' M&A practice operates across a wide variety of industries, but is particularly focused on the technology, media & telecommunications sector (TMT), as well as consumer goods and natural resources.

When acting on behalf of buyers, Salomons takes care to ensure the deal is free of irregularities. The firm performs an accurate and thorough legal due diligence of the target's asset history before cross-referencing its findings with data from other consultants, such as auditors and technical specialists. It maintains strong professional links within the M&A marketplace for this very purpose.

"We offer our clients a combination of Russian law practical and legal solutions with good contacts within London firms, which allows us to structure transactions under English law, to perform in-depth due diligence of the asset in question, to attract commercial and/or security due diligence specialists to the extent necessary," stated Mr Klyachin. The firm also maintains close working relationships with Russian authorities that may be involved in a usual M&A transaction.