CEE Finance & Capital Markets 2024-2025

Navigating the New Global Order:

Legal Dynamics in Banking, Finance and Capital Markets Across the CEE Region

Freshfields Bruckhaus Deringer

Introduction

In the dynamic landscape of the central and eastern Europe (CEE) region, where significant legislation and financial markets are in constant evolution, Freshfields Bruckhaus Deringer are pleased to present an update on the emerging market and legal trends across the CEE financial markets sectors in collaboration with leading local law firms, following two days of insightful discussions, networking and celebration.

In the 16 years we have been holding our banking and finance workshops, the countries that make up the CEE region have made significant steps forward in economic sophistication. Legislation and financial markets have evolved in response.

The region has steadily drawn closer to the European Union, including adopting EU rules, a trend that has continued since our last workshop. The past year has also crystallised regional developments influenced by important global shifts, including a global economic downturn and a shift to green energy, as well as more localised changes.

This year's publication focuses on legal dynamics in banking, finance and capital markets and the global political influences on financial regulations and legal risks in lending and investment activities across the CEE region.

Focus on green energy and infrastructure

The energy transition and need for modernised infrastructure is having a significant impact in many of the CEE countries.

Like its neighbours, Serbia faces challenges around inflation, supply chain and higher interest rates. Increasing manufacturing, construction and installation costs have caused delays in projects at the planning stage. On the other hand, negotiations with lenders and suppliers have accelerated in an effort to finalise commercial terms before economic conditions tighten further.

In Serbia and elsewhere, investments in infrastructure and energy benefit from policy support.

Hungary is typical of several countries where financing is shifting from real estate to energy and infrastructure. Investments in renewables, particularly solar, have been bolstered by government incentives and EU policies.

Recent amendments to Bulgaria's Energy Act aim to simplify project development procedures, reduce development timelines and improve financial flexibility for electricity producers. Bulgaria is aiming to streamline grid connection processes for renewable projects, facilitate offshore wind power plant installations and introduce a legal framework for geothermal projects.

However, there are challenges. Bulgaria's difficulties are not unusual in the CEE region and include frequent legislative changes as well as administrative and bureaucratic hurdles, such as lengthy approval processes, cumbersome due diligence in particular with respect to title to real estate, and a lack of legal certainty.

Despite Bosnia and Herzegovina's comprehensive energy law reform in 2023, similar challenges to other countries in the region linger. The bureaucratic system can be complex and slow. Dispute resolution is often inefficient and unpredictable. Labour laws, environmental regulations and compliance requirements can be complicated.

Hungary's tight state budget and lack of EU funds have seen infrastructure development projects dwindle. A changing regulatory environment poses investor risk, alongside contract enforcement, sector-specific complexities and concerns over political interference and economic stability.

The Baltic countries of Latvia, Lithuania and Estonia add anti-money laundering (AML) and sanctions regulations, with regulators stringent that no funding is provided to businesses with ties to Russia or Belarus.

Despite these issues, energy and infrastructure projects remain attractive.

Growth, challenges and opportunities

The CEE region's dynamic economies also present potential in capital markets and M&A.

With around 150 Croatian state-owned enterprises (SOEs) intended to be privatised, the opening up of markets previously monopolised by the state could offer investment prospects. SOEs are estimated to generate about five per cent of the Croatian economy's added value and account for about four per cent of total employment, well above the EU average. Rigid and inefficient corporate structures and practices among Croatian SOEs mean new management practices could significantly improve their efficacy. However, as with other CEE countries, investors face risks, notably a slow judiciary system.

Poland's banking sector is increasingly in the spotlight. The Polish State Treasury holds an outsized nearly half of banking sector assets.

Rather than engaging in M&A activity, domestic Polish banks have focused on resolving issues around Swiss-franc-denominated loans in the housing market. Pro-consumer rulings from domestic Polish courts and the Court of Justice of the European Union meant Polish banks had to establish significant financial provisions for such legal risks. Rising inflation saw interest rates rise significantly.

Some of these challenges have now been resolved, and Polish banks have been generating record profits in 2024, making the country's banks increasingly attractive targets for M&A activity.

In changing interest rate policy and increasing interest rates to combat high inflation, Türkiye has prompted an increase in initial public offerings (IPOs) as companies seek alternative financing options. The Capital Markets Board of Türkiye has announced flexibility in IPO monetary thresholds for sectors including renewable energy, technology, petrochemical and IT sectors.

Nevertheless, the liquidity of the Turkish stock market often depends on foreign institutional investors, making it susceptible to fluctuations in global and local market conditions, potentially leading to sudden reversals in foreign fund flows, impacting market liquidity and stability. The devaluation of the Turkish Lira also increased risks for foreign investors, potentially leading to lower returns in an inflationary environment.

Proactive approaches in restructuring and insolvency

Despite active interest in transactions, CEE companies face the same economic pressures seen elsewhere. The region is looking at the benefit of restructuring procedures so as to help prevent insolvency.

Romanian legislation now recognises a number of formal court procedures covering a broad spectrum of distress, from companies 'in difficulty', to those that are actually insolvent, where the courts can approve either a re-organisation procedure (which saves the company) or initiate bankruptcy proceedings. However, none of these formal, in-court, tools have so far proven to be very effective in stabilising and revitalising businesses.

Recent changes in Slovak insolvency law primarily stem from the adoption of the EU directive on preventive restructuring frameworks, which has introduced both public and non-public preventive restructuring proceedings as well as updates to the existing insolvency regimes.

A major change in Slovakia is the redefinition of 'impending insolvency', now defined as the existence of a reasonable expectation of illiquidity within the next 12 months. The new rules allow for impending insolvency to be addressed exclusively through preventive restructuring rather than formal restructuring.

The Czech Republic's new confidential, consensual and less formal process allows corporate debtors in financial difficulties (but not yet insolvent) to negotiate a solution with selected creditors confidentially and with limited court intervention.

In a threatened or actual insolvency situation, a debtor can also seek a formal reorganisation under the insolvency legislation. Several reorganisations successfully completed under this new preventive restructuring regime have stabilised and revitalised businesses.

However, a larger number of reorganisations seem to have resulted in the sale of the debtor's business or assets. In some instances, the same outcome could have been attained through bankruptcy proceedings which also allow for the maintenance of the debtor's business and its sale as a going concern.

Bankruptcy proceedings are the most common fate for distressed Slovenian companies. However, bankruptcy recovery rates are low. Like the Czech Republic, Slovenia's focus is now shifting to pre-insolvency procedures, although the familiar challenges of bureaucratic and lengthy proceedings remain.

Such systemic issues make advice from experienced legal counsel the best way to mitigate insolvency-related risks, in Slovenia and elsewhere in the CEE region.

As lawyers providing such advice, we must keep up with the region's rapid evolution. The following articles have been written by our StrongerTogether firms in attendance at the CEE Finance and Capital Markets Workshops 2024. We would like to express our sincere thanks to all StrongerTogether colleagues for their contributions and wish you an interesting and pleasant read.

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Gerli Kivisoo, Partner (Estonia)
Ieva Dosinaitė, Partner (Lithuania)
Marta Cera, Associate Partner (Latvia)

Ellex

Baltics

Legal risks in lending and investment activities in the CEE region

Q: What recent legal and market developments have you observed in your jurisdiction that are influencing lending and investment activities? Have global economic, political and financial trends impacted these recent developments in your jurisdiction, and, if so, how?

Ellex Latvia:

In recent years, the domestic lending sector in Latvia has experienced a decrease in local bank activity in commercial lending due to sector-wide de-risking/ over-compliance. Currently, the lending activity is slightly increasing as a result of public discussion and measures implemented relating to access to financing. The global economic and political trends have detrimentally impacted the domestic lending sector in Latvia as well, mainly due to an increase in base interest rates. Interest rates are now expected to gradually decrease, although, as in most countries in Europe, at a much slower pace than initially expected. Thus, overall, with the discussion on access to local bank financing and gradual decrease of base interest rates, domestic lending is expected to slightly increase.

As a result, 2023 and 2024 have seen an increase in bond market activity. Private placements are more common than public offerings, whereas if public bonds are issued, these would usually be listed in Nasdaq First North (rather than the main list) due to the fewer administrative burdens. The issuers mainly represent the private sector, whereas the activity of state-owned companies has decreased (although currently there is a large public campaign to promote the participation of state capital in capital markets). There have also been several bond issues recently the proceeds of which are intended for the financing of M&A deals (due to more attractive terms than local bank financing).

Another effect of the stagnant domestic bank lending has been the expansion of the alternative financing industry in Latvia, with alternative investment funds providing both equity and quasi-equity/debt financing in various sectors including real estate, renewable energy and general growth financing.

Ellex Lithuania:

Bank Lending and Bond Issues

Bond Market Shift: Over the past three years, banking lending in the real estate market has been significantly replaced by bond issues, particularly for early-stage developments (ie bridge financing options). However, in 2024, bond issues began to decline due to shifting investor sentiment towards the real estate sector. The market was further unsettled by the financial collapse of one of the issuers. Additionally, the regulator has started scrutinising private placements of bonds issued by investment fund-owned Special Purchase Vehicles, imposing certain leverage limits.

Diversification in Bond Issuance: Other unregulated sectors such as manufacturing and service providers have entered the bond market to raise funding, albeit with much smaller issue sizes compared to the real estate sector.

New Lending Incentive Programme

European Union (EU) Recovery and Resilience Facility (***RRF***) Programme: A significant change in banking lending was the approval of the new RRF-based incentive programme, 'Billion to Business' in mid-spring this year. Designed for medium and large businesses engaged in renewables, science, digitalisation and similar sectors that align with EU priorities, the programme offers nearly €1bn in total, with a maximum ticket size of up to €250m per applicant if the financing involves a syndicated loan with commercial lenders and/or International Financial Institutions (***IFIs***). This programme aims to finance greenfield projects that are currently unfunded by commercial lenders or IFIs in Lithuania, significantly influencing the economy. Moreover, the respective programme offers debt instruments to the military sector, a market segment that is entirely underserved by local commercial lenders. Although the programme aims to cover the military sector, the majority of instruments require 30-50 per cent of either equity or commercial bank loans. Given that the military sector raises numerous concerns for local banks, this new opportunity necessitates additional efforts.

Ellex Estonia:

Global economic and financial trends have strongly affected the Estonian lending scene. This is mainly evident in increased base interest rates that have reduced activity in the lending market. If interest rates will as currently expected decrease, this will likely result in some recovery of the local lending scene and could have a positive impact on the Estonian economy as a whole.

However, despite the high interest levels, bond financing issuances, especially for public bonds, have experienced a significant increase in the past year and a half. This is most likely due to two factors. First, the economic instability, increased interest rates and inflation has resulted in investors looking for safer investment opportunities with a stable cash flow. Thus, public equity transactions have almost decreased to zero, with only one

initial public offering taking place in Estonia last year and none this year so far. Second, companies still need financing and even though the economy is in decline, this has not resulted in the complete standstill that was evidenced during the 2008 financial crisis or the early days of the COVID-19 pandemic. Therefore, the Estonian public bond emissions market, which has traditionally been rather inactive, has gained a lot of momentum across 2023 and the beginning of 2024, with more than six public offerings taking place during the past twelve-month period. The Estonian public bond market has so far been dominated by bond offers from credit institutions. However, a positive development at the beginning of 2024 saw the first public green bond issue of a real estate developer in Estonia. It is therefore evident that the global (or at least EU-wide) shift to green financing is also having an impact on the Estonian lending market. Another recent development is that the Estonian state is planning on conducting its first public bond issue, likely to take place at the end of this year.

Q: What specific legal considerations should foreign investors or lenders be aware of when entering your jurisdiction (eg concerning due diligence, risk management, restrictions on foreign investment, enforceability of claims and security or compliance)?

In each of the Baltic countries, investors aiming to invest in companies of significance to national security or in sectors that are deemed strategically important (eg, electronic communications and mass media, military, technology, financial, energy, etc) may be subject to an obligation to obtain a special permission or undergo certain screening procedures. Latvian law would require such investors to obtain a separate permission from the Latvian Cabinet of Ministers. The criteria for obtaining such permission is not disclosed or incorporated under Latvian law, however, the regulation was primarily introduced to prevent any investment related to sanctioned jurisdictions (eg, Russia and Belarus). In Lithuania, such investors would have to undergo screening by the National Security Commission. This screening primarily checks for any criminal history and verifies any current or past ties to Russia, Belarus and other sanctioned jurisdictions. Whilst in Estonia, certain foreign investments (ie related to non-EU parties) in certain sensitive sectors are subject to additional screening and authorisation obligations by the Estonian Consumer Protection and Technical Regulatory Authority.

Ellex Latvia:

Investors should be aware of the following consideration in relation to financing transactions where the principal claim is intended to be, *inter alia*, secured by a pledge on the borrower's bank accounts (financial pledge). Where the financing party or the pledgee is not the holder of such bank account and the borrower's main bank accounts are opened with a local financial institution, Latvian commercial banks are very hesitant to enter into trilateral agreements (as required by local laws) relating to the pledge of the borrower's bank accounts.

A further consideration relates to the opening of bank accounts for investors, where local financial institutions continue to implement stringent KYC/AML/sanctions checks, in particular on companies registered outside of Latvia. These measures are often more extensive compared to those in other EU countries.

Ellex Lithuania:

Foreign investors seeking to invest through a Lithuanian SPV may encounter challenges in opening a bank account due to the perceived lack of economic substance in Lithuania. This is a common practical issue faced by fintech companies entering Lithuania.

Even if the economic substance requirement is met, investors are obligated to undergo a KYC process at any financial institution where they intend to open an account. While the AML requirements are driven by AMLD5, Lithuanian laws on AML are notably distinct and quite extensive. They include an exhaustive list of methods for identity verification which requires top C-level managers to pass the identity verification requirements for notarisation and apostille of certain supporting documents for KYC, and a comprehensive investigation into the source of funds.

Ellex Estonia:

Estonian financial institutions focus their stringent KYC/AML/sanctions checks in the account opening procedure in particular on companies registered, or with ultimate beneficial owners residing, outside of Estonia. These measures are often generally more extensive compared to those in other EU countries.

Given recent global developments, the local geopolitical risk has increased since 2022, which is also evidenced in the lowered national credit rating (currently A+ according to Standard and Poor's (S&P) and A1 according to Moody's).

Q: Can you provide an example of a recent successful lending or investment transaction in your jurisdiction, highlighting the key legal considerations, strategies employed and factors that contributed to its success?

Ellex Latvia:

In recent years, the Baltic region has experienced a significant increase of activity in the renewables and energy financing sectors. A recent noteworthy transaction in Latvia related to a construction bridge financing for the largest standalone solar power plant park in Latvia by one of the leading German commercial banks. Work on the respective transaction involved project finance elements, such as regulatory due diligence and advice on engineering, procurement and construction contracts and operation and maintenance agreements further serviced by the sponsor of the transaction. The financing was secured by, *inter alia*, a mortgage on build-up rights of the solar panel plant, which is a new type of mortgage security established under Latvian law. The scale of the project marks a significant milestone in the Latvian renewable energy sector.

Ellex Lithuania:

A recent noteworthy financing transaction that was atypical for Lithuania involved a club loan provided to a biotech company developing a greenfield project in gene therapy facilities. This financing was arranged by an International Financial Institution (IFI) in collaboration with a commercial bank. The financing structure blended elements of project finance, albeit without the main components of off-take agreements and corporate financing.

In the biotech sector, off-take agreements are typically not executed. Therefore, alternative methods to demonstrate future cash flows were employed, combined with cash flows anticipated from other entities within the group. This transaction marked a significant milestone as the first of its kind in the Baltic biotech sector.

Ellex Estonia:

One of the latest successful lending transactions in Estonia was the recent issue by Eesti Energia (the local state-owned energy company) of €400m green hybrid bonds on the London Stock Exchange. This was a landmark project in Estonia both for being one of the first large-scale green bond financing deals as well as for being a pioneer hybrid bond issue by an Estonian issuer. Thus, despite some delay, this new and innovative instrument of global finance is becoming increasingly popular in Estonia. However, this does pose certain legal challenges, given that the Estonian legislature does not have specific regulation that would enable the issuance of hybrid bonds. Thus, bespoke solutions must be implemented to ensure the compliance of such innovative instruments with the Estonian legal (and tax) system.

Q: Which future legal trends or changes are intended or may be anticipated which could impact lending and investment activities in your jurisdiction?

Ellex Latvia:

Due to the geopolitical situation, the Latvian State Development Institution, Altum, has amended its financing programme rules removing the field of arms and ammunition production from the list of excluded industries, meaning that projects in this industry may now receive Altum financing. The Latvian Finance Association, comprised of the country's largest commercial banks, has also declared that commercial banks are ready to more widely finance companies in the military sector that develop and strengthen the state's defence capabilities. The wider context of these statements is that national security issues are particularly topical in Latvia, the Baltic countries and Europe as a whole.

Ellex Lithuania:

In Lithuania, it is expected that there will be an increase in financial stimulus through the RRF programme. This initiative is likely to spur growth in greenfield projects and attract foreign investments into sectors aligned with EU priorities such as renewable energy, science and digitalisation, as well as within the military sector.

Another expected change is the implementation of the Markets in Crypto-Assets (***MiCA***) regulation, which introduces a passporting regime across the European Economic Area (***EEA***). This regulatory framework has already begun to attract US investors interested in offering investment services involving crypto assets within the EEA market.

These trends are poised to shape the landscape for lending and investment activities, fostering opportunities for economic growth while necessitating adaptation to new regulatory frameworks and market dynamics.

Ellex Estonia:

As evidenced by the Eesti Energia issue described above, new and innovative instruments are leading to a wider range of financing and investment opportunities which is becoming popular in Estonia. The shift to green financing, both in terms of bank financing and in the form of bonds, is also likely to gain further momentum in the near future, especially with the full implementation of the EU non-financial reporting directive and the Taxonomy Framework.

Although the Estonian economy has been in a consecutive recession for almost two years, employment rates remain high and many other macro indicators are better than expected. This situation paired with the lack of predictability makes any prognosis for the future increasingly difficult.

Bosnia and Herzegovina

Nebojša Marić, Managing Partner
Bojana Bošnjak-London, Partner
Igor Petković, Associate

Marić & Co

Bosnia and Herzegovina

Legal risks in lending and investment activities in the CEE region

Q: What recent legal and market developments have you observed in your jurisdiction that are influencing lending and investment activities? Have global economic, political and financial trends impacted these recent developments in your jurisdiction, and, if so, how?

There has been a comprehensive reform in energy law in 2023 which encourages the use of renewable energy sources instead of coal, which has historically been the main energy resource in Bosnia and Herzegovina. The new Law on the Utilisation of the Renewable Energy Sources and Efficient Cogeneration promotes the idea of using renewable energy, sets mandatory goals for the use of renewable energy and generally defines what is considered to be a source of renewable energy. This reform is set to bring Bosnia and Herzegovina closer to the obligations it undertook by signing the Paris Convention and Kyoto Protocols. The EU's progress reports on Bosnia and Herzegovina highlight efforts to align with EU financial regulations, with the 2023 report mentioning steps taken to improve the regulatory framework and banking supervision. The World Bank and other international organisations have documented Bosnia and Herzegovina's legislative changes aimed at improving the investment climate, with the World Bank's *Doing Business* report providing insights into reforms related to investor protection and ease of doing business. Additionally, reports from the Central Bank of Bosnia and Herzegovina detail measures taken to enhance the banking sector's resilience, including implementing higher capital requirements and improving supervision practices. The Stabilisation and Association Agreement (SAA) between Bosnia and Herzegovina and the EU outlines the country's commitments to adopting EU standards, which impacts its legal and economic policies.

Q: What are the primary legal risks and challenges associated with lending and investment activities in your jurisdiction, and how do these factors impact the decision-making process for lenders/investors and borrowers/targets? What opportunities does the current legal framework in your jurisdiction offer to lenders and investors to mitigate risks and enhance returns?

There are many technical challenges around investing in Bosnia and Herzegovina. The bureaucratic system can be complex and, consequently, slow. Official databases and records maintained by government entities are not integrated with their respective counterparts in foreign countries and often between entities themselves.

Legislature is compartmentalised, with most areas regulated on an entity level. However, although laws and regulations may differ on a state and entity level, this should not be for a decisive investment consideration.

Foreign investors and lenders in Bosnia and Herzegovina are granted the same rights and protections as local investors under the principle of national treatment. This means that foreign investors are treated no less favourably than domestic investors in similar circumstances. This principle is guaranteed by the local laws to ensure a level playing field for all investors. Foreign investors also have equal access to investment opportunities and markets within Bosnia and Herzegovina. They can participate in public tenders, acquire property, and invest in various sectors without facing discrimination or restrictions based on their foreign status.

Both local and foreign investors and lenders are protected against expropriation, except in cases where it is done for a public purpose, in a non-discriminatory manner, and with adequate compensation. This protection ensures that foreign investors' assets and investments are secure, and that any expropriation is subject to fair and transparent procedures. Probably the most important factor for investing in Bosnia and Herzegovina is that investors have the right to freely transfer and repatriate profits, dividends, and other financial returns from their investments. This right is crucial for foreign investors as it allows them to move their earnings out of the country without facing undue restrictions or excessive taxation.

Foreign investors have access to the same legal remedies and dispute resolution mechanisms as local investors. They can seek redress through local courts and, if specified in contracts, through international arbitration. The availability of international arbitration, such as ICSID, provides an additional layer of protection and confidence for foreign investors. Additionally, Bosnia and Herzegovina has signed numerous BITs with various countries, which reinforce the equal treatment of foreign investors. These treaties typically include clauses on fair and equitable treatment, protection against discrimination, and access to international arbitration for dispute resolution. BITs provide a legal framework that guarantees foreign investors' rights and offers additional protection against arbitrary actions.

Bosnia and Herzegovina is a relatively small market and therefore lacks certain elements of logistical infrastructure which can limit access to global trading and investment systems. The Foreign Investors Council was established to promote foreign investments and to improve the overall legal and political environment and make it more suitable to foreign investors. Furthermore,

several organisations and chambers of commerce play a significant role in promoting foreign investments and supporting business interests in Bosnia and Herzegovina. For example, the American Chamber of Commerce in Bosnia and Herzegovina (AmCham BiH) works to improve the business environment and promote the interests of American and other international businesses operating in the country, providing networking opportunities, advocacy, and business support services. The German-Bosnian Chamber of Industry and Commerce (AHK Bosnien-Herzegowina) is part of the global network of German Chambers of Commerce Abroad and fosters economic relations between Germany and Bosnia and Herzegovina, offering support to German companies investing in the country and vice versa.

Together, these organisations contribute to creating a more favourable environment for foreign investments in Bosnia and Herzegovina.

Additionally, local judiciary is an area of risk for Bosnia and Herzegovina as dispute resolution is often inefficient and unpredictable. For this reason, it is possible for foreign investors to agree upon alternative dispute resolution mechanisms. Additionally, foreign investors have a general recourse to investment arbitration before ICSID should they feel the need to make a claim against Bosnia and Herzegovina.

Q: What specific legal considerations should foreign investors or lenders be aware of when entering your jurisdiction (eg, concerning due diligence, risk management, restrictions on foreign investment, enforceability of claims and security or compliance)?

Bosnia and Herzegovina does not have a strict FDI screening mechanism - investments of foreign capital are restricted in terms of companies that manufacture and sell arms, ammunition, military explosives and equipment, and for companies providing public media services. The maximum share of basic capital that can be owned by foreign investors in companies engaged in such activities is 49 per cent. It is possible to obtain a larger basic capital share in these companies but only with government permission.

Bosnia and Herzegovina offers various tax incentives for foreign investors, including tax holidays and exemptions on certain types of income which can provide financial benefits and improve the feasibility of investments. There are several free-trade zones and industrial parks where foreign investors can benefit from special tax and customs incentives, designed to attract foreign capital and facilitate business operations.

The country has a skilled and relatively low-cost labour force, advantageous for certain industries. However, investors should be aware of labour laws and regulations, which may differ between entities. While the legal system is gradually aligning with international standards, navigating the local regulatory environment can still be complex. Engaging local legal expertise is advisable to ensure compliance.

Other factors that can impact the commercial landscape in Bosnia and Herzegovina include political dynamics and ongoing infrastructure development, in particular in the transportation and energy sectors. Bosnia and Herzegovina is increasingly focusing on sustainable development and environmental protection. Investors should therefore be aware of environmental regulations and compliance requirements, especially for projects that may have significant environmental impacts.

Q: Can you provide an example of a recent successful lending or investment transaction in your jurisdiction, highlighting the key legal onsiderations, strategies employed, and factors that contributed to its success?

Adriatic Metals Plc initiated the Vareš Project, a mine located in the municipality of Vareš in central Bosnia which contains one of the most significant polymetallic ores in the region. In 2024, the mine itself produced the first silver/lead concentrate and zinc concentrate after years of extensive preparations and following an investment of $250m. The company performed both technical and legal due diligence in the years before the project was initiated. First, the necessary concessions for exploration and exploitation were obtained and the drilling program was completed to inspect the ground for the quantity and quality of ore. The Vareš project showcases that despite some drawbacks and complexities of the local legal landscape, even the most complex projects can still be performed with professional technical and legal assistance.

Q: Which future legal trends or changes are intended or may be anticipated which could impact lending and investment activities in your jurisdiction?

As Bosnia and Herzegovina is now a European Union (EU) candidate state, we expect more and more of its legislature to be aligned with the EU acquis. This will have a significant impact on most legal fields in the jurisdiction and, in particular, will accelerate the green-energy transition and digitalisation of business and governance services, and enhance consumer protection. Additionally, we anticipate substantial developments in infrastructure projects as the country aligns with EU standards for transport, energy, and communications.

Furthermore, the adoption of EU financial regulations is expected to improve market transparency and investor confidence. This will likely lead to stronger regulatory frameworks for banking and financial services, enhancing the stability and attractiveness of the financial sector. Increased regulatory oversight and compliance requirements will also improve corporate governance standards and make the investment environment more predictable and secure.

We can also expect reforms in the labour market aimed at harmonising labour laws with EU standards, which could affect employment practices, workers' rights, and workplace safety regulations. These changes will make the labour market more attractive to foreign investors by providing a clearer and more stable regulatory environment.

In the realm of data protection and privacy, Bosnia and Herzegovina will likely implement stricter regulations in line with the EU's General Data Protection Regulation (GDPR). This will enhance data security and privacy standards, crucial for businesses operating in the digital economy.

Bulgaria

Damian Simeonov, Partner
Alexander Chatalbashev, Partner
Yordan Naydenov, Partner
Kina Chuturkova, Partner

Boyanov & Co.

Bulgaria

Legal risks in lending and investment activities in the CEE Region

Q: What recent legal and market developments have you observed in your jurisdiction that are influencing lending and investment activities? Have global economic, political and financial trends impacted these recent developments in your jurisdiction, and, if so, how?

Foreign Direct Investment (FDI) screening mechanism

In February 2024, Bulgaria, previously one of the few remaining EU countries without FDI controls, introduced an FDI screening regime in accordance with the EU FDI Screening Regulation 2019/452.

The FDI screening legislation requires prior approval on national security grounds for FDI in certain key areas of interest for national security. The regime applies to investors controlled by non-EU shareholders or themselves constituting non-EU individuals or entities. Indirect investments (such as those occurring via an EU-based holding company) and changes to such investments, are also caught by the new FDI regime.

Investors cannot complete an FDI which triggers an FDI screening obligation before they have obtained express or tacit clearance. Obtaining such clearance might take two to three months (ie, 45 days following the filing or the correction of any deficiencies in the notification, which may be extended once, for up to 30 days).

Green energy investments

- **Amendments to the Energy Act:** Recent changes aim to simplify project development procedures, reduce development timelines and improve financial flexibility for electricity producers. The amendments also introduce a legal framework for energy storage projects, supporting the integration of battery systems in renewable energy plants without requiring new construction permits.
- **Simplification of grid connection procedures:** Legislation has been introduced to streamline grid connection processes, making it easier for new renewable energy projects to connect to the grid. This includes universal grid connection agreements for greenfield projects, aiming to reduce bureaucratic delays.
- **Geothermal projects:** The amendments also introduce a legal framework for geothermal projects — including power generation, heating and cooling. This is expected to attract the interest of investors to the potential of Bulgarian geothermal energy projects, which remain largely unexplored.
- **Promotion of offshore wind projects:** A draft law, which has passed first voting, aims to facilitate offshore wind power plant installations in the Black Sea, potentially granting 30-year concessions for these projects. This move is expected to significantly boost Bulgaria's wind renewable energy capacity. Wind project investments have been lagging behind photovoltaic projects.
- **Facilitation of renewable energy development on agricultural land:** Recent legislative changes have eliminated redundant steps in the process of designating agricultural land for renewable energy production, making it easier to develop new power plants.

Q: What are the primary legal risks and challenges associated with lending and investment activities in your jurisdiction, and how do these factors impact the decision-making process for lenders/investors and borrowers/targets? What opportunities does the current legal framework in your jurisdiction offer to lenders and investors to mitigate risks and enhance returns?

Legal risks and challenges

- **Frequent legislative changes:** Bulgaria has undergone numerous regulatory changes in recent years, particularly in the renewable energy sector. This can lead to uncertainty for lenders and investors, who must constantly adapt to new rules.
- **Administrative and bureaucratic hurdles.**
  - **Lengthy approval processes:** Despite recent efforts to streamline processes, obtaining necessary permits and approvals can still be time-consuming.
  - **Bureaucratic hurdles:** Various registers where security must be registered in order to be created or perfected have inconsistent practices which can sometimes lead to unjustified delays or refusals. The costs of registering certain types of security (eg, a mortgage over real estate) is based on a percentage of the secured claims without a cap, which in large financings might trigger a significant cost. Certain types of security require strict formal documentation, for example, the verification of a security agreement by a notary, which also triggers additional bureaucratic costs.
- **Lack of legal certainty on the use of a security agent:** Bulgarian law does not contain a clear regulation on the use of a security agent to hold security in syndicated financings, which leads to legal uncertainties and higher costs

– **Lengthy AML procedures:** EU anti-money laundering legislation compliance can sometimes be very slow and bureaucratic. This has led to instances where the opening of a bank account for a global client of a global banking institution has taken months.

Opportunities to mitigate risks and enhance returns

- **Incentives for renewable energy.**
  - **Financial support:** The Bulgarian government offers financial incentives for renewable energy projects, including grants and subsidies.
  - **Simplified procedures:** Recent legislative amendments have streamlined procedures for renewable energy projects, making it easier to obtain necessary permits and grid connections.
- **Favourable tax regime.**
  - **Low personal income and corporate tax rate:** Bulgaria is among the EU countries with the lowest personal income and corporate tax rates — a ten per cent flat rate in each case.
  - **Low withholding tax (WHT) on capital gains:** The WHT rate on capital gains in the case of a sale of shares is ten per cent. Capital gains from transactions on a regulated EU market (including the Bulgarian Stock Exchange) are not taxable.
  - **Low/no WHT on dividends:** The WHT rate on dividends is five per cent and zero per cent on dividends to corporate shareholders from the EU.
  - **Double tax treaties:** Bulgaria maintains favourable double taxation treaties, eliminating completely or reducing withholding tax on interest and capital gains with approximately 70 countries.
- **Improved legal infrastructure.**
  - **Energy storage legislation:** New laws facilitating energy storage projects help in mitigating risks associated with grid congestion and improve the overall feasibility of renewable projects.
  - **Concessions for offshore wind projects:** The draft law on offshore wind provides long-term concessions, offering a stable legal framework for significant investments.
- **Access to EU funds.**
  - **EU grants and loans:** Bulgaria's integration into the EU allows access to substantial funding opportunities for development projects, which can mitigate financial risks.
  - **Support for green transition:** EU funds specifically targeted at the green transition provide additional financial security for investments in renewable energy.

Q: What specific legal considerations should foreign investors or lenders be aware of when entering your jurisdiction (eg concerning due diligence, risk management, restrictions on foreign investment, enforceability of claims and security or compliance)?

Due diligence

Legal due diligence is often particularly cumbersome, especially with respect to real estate title, construction and zoning procedures and environmental procedures. Investing time and cost in conducting a legal due diligence process is recommended in order to avoid a reduction in the value of, or even the complete loss of, an investment. Lenders (particular for renewable energy projects) normally require a detailed satisfactory legal due diligence report as a condition precedent to loan utilisations.

FDI screening regime: see above

Enforceability of claims

- **EU judgments:** Court judgments issued in EU countries are directly enforceable in Bulgaria.
- **Non-EU judgments:** Court judgments issued in non-EU countries are enforceable in Bulgaria according to the rules of the Hague Convention on Choice of Court Agreements 2005 and/or the rules of bilateral agreements between Bulgaria and the respective non-EU state (generally subject only to compliance with certain procedural formalities and unless the judgment is inconsistent with Bulgarian public policy or a Bulgarian judgment on the same dispute).
- **Foreign arbitral awards:** Foreign arbitral awards are also generally enforceable in Bulgaria under the UN Convention on Recognition and Enforcement of Arbitral Awards in a substantially identical way to non-EU court judgments. However, investors and lenders should be wary about using asymmetric forum clauses (ie clauses where one of the parties to the contract is free to refer to disputes to arbitration or court of its choice where the other party is limited to referring disputes only to arbitration) as these might result in difficulties or a Bulgarian court's refusal to enforce an arbitration award or a foreign court judgment issued pursuant to such forum clause in Bulgaria.

Additionally, referring a dispute between a local subsidiary of a foreign investor and another Bulgarian entity to foreign arbitration involves a risk of non-enforceability of the foreign arbitration award based on jurisdictional restrictions.

- **Enforcement of security:** Some types of security might be difficult to enforce in a private sale without the use of a bailiff. Enforcement of security over the assets of companies licensed for certain energy businesses might require prior approval by the energy regulator.

Q: Can you provide an example of a recent successful lending or investment transaction in your jurisdiction, highlighting the key legal considerations, strategies employed, and factors that contributed to its success?

Acquisition by **valantic GmbH** (one of the fastest growing German digital transformation companies) of a majority shareholding in AIOPS Group AD (a digital company operating at the intersection of eCommerce, data, and technology sectors, system integrator delivering effective digital solutions for global players). The deal involved three jurisdictions (Bulgaria, India and Serbia), renegotiation of existing shareholders arrangements, setting up of earnout mechanisms with respect to options granted to remaining minority packages, as well as stimuli to key employees, which is a recent trend in Bulgaria.

Acquisition by **Rezolv Energy** (part of Actis group) of the Bulgarian company developing the largest PV project so far in Bulgaria with a capacity of 229 MW. The plant is expected to be online in early 2025. The project will comprise nearly 400,000 solar panels. With an average annual power generation of 313 Gigawatt hours (GWh), it will produce the equivalent of 13 per cent of Bulgaria's currently installed solar power. The deal was particularly challenging from a regulatory and real estate/zoning point of view due to the fact that the site of the project was a decommissioned military airfield (which also served for a while as a civil airport). Particular attention needed to be paid to various elements of the due diligence. This included all steps and elements of the decommissioning of the military airfield, its transfer to the civil aviation authorities and subsequent privatisation, possible contamination with heavy fuels, processed oils or other dangerous substances, and all procedures and works to be carried out thereafter in order to make the site fit for purpose.

Q: Which future legal trends or changes are intended or may be anticipated which could impact lending and investment activities in your jurisdiction?

Changes to renewable energy legislation

- **Offshore wind projects:** The anticipated adoption of the law on renewable energy sources in the Black Sea mentioned above.
- **Energy storage regulations:** The continued development of regulations around energy storage, building on recent amendments, will facilitate the integration of battery systems into renewable energy projects without requiring new construction permits.

Digitalisation and simplification of administrative procedures

The Bulgarian government is moving towards digitalisation of administrative services. This includes the creation of online public registers for project applicants and digital platforms for submitting and tracking permit applications, which will simplify and expedite administrative procedures.

Enhanced grid infrastructure and interconnectivity

- **Grid modernisation:** Investment in grid infrastructure is expected to continue, addressing current capacity issues and enhancing the ability to integrate new renewable projects. This includes building new grids, substations and lines, as well as improving international grid connections with neighbouring countries like Greece and Romania.
- **Interconnectivity projects:** Joint efforts with neighbouring countries to enhance interconnectivity and improve the efficiency of energy distribution, potentially stabilising prices and improving the market for cross-border energy trading.

EU Green Deal and climate policies

Bulgaria will continue aligning its laws with EU climate policies and the European Green Deal (a set of policy initiatives by the European Commission with the overarching aim of making the European Union climate neutral in 2050). This includes stricter emissions regulations and increased support for green projects through EU funding, which will create new opportunities for investments in sustainable technologies and renewable energy.

Corporate governance and ESG requirements

- **ESG standards:** Increasing emphasis on ESG criteria in investment decisions will drive changes in corporate governance practices. New regulations may require enhanced disclosure of ESG practices, impacting both domestic and foreign investors.
- **Sustainability reporting:** Anticipated regulations on mandatory sustainability reporting for companies will ensure that the environmental and social impact is considered in corporate decision-making, affecting investment evaluations and risk assessments.

Croatia

Mia Lazić, Partner

Šavorić & Partners

Croatia

Evaluating growth, challenges and opportunities in capital markets

Q: What recent legal and market developments have you observed in your jurisdiction that are influencing the capital markets landscape (eg, in terms of investor protection, market participants, market infrastructure, market accessibility, volatility, size and growth)? Have the global economic, political and financial challenges impacted these recent developments in your jurisdiction, and, if so, how?

In Croatia capital markets are regulated by the Capital Markets Act (***CMA***), the latest version of which entered into force on 27 July 2024. A very recent development affecting the national capital markets was the transposition of the Directive 2022/2464 ('***CSDR***') on corporate sustainability reporting into the Croatian legal system. The directive extended the sustainability reporting obligation to a wider category of undertakings, standardised the way in which sustainability reports are made and rendered them easily accessible. While the obligations will apply to undertakings gradually, depending on their size, the Croatian capital markets will quickly become more attractive to ESG investors, allowing them to make better informed financial decisions.

Conversely, a trend which presents a challenge to the Croatian capital markets landscape is cryptocurrencies. Initially, the CMA did not recognise cryptocurrencies as 'financial instruments'. Thus, they were left largely unregulated. However, on 29 June 2023 the EU Regulation on Markets in Crypto-assets ('***MiCA***') entered into force and, accordingly, the Croatian Parliament adopted the Law on the Implementation of the MiCA under the expedited procedure (***Implementation Act***). The law came into force on 27 July 2024. The Implementation Act sets out various obligations concerning cryptocurrencies on the Croatian capital markets. For example, the Implementation Act: (a) is set to establish a regulatory framework for crypto-assets by defining them, and setting regulatory standards for their issuance, public offering, and trading, (b) requires issuers of crypto-assets to prepare a white paper with detailed information about the asset, which must be accurate and clear to their clients, and (c) reinforces the prevention of market abuse by, for example, setting out a €5m penalty for insider trading and market manipulation.

Q: What are the primary legal and market risks, challenges and opportunities associated with the capital markets in your jurisdiction that a(n) (foreign) investor should be aware of?

In July 2021, the Croatian government published the 'National Recovery and Resilience Plan 2021-2026'. A notable component of the plan is to 'Improve the Management of State Assets' (sec. 2.4) by continuing the privatisation of state-owned enterprises (***SOEs***).

It is estimated that SOEs alone generate about five per cent of the added value of the entire economy and account for about four per cent of total employment, well above the EU average. Currently, around 150 Croatian SOEs are intended to be privatised. The Croatian Centre for Restructuring and Sale, tasked with managing state assets, frequently publishes 'Public Calls' on its websites for purchases of shares and interests in SOEs. A total of three Public Calls were published in 2024.

The primary opportunity herein lies in the possibility of opening up markets which were previously monopolised by the state. Further to this, as the corporate structures and practices of Croatian SOEs are known to be particularly rigid and inefficient, implementing new management practices could significantly improve the efficacy of such companies. Additionally, shifting their focus to maximise shareholder value leaves a significant margin for profit.

Conversely, there are certain risks an investor should be aware of when considering the Croatian capital market. One such risk is a slow judiciary system. The EU Justice Scoreboard 2024 by the European Commission has found Croatia to be the 5th slowest justice system within the EU, with 26 incoming first instance cases per 100 inhabitants. Accordingly, investors should be aware that in the event they seek to have a dispute settled by the Croatian judiciary, this process may take longer than in other EU member states.

Q: Has your jurisdiction implemented sustainable finance practices and motives into the capital markets, and if so, how?

The 'National Recovery and Resilience Plan 2021-2026' was drafted for the purpose of steering the Croatian economy in the direction of SDG goal no. 8 'Promoting sustained, inclusive and sustainable economic growth'. SOEs were found to be lacking in productivity, profitability, and efficacy behind private enterprises. By privatising SOEs, it was hoped this would contribute to the development of the economy and fiscal sustainability.

Furthermore, the centre of attention for Croatian capital markets actors has been the CSRD. Under Art. 5 of the CSDR, the transposition deadline was set for 6 July 2024. The Croatian Parliament made use of the emergency legislative procedure to finalise the transposition of the

directive on 19 July 2024. The transposition was carried out by amending the Accounting Act, the Audit Act, and the CMA. Moving forward, a wide variety of undertakings will have sustainability reporting obligations every fiscal year. Depending on national interest and the size of the relevant undertaking, the sustainability reporting obligation will start at different dates. Large undertakings which are not of national interest will already have to start reporting on sustainability from 1 January 2025, whereas small and medium sized undertakings will be obliged to do so from 1 January 2026. The reporting obligation aims to ensure better and easier access to information on sustainability for potential investors and will hopefully shift corporate governance in Croatia towards a more ESG-focused model.

Q: Can you provide an example of a recent successful capital markets transaction in your jurisdiction, highlighting the key factors that contributed to its success?

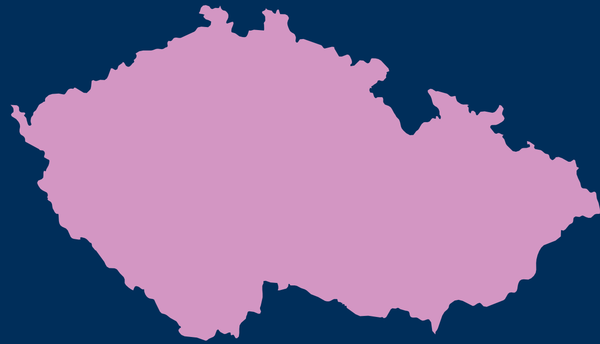
An example of a recent successful capital markets transaction was the issuance of the first 'green bond' on the Croatian market. In July 2022, qualified investors were able to subscribe to the target amount of €40m in sustainability-linked bonds issued by M+ Group (the subsidiary of Meritus Investments d.d.). The bonds were issued to raise capital for the purpose of reducing its carbon emissions by 25 per cent and increasing female representation in management to 51 per cent. If the goals were not met, investors would receive an additional 0.75 per cent on top of the 4.25 per cent interest rate. Each bond was worth 100,000 euros with semi-annual interest payments and principal repayment in 2027. Upon being listed on the Zagreb Stock Exchange, the bond proved to be a success as M+ was able to raise €40m. Consequently, this helped it establish partnerships with the Austrian Erste Bank and the European Bank for Reconstruction and Development.

A further example of a recent successful capital markets transaction in Croatia is the capital increase of Atlantska plovidba d.d., a shipping company headquartered in Dubrovnik. The company issued a total of 697,760 regular shares at €53.50 per share in September 2023. The public call lasted until 11 October 2023, and the company announced it would consider it successful if a minimum of 348,875 shares would be subscribed and paid for. The goal of the increase was to raise capital to strengthen its financial position and invest in fleet improvement by installing new filtering systems and purchasing new ships, so as to comply with environmental regulations. Atlantska plovidba d.d. was able to increase their capital by approximately €27.8m. One of the key players in the success story was the Zadar shipping company Tankerska plovidba d.d. which acquired 683,000 shares, totalling to 39 per cent of ownership in Atlantska plovidba d.d.

A key indicator for why the initial capital increase was a success is that Tankerska plovidba d.d. continued to progressively acquire the Atlantska plovidba d.d. shares after the initial capital increase. This resulted in Tankerska plovidba d.d. extending its ownership to 71.16 per cent as of 14 June 2024. The key benefit here lies in the synergy Tankerska plovidba d.d. seemingly seeks to achieve. While Tankerska plovidba d.d. focuses on tanker shipping, Atlantska plovidba d.d. focuses on dry bulk shipping. The synergy from the acquisition could result in a stronger position in the global shipping market, cost savings thanks to better use of available resources, and increased negotiation power with customers and suppliers.

Q: Which future legal initiatives, trends, and reforms you see being implemented in your jurisdiction to foster capital markets growth and attractiveness?

A recent trend which has hampered the operation of several Croatian institutions is cyberattacks. These present a practical risk to both Croatia and the EU as a whole. Consequently, the EU legislator promulgated the Digital Operational Resilience Act (***DORA***) on 14 December 2022. Its entry into force is set for 17 January 2025, and presents an opportunity for Croatia and other EU member states to reinforce the confidence of both EU and non-EU investors when it comes to ensuring the adequate cyber-resilience of the institutions connected to capital markets. The goal of the Croatian legislator is to implement adequate measures against cyberattacks so as to reinforce the confidence of investors in Croatian financial institutions.



Czech Republic

Radan Kubr, Partner

PRK Partners

Czech Republic

Legal dynamics in restructuring and insolvency

Q: What recent legal and regulatory updates have you observed in your jurisdiction that could influence strategies and approaches in restructuring and insolvency? How have recent global financial shifts impacted these? If there are no such recent updates, are any such changes intended or anticipated?

Until recently, Czech businesses in financial difficulty had two primary options. The first option was to negotiate an agreement (an informal restructuring or work-out) with relevant creditors. In the absence of legislation facilitating either an informal restructuring or a work-out, workouts had to be negotiated within the boundaries of generally applicable law and required approval by all affected creditors. The second option was to initiate insolvency proceedings that could result in the liquidation (bankruptcy) or reorganisation of the debtor's business. In addition to involving all creditors, including those that were not affected, these insolvency proceedings would take place publicly and would often be lengthy and costly processes. Further, this would likely involve a quick erosion of the company's value.

The Czech Act on Preventive Restructurings, which incorporated EU Directive 2019/1023 on preventive restructuring frameworks into Czech law, came into effect on 23 September 2023. This provides Czech corporations with a framework enabling them to restructure with a view to preventing insolvency and ensuring longer-term economic viability. The new regime allows for the confidential negotiation of a solution with selected creditors and involves limited court intervention.

The debtor initiates the process by sending the affected creditors a written invitation to negotiate, including a draft rescue plan which describes the legal and economic situation of the debtor and specifies both the affected creditors (and the way in which their rights are to be affected) and the unaffected creditors. The court may, or in certain circumstances is required to, either appoint a restructuring trustee or approve a general or individual moratorium (stay) at the debtor's request, which has similar effects as in an insolvency situation.

Pre-requisites for a preventive restructuring are that the debtor's intentions must be honest, and the debtor must be in sufficiently serious financial distress (with a strong likelihood that it would become insolvent if the proposed restructuring steps were not implemented).

The restructuring plan must be approved by: (i) all classes of affected creditors; and (ii) 75 per cent of the creditors by claim amount within each class. Absent such approval, the court may still confirm the restructuring plan in a cross-class cram down if certain conditions are met.

In parallel, certain improvements to insolvency legislation are being considered by a government-mandated working group. These include: (i) the sale of assets belonging to the insolvency estate, similar to a US 363-sale, which would take place between the court decision permitting a reorganisation and the approval of the reorganisation plan, in order to avoid an erosion of value leading to a liquidation; and (ii) the submission to an expert valuation of the debtor's assets with an insolvency filing, which would be pre-approved by creditors along with a pre-approved reorganisation. This would speed up the process as, alternatively, an expert valuation would have to be drawn up during the reorganisation process in order to establish that the proposed reorganisation plan meets the 'best interest' test (wherein creditors in the reorganisation proceedings should receive at least what they would have received in bankruptcy, unless the relevant creditors agree otherwise).

Q: What specific legal strategies and tools are available in your jurisdiction to support companies facing financial distress, and how effective have these measures been in stabilising and revitalising businesses?

The recently introduced preventive restructuring regime allows corporate debtors which are in financial difficulty (but not yet insolvent) to negotiate restructuring steps with affected creditors. The restructuring process should be more efficient than insolvency proceedings due to its confidential, consensual and less formal nature. For example, creditors will not be required to file claims or scrutinise these as is the case in insolvency proceedings, although creditors remain entitled to challenge claims.

In parallel, a publicly available early warning system was launched on a free-of-charge basis in order to permit the early detection of debtors in financial difficulty.

Given how recently the new regime was adopted and the confidential nature of the process, it is too early to analyse its impact. However, we know from practice that preventive restructuring negotiations will be taking place, with the support of institutional creditors, in particular banks. At the same time, a few preventive restructurings have been in the public eye as a result of a general moratorium being obtained, which requires a publicly available court decision to be issued.

In a threatened or actual insolvency situation, the debtor can also seek to achieve a formal reorganisation under insolvency legislation, as opposed to informal restructurings. This has not previously been a significant option due to the absence of legislation facilitating such restructurings (which has now been facilitated by the

introduction of the new preventive restructuring regime). Several formal reorganisations have, however, been successfully completed and have led to the stabilisation and revitalisation of various businesses. However, a larger number of reorganisations appear to have resulted in the sale of the debtor's business or assets and, in some instances, the same outcome could have been attained through bankruptcy proceedings, which also allow for the maintenance of the debtor's business and its sale as a going concern, under certain conditions.

Q: How does the legal framework in your jurisdiction facilitate or hinder cross-border restructuring and insolvency proceedings, and what best practices have you identified for managing these complex cases?

While cross-border insolvency proceedings generally take place under the umbrella of the EU insolvency regulation 2015/48, we have encountered certain implementation issues in the Czech Republic. The Centre of Main Interests (***COMI***) is sometimes difficult to establish as debtors may attempt to change seat, transfer manufacturing facilities or take other steps in order to move their COMI to a more favourable jurisdiction, which tends to lead to uncertainty and increased costs. We have also seen attempts by certain Czech creditors to obtain an undertaking from the insolvency trustee under Article 36 of the EU insolvency regulation to avoid secondary insolvency proceedings.

Q: What are the primary legal risks and challenges for creditors of companies in your jurisdiction during the restructuring and insolvency process? What opportunities does the legal framework in your jurisdiction offer to mitigate such risks and enhance returns?

There is not currently extensive case law dealing with the new preventive restructuring regime. However, creditors have noted that:

- preventive restructurings offer a new practical approach as, historically, threatened insolvencies have ultimately resulted in formal insolvency proceedings;
- the determination of 'affected creditors' is within the debtor's discretion which creates room for manipulation and distortion (the law deals with partial examination of claims by the restructuring trustee, without providing for a detailed examination), meaning that creditors must be particularly vigilant;
- in the absence of relevant guidance from the courts, there is a risk that preventive restructurings will be initiated based on poor-quality rescue plans. While the law provides for protective mechanisms, these proceed on the basis that creditors will be active (a creditor's position may be impacted by the fact that it will not necessarily learn about the preventive restructuring process, if it is not an 'affected' creditor); and
- practice to date shows that preventive restructurings are not an appropriate tool to resolve disputes among creditors.

The insolvency process has been in continuous development since 1991 (and particularly since 2006, when a new insolvency law was adopted) and so many insufficiencies have been corrected over time. In a formal reorganisation, time is usually of the essence to avoid the liquidation of the debtor's business, and delays can lead to an erosion of value. Since, as opposed to informal and preventive restructurings, reorganisations take place in the public eye, the risk of erosion is even greater. Accordingly, it is crucial that the entire process is conducted with creditor support in an effective, professional and expeditious manner. Ideally, a reorganisation plan should be prepared and pre-approved by creditors at the earliest possible stage in the process. Under the Czech insolvency laws, a debtor can submit an insolvency filing, requesting that a reorganisation be permitted, together with a reorganisation plan approved by at least half of all secured creditors in claim amounts and half of all unsecured creditors in claim amounts.

Q: Can you provide an example of a successful restructuring or insolvency case in your jurisdiction, highlighting the key legal considerations, strategies employed, and factors that contributed to its success?

MSV Metal Studénka, a leading manufacturer of forgings and railcar components, is one example of a successful formal reorganisation. When the company became insolvent, it had debts totalling €21m, with the financing provided by financial institutions, the State and other unsecured creditors. Disposal rights were transferred by court decision from the debtor to the insolvency administrator, aided by crisis managers. It was crucial that relationships with key suppliers and customers were maintained. The reorganisation involved a registered capital decrease to cover losses, a debt-equity swap (including partial capitalisation of claims of the financial institutions, which took control of the company), a rescheduling/partial waiver of leasing payments and secured payments as well as a partial satisfaction of debts owed to the unsecured creditors.

The reorganisation was completed in less than two years and led to the stabilisation of the company the shares in which were eventually sold for more than €6m. This is a good example of a creditor-run reorganisation with a positive outcome for stakeholders.

Another more recent example of a successful case is the prepackaged reorganisation of Zoot, an internet clothing store that ran into financial distress as a result of an overly ambitious growth strategy and the COVID-19 crisis. In 2018, Zoot obtained a moratorium to continue negotiating a strategy to ensure its viability. During the moratorium, the company managed to prepare and negotiate a pre-packaged reorganisation plan which was pre-approved by creditors and submitted as part of the company's insolvency filing. The management was taken over by crisis managers who took necessary steps to stabilize the business and reduce costs, such as closing redundant outlets. Insolvency financing was provided by a new investor who took control of the company based on a debt-equity swap.

This creditor-run reorganisation, which was completed in a year, also involved favourable treatment of customers (whose claims were unaffected by the plan and settled on a continuous basis), the partial waiver/restructuring of supplier and other unsecured claims, and the issuance of new bonds to replace existing ones. In 2022, the company announced its expansion to several other countries.

These examples show that the key to a successful reorganisation include: (i) a coordinated approach by stakeholders; (ii) the squeeze-out of the original owners; (iii) the appointment of new (crisis) managers; and (iv) the continuity of the business, in particular of key relationships with suppliers and customers.

Hungary

Peter Horvai-Hillenbrand, Partner
Dominika Beléndesi, Junior Associate

Oppenheim

Hungary

Adapting legal strategies for energy and infrastructure lending and investments

Q: What recent trends in energy and infrastructure lending and investments have you observed? Have global economic, political and financial trends impacted these recent developments in your jurisdiction, and, if so, how?

Recent trends in Hungary's energy and infrastructure lending and investments include a variety of positive and negative tendencies, which have been influenced by both internal factors and global dynamics.

On the positive side, the market environment for interest rates has improved (ie, generally interest rates have decreased for financings), and banks are more eager to finance the energy and infrastructure projects in the current market environment, whereas the real estate market activity is much lower. Significant investments in renewable energy, particularly solar, have been bolstered by government incentives and EU policies, whilst extreme energy prices in recent years have generated financing needs in relation to oil and gas purchases.

There are particular local challenges to overcome for such projects in Hungary. The tight state budget and lack of EU funds have generally decreased the number of infrastructure development projects, limiting the scope and pace of new initiatives. Moreover, the changing regulatory environment also poses a risk for investors in this field, where project lifetime often exceeds ten years with less aggressive returns on the investment and thus a higher exposure on equity invested. Beyond that, several of the largest infrastructure projects are not financed on the local market, but rather financing is provided by development banks domestic to the foreign investor of the project. Nevertheless, there are also larger local infrastructure and energy deals which are realised through local banks. Due to the size of these projects, this often assumes a larger bank syndicate with the involvement of all larger and several minor banks which are present in the country.

A significant shift in investor demographics is also notable in Hungary. There has been a general move from Western European and US investors to Middle Eastern and Far Eastern investors in energy and infrastructure projects. Such a shift reflects changing geopolitical dynamics and investment strategies.

Inflation rates in Hungary have presented another challenge for long-term infrastructure projects and their financing. As a general reaction, we have experienced a shift in the currency from Hungarian Forint to Euro, providing for more funding possibilities for banks and also opening up the possibility for future refinancings. On the other hand, if a project involves a cash flow in local currency, hedging requirements may increase the general cost of the funding. Whilst Euro funding may open the participation for other EU-based banks, the financing market in relation to such long-term projects is currently dominated by local banks or banks with a local presence.

Q: How are legal strategies adapting to these recent trends in your jurisdiction? Also, which approaches are employed to incorporate stakeholder interests (and potentially community engagement) in energy and infrastructure projects, and what considerations are important in this regard?

Internal banking limits for certain clients or groups in this sector have increased in several cases, reflecting high demand and active lending. Despite this, larger projects are often funded through syndicated loans. Financing from the capital market remains robust, primarily driven by local venture capital and investment funds, however capital market funding is generally only available for well-known companies in Hungary, such as blue-chip companies or entities in the financial sector. Meanwhile state-funded programmes for capital market financing targeted at a broader range of companies, such as the growth bond programme, have been exhausted.

Another trend is the growing emphasis on environmental, social, and governance (ESG) criteria in Hungary which aligns investments with sustainability goals, driving modernisation in digital infrastructure and smart city initiatives.

To incorporate stakeholder interests, Hungarian law mandates community consultations and project planning, ensuring mechanisms for community feedback and involvement. Detailed stakeholder management plans are required to address concerns from local communities, environmental groups and other relevant parties. Mandatory environmental and social impact assessments (***ESIAs***) help identify and mitigate potential negative effects. Further, project contracts are now integrating sustainability clauses, emphasising renewable energy adoption, carbon footprint reduction and sustainable construction practices. A key shareholder consideration is maintaining legal certainty and stability to attract and retain investments. Hungary aligns its legal frameworks with EU standards, such as the Green Deal and energy efficiency directives. Cultural and social contexts are also respected to prevent disproportionate impacts on vulnerable communities. While the Hungarian state

actively promotes the economic viability of a project by providing incentives.

Q: What are the primary legal and regulatory compliance issues that lenders or investors need to be aware of in the energy and infrastructure sectors in your jurisdiction? What opportunities do these create for sustainable investment?

Hungary's energy and infrastructure sectors present attractive opportunities amidst regulatory challenges and evolving legal landscapes. Investors must navigate complex permitting and compliance processes, ensuring adherence to environmental standards and understanding energy market regulations to optimise project viability. Stability and transparency in regulatory frameworks are crucial, as policy changes can impact project economics and investor confidence.

Opportunities for sustainable investment are still available in relation to some projects, supported by government incentives and EU funding. Renewable energy projects in solar, wind, and biomass align with Hungary's carbon reduction goals, where wind projects are just starting. Additionally, energy efficiency initiatives in buildings, industries, and transportation sectors benefit from EU support, enhancing sustainability efforts. Modernising infrastructure, including transportation and digital networks offers avenues for efficiency gains and environmental impact reduction.

Among the most important challenges are the Foreign Direct Investment (FDI) requirements. These provide for significant transaction planning and risk allocation discussions in relation to projects involving strategic companies or strategic assets, which are likely to apply in respect of energy and infrastructure projects. Further challenges include licensing issues, security regulation, some uncertainties in contract enforcement, sector-specific complexities and concerns over political interference and economic stability. The legal environment's continuous evolution affects holding structures and investor appetite, with ongoing discussions on sanction clauses, particularly in oil and gas financing.

Q: Can you provide an example of a recent successful lending or investment project in your jurisdiction, whether in infrastructure or energy, highlighting the key legal considerations, strategies employed, and factors that contributed to its success?

The Hungarian Hydrocarbon Stockpiling Association (HUSA) executed a successful special gas stock financing project aimed at enhancing Hungary's strategic gas reserves and ensuring energy security. The ticket size of the project was among the largest in Hungary, exceeding €2bn.

Key legal considerations included regulatory compliance with Hungarian standards and adherence to environmental and safety requirements. Detailed contractual agreements were drafted to define financing terms, stakeholder roles and risk mitigation strategies.

Strategies employed involved financing through a syndicate of all major Hungarian banks, led by the largest commercial banks and designated agent banks. This syndication spread the financial risk and split participation among the lenders. The agent banks played a pivotal role in coordinating documentation terms, ensuring consistency and managing communications. The project received strong backing from the Hungarian State. Legal expertise from lawyers on both sides ensured meticulous attention to all legal aspects, facilitating robust agreement drafting and regulatory compliance.

Factors contributing to the success of the project included clear objectives aligning with national energy security priorities, garnering strong support from all stakeholders, adherence to the tight transaction schedule and intense efforts in meeting the deadlines while finalising complex structures and reaching agreement on complex points of negotiation. The collaborative approach between HUSA, the syndicate of banks and the state entities fostered an efficient decision-making and problem-solving environment. The involvement of multiple banks in a syndicated loan structure mitigated risks and ensured adequate funding, demonstrating the financial sector's confidence in the project's viability.

This special gas stock financing project by HUSA showcases how strategic planning, robust legal frameworks and collaborative approaches can lead to successful outcomes in the energy sector, setting a benchmark for future energy investments in Hungary.

Q: What future trends do you anticipate with regard to energy and infrastructure investments in your jurisdiction, and how do you foresee the regulatory landscape evolving to meet changing needs?

Looking ahead, Hungary's energy and infrastructure sectors are poised for significant developments, which are driven by key trends. Renewable energy expansion, including solar with capacities over 6 GW, wind and battery and biomass projects are expected to improve further in the long run, aligning with EU carbon reduction goals and fostering sustainable energy sources. Further projects for construction of gas power plants are also anticipated and construction of the atomic power plant is progressing. In relation to infrastructure, beyond a new motorway, no large developments have been announced recently. However, these will certainly be reported in the next couple of years, depending on the availability of funding sources. Simultaneously, investments in energy efficiency initiatives across buildings, industries and transportation will intensify to enhance sustainability and reduce carbon emissions.

ESG criteria are likely to gain prominence, necessitating rigorous ESIAs and sustainable practices across projects. As digital infrastructure expands, regulations will likely focus on data protection and cybersecurity to safeguard digital operations.

A significant number of further renewable financings are anticipated, including METAR, merchant-based and on-site projects, with questions remaining regarding the financing of purely market-based projects. Wind and battery projects are gaining traction among banks, reflecting growing interest and investment potential.

While new capacity tenders and potential ease of FDI restrictions could facilitate project development, these are still under consideration. The largest infrastructure project, the motorway development, has already been contracted through a banking syndicate, demonstrating the ongoing collaboration between public and private sectors.

Infrastructure financing is expected to increase, further highlighting the need for sustainable investment.

Poland

Łukasz Gasiński, Partner
Adam Puchalski, Counsel

Rymarz Zdort Maruta

Poland

Future prospects of M&A in the Polish banking sector

Q: How have trends in M&A transactions in Poland changed over the last few years? Have global economic, political and financial trends impacted these developments in your jurisdiction and, if so, how?

In recent years, we have seen fewer M&A transactions in the Polish banking sector. This is a relatively new situation and perhaps a temporary one. After all, in the past, M&A market activity in the Polish banking sector has always been very significant, with such transactions being the result of numerous changes that the Polish banking market has undergone over the years.

After the fall of communism, the Polish economy shifted away from state ownership and privatisation programmes were implemented. This caused an increase in the presence of foreign investors who began acquiring domestic banks, and this increased further after Poland's accession to the EU in 2004. As a result, in 2008, foreign investors' share of Poland's banking assets reached 72.3 per cent, while the state's share fell to 17.3 per cent. The remainder of the assets (10.4 per cent) were held by Polish private investors.

The financial crisis of 2008-09 catalysed further transformations in the Polish banking sector. While financial institutions were stable during the crisis, in the years that followed, many foreign investors disposed of their subsidiaries in Poland (either in whole or in part by way of demergers). In many cases, the purchasers of stakes in banks that were sold by foreign investors were companies controlled by the Polish State Treasury. As a result, the state's market share increased. As of May 2024 the Polish State Treasury held 49.10 per cent of banking sector assets, foreign investors owned 41.80 per cent of the assets, and Polish private investors held 9.10 per cent. The significant presence of the state is largely due to the lack of Polish private entities with significant capital.

Both of these trends (first privatisation, then state acquisition of banks) have since come to an end. In turn, for certain reasons, further market trends resulting in M&A transactions in the banking sector have not yet emerged.

Q: What were the main factors that influenced M&A activity in the Polish banking sector in recent years? Were they related to the regulatory environment?

The recently reduced levels of M&A activity in Poland is mostly due to the challenges related to Swiss franc (CHF) loans. The housing market in Poland had been largely financed by loans denominated in or indexed to the CHF. The rise in the exchange rate of CHF resulted in a wave of claims by consumers against banks for the invalidation of their CHF loans. Gradually, domestic courts have become more and more pro-consumer. Borrowers were also helped by the Court of Justice of the European Union, which issued a number of consumer-friendly rulings. As a result, Polish banks holding portfolios of CHF loans had to establish significant financial provisions for legal risks, securing substantial amounts to settle customer claims related to CHF loans.

As a result of rising inflation in the post-Covid 19 world, interest rates rose significantly. However, banks were then burdened with the cost of supporting an increased number of borrowers with PLN variable rate loans. In 2022, a programme called 'mortgage holidays' was introduced in Poland, allowing all borrowers (not only those in difficult financial situations) to temporarily suspend the making of certain PLN loan instalments.

These challenges have led to a decreased interest by foreign investors in the Polish market. In turn, domestic banks have been focused on resolving these issues rather than on engaging in M&A activity.

Q: What future trends do you anticipate with regard to M&A transactions in banking sector in Poland?

It seems that some of the challenges identified above have largely been resolved. The level of financial provision for legal risks related to CHF loans is already very high, in some banks it even reaches 100 per cent of the active CHF loan portfolio. At present, legally stipulated support programmes for borrowers with PLN loans only apply to people in difficult financial situations. These therefore impose a smaller burden on banks than before. Interest rates remain high and are unlikely to be reduced until the second half of 2025. Banks are generating record profits in 2024. Thus, Polish banks are becoming more attractive targets for M&A activity which may thus increase in the coming years.

It should also be noted that the level of concentration of the banking sector in Poland is relatively low, which is favourable for future M&As. The share of the five largest banks in the banking sector's assets in 2022 was only 57 per cent. This was the 21st position among EU Member States, which means that in the vast majority of EU countries, the banking market is much more concentrated than in Poland. The level of competition in the banking sector is also very high in Poland and is influenced by its technological expertise which is considered to be very advanced.

Q: What are key strategies and approaches of regulatory authorities in your jurisdiction in supervising the implementation of M&A transaction in the banking sector?

In Poland, it is important to inform the regulator at a relatively early stage of any planned transaction which requires a number of necessary arrangements to be put in place.

The regulator can also influence the subject of the transaction. For example, the Polish Financial Supervision Authority (PFSA) takes the position that the consequences of the previously adopted strategy involving the granting of loans in CHF should be borne by the seller of the bank, ie the entity that formulated this strategy. However, the choice of the instruments used to achieve this is up to the parties to the transaction. For example, the subject of the acquisition may be a carved-out part of the bank without CHF loans, the seller may provide a guarantee for the CHF risk, or the bank being sold may establish an appropriate level of financial provisions.

Recently the regulator in Poland has also allowed investment by private equity funds specialising in financial institutions. Currently, no Polish bank has a dispersed shareholding and instead, all Polish banks, even those listed on the stock exchange, have a dominant owner. This is preferred by the regulator, but recent statements by representatives of the PFSA indicate that there may come a time in the future when banks with a dispersed shareholding will also operate in Poland.

Q: Can you provide an example of a recent successful M&A transaction in banking sector in your jurisdiction, highlighting the key legal considerations, strategies employed, and factors that contributed to its success?

An interesting example of a recent transaction is the establishment and sale of VeloBank S.A. This was initially a restructuring transaction which later became an M&A deal.

In September 2022, the Polish authority responsible for the banking resolution procedure, the Bank Guarantee Fund (BFG), issued a decision on the resolution of the tenth largest Polish bank, Getin Noble Bank S.A. A significant part of the business was separated from the collapsing bank and transferred to a bridge bank established by BFG. The resolution process was subsidised by the eight largest commercial banks in Poland (both controlled by foreign investors and by the Polish State Treasury). To this end, these banks established and became shareholders in the protection system company System Ochrony Banków Komercyjnych S.A. (SOBK) which provided the support required to carry out the resolution process by granting subsides and taking a minority stake in the bridge bank.

Based on the transferred assets of Getin Noble Bank S.A., the bridge bank began operating under the name VeloBank S.A. It significantly expanded its customer portfolio and became a profitable institution recognised on the Polish market. Subsequently, in August 2024, US fund Cerberus Capital Management, LP, the European Bank for Reconstruction and Development (EBRD) and the International Finance Corporation (IFC, a member of the World Bank Group) completed the acquisition of 100 per cent of the shares in VeloBank S.A.

This is an example of a successful resolution process which resulted in significant foreign investment into a domestic Polish bank.

Romania

Valentin Voinescu, Partner

NNDKP

Romania

Legal dynamics in restructuring and insolvency

Q: What recent legal and regulatory updates have you observed in your jurisdiction that could influence strategies and approaches in restructuring and insolvency? How have recent global financial shifts impacted these? If there are no such recent updates, are any such changes intended or anticipated?

From a regulatory and practical perspective, for almost 30 years (1995-2022), the field of restructuring and insolvency has been reduced in Romania. This is mostly due to bankruptcies, with in-court judicial reorganisations, albeit formally regulated, not exceeding 2-3 per cent of cases, while out-of-court restructuring (pre-insolvency) exercises have been very rare and performed without the application of any specific legal framework. Overall, the focus in the market has not been on preventing insolvency.

Generally, the Romanian courts and legislator have paid most attention to straightforward bankruptcy/liquidation processes which have been most common in the region, even during historical periods when an increased level of turnaround and restructuring may have presented a far better alternative.

One major shift has occurred in 2022 , with the implementation in Romania of EU Directive 2019/1023 on preventive restructuring frameworks, which has effectively introduced two such frameworks along with introducing the concept of 'early warning signs'. The legislation has been far from successful in practice so far, as practitioners still struggle to find practical application to these procedures, but the indirect effect of this implementation process has been the rise and increase in importance of out-of-court restructurings and transactions to restructure and prevent insolvency, which have occurred far more often during the past year.

Of course, this renewed attention comes also at the right time economically, namely after the historical shift from a low inflation/low interest environment which lasted more than a decade to the high inflation/high interest rates environment of today, with many businesses being tested for resilience more than ever before during the past 15 years. This high interest environment has led mostly to underperforming loans in this cycle rather than full blown non-performing loans, as we saw for example post financial crisis (2009-2012), a period dominated by extreme credit crunch (not the case today as banks have enough liquidity to support worthy borrowers going through a difficult time).

Q: What specific legal strategies and tools are available in your jurisdiction to support companies facing financial distress, and how effective have these measures been in stabilising and revitalising businesses?

Romanian legislation now recognizes a number of formal court procedures covering a broad spectrum of distress, from companies 'in difficulty', which can be subject to a restructuring agreement or a preventive composition (*in Romanian: concordat preventive*), to companies in insolvency, to which the courts can approve either a re-organization procedure (which saves the company) or bankruptcy as the ultimate resort for insolvent companies that cannot be successfully reorganized.

Nevertheless, none of these formal, in-court, tools have proven to be very effective in stabilising and revitalizing businesses. On the other hand, this very 'flaw' of the system, the incapacity of offering effective formal 'in-court' tools for preventive restructuring seems to have produced a substantial increase in confidential, out of court, restructuring processes. Often, these are supported by an increasingly specialized turnaround community of professionals, much more able to deal with complex cases than they were a decade ago.

Currently, in Romania, it is not unusual to see effective deployment of standstill arrangements, restructuring agreements with an increased complexity and substantial work on corporate and finance issues, seeking to implement rather ambitious plans, with the support of both financial institutions and business partners.

This has encouraged the development of legal practice focused on distress due diligence, restructuring agreements, and a corresponding growing community of lawyers focusing on these mandates.

One notable development in this area is the increasing involvement of turnaround professionals in open dialogue with banks, entrepreneurs, and the Romanian State - the Romanian chapter of the Turnaround Management Association (TMA). This is one of the largest, most developed and most active international non-profit professional organizations gathering restructuring and turnaround professionals in Europe.

Q: How does the legal framework in your jurisdiction facilitate or hinder cross-border restructuring and insolvency proceedings, and what best practices have you identified for managing these complex cases?

Cross-border insolvencies and generally in-court procedures dealing with restructuring and insolvency on a cross-border basis are extremely difficult and it is probably not surprising that the legal framework in Romania does not enable the seamless functioning of such procedures. Cross-border insolvencies and group insolvencies with multiple procedures opened in different jurisdictions have proven so far to be extremely complicated, bureaucratic and time consuming.

One of the key elements in practice that is paramount in such cases is close cooperation between professionals across jurisdictions and a centralized and well-functioning transaction management team to address all key issues arising in a concerted manner.

Our experience clearly distinguishes between out-of-court restructuring processes which have proven, even when including many countries and many cross-border elements, to be extremely successful when well-coordinated between counsel in various countries with a lead counsel in charge, and in court proceedings, which have regularly proven extremely problematic. This is why we always advise clients to take action sooner rather than later, as risks increase exponentially with time.

Q: What are the primary legal risks and challenges for creditors of companies in your jurisdiction during the restructuring and insolvency process? What opportunities does the legal framework in your jurisdiction offer to mitigate such risks and enhance returns?

As we mostly handle complex processes, we will speak to the primary risks and challenges relating to these rather than the primary issues relating to more common straightforward liquidations cases in Romania.

The key risks creditors are facing in complex cases are (1) acting too late, and (2) taking a too rigid view of their own position, by comparison to other creditors.

Therefore, we support our clients who are creditors in a distress scenario to quickly assess, anticipate and properly determine their relative strengths and weaknesses in various stages of such distress, and fundamentally structure their strategy to play on their relative strengths, which is crucial.

For example, an unsecured supplier of high-quality inputs for a business in early-stage decline has very different priorities compared to a senior secured lender (typically, a financial institution) exposed to the same business. Each particular position requires setting up an initial strategy outline, which will have to adapt and adjust as circumstances change.

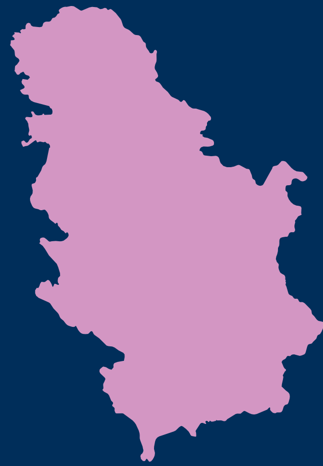
Q: Can you provide an example of a successful restructuring or insolvency case in your jurisdiction, highlighting the key legal considerations, strategies employed, and factors that contributed to its success?

One of the most interesting recent cases we have successfully restructured, involved acting for a secured creditor with very limited chances of recovering anything from their original loan to an 'asset light' company which was very active in the retail sector and which had taken a very negative economic turn post-pandemic.

What we did was

- assess our client's legal position, plan and evaluate various legal scenarios in insolvency to understand their legal standing and potential for recovery;
- once we had established the very weak outlook on recovery in a formal procedure and considered the client's legal standing and contractual rights, we proceeded to analyse the relative contractual strengths of our client as opposed to other counterparties and main elements of leverage to improve the client's position (in such cases it is important to establish if others have even more to lose and to structure strategy accordingly); and
- following a strategy outline developed using this analysis, we proceeded to negotiate with the relevant stakeholders (12-15 key counterparties, across a period of four months), resulting in our client successfully taking over the business without litigation, writing-off a substantial amount of supplier debt from the balance sheet and restructuring operations with the help of management.

As a result of the successful restructuring, we are very pleased to see the company has rapidly advanced to full recovery and restored bankability, with an outlook including expanded business opportunities in several other countries.



Serbia

Dragoljub Sretenović, Senior Partner

BDK Advokati

Serbia

Adapting legal strategies for energy and infrastructure lending and investments

Q: What recent trends in energy and infrastructure lending and investments have you observed? Have global economic, political and financial trends impacted these recent developments in your jurisdiction, and, if so, how?

The global trends of inflation, supply chain crunch and higher interest rates have affected the Serbian energy and infrastructure market. In particular, the increasing manufacturing, construction and installation costs have caused delays in certain announced projects. In other cases, this has caused the acceleration of negotiations with lenders and suppliers to finalise commercial terms before the further tightening of economic conditions. At least for now, the market has rewarded these proactive developers as some of the prices have further climbed.

In contrast, a positive trend in the Serbian market is that investments in the energy and infrastructure sectors still benefit from considerable policy support. The government has repeatedly committed to treaties and spending programmes to increase the share of renewable power in the country's energy sources. The Ministry of Mining and Energy has announced a new auction for solar and wind bids before the end of 2024, which is expected to add an additional 400MW in renewable energy capacity. Under this scheme, the government sets a maximum guaranteed price, and the bidders submit bids below this amount. If the market electricity price falls below the agreed contract price (but not below zero), the producer is paid the difference (and the opposite also applies; the producers must refund when the market price goes above the agreed price). This mechanism has already proven effective as some of the projects that had qualified on last year's auction have now reached financial close.

Q: How are legal strategies adapting to these recent trends in your jurisdiction? Also, which approaches are employed to incorporate stakeholder interests (and potentially community engagement) in energy and infrastructure projects, and what considerations are important in this regard?

As mentioned above, the renewable energy auctions in Serbia are a useful counterweight to the unpredictable market trends. These provide clarity on future revenue streams to developers of renewables, who face high upfront capital costs. It is interesting to note, however, that the successful bidders on last year's auction have not allocated their fully planned capacities for the market premium. This signals their expectation that the cost of electricity will continue to rise and that they will be able to get better terms in the open market. It is also a sign of a maturing industry sector as it does not completely rely on subsidies.

Regarding the relationship with the communities in which they operate, sponsors of the major wind farm projects have so far demonstrated strong commitment to compliance with environmental regulations and standards. This is achieved, among other methods, by conducting detailed environmental impact assessment studies aiming to reduce harm to biodiversity and ecosystems. Many projects are built in rural areas and residents welcome jobs and other opportunities to diversify their income (eg, by granting lease and land easement rights to the project company). Developers are organising regular and *ad hoc* meetings with the locals to inform them of all aspects of the project and how they can protect and advance their interests. Some developers have also developed donation programs to local non-profit associations, sport sponsorships and other activities to assist and engage with the community. Feedback has been exceptional and as a result of these measures, it is very rare for the public in Serbia to oppose the development of large wind farm projects.

Q: What are the primary legal and regulatory compliance issues that lenders or investors need to be aware of in the energy and infrastructure sectors in your jurisdiction? What opportunities do these create for sustainable investment?

Land rights and permits are crucial points to consider when implementing renewable projects in Serbia. The developers must procure various rights to the land where the project will be located including long-term easements, leases and rights of way. Lenders will generally require a mechanism for these to be transferred at their discretion in case of default. There are good precedents for negotiating these rights with landowners, but these must be planned in advance to avoid any last-minute issues with title to any part of the site. The developer will also typically require many permits, including to construct the plant and the transmission grid connection infrastructure and, in some cases, for more 'exotic' works such as temporary extensions of the dirt roads, to allow safe transport of the equipment to the site.

The foreign exchange regulations are a complex subject for many banks, developers and practitioners looking to structure a deal in Serbia. The government has promoted foreign direct investments in Serbian infrastructure for years, and the regulatory framework for implementing

and protecting these investments is generally robust. However, there are still various pitfalls for the unwary that may sound like technical issues, but in practice can complicate or even disable intended cash movements. To name a few, Serbian project companies are in general not permitted to hold any funds outside of Serbia; there are limitations on a foreign lender's ability to accelerate loans in certain cross-default scenarios and a set-off of mutual claims may be prohibited or subject to various formalities. It is good practice for local advisers to review all project documents in detail, irrespective of their governing law, for potential non-compliance with the foreign exchange rules.

Q: Can you provide an example of a recent successful lending or investment project in your jurisdiction, whether in infrastructure or energy, highlighting the key legal considerations, strategies employed, and factors that contributed to its success?

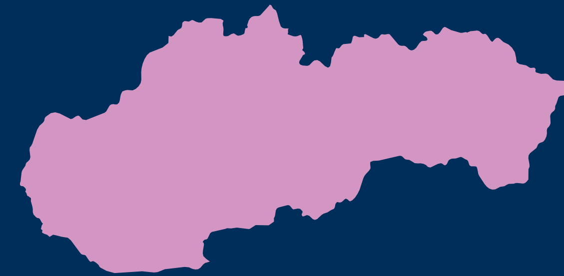
Enlight Renewable Energy Ltd., a power producer of renewable energies with a diversified US, European and Israeli portfolio, has recently closed financing for its second wind farm in Serbia. Once this construction is complete, Enlight will expand its capacity in Serbia to almost 200 MW in aggregate, making it one of the largest local independent power producers in Serbia. The project is one of the successful bidders in last year's market premium auction and it is the first one to secure project financing. Erste Bank AG, Erste Bank ad Novi Sad, and the European Bank for Reconstruction and Development have approved a financing package worth €91.4m for the construction of the project.

The same group of lenders financed the first Enlight project in Serbia. It is precisely the previous experience of the participants that enabled this complex and demanding deal to move so efficiently. Despite the inherent differences between the two projects, the good working relationship between the principals and the advisers has significantly reduced the documentation drafting and CP fulfilment processes. All parties were able quickly to analyse and understand project risks and negotiate the allocation of risk in good faith.

Q: What future trends do you anticipate with regard to energy and infrastructure investments in your jurisdiction, and how do you foresee the regulatory landscape evolving to meet changing needs?

We expect that investments in the energy sector will continue at the same or higher pace. The increasing power demand and the country's aim to achieve carbon neutrality by 2050 will mean transforming the Serbian economy. Funding this transition will require vast amounts of capital from private and public sources. This year, the state has returned to the capital markets with a second issuance of 'green' bonds in the amount of up to $1.5m. A part of these proceeds will be allocated to improving energy efficiency and financing renewable projects.

The announced scale-up of renewables needs to go hand-in-hand with investments in the infrastructure and stability of the grid. This would require significantly increasing the number of energy storage systems to help balance out the irregular power supply from renewables. For this reason, the government has recently prioritised projects that have increased operational flexibility and power storage capabilities. Examples include the recent partnership between Serbia and Hyundai Engineering Co Ltd to build self-balanced solar power plants with a total capacity of 1 GW and the multi-billion projects for the construction of two pumped storage hydropower plants, Bistrica and Derdap 3.



Slovakia

Eva Hromadkova, Associate Partner

PRK Partners

Slovakia

Legal dynamics in restructuring and insolvency

Q: What recent legal and regulatory updates have you observed in your jurisdiction that could influence strategies and approaches in restructuring and insolvency? How have recent global financial shifts impacted these? If there are no such recent updates, are any such changes intended or anticipated?

Recent changes in Slovak insolvency law primarily stem from the adoption of the EU directive on preventive restructuring frameworks (Directive (EU) 2019/1023). This has introduced both public and non-public preventive restructuring proceedings as well as updates to the existing insolvency regimes.

A major change is the redefinition of 'impending insolvency'. Previously, 'impending insolvency' was based on over-indebtedness, specifically on a concept of 'company in crisis' under Slovak corporate law that occurred if a ratio of equity to obligations was less than 8/100. However, following the recent changes, 'impending insolvency' is defined as the existence of a reasonable expectation of illiquidity within the next 12 months. The illiquidity test is met if a company is unable to pay its debts to more than one creditor within 90 days after they become due (a cash flow test). This does align better with practical scenarios where most bankruptcies result from cash flow issues rather than over-indebtedness (occurring when obligations of a company exceed its assets, so-called a balance sheet test). The new rules allow for impending insolvency to be addressed exclusively through preventive restructuring rather than formal restructuring.

In addition to public preventive restructurings, non-public preventive restructurings have been introduced. This is available only to debtors with creditors that are banks or other entities regulated and supervised by the financial regulator (the National Bank of Slovakia). The regime is similar to previous informal work-out or standstill solutions. However, the advantage of the new non-public restructuring is that any new agreement with such creditors cannot be contested in the future under avoidance action (resulting, if successful, in the ineffectiveness of such agreement against other creditors).

Within the changes adopted in the context of the existing insolvency regime, it is worth mentioning the (re) introduction of the possibility for a debtor to file petition for bankruptcy when illiquid (under a cash flow test), which was previously reserved for creditors only.

Q: What specific legal strategies and tools are available in your jurisdiction to support companies facing financial distress, and how effective have these measures been in stabilising and revitalising businesses?

The new regime of preventive restructurings is aimed at assisting debtors facing financial distress to identify and effectively manage impending bankruptcy and at providing a simpler and faster alternative to formal restructurings. The shorter periods apply to court decisions as well as to creditors' meetings to adopt restructuring plans. In addition, certain limits for satisfaction of creditors (in respect of haircut as well as the discharge period) were abolished. That being said, a temporary protection (moratorium) of debtors against any enforcement actions, filings and bankruptcy declarations is not automatic in preventive restructuring, but instead is subject to the consent of creditors and court. If preventive restructuring is not successful, a debtor is not automatically declared bankrupt.

Challenges of the new regime include prerequisites such as: (i) no pending enforcement actions or realisation of debtor's assets via pledge enforcement; (ii) registration of a debtor in a register of public sector partners; (iii) no distribution of dividends or other equity in the last 12 months; and (iv) preparation of various analyses by the debtor such as a viability test, best-interests-of-creditors test and coverage gap modelling (which is rather costly for the already distressed debtor). In addition, there is also unfavourable tax treatment of debts discharged in preventive restructurings compared to formal restructurings and this regime is not suitable for debtors having debt on taxes since this debt is not affected by the approved restructuring plan.

The efficiency of this new regime is yet to be seen as no preventive restructuring case has been recorded in the past two years since the new law came into effect.+

Q: How does the legal framework in your jurisdiction facilitate or hinder cross-border restructuring and insolvency proceedings, and what best practices have you identified for managing these complex cases?

Although the EU regulation on insolvency proceedings has been fully in effect in Slovakia, certain uncertainties of its implementation in practice persist. Slovak courts have addressed the following:

(i) The interplay between the main and secondary insolvency proceedings: The issue involved a transfer of assets under a plan adopted in the main proceedings abroad, that was signed after opening of the secondary proceedings in Slovakia. It was held that the transfer was void as the assets located in Slovakia at the time of the secondary proceedings opening were excluded from the insolvency estate in the main proceedings and fell exclusively within the competence of the Slovak trustee;

(ii) Jurisdiction: The case involved a set-off applied by a trustee arising out of an unjust enrichment counterclaim against a creditor's claim filed in bankruptcy. The Slovak court held that action on unjust enrichment did not derive directly from, and was not closely connected to, the opened insolvency proceedings, hence a Slovak court did not have international jurisdiction over this action; and

(iii) COMI (Centre of Main Interest) determination: In general, the COMI of a company is considered to be the place where the debtors regularly manage their interests and thus is identifiable by third parties (especially creditors). However, for individuals (non-entrepreneurs) in Slovakia it is now considered that a person's COMI is the place where they usually live. This is following a recent case which involved a Slovak citizen with a permanent residence in Slovakia (the debtor), who lived for four years in a rental flat in the Czech Republic, had a Czech general practitioner doctor and a Czech mobile operator. The debtor commuted for work to Slovakia, where he spent the working week while staying at a different address to his permanent residence address, and had only Slovak creditors. The debtor filed for insolvency in Slovakia but the court held that the debtor's COMI was the Czech Republic (not taking into account the third-party perception of pre-insolvency activities or assets located in each country). Given a large number of factors that can affect the determination of COMI, it remains subject to various interpretations and application by EU member states' courts.

The practical difficulties may appear in communication between trustees in cross-border insolvencies and in the timely filing of claims by creditors within relatively short periods (especially in challenging in complex cross-border insolvencies). Despite this, we have seen some positive trustee cooperation in the case of the ARCA group restructuring. The trustees entered into a cooperation agreement and the trustee in the main proceedings held in the Czech Republic undertook to lodge the claims of about 1700 creditors in Slovakia where the secondary proceedings are held. Filing of claims and access of creditors to data is expected by a new unified and fully digitalised system for all pre-insolvency, insolvency and liquidation proceedings scheduled to launch in January 2025.

Q: What are the primary legal risks and challenges for creditors of companies in your jurisdiction during the restructuring and insolvency process? What opportunities does the legal framework in your jurisdiction offer to mitigate such risks and enhance returns?

The main challenges creditors face in Slovakia are the late filings of debtors for bankruptcy or restructuring, inadequate monitoring of financial situations by a debtors and disposal of valuable assets by owners and debtors' related parties prior to bankruptcy. Creditors do not have access to the relevant data of a debtor's financial condition and trustees may not always act in creditors' best interests (especially in debtor-filed restructurings where the trustee is chosen by the debtor). In particular, there is the inadequate identification of related parties' transactions prior to insolvency and subsequent avoidance of these acts. Needless to say, insolvency proceedings are typically lengthy, often exceeding five years, which hampers effective creditor satisfaction.

The decline in formal restructurings over recent years is likely due to the legal requirement of at least 50 per cent satisfaction of a creditor's claim, prompting debtors to opt for informal restructuring agreements instead (especially those having a 'true' intent to revitalise the business).

A residual risk for creditors, especially banks and other entities providing financing, is potential subordination in bankruptcy if they are deemed to be 'related parties' to a debtor in bankruptcy. A 'related party' includes a person that has the ability to exert influence over a debtor that is comparable to influence corresponding to five per cent direct or indirect holding of the shares or voting rights in the debtor. All claims of related parties are subordinated in bankruptcy, security provided for securing the satisfaction of such claims is disregarded and such claims will only be paid after all claims of (unrelated) creditors have been fully satisfied. There is case law in Slovakia concluding that a third-party lender is able to exert such an influence over the debtor by virtue of lenders' potential rights, including the exercise of voting rights and prior approvals with the general meeting resolutions in the standard banking loan and security documentation. The case was decided by a regional court and even though an appeal was later submitted to the Supreme Court and the Constitutional Court, but the substance of the decision was not reviewed as the appeal was considered inadmissible. A decision that overrules or considerably limits this notion has therefore not yet been made.

Q: Can you provide an example of a successful restructuring or insolvency case in your jurisdiction, highlighting the key legal considerations, strategies employed, and factors that contributed to its success?

A notable restructuring case involving Dedoles, an e-commerce company, is one such example. After rapid growth aided by the COVID-19 lockdowns, by late 2021 the company faced cash flow difficulties. In 2021, Dedoles recorded over €93m in sales and operated in 21 countries. As stated by the owner and then-CEO, this was due to several bad decisions, unrealistic ambitions with the implementation of several new projects such as new IT systems and warehousing, heavy dependence on Facebook marketing and external market changes, rising inflation and the situation in Ukraine. Unable to secure new investments, Dedoles entered formal restructuring in June 2022, and, by March 2023, a court-approved restructuring plan was in place ending the restructuring. To this date, the company continues to operate and discharge the debt according to the approved restructuring plan.

Success factors which contributed to this outcome include: (i) an early management change in May 2021 with support from the owner; (ii) early and good communication with creditors that led to unanimous approval of a proposed restructuring plan; (iii) cost optimalisation — cut backs of various costs including marketing costs, closure of operations in certain countries, closure of retail stores and branches and engagement of business experts in certain areas; (iv) securing new financing that facilitated discharge of debt under the restructuring plan coupled with proactive engagement of the new investors in the company's business offering their know-how; and (v) overall trustworthiness of the company with the demonstration of real business plans and true intent to rescue the company. The dedication of the new management and the company's transparent approach played crucial roles in the successful restructuring, showing the importance of early intervention, strategic planning, effective communication and stakeholder engagement.

Slovenia

Mia Kalaš, Partner
Lenart Kmetič, Senior Associate

Odvetniki Šelih & partnerji

Slovenia

Legal dynamics in restructuring and insolvency

Q: What recent legal and regulatory updates have you observed in your jurisdiction that could influence strategies and approaches in restructuring and insolvency? How have recent global financial shifts impacted these? If there are no such recent updates, are any such changes intended or anticipated?

Bankruptcy proceedings are the most common fate for Slovenian companies facing distress. For example, in 2023, 872 bankruptcy proceedings and only eight compulsory settlement proceedings commenced, with similar ratios being recorded in recent years. Slovenia has been struggling with low recovery rates in bankruptcy proceedings for a long time, with individual researchers reporting average historical recovery rates for unsecured creditors being as low as 2-4 per cent. This, combined with the fact that damage claims against the management of bankrupt companies are hard to assert, led the Slovenian legislature to explore possible incentives for the restructuring of distressed companies prior to insolvency and for improving creditor recovery rates where companies would otherwise land in insolvency. The motivation for finding alternative solutions was further fuelled by the anticipated decline in economic activity after recent global developments (such as Covid-19, the Ukrainian crisis, inflation, etc).

In the context of adopting the EU Directive on restructuring and insolvency (Directive (EU) 2019/1023) into the Slovenian Insolvency Act in the autumn of 2023, the legislature introduced the new concept of 'threatened insolvency'. This refers to a situation where the debtor is likely to become insolvent within a period of one year and has shifted the focus to the pre insolvency phase. Now, companies' managerial and supervisory bodies must continuously monitor which developments could result in threatened insolvency and must refrain from certain actions if threatened insolvency nevertheless arises. Some such actions include conduct resulting in the unequal treatment of creditors or actions which diminish a company's assets.

Further, a new pre-insolvency restructuring process has been introduced, being the judicial restructuring proceedings to remedy threatened insolvency. It will become available on 1 January 2025.

Q: What specific legal strategies and tools are available in your jurisdiction to support companies facing financial distress, and how effective have these measures been in stabilising and revitalising businesses?

After the 2008 crisis, Slovenia quickly followed the EU in developing a legislative framework for pre insolvency proceedings. The preventive restructuring proceedings were introduced in 2014. The purpose was to enable distressed companies which have not yet become insolvent, but might become so in a year, to financially restructure with the assistance of the court. It was hoped that this would allow debtors to overcome opposing creditors more easily. However, the tool has not been widely successful in Slovenia, as altogether less than 15 proceedings have commenced so-far, and less than half of these have been successful. The most common reasons for this include debtors being able to restructure only financial claims, and Slovenian banks being generally open to out of court consensual restructurings.

On the other hand, compulsory settlement proceedings have been successfully implemented by several large companies in insolvency situations since the 2008 crisis (although still very few compared to new bankruptcy proceedings). With several developments implemented in the past decade in Slovenia, compulsory settlement proceedings allow debtors to propose the restructuring of ordinary and secured claims and provide the possibility of debt to equity swaps. A simplified version of compulsory settlement proceedings is available to micro-sized companies.

New judicial restructuring proceedings to remedy threatened insolvency will become available on 1 January 2025. The adoption of this change was accompanied with scepticism because the purpose is so similar to that of preventive restructuring proceedings. However, one important advantage is that both financial and business receivables may be restructured within these new proceedings. Whether this will be implemented in business practice remains to be seen, but the hope remains that this will present a viable restructuring option for distressed companies.

Q: How does the legal framework in your jurisdiction facilitate or hinder cross-border restructuring and insolvency proceedings, and what best practices have you identified for managing these complex cases?

The Slovenian insolvency framework generally enables foreign creditors to participate effectively in potential restructuring and insolvency proceedings led by Slovenian courts, as the core framework is based on the UNCITRAL Model Law on Cross-Border Insolvency (***MLCBI***). This ensures the equal treatment of domestic and foreign creditors. On the other hand, the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments (2018) and the UNCITRAL Model Law on Enterprise Group Insolvency (2019) have not yet been enacted.

Furthermore, as Slovenia is an EU Member State, debtors from other EU Member States may also benefit from the Regulation (EU) 2015/848 on insolvency proceedings, the provisions of which have been transposed into the Insolvency Act.

Although the Slovenian financial and investment markets are very international and many previously solely Slovenia-based companies are now part of wider international groups and conglomerates, there is scarce jurisprudence referring to official (court assisted) cross-border restructuring and insolvency proceedings. One of the very few judgments relates to Agrokor, a regional conglomerate managing companies, production and trade of agricultural products. This judgment addresses the question of recognising a foreign insolvency like proceeding conducted in Croatia when it was not yet an EU Member State. The proceedings were regulated by a very specific law which appeared to be tailor-made for Agrokor (although formally it was generally applicable). The Slovenian Supreme Court decided that the measures applied as part of the foreign proceedings were contrary to the fundamental legal principles of Slovenian insolvency proceedings, particularly regarding the adherence to the principle of the equal treatment of creditors. Consequently, recognition was rejected.

Considering the scarce judicial practice, this is at the same time the most topical judicial decision establishing best practices in cross-border insolvency cases. Namely, the court argued that the main purpose of the so-called 'lex Agrokor', being ensuring continuity of business operations of companies systemically important for Croatia, would, if implemented by recognition of foreign insolvency proceedings in Slovenia, unjustly deprive the creditors of those companies in the Agrokor group which had a substantial repayment ability. It argued that the principle of equal treatment is not only one of the core principles of Slovenian insolvency law, but also part of Slovenian public policy.

Another good practice worth mentioning is that the Slovenian Insolvency Act allows creditors to lodge their claims through attorneys without having to attach a formal power of attorney (which in other types of judicial proceedings needs to follow very strict formalities), registry certificates or similar. This simplifies the process, cuts costs for the creditor and eases the logistics of filing.

Q: What are the primary legal risks and challenges for creditors of companies in your jurisdiction during the restructuring and insolvency process? What opportunities does the legal framework in your jurisdiction offer to mitigate such risks and enhance returns?

The primary legal risks and challenges for creditors of companies undergoing restructuring and insolvency proceedings in Slovenia are the over-complexity of statutory provisions and the overall bureaucratic and lengthy nature of proceedings. Due to a number of amendments made to the Slovenian Insolvency Act, the meaning of certain clauses in the act has become less clear. This hinders predictability and, in practice, has resulted in several judgments issued by the Constitutional Court of the Republic of Slovenia, which have added to confusion around the overarching framework. Although the principle of speed of proceedings is one of the key imperatives of the Insolvency Act, in practice, the court-assisted restructuring proceedings and, in particular, bankruptcy proceedings tend to be lengthy, and creditors lack a clear understanding of the time required to receive repayment. As this problem is systemic, there is unfortunately no tool to mitigate these risks, other than engaging with reputable legal counsel with the relevant expertise.

Nevertheless, the framework includes several options that may enhance the probability of creditors' claims being repaid and increase the repayment rate. For instance, compulsory settlement proceedings may, subject to certain conditions, be initiated by the creditors, allowing them to force restructuring proceedings. As part of this, creditors may propose that the applied restructuring measures include a debt to equity swap and, in certain cases, that the managerial rights relating to the debtor are passed to individual creditors. This helps in protecting creditors from unfavourable terms and incentivising debtors to propose favourable repayment terms from the start.

Q: Can you provide an example of a successful restructuring or insolvency case in your jurisdiction, highlighting the key legal considerations, strategies employed, and factors that contributed to its success?

The most interesting restructuring cases in Slovenia are often those which are negotiated contractually, ie, outside of the framework of insolvency legislation. There have been relatively few examples since the 2008 financial crisis.

We have recently advised a syndicate of Slovenian banks in a comprehensive restructuring of financial obligations of a Slovenian company engaged in providing smart technological solutions. The main challenge of the project was achieving alignment of positions of all banks on certain commercially sensitive topics, including one of the banks becoming slightly less secured after the joining of previously fragmented syndicated facilities lines into one single facility, and, simultaneously, keeping different types of security for the syndicated facility and the separate bilateral facilities. The key legal considerations arose in respect of analysing the existing security and advising on the most efficient and safest way of adapting and supplementing it to secure the restructured obligations. Another interesting angle was the structuring of the time effectiveness of the MRA (Master Restructuring Agreement) as the banks looked for different retroactive validity for different institutes.

In our view, the main factor contributing to the successful restructuring was the ability of both sides to listen to and understand the position of the other parties. Also, the bank acting as the agent was very skilful in directing all sides towards compromise. The contributing factors on our side were prompt drafting of the restructuring documentation, constant availability for addressing the questions of all sides and providing understandable explanations for the proposed solutions.

Türkiye

Yeşim Bezen, Partner
Berkin Murat Soylu, Partner
Berkay Sezginci, Senior Associate
Hediye Nur Şentürk, Associate

Bezen & Partners

Türkiye

Evaluating growth, challenges and opportunities in capital markets

Q: What recent legal and market developments have you observed in your jurisdiction that are influencing the capital markets landscape (eg, in terms of investor protection, market participants, market infrastructure, market accessibility, volatility, size and growth)? Have the global economic, political and financial challenges impacted these recent developments in your jurisdiction, and, if so, how?

The Turkish capital markets have experienced growth in market capitalisation in recent years, largely driven by an increase in number of both domestic and foreign investors. Low interest rates and high inflation between 2020 and 2023 meant that domestic investors resorted to capital market instruments as an alternative to investment.

In particular, the Turkish stock index BIST 100, which contains the 100 largest Turkish stocks weighted by market capitalisation, increased by 505 per cent between 2020 and 2023. This increase is partly due to the country's stock market boom, as inflation of nearly 60 per cent with the *low-interest rate policy* for savings of the Central Bank of Türkiye has prompted ordinary citizens to invest in equities to offset the erosion to their savings.

The enactment of the Communiqué on Remote Identification Methods to be used by Brokerage Firms and Portfolio Management Companies and Electronic Agreement meant that the use of technology also increased in 2022. This made it both easier and more cost-effective to place buy-sell orders with easy managed remote identification of individuals.

By the second half of 2023, the Central Bank of Türkiye changed its interest rate policy and increased interest rates to combat high inflation. This change led to an increase in initial public offerings ('***IPOs***') as companies sought alternative financing options. Tax advantages also served as a significant incentive for companies to pursue IPOs. The Corporate Tax Law numbered 5520 was amended with the Law on the Restructuring of Certain Receivables and the Amendment of Certain Laws numbered 7256, which meant that companies whose shares (within a certain percentage range) traded on Borsa İstanbul benefited from a reduction in their corporate tax rate by two points for five consecutive fiscal periods.

Further, the Capital Markets Board of Türkiye (the '***CMB***') announced the flexibility provided in IPO monetary thresholds in its bulletin numbered 2024/17 for certain sectors, including in renewable energy, technology, petrochemical and IT sectors. In accordance with the relevant bulletin, these companies will only be required to have a net sales revenue of ₺270m [€7m] instead of ₺750m [€20m], and total assets of ₺450m [€12m] instead of ₺1.5bn [€40m] for the year in order to offer their shares to the public.

The CMB also introduced the option for companies to sell shares to qualified investors through capital increases without a public offering on 29 December 2023, by way of the Communiqué on the Principles Regarding Companies whose Shares will be Traded on the Venture Capital Market numbered 40197. Accordingly, companies achieved public status by issuing and selling new shares exclusively to qualified investors, bypassing the need for a public offering.

Q: What are the primary legal and market risks, challenges and opportunities associated with the capital markets in your jurisdiction that a(n) (foreign) investor should be aware of?

The liquidity of the Turkish stock market often depends on foreign institutional investors, making it susceptible to fluctuations in global and local market conditions. Such fluctuations can lead to sudden reversals in foreign fund flows, impacting market liquidity and stability. The devaluation of the Turkish Lira also increased risks for foreign investors, potentially leading to lower returns in an inflationary environment.

In 2024, the Central Bank of Türkiye hiked interest rates, which raised borrowing costs and may restrict companies' growth and expansion plans. Despite these challenges, IPOs are likely to continue to be a trend, with those realised in the first quarter of 2024 on the Borsa Istanbul yielding a 110 per cent return for investors.

As a result of the rising IPO trend, the CMB published an announcement regarding the public offering threshold and registered capital system. The CMB tightened the criteria for IPOs, posing greater challenges for smaller companies seeking to go public due to increased financial thresholds. The CMB bulletin numbered 2023/82 indicated that the minimum capital requirement for transitioning to the registered capital system has been set at ₺100m [€2.6m] (ie approx. $3m as of July 2024) and the threshold for companies planning to go public in 2024 has been determined as ₺750m [€20m] in turnover (ie approx. $23m as of July 2024) and ₺1.5bn [€40m] in asset size (ie approx. $45.5m as of July 2024) as of the end of 2023. This is a general rule for companies going public but there are exceptions, such as flexible thresholds for companies active in certain sectors, as stated above.

Q: Has your jurisdiction implemented sustainable finance practices and motives into the capital markets, and, if so, how?

The CMB first amended the Corporate Governance Communiqué on 2 October 2020, setting out sustainability principles for publicly traded companies and published the Sustainability Principles Compliance Framework. Although adherence to these principles is voluntary, public disclosure of compliance will enhance corporate reputation and incentivise sustainability.

The Ministry of Treasury and Finance also joined this legislative effort, publishing the Sustainable Financing Framework Document on 12 November 2021. This document sets standards for green, social and sustainable transactions in financial markets, applicable to all sustainable financial instruments issued by the Republic of Türkiye. The standards, aligned with the International Capital Markets Association's (the '***ICMA***') and Loan Markets Association's principles, will apply until the redemption of these sustainable instruments.

The CMB then advanced sustainability legislation by publishing the Guidelines on Green Debt Instruments, Sustainable Debt Instruments, Green Lease Certificates and Sustainable Lease Certificates on 4 March 2022. These guidelines, based on the ICMA's Green Bond Principles, will regulate green debt instruments and lease certificates that can be issued to finance investments contributing to sustainability.

The framework outlines three types of financing instruments: green, social and sustainable. Green financing instruments support eligible green projects such as renewable energy and clean transportation. Social financing instruments fund projects in areas like basic services and affordable housing. Sustainable financing instruments cover projects meeting both green and social criteria. In order to encourage the issuance of green and sustainable debt instruments and lease certificates, it was decided by the CMB that the CMB, Borsa Istanbul and Central Registry Agency fees will be applied with a 50 per cent discount in respect to the issuance of such instruments.

The Industrial Development Bank of Türkiye ('***TSKB***') became the first Turkish bank to issue a 'Green/Sustainable Bond' on international markets. Further, TSKB obtained a $155m loan from the World Bank, backed by the Ministry of Treasury and Finance of the Republic of Türkiye, to establish the Türkiye Green Fund. The Türkiye Green Fund, as the first venture capital investment fund financed by loans, both in Türkiye and in the world, is dedicated to reducing emissions and fostering inclusive transformation.

Q: Can you provide an example of a recent successful capital markets transaction in your jurisdiction, highlighting the key factors that contributed to its success?

Rönesans Gayrimenkul Yatırım A.Ş. (RGYAS) recently launched a successful IPO, raising approximately ₺4.5bn [€120m]. This marked one of the largest IPOs in Türkiye, reflecting strong investor confidence.

Several key factors contributed to the success of this transaction. The company's robust portfolio of high-value assets, including numerous shopping malls across Türkiye, positioned it as a reliable investment choice. Investors were particularly attracted by the company's strategic focus on sustainable and green energy initiatives. The company's significant investments in energy-efficient technologies and sustainable building practices resonated with the growing global emphasis on environmental responsibility.

The offering was oversubscribed, indicating high demand, and was achieved by the participation of leading financial institutions which facilitated distribution to both institutional and retail investors. A wide network of brokerage firms further enhanced accessibility and outreach.

In addition, favourable market conditions and a pricing strategy, offering a discount to attract more investors, played crucial roles. The company's commitment to using a substantial portion of the raised funds to repay debts and invest in new projects also provided reassurance about future growth and financial stability.

Q: Which future legal initiatives, trends, and reforms you see being implemented in your jurisdiction to foster capital markets growth and attractiveness?

The CMB's four-year strategy report for 2022-2026 (the '***Report***') outlines several key initiatives aimed at enhancing the functionality and accessibility of the Republic of Türkiye's capital markets. One significant initiative is the transformation of capital markets through technological developments. One of the possible areas of use of artificial intelligence by regulators seems to be in responding to investors' complaints, and efforts are being made to distinguish between simple questions from investors that can be answered by artificial intelligence and complaints that should be directed to the relevant company first. The CMB aims to accelerate these efforts by making electronic application widespread and mandatory for at least some issuers in order to facilitate the application process of companies that are seeking to obtain financing from capital markets.

Another major focus in the Report is on establishing the legal framework and general principles for algorithmic transactions, which have become increasingly common due to technological advancements, by making amendments to the Capital Markets Law No. 6362 and the Communiqué on the Principles of Establishment and Operation of Investment Institutions III-39.1. The CMB plans to impose obligations on investment institutions engaged in algorithmic trading to implement necessary risk management measures. These institutions will need to comply with the notification, document recording, and retention standards set by Borsa İstanbul, and to adhere to supervision and auditing rules.

The CMB is addressing the growing use of robo-advisory services in investment advisory activities. The Report indicates a need to clarify the role of these services within the capital markets legislation. Investment institutions that provide robo-advisory services will be required to inform clients of specific minimum requirements and establish a comprehensive internal control system. These measures are intended to ensure that clients receive adequate information and that investment institutions maintain high standards of internal oversight.

To align with the EU's MiFID II regulations, a new rule will be added to the conflict-of-interest policy for brokerage houses by making amendments to the Communiqué on the Principles of Establishment and Operation of Investment Institutions III-39.1 and Communiqué on Principles regarding Investment Services and Activities and Ancillary Services. This rule will require brokerage houses to implement measures to prevent their shareholders, employees, managers, and related individuals from engaging in activities that constitute information abuse and market fraud. Additionally, it aims to stop these individuals from using insider information obtained during transactions for personal gain and from conducting transactions that violate conflict of interest or disclosure obligations.

Ukraine

Yulia Kyrpa, Executive Partner

AEQUO

Ukraine

Adapting legal strategies for energy and infrastructure lending and investments

Q: What recent trends in energy and infrastructure lending and investments have you observed? Have global economic, political and financial trends impacted these recent developments in your jurisdiction, and, if so, how?

Following Russia's full-scale invasion of Ukraine in February 2022, Ukraine's economy suffered greatly; all foreign direct investments stopped abruptly, and the M&A market experienced a rapid disruption due to military risks, as well as geopolitical and economic uncertainty. Most transactions which had started in 2021 were cancelled or postponed for an indefinite period of time.

The resilience of Ukraine's businesses combined with substantial international support helped our economy avoid collapse: more than 80 per cent of firms that suspended operations in early 2022 were able to partially resume their activities within the next six months. Despite extreme war-related challenges, the Ukrainian economy rebounded in 2023 with 5.8 per cent GDP growth, which continued in 2024 (in the first half of 2024 Ukraine's GDP grew by 4.1 per cent).

While investment risks remain relevant due to the ongoing war, less than 20 per cent of Ukraine's territory is affected by the war, leaving substantial regions, especially in the central and western parts of Ukraine, viable for investment opportunities, especially in the energy and infrastructure industries of Ukraine, which are vital for rebuilding the country.

To help Ukraine in its recovery, reconstruction and modernisation efforts, the EU launched a new support mechanism in early 2024 for the years 2024 to 2027. The Ukraine Facility is a dedicated instrument which allows the EU to provide Ukraine with up to €50bn in stable and predictable financial support during this period. The Facility underlines the EU's commitment to supporting Ukraine in the face of Russia's ongoing war of aggression and on its path towards EU membership.

The Ukraine Facility established a specific Ukraine Investment Framework (the 'Framework' to scale up investment for Ukraine's recovery and reconstruction. To achieve this, the framework enables investors to take advantage of EU budget guarantees and a blend of grants and loans from public and private institutions which will make investing in Ukraine more attractive. The Framework is equipped with €9.3bn in guarantees and grants. It is expected to mobilise up to €40bn in public and private investments in Ukraine over the coming years. Substantial part of this funding will be allocated for energy and infrastructure investments in Ukraine, as those industries were adversely affected by the war and are crucial for Ukraine's resilience.

Q: How are legal strategies adapting to these recent trends in your jurisdiction? Also, which approaches are employed to incorporate stakeholder interests (and potentially community engagement) in energy and infrastructure projects, and what considerations are important in this regard?

New opportunities for both public and private sector investments are prescribed by the Framework, which was developed in collaboration with international financial institutions ('***IFIs***') and foreign governments, providing financial assistance to Ukraine. The Framework, being the financial arm of the Ukraine Facility, is designed to attract up to €40bn in investments. The funding will be distributed to provide:

- €7.8bn in Ukrainian guarantees, covering financial risks in various industry sectors, including loans, capital market instruments, insurance, equity participation instruments and counter-guarantees. IFIs will rely on such guarantees to provide financing to Ukrainian projects.
- €1.5bn from the EU in the form of blended finance, grants and technical assistance.

A significant part of the funding to be provided under the Framework will be used for investments into energy and infrastructure sectors, as well as industrial development of Ukraine. Available funding will be allocated to support SMEs, being a key part of the Ukrainian private sector, high-priority public sector projects (through financing by the European Investment Bank) and 20 per cent of the total investment budget will be directed towards green projects.

Financing will be granted through direct loans of IFIs to large Ukrainian corporates and municipalities, loans to high-priority public sector projects granted by the European Investment Bank on the demand of the Ukrainian government, and indirect loans of IFIs to support SMEs, which will be granted through selected Ukrainian banks. Blended finance instruments (comprising both public and private funds) are also expected to play a significant role in the projects aimed at rebuilding Ukraine.

In addition to the above set of instruments available for cross-border financing of infrastructure and energy projects in Ukraine, financing by local Ukrainian banks is

also an option. In particular, in June 2025, Ukraine's top largest banks signed a Memorandum on Bank Lending for Energy Infrastructure Rehabilitation Projects, whereby local Ukrainian banks agreed to provide loans at affordable rates to borrowers implementing projects increasing the power-generating capacity of Ukraine (including construction of renewable energy power plants, production of solar panels and energy saving equipment).

In view of the above complexities of the business environment in Ukraine and available funding sources, it is essential for investors or borrowers to have a 'bankable' project, meeting the eligibility criteria of IFIs or local banks, including from a compliance standpoint. In most cases, war insurance instruments will also be needed (eg, MIGA insurance, a DFC risk-sharing instrument or insurance coverage by local players). As foreign capital markets remain closed for new issuances of Ukrainian companies due to its high risks and low sovereign rating, most funding nowadays is granted by IFIs (either directly or through local banks) or through blended finance instruments. Hence, all new transactions should be structured keeping in mind market standard IFI requirements to make them eligible for financing.

Q: What are the primary legal and regulatory compliance issues that lenders or investors need to be aware of in the energy and infrastructure sectors in your jurisdiction? What opportunities do these create for sustainable investment?

Investors and lenders into energy & infrastructure projects of Ukraine are expected to conduct full-scale legal due diligence of the borrower or the targets for investments. A typical due diligence exercise in such projects normally includes verification of: (i) corporate issues, (ii) land issues, (iii) technical issues and construction matters, (iv) operational issues and (v) financing and tax and accounting issues.

While corporate, financing and tax and accounting issues are quite similar for projects in various industry sectors, land issues and technical and construction matters are overly complex in the energy and infrastructure sectors of Ukraine and, therefore, deserve a special attention. Land issues are usually the main reason investors prefer ready-to-build projects, which have progressed through the development stage and are ready for construction and implementation, rather than building their own projects from scratch. This is because the allocation of land usually requires considerable time and preparation of a large amount of documentation. Land plots must be owned or leased by the companies implementing the project. The designated use of the land plots must be eligible for the purpose of the project depending on the specific case (eg, land plots for industrial use). The land plots must be located outside of protected areas, such as historical, forest or water areas.

Proper verification of technical and construction matters is also essential for investment and facility projects. Within the course of their structuring, it is necessary to check: (i) the availability of all documents necessary for further construction and commissioning, (ii) compliance of the documents with legislation and (iii) compliance of the documents with the technical requirements. In certain cases, the documents are in order but the actual transfer of the planned capacity is technically impossible. In such cases, either the capacity must be reduced or a new substation and transmission line must be built at the developer's expense, which will negatively affect the cost of the project itself.

Additionally, it is worth checking: (i) the availability of raw materials and the ability of preferred suppliers to sell them within an appropriate timeframe, (ii) the geographical terrain and accessibility of roads, which may complicate delivery of equipment or machinery required for construction, (iii) the possibility of obtaining insurance against project-related and war-related risks and the cost of such insurance and (iv) the distance to a connection point and the possibility of obtaining a 'green' tariff for any energy projects.

Proper legal due diligence of energy and infrastructure projects in Ukraine is vital for mitigating all transaction-related risks to the extent possible.

Q: Can you provide an example of a recent successful lending or investment project in your jurisdiction, whether in infrastructure or energy, highlighting the key legal considerations, strategies employed, and factors that contributed to its success?

One of the most prominent projects to support Ukraine's resilience in the energy sector is the €200m loan to Naftogaz granted by EBRD in late 2023 to help Naftogaz, as the biggest Ukrainian corporation and gas supplier in the country, build-up gas reserves in the second winter heating season since the start of the Russian invasion in February 2022. It was a part of EBRD efforts to boost the country's energy security — one of five investment priorities for EBRD's support of Ukraine's real economy. This loan was granted also by involving risk-sharing instruments with donors and partners, in this case Norway and the Netherlands.

Another large investment, which is being implemented in Ukraine during the full-scale invasion, is the construction of a 150 MW windfarm by Galneftegaz (OKKO) concern in the Volyn region of Ukraine, which is financed by the IFC. The construction of a windfarm by the largest fuel company in Ukraine will allow OKKO to become one of the top three leaders in Ukrainian wind energy (counting stations in territory controlled by the Ukrainian government).

The above projects are being successfully implemented in Ukraine despite the ongoing war because they represent high-impact projects for top Ukrainian corporations (both publicly and privately owned) and are aimed at increasing Ukraine's resilience and achieving energy independence from Russia. To raise funds from IFIs successfully, Ukrainian borrowers normally need a project suitable for funding by IFIs (including from an ESG compliance standpoint) and have to enter into standard financing and collateral agreements, which, however, need to provide a more relaxed covenant package compared to pre-invasion times. IFIs and development finance institutions are expected to remain at the forefront of new funding deals in Ukraine in the near future.

Q: What future trends do you anticipate with regard to energy and infrastructure investments in your jurisdiction, and how do you foresee the regulatory landscape evolving to meet changing needs?

Ukrainian energy facilities were significantly destroyed or damaged during the full-scale invasion, which resulted in a loss of an essential part of Ukraine's energy generating capabilities. The destruction of the Kakhovka Hydropower Plant, operated by Ukrhydroenergo, and the energy-generating facilities of Ukrenrgo shocked the entire world due to unprecedented amount of damage of energy infrastructure and the environment caused by the Russian missile attacks. The Ukrainian energy sector now focuses on the recovery of national power-generating capacities, especially on expanding the share of renewable power generation in Ukraine. Considering military-related risks which are expected to remain relevant for Ukraine's energy sector in the near future, distributed power generation is rapidly becoming a dominant trend in the energy sector. Conventional power stations, such as coal, gas and nuclear power plants, as well as hydroelectric dams and large-scale solar power stations are centralised and often require energy to be transmitted over long distances. In contrast, distributed electricity generation stations are decentralised, modular and more flexible technologies that are located closer to the load they serve, albeit having capacities of only 10 MW or less. Distributed power generation systems immensely increase the resilience of the Ukrainian energy sector; a substantial number of distributed power generation stations across the country is less likely to be a target of Russian missile attacks. The Government and the National Bank of Ukraine have already introduced various regulatory incentives to incentivise the implementation of various projects in the energy sector of Ukraine. In particular, the National Bank of Ukraine has recently decreased provisioning requirements under loans to be granted by Ukrainian banks to companies building power generating facilities in order to boost financing into the energy sector.

In the infrastructure sector, the main regulatory changes are expected to apply to Public Private Partnerships ('PPPs'), being the most relevant regulatory regime for foreign investments into Ukraine's infrastructure. In particular, PPPs are a form of long-term (5 to 50 years) cooperation between public and private partners on a contractual basis, which may be implemented through either: (i) a concession agreement, (ii) a joint activity agreement, (iii) an asset management agreement or (iv) mixed contracts. The main areas for PPP implementation are: (i) the construction of highways, roads, ports, railways and bridges, (ii) the reconstruction of destroyed residential buildings, (iii) the construction of modular buildings and temporary housing, (iv) the production and implementation of energy-saving technologies and (v) machinery. To accelerate rebuilding through a simplified PPP mechanism, the draft law N7508 was developed and is expected to be adopted by the Ukrainian parliament soon. This draft law follows the European Single Procurement Document standard (ESPD) and introduces a simplified and shortened procedure for PPP project implementation. Moreover, it is supposed to simplify fundraising opportunities from foreign states, IFIs and the EU.

Authors

Baltics (Estonia, Latvia, Lithuania)

Ellex Circle
Gerli Kivisoo, Partner (Estonia)
Ieva Dosinaitė, Partner (Lithuania)
Marta Cera, Associate Partner (Latvia)

Bosnia and Herzegovina

Marić & Co
Nebojša Marić, Managing Partner
Bojana Bošnjak-London, Partner
Igor Petković, Associate

Bulgaria

Boyanov & Co
Damian Simeonov, Partner
Alexander Chatalbashev, Partner
Yordan Naydenov, Partner
Kina Chuturkova, Partner

Croatia

Šavorić & Partners
Mia Lazić, Partner

Czech Republic

PRK Partners
Radan Kubr, Partner

Hungary

Oppenheim
Peter Horvai-Hillenbrand, Partner
Dominika Beléndesi, Junior Associate

Poland

Rymarz Zdort Maruta
Łukasz Gasiński, Partner
Adam Puchalski, Counsel

Romania

NNDKP
Valentin Voinescu, Partner

Serbia

BDK Advokati
Dragoljub Sretenović, Senior Partner

Slovakia

PRK Partners
Eva Hromadkova, Associate Partner

Slovenia

Odvetniki Šelih & partnerji
Mia Kalaš, Partner
Lenart Kmetič, Senior Associate

Türkiye

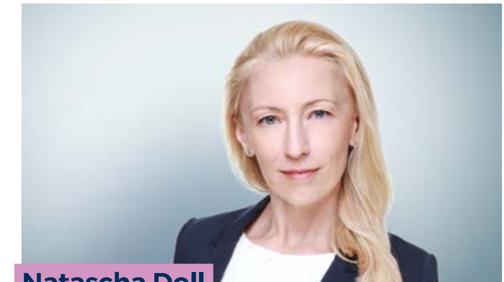
Bezen & Partners
Yeşim Bezen, Partner
Berkin Murat Soylu, Partner
Berkay Sezginci, Senior Associate
Hediye Nur Şentürk, Associate

Ukraine

Aequo
Yulia Kyrpa, Executive Partner

Your contacts at Freshfields

Florian Klimscha
Partner and Co-Head CEE/CIS,
Global Transactions, Finance
T +43 1 515 15 122
E florian.klimscha@freshfields.com



Natascha Doll
Partner and Co-Head CEE/CIS,
Global Transactions, Corporate
T +49 40 36 90 61 04
E natascha.doll@freshfields.com

Noah Rubins KC
Partner and Co-Head CEE/CIS,
Dispute Resolution
T +33 1 44 56 29 12
E noah.rubins@freshfields.com

Stephan Pachinger
Partner, Global Transactions,
Capital Markets
T +43 1 515 15 124
E stephan.pachinger@freshfields.com

Anouschka Zagorski
Head of English Law Finance,
Global Transactions, Finance
T +43 1 515 15 679
E anouschka.zagorski@freshfields.com

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