

COVID-19 – Opportunities

CEE Finance and Capital Markets 2020–21



Freshfields Bruckhaus Deringer

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Introduction

The CEE banking and finance practice at Freshfields Bruckhaus Deringer – jointly with leading firms in the Central and Eastern Europe (CEE) region as part of our StrongerTogether network – presents an annual update highlighting market trends and legal developments in the banking, finance and capital markets sectors in CEE.

This year's publication focuses on opportunities in the CEE region as a result and in the aftermath of COVID-19.

Hardly any recent event has affected societies, economies and laws as the COVID-19 pandemic has. This is also true for CEE.

Real GDP across the CEE region is expected to decline substantially in 2020 compared to 2019. This general deterioration of the economic situation, together with the slump of specific markets, strongly affects businesses in CEE. Reduced demand and investment as well as disruption in supply chains have far-reaching commercial and financial implications. Businesses suffer from drops in earnings and liquidity shortages. Debtors may no longer be able to meet their payment or other obligations or may not comply with financial covenants as a result. Consequently, creditors may cancel commitments and access to financing may no longer be available. Insolvency risks are imminent and need to be considered.

The European Union (EU) has responded with a variety of support programmes. The CEE region benefits above the EU average from the €750bn recovery instrument 'Next Generation EU' (receiving approximately 20 per cent of all available grants and guarantees). CEE countries are also beneficiaries of the strong crisis response of the European Central Bank, including its swap and repo lines with Bulgaria, Croatia, Hungary, Romania and Serbia.

National legislators and governments in CEE have adopted various temporary aid measures, such as grants, subsidised loans, guarantees and incentives to foster lending. With the intention of bridging liquidity needs, short-time work and extensive payment moratoria have been introduced. In addition, changes to insolvency laws have made a significant contribution to

reducing crisis-related insolvencies, despite the massive economic downturn in the first half of 2020 and the uncertainties and volatility of the remainder of the year.

All these measures have significant implications for the banking and finance market and form the basis for new opportunities – such as financing transactions involving state support, or the restructuring of financial obligations under existing contracts as well as providing finance to investors seizing investment opportunities.

COVID-19 bears challenges but also opportunities for the banking, finance and capital markets in the CEE region. Restructuring and insolvency will be hot topics going forward.

In several CEE countries, temporary modifications to insolvency regimes (such as the suspension of the requirement to file for insolvency), as well as other support provided by legislators and governments, will – if not further extended – expire in the autumn or at the end of 2020. As a result, market participants consistently expect the number of restructurings and, where they fail, insolvency proceedings to rise sharply in Q1 2021.

Opportunities in this regard could result from the implementation of the EU Restructuring Directive, which is due by 17 July 2021. It is intended to provide debtors with a streamlined framework for effective restructuring aimed at preventing insolvencies. It encourages lenders to grant new or interim financing within the context of a restructuring by requesting EU member states to ensure that such financing is adequately protected in the case of any subsequent insolvency of the debtor.

Alternatives to bank financing, such as securitisations or capital markets issuances, may gain in importance.

We have seen a very strong focus on liquidity at the beginning of the crisis, supported by, in parts, central bank measures, and resulting in strong primary issuance volumes in highly receptive markets. It will be key for banks to continuously maintain and even enhance their capacity to lend to the real economy going forward, in particular to SMEs. For lenders securitisations can be a central enabler in this respect. By transforming loan receivables into tradable securities, securitisations can free up bank capital and allow a broader range of investors to fund the economic recovery. Especially in Croatia, where the regulator sought to encourage securitisation by domestic legislation in addition to the EU Securitisation Regulation, securitisation might be a promising tool.

It does not come as a surprise that targeted amendments to securitisation rules are also a key feature of the EU Capital Markets Recovery Package, alongside changes to MiFID II and the Prospectus Regulation. The EU Recovery Prospectus aims at being easy to produce (for companies), easy to read (for investors) and easy to scrutinise (for national competent authorities).

These proposals may pave the way for increasingly dynamic developments in CEE capital markets – together with innovation in national financial markets regulation in various CEE countries. For example, Latvia has adopted new legislation providing for financial support to SMEs for attracting funding through the capital markets, and the Hungarian central bank has adapted the conditions for its bond funding for growth scheme. Outside the EU, Turkey has introduced lighter requirements for debt securities issuances and material transactions.

COVID-19 offers potential for innovation in the financial sector.

Last (but not least), in light of IT solutions becoming increasingly significant, we particularly expect opportunities for banking and finance solutions embracing modern technologies in a world of less travel, social

distancing and increased use of technology in response to the pandemic. This also includes further digitalisation of processes and products of established institutions, as well as increased co-operation with tech companies. Fintech start-ups and BigTechs are moving to conquer the financial market, frequently on the basis of ground-breaking business models and dynamically rethinking the way financial services are provided.

We expect interesting developments in CEE and will be keen to continue supporting them.

Unlike in the global financial crisis of 2008–09, liquidity is currently not an issue for banks that, while prudent and selective, remain generally healthy and started largely well capitalised into the crisis. In the context of COVID-19, so far we have seen an increase in amendments of existing facilities, with banks showing more flexibility with those customers they are willing to support. Opportunistic investors still appear to be cautious and critically looking at risk distribution options, but once committed are very fast at providing support especially on midsize transactions. On the other hand, capital markets activity, especially eurobond issuances, appears to be particularly dynamic in the region, and general infrastructure or green energy projects are being pushed forward albeit with some delay.

The CEE region is traditionally a key element of our global practice. Our clients benefit from our vast and long-standing experience in complex cross-border and cross-practice deals, our regional and market knowledge, our expertise in English and US law, but also the first-class local legal know-how of our *StrongerTogether* partners.

The articles contained in this year's edition of our CEE Finance Workshop publication have been put together by *StrongerTogether* firms attending the virtual edition of the CEE Finance and Capital Markets Workshop 2020. The deadline for publication was August 2020, developments thereafter were taken into account.

We would like to express our sincere thanks to all *StrongerTogether* colleagues for their contribution and wish you an interesting and pleasant read.



Bulgaria

Banking and capital markets
during the COVID-19 pandemic

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BOYANOV & CO

Introduction

The COVID-19 pandemic reminded us how little we control and how easy it is to make dramatic changes, changes that might have formerly been unthinkable, when we need to adapt to a new reality.

The home office working mode, which previously was not very popular among employers, is now turning into a new reality that is here to stay for many businesses even after the pandemic is over (it saves commuting time and office costs, allows the recruiting of talent not geographically linked to a certain location and reduces employment costs).

The global supply chain may shift to a more local or regional one. Online trade will increase at the expense of offline trade. The value of shopping malls and office buildings may drop dramatically as these would become less used. Residential property values might follow too. Online financial services will become more important than ever before.

This is probably just the tip of the iceberg of changes that the COVID-19 pandemic has led or will lead to.

Even though any attempt to predict the development of the banking, capital and financial markets in a situation like this (coupled with the current political turmoil in Bulgaria) is very challenging, one may start by looking into how the pandemic has affected these markets so far.

Below are some highlights of the Bulgarian economy generally, and the banking sector and capital market in particular, in the second quarter of 2020.

- Even though in the second quarter of 2020 the growth of the Bulgarian economy slowed down to 2.4 per cent on an annual basis, the low external indebtedness and the accumulated financial buffers put the economy on an initially favourable track before it was hit by the pandemic.
- Subdued lending activity, lower income from fees and commissions, low interest rates, impairment expenses, the management of operating expenses and the quality of credit portfolios, as well as some one-off effects, influenced the financial results of the banking sector.
- In the second quarter of 2020, the private banking moratorium proposed by the Association of Banks in Bulgaria (ABB) and approved by the banking regulator came into force and many households and non-financial corporations took advantage of it.
- The average interest rates on new loans and on new deposits with an agreed maturity retained their low levels.
- Different national and international organisations forecast that the economic growth in Bulgaria will vary between -7.2 per cent and -3 per cent in 2020 and between 4 per cent and 6 per cent in 2021.

Capital market

The capital market in Bulgaria remains weak and currently we do not foresee a major change in this respect.

Banking sector

The state of the economic environment continued to affect the activities of the banking system.

The Bulgarian National Bank (the BNB, being the banking regulatory authority in Bulgaria) expects the formation of precautionary savings by some economic agents in the second and third quarters of 2020 in the context of the uncertainty in the macroeconomic environment. This, along with the lack of a safe and risk-free alternative to deposits, would drive the further increase of deposits. The BNB projects that credit is going to decelerate its annual growth because of weakening demand, possible tightening of bank credit standards and reduced risk appetite.

In terms of the consolidation process in recent years, 18 banks and six foreign bank branches were operating in Bulgaria as at the end of June 2020, compared to a total of 30 banks and foreign bank branches 10 years ago.

The capital position of the banking sector is being marked by a significant capital surplus above the regulatory requirements for capital adequacy. The level of the indicators for the capital adequacy of banks in Bulgaria is above the average level reported by other European banks.

In relation to the COVID-19 pandemic, in the first quarter of 2020 the BNB announced measures for the banking sector, one of which was full capitalisation of the banking system's profit for 2019 amounting to BGN 1.6bn. The decision of the BNB banks not to distribute dividends compensated for the effect of the increased risk weight for Bulgarian government bonds, denominated in euro, in the second quarter of 2020.

Interest rates

The BNB has pointed out that, in the context of weakening economic activity and rising unemployment as economic consequences of the COVID-19 crisis, low levels of lending interest rates appear to be a favourable factor in terms of the cost of financing for economic agents.

The BNB expects that in the second and third quarters of 2020 deposit rates would remain at low levels, driven mainly by high liquidity in the banking system and projected further increases in resident deposits in an environment of heightened uncertainty stimulating strong precautionary savings by households.

The average interest rates for new business on loans to non-financial corporations dropped to 2.75 per cent for loans in leva from 3.14 per cent and for loans in euros they declined to 2.2 per cent from 2.32 per cent compared to the end of the previous quarter. The decrease in the level of interest rates for loans to non-financial corporations agreed in US dollars dropped to 2.04 per cent from 4.25 per cent a quarter ago.

Single Resolution Mechanism and ERM II

In July 2020, Bulgaria joined the Single Resolution Mechanism and the European Exchange Rate Mechanism (ERM II). From 1 October 2020, the European Central Bank (ECB) will directly supervise Bulgaria's significant institutions, and the Single Resolution Board (SRB) will become the resolution authority for these and all cross-border groups. The SRB will also oversee resolution planning for smaller banks, known as 'less significant institutions'.

Joining the ERM II will also have a favourable economic effect on Bulgaria.

Conclusion

On the back of the above facts and analysis, the banking system in Bulgaria seems to be in a good shape to meet the challenges of the economic crisis caused by the COVID-19 pandemic.

The sectors most affected by the COVID-19 pandemic in Bulgaria are tourism, transport and the retail trade. Hence, these sectors are the most likely to see distressed debt restructurings and/or distressed sales.

Manufacturers of parts for the automotive industries, which are largely dependent on the automotive market in Germany, may also be affected.

Shopping malls and new office buildings, which saw strong development and related financing before the pandemic, are expected to see a decline. This might lead to debt restructurings or sales thereof.

A change in the global supply chain by a Europe trying to reduce its dependence on China might open an opportunity for Bulgaria as a nearshoring destination that is close to the markets in Central and Western Europe and also an EU member state. This might open new investment and financing opportunities.

The ever low interest rates on business loans, coupled with a significant deposit base in local banks and the negative interest rates on business deposits, might make it possible for local club deals (small local bank syndicates) to start financing international groups having material operating subsidiaries in Bulgaria through such Bulgarian subsidiaries (by the latter on-lending loan proceeds to other group entities).



Croatia

Securitisation, covered bonds and restructuring in Croatia –
the right medicine for the COVID-19 crisis?

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ŠAVORIĆ & PARTNERS

Market update

The COVID-19 economy – figures and measures

The last year has been the fifth consecutive year of economic growth for Croatia, with a promising outlook for the future. Prior to the global COVID-19 pandemic and lockdown, Croatian GDP growth was accelerating, with a growth rate of 2.9 per cent in 2019; the unemployment rate was low; and the government budget ran a surplus of 0.9 per cent GDP. COVID-19 drastically changed predictions for 2020 and a recession of around 9 per cent of GDP is expected, primarily due to the significant drop in the tourism sector. In the first month of the pandemic, the Zagreb Stock Exchange's indicator, CROBEX, lost over 32 per cent due to investors' panic. In July 2020, the loss was stabilised at around 25 per cent following the government's rescue packages.

The April 2020 package of government measures has certainly encouraged businesses to facilitate crisis management and restore investor and consumer confidence. The government adopted various economic measures in order to help citizens and companies and to preserve the financial stability and liquidity of economic subjects. The Croatian National Bank (CNB) adjusted its regulatory framework and monitoring activities in order to support the liquidity of financial institutions. The CNB reduced its mandatory reserve requirements from 12 per cent to 9 per cent, lowering the total amount of mandatory reserve by HRK 10.45bn (approximately €1.3bn). Furthermore, the CNB also responded by purchasing government bonds and selling foreign exchange to maintain exchange rate stability.

The vast majority of government measures aims to preserve jobs by introducing a suspension of the enforcement proceedings against legal entities and natural persons. The measures also include tax and credit obligation deferrals, fast liquidity loans for working capital by the Agency for SMEs, Innovation and Investments (HAMAG-BICRO) and the Croatian Bank for Reconstruction and Development (HBOR), and commercial banks, loan reprogramming and employment grants.

Amid the COVID-19 crisis, on 10 July 2020 the Republic of Croatia joined the Exchange Rate Mechanism (ERM II), the key milestone in the process of the euro adoption. This step will help to strengthen the resilience of Croatia's economy and foster investments by the creation of a level playing field with the rest of the eurozone countries.

Financing

Securitisation – leading role in financial crises and new Croatian regulatory framework

While the last financial crisis was negatively linked primarily to various forms of mortgage securitisation, this time securitisation might be one of the most suitable alternative financial tools for bolstering liquidity.

The EU securitisation package – consisting of Regulation (EU) 2017/2401 amending the Capital Requirements Regulation (CRR) and Regulation (EU) 2017/2402 providing a general framework for securitisation and a specific framework for simple, transparent and standardised (STS) securitisation (the Securitisation Regulation) – that entered into force on 1 January 2019 might be the first cornerstone of recapitalisation of companies for rapid recovery and new impetus of securitisation 2.0. Even more recently, the proposals of the Capital Markets Recovery Package aim to incentivise banks to inject more money into the real economy by expanding the STS framework to on-balance-sheet synthetic securitisation and by removing regulatory barriers to the securitisation of non-performing exposures.

The Croatian legislator is moving in the same direction with the Act on the Implementation of Regulation (EU) 2017/2402 introduced in June 2020 (the Act). Although such regulation is directly applicable in Croatia, the regulator sought to encourage securitisation even further by additional domestic legislation, which is yet another milestone in the process of aligning the Croatian capital markets regulatory framework with the EU acquis. Croatia does not have an established securitisation market and securitisation transactions are still uncommon. This might change with the new legislation because the lack thereof was one of the main obstacles for securitisation. Thus, while the COVID-19 crisis represents a great setback for the economy, there is at the same time a huge opportunity for the securitisation market.

The new securitisation regulatory framework in Croatia will enable banks, leasing companies, insurance and other companies to repackage their portfolio of claims into pools, categorise and bundle claims, and then offer debt securities to investors that will provide them with liquidity, which is strongly needed for the recovery of the economy. The Act did not impose additional requirements compared to those set out in the Securitisation Regulation and follows the STS standard included therein. It also regulates the regulatory bodies for monitoring securitisation activities and market players, as well as sanctions for wrongdoing. The Croatian Financial Services Supervisory Agency (HANFA) and the CNB have shared responsibility for overlooking the securitisation market.

As securitisations might involve various market participants such as underwriters, credit rating agencies or swap counterparties, the new sub-market may attract and stimulate market participants that barely exist in Croatia. This would further strengthen the capital market in Croatia, which is still at an early stage of development.

Hence, securitisation will be a useful instrument for financing alternatives to bank loans, especially in the bank-orientated Croatian financing market.

Covered bonds – long-awaited sigh of relief for credit institutions in Croatia

With the first indication and news about COVID-19 from China in January 2020, the EU legislative package on covered bonds – including Directive (EU) 2019/2162 and Regulation (EU) 2019/2160 – partially entered into force.

This is particularly relevant for covered bond markets emerging in the CEE region. While some countries will have to adjust their regulatory frameworks, Croatia still waits to introduce a legal basis for covered bonds. By July 2021 that will be remedied because Croatia is expected to have the first piece of legislation regulating covered bonds. In practice, the vast majority of bonds issued in Croatia consists of unsecured bonds and thus it is not common to encounter mortgage or covered bonds.

We expect that the new regulatory framework will change this and encourage market stakeholders, primarily credit institutions, to employ this financial tool as a cheaper source of funding. Furthermore, covered bond legislation will facilitate cross-border transactions of receivables and define which assets can be used as collateral for covered bonds by monitoring cover pools. It will also provide the possibility of joint funding, enabling small credit institutions to reduce the costs of setting up covered bond programmes, and it will simplify investors' assessment of the quality of the covered bonds (based on the new labelling).

Alongside new securitisation legislation, the long-awaited covered bonds regulatory framework in Croatia will create new opportunities for investments, alternative ways of financing and solutions for restoring the Croatian economy, which has been damaged as a result of the COVID-19 crisis.

Restructuring

Government measures regarding enforcement and bankruptcy proceedings

As another measure to help the economy due to the COVID-19 crisis, on 1 May 2020 the government introduced the Act on Intervention Measures in Enforcement and Bankruptcy Proceedings while the 'extraordinary circumstances' caused by the COVID-19 pandemic subsist. Under this statute and the subsequent government decision, all enforcement proceedings are suspended for a period of six months. Nevertheless, each judge has a unique right to order continuance of individual enforcement proceedings in exceptionally justified cases. Default interest will not accrue during such period of extraordinary circumstances. Furthermore, if during such period a legal entity becomes insolvent, no bankruptcy proceedings shall be initiated against such legal entity. Exceptionally, the insolvent legal entity may itself initiate the opening of bankruptcy proceedings, while creditors and the government agency only have this right if this would be justified by interests of national security, environmental protection or public health.

Moratoria on the repayment of loans have not been dealt with under this legislation. Nevertheless, in practice most commercial banks have granted such moratoria to their clients, mostly lasting three to 12 months.

Since the extraordinary circumstances, as regulated under this statute, are expected to end in the second half of October 2020, an increased number of enforcement and bankruptcy proceedings is the likely outcome.

The end of 2020 and beginning of 2021 will, thus, show the real effects of the COVID-19 crisis on the Croatian economy, in particular with respect to the number of corporate insolvencies and likely restructurings. Therefore, the legal framework on restructuring may become crucial in the months to come.

Restructuring Directive

Restructuring is regulated in Croatia only in the form of in-court proceedings. Out-of-court restructuring is not regulated explicitly and is, therefore, a matter of contract law.

In-court restructuring may be executed within bankruptcy proceedings by adopting the bankruptcy plan or within pre-bankruptcy proceedings by adopting the pre-bankruptcy settlement. Both a bankruptcy plan and a pre-bankruptcy settlement need confirmation by the court.

This may change after the implementation of the Restructuring Directive (EU) 2019/1023 in the Croatian legal system. Under this directive, restructuring of debtors in financial difficulties when there is a likelihood of insolvency is possible even without the involvement of a court and debtors may remain totally in control of their assets. The appointment by a judicial or administrative authority of a practitioner in the field of restructuring is to be decided on a case-by-case basis, and only exceptionally will such appointment be mandatory. However, a stay of enforcement actions may still be granted only by the judicial or administrative authority, if such stay is necessary to support the negotiation of a restructuring plan. Moreover, a restructuring plan may be adopted without any court confirmation (with certain exceptions requiring confirmation from a judicial or administrative authority). Other novelties that will be introduced by the implementation of the Restructuring Directive are protection against *ipso facto* clauses, cross-class cramdown and valuation of the debtor's business by a judicial or administrative authority.

The Restructuring Directive needs to be implemented in Croatia by 17 July 2021. This will allow debtors who are facing the threat of insolvency due to the COVID-19 crisis access to a much-needed and efficient restructuring tool, giving the restructuring market a further boost.

Key takeaways

The Croatian government introduced measures for mitigating the negative effects of the COVID-19 crisis that have stopped the strong economic downfall and stabilised the Croatian economy. Amid the COVID-19 crisis, Croatia entered into the final stage of adopting the euro, which is a beneficial move for fostering investments. Further, the new Croatian regulatory framework for securitisation has been introduced and could create a brand new market as an opportunity for various market participants. Moreover, the EU introduced a legislative package on covered bonds, paving the way for national implementation and adoption. As the current stay of enforcement and bankruptcy proceedings due to the COVID-19 pandemic will most likely end in October 2020, an increase in the number of these proceedings is to be expected. Implementing the Restructuring Directive should be one of the key concerns for the Croatian legislator in order to help entrepreneurs in financial difficulties to continue their businesses.



Czech Republic

Fintech sector growth in the aftermath of COVID-19

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Introduction

The COVID-19 pandemic has had, and continues to have, a significant impact on our personal and professional lives. There is no doubt that the pandemic has reordered the world, bringing with it many negatives; however, it has also unleashed new opportunities. Among other things, people have discovered that they can often easily work and communicate with the outside world from home and online, creating virtual solutions to replace everyday social interaction. We spend more time negotiating deals from our sofas, the mobile phone in our hand, or from our home workstations. With people confined to their homes, the use of technology, e-commerce and the internet in general has exploded exponentially. These effects of the pandemic are likely to create new business opportunities that could pave the way for a brighter future. It is also a great opportunity for the fintech sector, which is set to bloom with new amazing innovation services.

Regulatory environment

Fintech services and solutions continue to expand in the Czech Republic, and there is still significant market potential.

In recent years, a number of well-established foreign fintech players have successfully entered the local market, while the number of fintech start-ups continues to grow. Even regulated major players, such as banks, are developing their own fintech solutions and have approached their client base – usually with banking and contactless payment applications. Many popular fintech solutions run on smart phones, even though mobile data costs in the Czech Republic remain one of the most expensive in the EU.

Until now, the Czech National Bank (CNB) – the local regulatory authority overseeing the financial and capital markets – has not provided the fintech sector with any specific regulatory exemptions or privileges. The CNB also declared that it would treat fintech companies in the same way as any other market participants, although it is aware of certain specifics that are unique to financial services in the digital world. However, this approach is slowly beginning to change:

in late 2019, the CNB launched a fintech contact point – a new communications channel for fintech companies. The main goal is to respond to specific questions related to fintech and innovation services. Unfortunately, the CNB still does not intend to run any regulatory sandboxes or innovation hubs in the near future, leaving the Czech Republic as one of the few countries in the EU with no such specific programme. In any case, the CNB tends to regulate fintech services only to the extent necessary to maintain fintech's unique and innovative character. The CNB has also stated that technological neutrality will be a key point of fintech sector supervision. Moreover, the Ministry of Finance has declared its readiness to get involved in a financial innovative hub prepared by the Czech financial sector.

The landscape

When it comes to fintech, the Czech population is somewhat conservative; the Czech financial market is still bank-centric, with only a few banks holding the majority of the financial system's assets. Until recently, they have held a monopoly on the local financial services market. Because of this, major players have not been motivated to provide innovative financial services – but this has begun to change, and banks now tend to see fintech companies more as partners than as competitors.

Still, awareness of alternative sources of financing, such as IPOs, bonds or crowdfunding platforms, remains limited, especially among individuals and SMEs.

The Czech Republic, however, is well prepared to adopt new fintech services. Internet use ranks among the highest in the EU, with the majority of mobile phones on the market being smart phones.

Currently, there are over 150 Czech fintech (non-bank) companies providing financial services in business-to-business (B2B) and business-to-consumer (B2C) models in various areas.

Banks' approach

As previously mentioned, until fairly recently Czech banks have not been motivated to provide or enhance new innovative financial services. However, with customers increasingly turning to digital channels to manage all aspects of their life, it has become critical for banks to provide fast and convenient financial services if they want to keep customers satisfied and sustain their competitive advantage. Nowadays, banks are continuing to develop their own financial technology projects, and at the same time they are offering smaller companies support and access to infrastructure to test new ideas and enhance mutual co-operation.

For established banks, partnering with fintech start-ups or scale-ups is critical to staying ahead in a crowded market.

To name a few, Komerční banka, a member of the Société Générale group, has begun co-operating with Upvest, an investment crowdfunding platform. Together they offer the possibility of investing in selected Czech real estate, thanks to mezzanine and senior loan financing.

Erste Bank and Air Bank have invested in Dateio, which offers IT platforms and solutions related to payment card discounts – thus increasing card payments over ATM (and cash) use.

In the insurance business, Mutumutu provides (in co-operation with Komerční banka's insurance company) insurance products that are devised to be customer-friendly while also encouraging a healthy lifestyle. Mutumutu has approached the Czech market with a business model that relies on a unique prevention programme based on a cash-back mechanism on the insurance premium through a connection to mobile health applications.

Fintech sector on the rise

E-commerce has been growing consistently – for example, grocery delivery businesses have seen significant growth during COVID-19-related quarantines. Rohlik.cz, a Czech start-up, has just expanded into Hungary and Austria (under the brand Gurkerl.at).

Only a few Czech fintechs offer alternative payment methods, such as delayed payments (eg the fintech start-up Twisto, which had some serious difficulties because of its business links to Wirecard), prepaid cards or electronic meal tickets (which remains, thanks to certain tax exemptions, a very popular employee benefit).

Digital financing is another significant area where growth can be seen. New peer-to-peer lending platforms are popping up, for example Zonky, the sector's biggest fintech aimed at individuals (Zonky is set up as a traditional consumer loan provider), or the US/Nigerian Lidya, a new player aimed at SMEs. PRK Partners provided assistance to Lidya with its entry into the Czech SME loan market, including, in particular, corporate law, financial law, capital markets and regulatory advice.

There are a number of local fintechs providing foreign exchange services. That said, the UK-based Revolut seems to be the most popular platform on the market.

Spendee and Wallet, both Czech mobile fintech apps operating worldwide, help people get their finances into shape by enabling them to connect all their bank accounts, e-wallets, crypto wallets and other financial products, giving them a complete picture of their finances in one place.

Cryptoassets

There is a wide range of companies providing services relating to virtual currencies, utility tokens and asset tokens (eg ccShop or Bitstick, where one can buy or sell cryptocurrencies). These are mostly high-risk investments, and these companies are generally aimed at experienced investors.

Currently, no specific legal or regulatory rules or guidelines exist in the Czech Republic relating to the use of distributed ledger technology, except for the general data protection principles set out in the GDPR.

Similarly, no specific legislation regulates the operation of digital trading exchanges or brokerages (unless such exchanges or brokerages involve derivatives trading related to digital currencies, which are viewed as financial instruments within the meaning of MiFID II).

Initial coin offerings (ICOs) or token-generating events involving the wider public would likely be viewed by the CNB as collective investment schemes requiring a licence – this was just recently confirmed in a Q&A issued by the CNB. In addition, any manager of the assets of private individuals (that are not considered public under the Act on Management Companies and Investment Funds) collected during an ICO or token-generating event would still need to register with the CNB. On the other hand, collecting assets to finance cryptocurrency mining would most likely fall outside the scope of the Act on Management Companies and Investment Funds and the CNB's supervision.

However, in the wake of some recent misleading or fraudulent ads relating to cryptocurrencies, the need for proper regulation and consumer protections is clear.

Future opportunities

The Czech fintech market is expected to see real growth in the next few years.

Czech fintechs are developing new, affordable products to successfully compete with traditional services. Such products are user-friendly and reaching new groups, especially millennials and post-millennials. A large number of fintechs create new sources of capital (including bonds) or cash flow to SMEs, thus providing broader access to financial services, or quicker and under better terms. Many fintechs introduced affordable and understandable capital market instruments that assist Czechs to get a better yield on their savings and help them manage and understand their personal finances. These new alternatives aim to improve consumers' financial behaviour and literacy. They are also often more affordable for the consumer when it comes to time and costs.

The regulatory environment has gradually been improving, becoming more sophisticated and tailored to the sector's needs. More and more fintech companies are obtaining their licences from the regulator, and the traditional players – banks – view them and treat them as partners.

The COVID-19 pandemic has demonstrated that connectivity can bring monumental benefits, and technology is an absolute necessity, which is more trusted than ever before.

The new fintech solutions, as part of that technology, will likely play an important role in the new order.



Hungary

The Hungarian lending business and emerging opportunities in light of the COVID-19 pandemic and the related stimulus measures

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The present article aims to provide an overview of the Hungarian lending business as it has to cope with the effects of the COVID-19 pandemic and the related measures, while these difficulties promise the transformation of the sector and the emergence of new opportunities.

Lending business hit by COVID-19 and the related measures

The pandemic outbreak hit Hungary at a time when the lending business was in a good shape and banks and other financiers were generally in a favourable position. According to the data of the Hungarian National Bank (MNB), loan issuance in 2019 was 9 per cent higher than in the previous year, while lending in the SME sector increased by 14 per cent and lending in the household sector increased by 17 per cent compared to 2018. In the first quarter of 2020, both corporate and household lending expanded dramatically as the disbursement of household loans significantly exceeded principal repayments and corporate loans outstanding increased by HUF 420bn. This has changed significantly owing to the lockdown and economic downturn in relation to the pandemic.

COVID-19 measures in a nutshell

The Hungarian legislator reacted drastically to the virus outbreak and introduced measures in connection with COVID-19 that meant a direct interference with private law relations unprecedented in Hungary since the regime change. The most significant measure from a banking perspective, the repayment moratorium, was enacted with effect from 19 March 2020 through Government Decree 47/2020. (III.18.). These rules are still in effect after the termination of the so-called 'state of emergency'; however, they can now be found in Act LVIII of 2020 on transitional rules concerning the end of the state of emergency and on the state of epidemiological preparedness (the Measures Act).

In Hungary, the legislator decided to resolve lending-related issues through legislation and left little to no room for banks and their clients to agree on individual changes.

The repayment moratorium in Hungary is for nine and a half months and lasts until 31 December 2020 pursuant to the Measures Act. It basically relates to all existing loans granted by regulated entities, including corporate and retail loans, with a few exceptions mainly relating to the person of the borrower. Given that in Hungary lending activities on a commercial basis can only be pursued by regulated entities (ie with the consent of the MNB), the repayment moratorium affects all loans, including those provided by banks, credit institutions, financial enterprises and other lenders who are entitled to pursue lending activities. Due dates of obligations under agreements affected by such moratorium and commitment periods have been extended for the moratorium period and agreements expiring during the crisis extended until 31 December 2020. The extension also relates to the payment of interest and therefore lenders may have no income from interest in 2020 either. This means that the cash flow of the banks from existing loans has dried up from the majority of sources in 2020, except for from those clients who have decided to opt out from the moratorium by their decision (made at their discretion). Banks were also hit by an additional sectoral tax on the top of such losses.

Unfortunately, new legislation on COVID-19-related changes in lending was rather brief and led generally to various interpretation issues. In some cases, very basic aspects, questions and consequences directly linked to the measures could not be answered or deduced from the wording of the laws. The legislator had to clarify or even change certain rules after such interpretational issues arose.

Beyond the moratorium on loans, within the framework of emergency measures, the Hungarian government also introduced extensive changes to the foreign investment screening rules and imposed limitations on foreign investment into Hungary, including the acquisition of shares in 'strategic' companies, whether directly or indirectly, or the taking of securities from such companies. The definition of 'strategic' companies is rather broad and includes entire industries (eg energy, transport and communication) with a relatively low transaction threshold of HUF 350m (approximately €1m). The legislator (initially in a Government Decree and then, after the termination of the 'state of emergency', in the Measures Act) significantly broadened the material scope of the relevant transactions (the so-called 'triggering events') and allocated an approval procedure for such transactions to the Ministry for Innovation and Technology. In the absence of such approval from the Ministry, the new shareholder or member cannot be registered in the company registry, and the Ministry may impose fines of up to two times the transaction value for any breaches of the rules contained in the Measures Act in relation to foreign investments. The measures are effective from 26 May 2020 (ie to all transactions concluded from that date) and are currently scheduled to last until 31 December 2020.

Effects on the banking scene – opportunities

As a trivial consequence of the pandemic, the working methods of the banking sector significantly transformed. The home office became a new standard in the sector within just a few days. The change in the 'working algorithm' of these institutions in itself was an adversity and at the same time extensive monitoring of the portfolio was necessary.

In the first few months, banks primarily focused on reaching out to clients in order to discuss who would be relying on the repayment moratorium after its enactment and who wanted to pay on an individual basis.

In order to mitigate the economic effects of COVID-19, among others, new subsidised loan products were made available on the market for SMEs. The MNB has set up a budget of HUF 1,000bn through a revised growth credit programme under the name 'NHP Hajrá!' or 'FGS Go!' in April 2020, which was supplemented with the amount of HUF 500bn from the already existing growth credit programme (the Funding for Growth Scheme or 'NHP'), resulting in total funds of HUF 1,500bn. The duration of the loans linked to SMEs was extended to 20 years, and the available funds were increased to HUF 10bn.

The goal of the revised programme is to encourage companies to 'jump back' into the economy; therefore, the funds may be used for a wide range of purposes such as investments, working capital loans, wage payments and even restructuring of existing loans.

The entities within the banking sector taking part in the credit programme will receive an interest subsidy of 4 per cent, while the maximum amount of interest remains at 2.5 per cent in the framework of the programme, leading to a potential profit of 6.5 per cent in total. These conditions will remain available until June 2021, so the MNB encourages enterprises to use this opportunity. On the other hand, the MNB expects banks to render decisions relatively quickly in credit scoring linked to the above funds; a maximum of two weeks is prescribed in this respect. According to the data provided by participating credit institutions to the MNB up to 31 July 2020, such institutions concluded loan or leasing agreements with 4,098 enterprises in the amount of HUF 285bn. The Széchenyi Card Programme also serves the SME sector and within its framework four new subsidised products were introduced on 15 May 2020, namely the Széchenyi Card Overdraft Plus (Széchenyi Kártya Folyószámlahitel Plusz), the Széchenyi Job Retention Loan (Széchenyi Munkahelymegtartó Hitel), the Széchenyi Liquidity Loan (Széchenyi Likviditási Hitel) and the Széchenyi Investment Loan Plus (Széchenyi Beruházási Hitel Plusz). These new products and schemes resulted in a boost in lending and at the same time will support the structural goal of the MNB in the domestic lending business, namely the transition from a variable interest rate to a larger volume fixed interest rate.

As an attempt to reanimate the corporate bond market, the conditions of the Bond Funding for Growth Scheme of the MNB (Növekedési Kötvényprogram) were also modified: (i) the repayment term was extended from 10 years to 20 years; and (ii) the participation of the MNB may be up to HUF 50bn per issuance as opposed to the previous limit of HUF 20bn. This successful scheme affects more than 200 enterprises and, as a result of the high demand, less than half of the total funds (HUF 450bn) remained available as of July 2020. The Bond Funding for Growth Scheme represents an alternative to long-term lending, in which the MNB may purchase the bonds so issued up to 70 per cent.

Revision of cash flow issues could also be identified in the lending market. Business sectors were re-evaluated by the banks while the previously seen miracle in the real estate sector is becoming exhausted. There is almost no lending for retail developers and hotels, with a few exceptions, while lending difficulties have also reached the office sector due to the changing office market during the pandemic. At the same time, logistics are still attractive for lending purposes and there are several projects in this field funded by banks. Credit institutions are still looking for sectors with unaffected cash flow: for example, energy financing is peaking (mainly new photovoltaic projects), certain trade finance transactions have also remained attractive for banks and the expansion of certain service providers in logistics, IT and other industries are also well received clients of the banks. At the same time, some industries have decreased attractiveness in general for lending, including the car industry and tourism and some leisure industries.

There have also been several transactions in the merger and acquisition market this year, where market players require financing from credit institutions to meet their purchase price obligations and related payments, which is another potential field of operation for the banks.

Due to the expiry of the repayment moratorium at the end of 2020, several business opportunities are expected in the first quarter of 2021. The ratio of non-performing loans (NPLs) to total gross loans in Hungary was further decreased in 2019. However, the currently low NPL rate is expected to increase significantly for 2020, while figures will only appear in 2021 due to the moratorium. This may lead to potential NPL sales by banks throughout 2021.

Conclusion

So far, 2020 has seen less general activity in the banking and lending business due to the adaptation to new working methods and to the repayment moratorium of over nine months enacted by the legislator for almost all types of financing. Changes in the legislation in relation to foreign investment screening may also support the decline in current lending activity. However, these limitations on foreign investment are expected to be temporary.

New loans and other products for the 'best' clients and businesses are still available, mainly from MNB refinancing sources, with an upturn/refinancing in corporate lending from such subsidised products.

At the same time, the market saw the re-evaluation of businesses in relation to stable cash flow and as a result the focus of the banks has changed, and new industry sectors have emerged into the view of the lending business while some well-established sectors have lost their bargaining power vis-à-vis lenders.

Upon expiry of the moratorium (31 December 2020), loans in Hungary will become due and payable, which is expected to present difficulties for several borrowers. Therefore, 2021 is likely to be an interesting year on the acquisition, workout and NPL markets and numerous related opportunities may emerge.



Latvia

COVID-19 measures and related
business opportunities in Latvia

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COVID-19 measures

The Latvian government implemented various Covid-19 measures to help affected businesses overcome the challenges to the economy caused by Covid-19.

The new legal framework implemented in Latvia included a limitation of contractual interest on late payments as well as numerous measures for the extension of procedural terms with respect to enforcement tools. Certain limitations were also imposed for debt recovery processes as well as initiating insolvency proceedings of legal entities by their unsecured creditors.

Additionally, recommendations were adopted by the local financial industry association stipulating a moratorium applicable to natural persons resident in Latvia enabling them to delay mortgage base repayments, and leasing and consumer loans. Although the moratorium does not have legal force, it was endorsed by the Latvian financial supervisory authority (FSA). The FSA expressed its support of this approach by inviting all credit institutions licensed in Latvia to participate, in return promising flexibility in supervision. The FSA has made a public statement that it will apply an individual and non-rigid approach in the supervision of market participants impacted by COVID-19.

State development fund instruments

A business support programme approved by the Latvian government in March 2020 provides for two financial instruments to be made available to Latvian businesses impacted by the COVID-19 crisis. The receipt of the instruments is conditional on the business's ability to justify that the aid will help in overcoming the crisis and the continuation of commercial activity. The business support programme has been approved by the European Commission (EC).

One of the available instruments is a credit guarantee offered by the Latvian state development agency ALTUM. The guarantee is available to businesses that have come into difficulties with respect to fulfilling their liabilities to credit institutions, allowing the banks to postpone principal payments for periods of up to two years. The guarantee is available to SMEs and large businesses as well as agriculture, fisheries and the aquaculture

industries. The maximum amount of the guarantee for a single business is €5m. The guarantees are planned to be issued in the total amount of €50m.

Another instrument is a direct loan from ALTUM for liquidity purposes. For businesses whose commercial activity has substantially decreased and that need additional resources for maintaining activity, ALTUM offers working capital loans with lighter conditions. The loans will be issued in the total overall amount of €200m.

State co-funded alternative investment fund

As a result of the Latvian government adopting measures on the prevention of the impact of COVID-19, at the end of May 2020 the Latvian FSA registered a new alternative investment fund managed by ALTUM. The fund will comprise partly state financing and partly private financing from Latvian pension fund managers. The fund aims to provide financing to large companies whose operations were adversely affected by COVID-19, as well as to those large companies that are ready to transform their current business model or adapt to the new realities of life and business. The total amount of the fund is projected at €100m.

AirBaltic share capital increase and expected IPO

The Latvian government decided to invest €250m in the share capital of the Latvian national airline airBaltic to help the airline overcome the consequences of the COVID-19 crisis; the decision of the EC approving this transaction was received in July 2020. As a result of these support measures, the state will increase its stake in airBaltic from 80.05 per cent to 91 per cent. The EC decision requires that the state must prepare a specific plan for the recovery of the funds invested by it in airBaltic to be carried out within five to seven years after the receipt of the funds by airBaltic.

Prior to the crisis caused by COVID-19, the management of airBaltic was already considering an international public offering (IPO) of shares. In further discussions on the recovery of the state's investment, it has been alluded to that this work will be continued in the near future.

As a general understanding, consultants will be involved to assess the most appropriate timeline for offering the airline's shares to private investors. Considering the recent market trends, this will largely depend on the general development of the situation in the aviation sector.

From the perspective of future business opportunities, it is clear that a public offering of shares of airBaltic is inevitable in the near future and that further debates are expected on whether such offering should take place in Latvia or on a more international level.

More certainty should be expected within one year when Latvia has to submit the plan to the EC.

Capital markets

Another novelty in the capital markets sector in Latvia is the increasingly active role of the local FSA in promoting discussions with industry participants on possible solutions for developing the Latvian capital markets. As of January 2020, new local legislation providing up to 50 per cent of financial support to SMEs for purposes of attracting funding through the capital markets has come into force with the aim of encouraging local companies to seek funding or raise capital with the assistance of the stock exchange or the alternative market, Nasdaq First North (with fewer listing requirements and ongoing disclosure rules).

In January 2020, Ellex Klavins became a Nasdaq First North certified adviser in Latvia, which permits the firm to guide small and medium sized growing companies through the First North application process, as well as to ensure that they meet all the relevant compliance requirements on a continuous basis.



Lithuania

Balance in action: Lithuania to lead the way with licensing of new financial institutions and anti-money laundering excellence

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Introduction

Lithuania entered the battle for fintech licensing leadership some years ago, and it is now on the map along with the UK, Luxembourg and Singapore. In mainland Europe, Lithuania is already at the forefront with a number of new licences for electronic money institutions (EMIs) and payment institutions (PIs) as well as specialised banks. In addition to fostering a fintech-conducive regulatory environment, Lithuania is also scaling up prudential supervision efforts, especially in relation to money laundering (ML). Interestingly enough, COVID-19 appears to have served as an incentive for both market participants and supervisors to revisit their ways of working.

Blossoming of new financial institutions

A post-quarantine survey of financial market participants (banks, credit unions, insurance companies, asset managers) released at the end of July revealed that the biggest risk perceived by the legacy institutions in Lithuania was COVID-19 and its effects on the economy.

Like elsewhere, the state, with the approval of the European Commission, set up a fund with a target size of up to €1bn that will invest through debt and equity instruments in medium-sized and large enterprises active in Lithuania and affected by the coronavirus outbreak.

Yet, despite COVID-19, some new financial institutions are proving to be quite well-positioned to meet new challenges in a more flexible manner. Due to COVID-19, online/remote business becomes more important, which escalates both demand for and supply of fintech solutions. The technological DNA of most newcomers is partly a recipe to survive necessary changes in ways of working and approaching customers, while still providing quality financial services. Also, newcomers are rarely limited to a local market, which expands their ability to mitigate the business downfall. Although the market is yet to see how everyone has survived the shake-up at the end of 2020, the newcomers are already proving to be quite well adapted to some new financial market realities.

The overall start-up ecosystem in Lithuania tripled in size in just a couple of years. As for financial services, at the end of 2019 a total of 115 EMIs and PIs were operating in Lithuania.

In addition, five specialised banks (including Revolut) were then licensed in Lithuania. Changes in the regulatory environment and supervisory initiatives resulted in the establishment of an appealing licensing process and operational setting.

The central bank's regulatory sandbox, its technological platform to test blockchain-based services, and a possibility of full access to the central bank's payment system (CENTROlink) put Lithuania on the map for foreign investors to introduce, develop and scale up their business ideas. Furthermore, according to the World Bank report *Doing Business 2020*, Lithuania ranked 11th in the world for ease of doing business and 34th out of 190 for starting a business.

It seems that even COVID-19 has not put a hold on licensing efforts, as Lithuania is the leading country in continental Europe for the number of EMIs.

In an effort to make the licensing process clearer, the central bank of Lithuania developed a roadmap for potential applicants for electronic money or payment institution licences ('Customer's journey').

Undeniably, licence passporting possibilities (to work across the entire EEA) as well as the possibility to connect to CENTROlink (technical access to SEPA through the Bank of Lithuania, reducing dependency on correspondent banks to make and receive euro payments) are incentives for investors to consider an application in Lithuania. The fact that the overall licensing process can take approximately six months is also an important factor.

On top of that, the state, the national supervisor and the business community are co-operating to support the development of the ecosystem in other ways, for instance by introducing targeted college or university-level training on fintech regulation and business models to junior staff as well as management.

AML in focus

What equally drives a local agenda is the focus on compliance efforts. Recent ML-related scandals across the Baltics have necessitated a more vocal stance by the local supervisors in terms of compliance standards. The Bank of Lithuania, when assessing a licensing application, pays particular attention to anti-money laundering (AML) and risk management. In practical terms, it translates into an assessment of applicants' actual readiness to ensure specific AML legal requirements. Such expectations are exigent already in the preparatory stage. For instance, applicants are expected to have hired key staff even before receiving the licence as well as to describe in detail on-boarding, on-going due diligence and monitoring arrangements (eg different monitoring scenarios) already in the licensing application. Thus, the supervisor needs to not only be convinced of a strong technical capacity and know-how, but also see it in a level of detail not previously expected.

Once operational, new financial institutions are closely supervised. In fact, the number of supervisory inspections, namely targeted AML inspections, have roughly tripled in past years. Fines and mandatory orders for remediation of deficiencies have ensued. This trend in supervisory priorities is indeed a telling argument for strong compliance models from the onset of activities; there is little tolerance for learning on the job. What has been quite interesting is the fact the Lithuanian supervisor was one of the few and among the very first to try to apply individual administrative pecuniary sanctions to the senior manager and shareholder of an EMI under the fourth AML directive.

COVID-19 shook up the ways of working not only for market participants, but also for the Lithuanian supervisor. However, remote supervisory inspections are now successfully replacing on-site actions, and enabling the supervisor to maintain compliance demands high on the prudential agenda.

In order to balance incentives to business and a strong prudential position, Lithuania's public and private sectors have teamed up to look for innovative solutions to shared compliance challenges.

The Bank of Lithuania, the Ministry of Finance and certain commercial banks operating in Lithuania have initiated the establishment of the Centre of Excellence in Anti-Money Laundering.

The Centre of Excellence in Anti-Money Laundering is still in the works and it will aim to: share information on the ML/terrorist financing typologies and set up a dedicated information exchange platform; carry out studies, assessments and analyses and prepare summaries, guidelines, recommendations, methodologies and legislative initiatives to improve the AML/combating the financing of terrorism (CTF) framework in Lithuania; assist private sector entities in conducting internal risk assessments; strengthen competencies of public and private sector staff in the AML/CTF field; organise training, seminars, conferences and other events; and publish information on co-operation and the implementation of AML/CTF measures in the country.

However, some other initiatives are revealing a conceptual divide between regulatory initiatives and their practical implications for financial market participants. Due to increased AML-related supervisory sanctioning and an overall de-risking trend, new financial institutions found it extremely difficult to open bank accounts with local credit institutions for the purpose of their own operational needs as well as client funds safeguarding and client payments. Thus, the Bank of Lithuania prepared and approved its position on the right of EMIs and PIs to access bank accounts opened with credit institutions. This opinion, presented to all market participants, tried to marry views on the managing of AML risks with co-operation between newcomers and legacy banks.

Overall, the regulatory and supervisory climate in Lithuania reveals potential for collaboration between the public and the private sectors, especially when the COVID-19 crisis highlighted the need for an open discussion on the most pressing issues.

While financial incentives are being arranged, there is no easing down on prudential efforts. With both the stimulation of the financial sector and AML being at the top of the regulatory and supervisor's agenda, the message from Lithuania is strong and clear: it is a thriving environment for fintechs that are able to meet the compliance standard.



Poland

New FDI controls for M&A deals in Poland and business opportunities arising in the context of the pandemic

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General overview of COVID-19's impact on the M&A market in Poland

The COVID-19 pandemic continues to negatively affect the entire global economy. This will undoubtedly have, and already has had, an effect on the Polish mergers and acquisitions (M&A) market. It is also interesting to see what effect it will have on ongoing transactions and investments and the ability of businesses to undertake new ones, as well as how long such negative consequences will afflict the business community.

One can already see the pandemic's influence at virtually every stage of ongoing transactions, and it is likely that the M&A market will appear markedly different from what it has looked like in the past several years. The new Polish foreign direct investment (FDI) regulations (the 'Act') will undoubtedly contribute to this difference. While FDI may have been and will be an important factor, we also see a number of opportunities in the new post-COVID-19 reality on the Polish market where potential investors may be looking into non-performing loans (NPLs) and single-ticket distressed opportunities, consumer finance offered by non-bank lenders, renewables (especially photovoltaic), logistics and warehousing.

Regarding NPLs, individuals are facing immense problems with repaying consumer loans (not only to financial institutions but also to non-bank lenders) even though interest rates have been reduced by the regulator (see further below).

Banks and their non-bank competitors are already tailoring semi-NPL and NPL portfolios for sale to improve their balance sheets and ratios and to maintain their lending capacity.

Furthermore, Polish financial institutions are expecting and preparing for restructurings and distressed situations. Sectors that are particularly affected include the hotel/restaurant/café (HoReCa), food and beverage and retail sectors.

As for consumer finance, it is worth noting that the National Bank of Poland substantially reduced interest rates, which directly affected the maximum rates and affiliated costs legally permitted in the consumer finance sector, with the result that profits for non-bank lenders (who in contrast to banks have almost no alternative sources of profit) are low and investors may be looking for immediate de-investment.

This would be an opportunity for new industry players with long-term capital to enter the Polish market.

Regarding renewable energy, it is interesting to note that photovoltaics is on the rise in Poland. Banks seem more than willing to finance projects at the construction phase and, since a large number of projects have reached a break-even point, there is an increasing appetite by institutional investors to acquire photovoltaic portfolios.

Finally, one of the global effects of the COVID-19 pandemic is the shortening of supply chains, so as to ensure that supplies may be maintained regardless of lockdowns. From the perspective of a European business looking for an alternative to suppliers from Asia or other geographically distant markets, Poland, with its well-educated workforce and relatively low cost of labour, seems like an ideal place for it either to find existing suppliers or to build its own production capacities through greenfield investments. The packaging business seems to be one example where increased demand (resulting from increased e-commerce activity) is expected and where Polish suppliers can play an increasing role.

For all these potential opportunities, the new FDI regime will pose one additional hurdle, and so it is important to understand how it may impact future transactions.

Scope of application of new Polish FDI regime (affected targets and affected investors)

The new FDI provisions came into effect on 24 July 2020 and will continue to apply for 24 months (ie until 24 July 2022). According to the government, these provisions were introduced in order to protect the Polish economy from 'hostile takeovers' by entities from outside the EU, the EEA and the member states of the OECD.

This obviously creates an opportunity for investors from countries that are members of any of the aforesaid organisations (EU, EEA and/or OECD). They will have a competitive advantage over potential buyers from outside these organisations, who will need to obtain an additional governmental approval in order to proceed with proposed transactions.

The regulations in question cover so-called 'protected entities', which include:

- all publicly listed companies;
- entities doing business in a wide range of sectors, which includes entities with assets classified as 'critical infrastructure';
- entities involved in the IT sector (in particular, developers of software used in particular industries);
- entities involved in electricity generation (from both conventional and renewable sources), energy transmission and storage, and the generation and distribution of fuel, gas and heat;
- entities in the telecommunications industry and the medical and pharmaceutical industries (pharmaceutical and medical device manufacturers, among others); and
- certain sectors of the food production industry.

Only those transactions where the targets had an annual turnover in excess of €10m in either of the previous two financial years are subject to notification. It remains unclear whether intragroup turnover will be excluded (as is typical for anti-monopoly clearance processes) or included in order to verify if the above threshold was crossed. Notably, this threshold is identical in value to that applicable to Polish merger control procedures.

Transactions that directly or indirectly lead to an entity seated in a non-EU, non-EEA and non-OECD member state acquiring control of a protected entity, or achieving 'significant participation' (ie achieving or crossing a 20 per cent or 40 per cent shareholding threshold) in a protected entity, are subject to prior notification to the president of the Office of Competition and Consumer Protection (UOKiK).

General overview of approval/rejection process

The president of the UOKiK may object to a notified transaction if the applicant fails to provide all of the required information or the transaction threatens (or has the potential to threaten) public policy, public security and/or public health. Moreover, the president of the UOKiK may object to the transaction if the entity intending to acquire dominant control of, or significant participation in, a protected entity cannot prove that it has been seated in an EU, EEA or OECD member state for at least the previous two years. The president of the UOKiK's powers in this regard appear rather broad, due to the fact that the Act provides for very vague conditions for its assessment of the above grounds for objection.

Note that the new FDI law applies equally to direct acquisitions of shares in protected entities, asset deals, and any other direct or indirect means of acquiring control or significant participation (including mergers, demergers, amendments to articles of association, share redemptions and indirect acquisitions on account of the acquisition of a controlling entity).

Although only acquisitions undertaken by entities not seated in an EU, EEA or OECD member state are subject to control, we would note that a transaction undertaken by an EU/EEA/OECD-based entity ultimately controlled by non-EU/EEA/OECD persons or entities would require notification.

In principle, transactions to which the Act applies must be notified to the president of the UOKiK prior to their completion. However, the Act imposes an obligation to give notification of 'any agreement creating an obligation to acquire' prior to its conclusion, which results in a lack of clarity as to the exact scope of application of the Act.

The Act provides that the president of the UOKiK will approve a transaction, or confirm that it is not subject to control, within 30 business days of the office receiving the notification, or 120 days in the case of transactions requiring more detailed review from a public order perspective. Each time additional information is requested these deadlines are suspended (a stop-the-clock mechanism) until such information is provided. Further, second-phase proceedings, when necessary, are stated to be similar to second-phase proceedings conducted pursuant to Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (ie the EC Merger Regulation).

Sanctions for failure to comply

Failure to notify a transaction where required will result in it being invalid, and therefore of no legal effect, with the possible imposition of additional financial and criminal sanctions. The government is also empowered to exempt certain types of company from the duty to give notice under the Act by way of a specific regulation on account of the pandemic's effects.

Potential implications and opportunities

The regulations introduced in the Act are, in general, in line with the broader trend of governments attempting to secure their national economies from the effects of economic crises caused by the current pandemic, as seen in, among others, Italy, France, Spain and Germany, which have also introduced similar laws. However, the competent authority in Poland has been granted extensive powers to control transactions across a wide range of industries, with little clarity as to the criteria for such review. This may lead to a cooling of investors' appetite to invest in Polish companies, which would be a pity given the potential opportunities that are starting to become visible on the Polish market in the aftermath of COVID-19.

On the other hand, as already stated above, the new FDI law can create a competitive advantage for investors from within EU, EEA and/or OECD member states, as they will be able to complete transactions more expediently and with greater deal certainty than their peers from outside these countries.

We hope that this will encourage investors from these countries to invest in Poland, notably in the markets mentioned above (NPLs, non-bank lenders in the consumer finance sector, photovoltaic energy, HoReCa, food and beverage and retail sectors).

The Polish M&A market will be significantly affected by the Act due to its application to a broad scope of industries and its low materiality threshold. Time will tell whether the Act will in fact protect the Polish economy from hostile foreign takeovers, or rather limit Polish companies' access to the capital likely to be necessary in a post-COVID economy, including in strategic industries.



Romania

The upside of the downturn: what the financial sector can look forward to in Romania in a post-COVID-19 world

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As the financial sector transitions from the 'response' to the 'recovery' phase, what are some key trends and developments to follow on the Romanian market?

Towards a positive outlook

While the whole world is looking ahead to the terms of the new realities of a post-COVID-19 world, the financial sector has a genuine opportunity to be part of the solution, particularly in Romania which is arguably one of the fastest growing economies in Europe, growing at an annual rate of around 4 per cent prior to the COVID-19 pandemic.

In the spring of 2020, while Romania was in lockdown and the government was scrambling to implement economic measures to protect businesses and consumers, Romanian banks took proactive measures in offering moratorium solutions to clients even before the official measures came into effect.

However, one could reasonably argue that the measures adopted by the government did not (and those adopted by financial institutions could not) really address the 'elephant in the room', which is the risk that the economic recession will leave companies requiring turnaround solutions in a context where the Romanian legal framework for out-of-court restructuring has not yet matured. And yet, we would like to argue that in fact the current environment provides a number of opportunities for the financial sector. We will consider the following aspects:

- the increased interest of professional associations, banks and companies in improving the existing legal framework, which may lead to a better environment for the restructuring and recovery of companies in financial distress;
- ways in which financial institutions could respond to new types of credit demand; and
- the opportunities surrounding digital and fintech developments, which are likely to be even more dynamic in a post-COVID-19 world.

In the first part of this article, we will look at the opportunity to create a more positive outlook in the context where Romania is required to implement the new EU Directive on increasing the efficiency of restructuring measures.

In the second part of the article, we will look at how the lending market is likely to be shaped and how this may be linked to demand, particularly in the consumer sector, but also to corporate refinancing and real estate projects.

Finally, the COVID-19 crisis is expected to accelerate people's appetite for online banking and cashless solutions at a time when alternative fintech options were already emerging and disrupting traditional channels. There are particular ramifications of this in Romania, where, on the one hand, the pre-COVID-19 environment was still relatively new to (and, on the whole, somewhat sceptical about) transitioning to fully online and cashless activities and, on the other hand, there is a particularly fertile social environment for IT development and fintech start-ups.

What were the main initial COVID-19 measures in the financial sector?

From a legislative perspective, the broad lines of the measures adopted by the government in view of protecting borrowers can be summarised as follows:

- Borrowers were allowed to opt for the suspension of the obligation to pay the due instalments (including principal amounts, interest and fees) for a period of one to nine months, which must terminate by 31 December 2020.
- Credit institutions and non-banking financial institutions have been provided with certain exemptions from capital adequacy requirements – for instance, they were under certain circumstances allowed to not make provisions in connection with the implementation of deferred payment plans. Banks were also allowed under certain circumstances to access reserves even if this would lead to falling below the prescribed minimum liquidity indicators.

- The measures applied to borrowers experiencing a decrease in revenue by a minimum of 25 per cent in the month the analysis was to be carried out. The measures did not apply to borrowers that were insolvent at the time of the request.

The chance to improve the restructuring legal framework

However, credit institutions and non-banking financial institutions that will accept deferred payment arrangements are not protected from the actions of other creditors that may take measures against debtor companies. Romania has one of the lowest levels of financial intermediation in the EU and, at the same time, an extremely high level of supplier credit. Therefore, preventing banks from taking measures against debtors is not expected to end the supplier credit obstruction by other creditors of the companies, which may continue to request the opening of insolvency procedures against those companies.

This aspect is an important topic for discussion as part of the various initiatives for amending the insolvency legal framework in Romania.

As regards the economic context, the financial sector is arguably in a better position in terms of capital compared to in the previous recession. It remains to be seen whether this will lead to an actual increase in lending appetite. However, a key ingredient to a successful restructuring is undoubtedly the willingness of various parties to co-operate in creating credit options for cash-strapped companies and helping them through the restructuring process.

We have also identified an increase in activity at professional association level (one example is the Romanian chapter of the Turnaround Management Association), seeking to address the shortcomings in the legal framework and making out-of-court restructuring more feasible on both the lender and the borrower sides.

Implementing the Restructuring Directive into national legislation is something all EU countries will need to do, but in Romania this will be the first legal framework for restructuring where the involvement of the court can be substantially reduced (under the existing framework in Romania the approval procedure itself requires the intervention of a court of law). However, for the financial sector, this will be an opportunity to get involved in the consultation stage regarding the implementation of the directive in order to address the key concerns that finance parties may have in the process.

Responding to the credit demand

As mentioned above, one of the features of the COVID-19 recession is that the financial sector is in a much better shape from a capital perspective compared to in the previous recession. In addition, the National Bank of Romania (BNR) even took measures to encourage lending under these circumstances.

From a consumer perspective, we have seen that the growth of Romania's GDP in past years has been relatively stable, even if it has been mainly consumer driven, suggesting a consistent consumer-borrowing appetite that is specific to Romania. It remains to be seen what impact this will have in the future under the current environment, but it is possible that consumer-lending opportunities will continue. An additional piece of news in the consumer credit area is that the government has recently renewed the 'First Home' programme, which allows for the acquisition of residential properties under better conditions (eg lower advance required). In contrast with the previous version of this programme (from which up to 300,000 Romanians have benefited), the price ceiling for the new scheme has more than doubled, as apartments costing €140,000 may now be covered.

From a corporate perspective, one of the developments to follow will be the impact that the current environment will have on the secondary loan market since lenders may review their portfolio to consider next steps. At the same time, companies feeling anxious about the behaviour of their financing partners during more challenging economic circumstances might also become more interested in refinancing options.

It will also be interesting to look at the impact on real estate financing, which has traditionally sparked growth on Romanian lending markets, particularly in respect of the development of office space.

With businesses having to readjust to a work-from-home climate, we see an increase in interest from real estate developers seeking to convert office spaces into residential spaces, which is also likely to require finance partners to support the necessary investments. Furthermore, the market for logistic buildings continues to develop and to attract financing.

Fast-forward: fintech and digitalisation in Romania

European deals and funding activity in the fintech sector have significantly increased in the past two years, with Romania hosting a dynamic range of start-ups. Bucharest, Romania's capital, is commonly quoted as being in the top 10 cities in Europe for carrying out IT business. In this context, we have seen Romanian start-ups seeking to converge into professional associations such as the Romanian Fintech Association (RoFin.Tech) whose stated goal is to promote a 'regulatory sandbox', ie a light regulatory framework to allow testing and validation of new technologies.

It will be critical to see how banks and the emerging fintech sector will both work together and compete in the coming months and years.

On the one hand, the EU Directive 2015/2366 on payment services in the internal market (PSD2) already implements an 'open banking' approach,

which aims to increase competition between banks and fintech providers. However, Romanian banks have recently invested in digital solutions in order to make them more competitive and attractive to customers. From this perspective, strategic co-operation with some fintech providers having the necessary know-how is likely to be very effective.

It will also be interesting to follow these developments against the backdrop of the new structural funding programmes envisaged for 2021–2027, which will have a dedicated chapter on intelligent growth and digitalisation.

The emergence of Romanian fintechs may get a significant boost once talks for the new EU rules to promote European crowdfunding platforms are finalised – the current draft regulation, if adopted, will be directly applicable in Romania.

However, while we have seen an increase in the demand for legal services in this area, Romania does not have dedicated legislation for fintech. Typically, more general legislation needs to be assessed to determine how it applies to companies using fintech, and the big question is whether or not a company using technology-enabled innovation in financial services, depending on its business model, falls under the scope of regulated entities supervised by the BNR or the Authority for Financial Supervision (ASF).

In this context, the EU FinTech Lab, an EU Commission initiative to build capacity and knowledge among national regulators, might eventually lead to better awareness of the regulatory challenges involved in the fintech sector and to an adequate response by Romanian regulatory authorities that protects consumers and investors, while also leaving room for start-ups to grow.

All these developments illustrate that the uncertainty permeating the outlook on the economy during these times also impacts the financial sector. However, we see that Romanian trends can converge to create reasons for optimism in a country that, overall, continues to encourage opportunities for growth.



Serbia

Opportunities in Serbia in the
aftermath of COVID-19

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BDK ADVOKATI

Introduction

In the months prior to the outbreak of COVID-19 in Serbia, the government worked on an ambitious plan for public investments, bringing an end to the years of tightening the fiscal belt. Fast-forward to mid-year, and Serbia is raising debt in response to the COVID-19 crisis in order to keep the economy in liquidity. With capital improvements still sorely needed, the government and local public entities will have to use and further develop alternative means of financing to address unexpected budget shortfalls.

As a continuation of a trend that has already been underway and taking advantage of their (in most cases) off-balance sheet treatment, public-private partnerships (PPPs) could be a solution.

PPP legislation

PPPs are not a new concept in Serbia: the legislation enabling PPPs (*Zakon o javno-privatnom partnerstvu i koncesijama*) was adopted in 2011 and amended twice in 2016. Its main provisions are briefly discussed below.

PPP models

The law provides a framework for public and private sector partners creating contractual and institutional PPPs, the difference being that the latter model requires the public partner to take an equity stake in the project company. Such public sector equity investments are exceptionally rare. Any such investment would have to be made by the public partner itself since the law does not designate any specific public sector entity to make and manage such investments. Further, the law regulates PPPs that involve the granting of concession, ie transfer of the right to commercially use natural resources and public infrastructure in exchange for a fee. The law specifically allows for concessions in the fields of mining, energy, transport, health, tourism, utilities and other sectors.

PPPs can involve new ('greenfield') or existing ('brownfield') facilities, which the private partner undertakes to renovate, maintain and expand.

PPP proposals

The law allows solicited and unsolicited proposals for PPP projects. Both types of proposal trigger the same evaluation procedures. There is no specific guidance in the legislation on how to prepare an unsolicited proposal.

PPP funding

The law provides that the private partner may finance the PPP through a combination of equity and debt, including, without limitation, financing procured by international financial institutions, banks and 'third parties' (Senior Lenders). The private partner may grant security to the Senior Lenders over its rights and other assets related to the project, subject to prior approval by the public partner. The law explicitly allows the public partner to enter into a direct agreement with the Senior Lenders to deal with the lenders' step-in, cure and substitution rights and to otherwise regulate the relationship between these parties.

Success stories

While in the early years the PPP legislation did not generate much activity, the number of deals in the PPP pipeline has recently increased.

According to the Ministry of Commerce, at the end of 2019 there were 134 approved projects across several cities and municipalities.

The biggest projects are the Belgrade Nikola Tesla Airport concession and the Belgrade Waste-to-Energy project.

In December 2018, financial close was reached on a nearly €1bn-worth concession of the Belgrade Nikola Tesla Airport. Vinci Airports Serbia d.o.o., a wholly owned subsidiary of Vinci Airports SAS, will manage the airport for a period of 25 years and will invest in the airport's infrastructure and expand the pool of airlines landing at Belgrade Airport. Vinci Airports Serbia d.o.o. was required to pay a €501m upfront concession fee and will be paying recurrent concession fees. The financing in the amount of €420m was provided by multilateral institutions (EBRD, IFC, Proparco and DEG) and commercial banks (UniCredit, Intesa, Erste, Société Générale, Kommunalkredit and CIC).

In May 2020, financial close was reached on a €330m PPP project consisting of a new sanitary landfill, a waste-to-energy plant and a modern facility to process construction and demolition waste. The project is being developed by Beo Čista Energija d.o.o., a special-purpose vehicle formed by Suez, ITOCHU Corporation and Marguerite, which will construct the waste management facility in Vinča landfill and then manage it for a period of 25 years. The project was awarded a power purchase agreement with a 12-year offtake term for power and a 25-year heat offtake agreement. The financing consisted of €128.25m in loans arranged by the EBRD, €128.25m in loans arranged by the IFC and a €35m loan provided by the OeEB. Commercial banks Erste and UniCredit are participating under the EBRD and IFC A/B loan structures and a portion of the loans was funded from the Green Energy Special Fund and the Canada-IFC Blended Climate Finance Program.

Way forward

In order to attract further interest from global investors, Serbia will need to adopt more flexible, creative and tailored PPP approaches. Some of these will require changes to the PPP legislation, whereas for others it will be sufficient that the government, other public partners and the PPP Commission further develop and adjust their policies. For example, a number of contracting authorities submitted requests for proposals for projects in a short span of time that were substantially similar (eg construction of public parking lots, energy services or waste treatment services). The PPP Commission should foster and navigate the bundling of these small-scale PPP projects into one contract creating a sizeable investment opportunity, while at the same time cutting the length of the procurement process and the transaction costs. Conversely, certain projects may have to be split and allocated between several private partners, each delivering different aspects of a project.

The public sector may also explore options of converting ongoing traditionally financed projects to PPPs, thereby transferring the debt responsibility, risks and benefits associated with the project.

The private partner could take over the operation and maintenance of, and collect revenue from, the project asset (eg highway tolls). In return, the private partner may assume responsibility for debt incurred by the public sector entity in the earlier phase of the project, as well as to complete any remaining phases of the project. To the extent there are available public sector funds for this purpose, the government may also want to consider taking a more active role in the financing of PPPs, whether as a lender or a minority equity co-investor. Finally, in order to increase the number of potential projects in the PPP pipeline, the government should promote unsolicited proposals for PPPs by adopting a detailed procedure and guidance for interested investors.

Potential pitfalls

The shortcomings of the Serbian general legislative framework continue to adversely affect the bankability of the project finance transactions, including PPPs. The outdated, overly protective and bureaucratic rules on capital controls create uncertainties with respect to the substitution of the private partner under the project agreements, which is an important feature of the direct agreements with project parties. Arranging an adequate insurance package is a complex task because Serbian regulations generally require insurance to be obtained from a local insurer. Until Serbia joins the World Trade Organization, the restriction will apply *mutatis mutandis* to the reinsurance business. In practice, this is solved by local reinsurers effectively acting as a conduit for transferring the risks abroad. The project company usually takes insurance from a local insurance undertaking, which reinsures the risks with a local reinsurance undertaking, which then enters into a retrocession arrangement with a pool of foreign reinsurers. While the end result may provide satisfactory insurance coverage, the involvement of multiple insurers complicates an already complex relationship matrix. Finally, the creation and enforcement of certain security interests the lenders traditionally rely on in the PPP context (most notably, pledge over bank accounts) is still insufficiently developed and fraught with operational difficulties.

Conclusion

Faced with budget pressures related to COVID-19, the government of Serbia and local public entities will likely need to resort to alternative solutions for financing and delivering large infrastructure projects.

PPPs are the most likely contenders given the recent successes with this model and the increased activity from the public and private sectors.

However, in order to improve the chances of closing new PPP projects, the Serbian government will need to further improve the existing legislation and policies.



Slovakia

Positive signs within the banking sector in Slovakia post-COVID-19

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Introduction

Despite the negative impacts the COVID-19 pandemic has had on our lives and businesses, we also see positive signs within the banking sector in Slovakia as a result of the enforced social distancing during the pandemic.

2020 first half-year results

The Slovak Bank Association reported that the profits of Slovak banks for the first half of 2020 had plummeted by 64 per cent to €125m. The most significant negative impact was the creation of loss provisions (more than tripled) and reserves in preparation for an increase in defaulted loans in the near future (currently at the level of 2.9 per cent). Due to COVID-related measures, including deferral of loan instalments for up to nine months, the banks do not see imminent non-performance of loans but have started to prepare for 2021. The second most negative impact on profit levels was a bank levy (about €150m), which was in fact abolished by the end of the second quarter 2020 (see further below). That said, loans to both consumers and firms were up year over year by 7 per cent and 3.8 per cent, respectively (during the four months – March through June 2020 – the volume of new loans was €4.3bn compared to €3.2bn for the same period last year).

Abolishment of bank levy

The bank levy was introduced in 2012 in Slovakia as the 12th country in the EU to do so, with the Slovak banks paying the highest amount of the bank levy (0.4 per cent of the value of the banks' liabilities, reduced by the amount of their equity) in proportion to the amount of assets of all EU member countries. It was originally considered to be a temporary measure to protect the banking sector from crises until the European Single Resolution Fund was established in 2015. Instead of abolishment in 2015, the levy was further prolonged till 2020 with a lower rate of 0.2 per cent. At the end of 2019, despite the ECB's warnings, the previous Slovak government not only approved the continuation of the bank levy but announced it would be doubled in 2020 to 0.4 per cent.

The new Slovak government (appointed just at the outset of the crisis), however, took a different stance, prompted mainly by the coronavirus crisis, and in June 2020 reached an agreement with the banks and signed a memorandum of understanding.

In exchange for the abolishment of the bank levy, the banks promised to move the funds originally planned for the levy payment (approximately €150m per year) to increase their own funds, to limit (but not completely restrict) the distribution of dividends for the years 2019–2022 and, in order to support the creation of GDP, to provide financing for state projects in the amount of €0.5bn and financing to individuals and firms in the amount of €1bn per year.

Digitalisation progress

According to the *Digital Economy and Society Index* 2020 report prepared by the European Commission, Slovakia ranked 22nd out of the 28 EU member states. Despite Slovakia lagging behind in its digitalisation progress overall, this does not apply to the Slovak banking sector. Pursuant to the *CE Banking Outlook* report (issued in October 2016), the digital maturity of Slovak banks is one of the highest among Central European countries, both from the perspective of the overall position of the five biggest banks (in second place after Poland), as well as at the level of particular banking institutions – the most digitalised bank in Central Europe is the Slovak bank Tatra banka (a member of the RBI Group). In 2019, Tatra banka was still recognised as the 'Most Innovative Digital Bank in Central and Eastern Europe' (by *EMEA Finance* magazine) and the 'Best Consumer Digital Bank' in Slovakia for 2019 (by *Global Finance* magazine). To illustrate, Tatra banka's top innovations for the past 10 years include a contactless Visa payment card (2010), digital signatures (2011), mobile payments (2012), voice biometrics (2013), ATM withdrawals with a mobile phone (2014), online banking using a smart watch (2015), a second generation of payments with a mobile phone (2016), an application for the Microsoft HoloLens headset (2017), face biometrics (2018) and the chatbot Adam (2019). In comparison to a wider European

area, the Slovak banks may still be considered followers rather than creators of digitalisation trends. Yet, a few years back, development in the Slovak banking sector was compared to that in Austria, Belgium and Denmark.

The COVID-19 pandemic tested the preparedness for digitalisation and put great pressure on digitalisation and online solutions in the entire financial sector.

Most banks had dedicated a great deal of effort in past years to the development and testing of online solutions and had motivated clients to use electronic banking. The pandemic accelerated these solutions and forced clients into an online space, which aided the financial sector in its prior efforts. To mention a few:

- In order to discourage clients from personal visits to branches, the banks increased fees for certain operations that can be carried out online or via ATM. Some banks also expect to employ fewer people in service positions (branches), and even to close less effective branches, and in turn increase positions in IT departments to ensure a proper level of digitalisation and use of distance financial services.
- To limit the spread of the coronavirus by minimising contact with payment terminals, the government adopted a measure allowing an increase in the limit for contactless payments from €20 to €50. Under normal circumstances, such a change would take up to six months, mostly due to a long approval process by card associations.
- Card payments were naturally up during the pandemic; moreover, in the first half 2020 purchases through Google Pay and Apple Pay reached €305m, an increase by 16 per cent more than in the entire year of 2019, and in the second quarter of 2020 alone by 28 per cent more than the fourth quarter of 2019. All Slovak banks enabled payments by mobile with the last one (ČSOB) launching Google Pay in July 2020.

- The announcement of a payment request (via hyperlink) service called ‘Payme’ to be operated by the Slovak Banking Association and launched in 2020 or the beginning of 2021. The new payment request method will achieve its full potential only after launching instant payments (processed in real time), which is currently planned for 2022.

There is an expectation that digitalisation trends will continue, and emphasis should also be placed on the sustainability of digitalisation solutions even after the coronavirus crisis recedes. These efforts will ultimately lead to green banking and to minimising the impact on the environment. The other side of the same coin is that the increased costs of digitalisation may translate into fees payable by clients.

Regulator’s initiatives

Historically, financial regulation coupled with consumer protection was fairly rigid in Slovakia and, with the absence of clear and specific legal rules and regulatory guidelines, financial institutions may have been hesitant to introduce new solutions.

To facilitate a dialogue between the regulator (the National Bank of Slovakia) and the financial sector, in April 2019 the regulator established an innovation hub as a contact place for innovative start-ups and regulated entities. It provided a base for one-off consultations with the regulator concerning mainly the interpretation and clarification of the application of regulatory rules and legislation to envisaged business models and services in order to contribute to a safe and healthy environment in the financial sector.

During the coronavirus crisis, the regulator published a newly contemplated concept of a ‘regulatory sandbox’ for financial innovations.

Similar regulatory sandboxes in the EU are in place in the Netherlands, Denmark, Lithuania and Hungary, though each is functioning slightly differently. The proposed sandbox should, in contrast with the innovation hub, provide long-term assistance and consultation. Start-ups and regulated entities would have a controlled environment in which to test their new business models and services against the regulatory background, and the consultation process would be mutual and enhanced, not limited to one-off consultations, to ensure proper consumer protection and the stability of the Slovak financial market. The regulator initiated public consultation on the 'regulatory sandbox' in June 2020 and, provided there is sufficient interest and a good response from the public, the sandbox could be launched in 2021.

Temporary protection against creditors (moratorium)

One of the measures adopted in connection with the negative impact of COVID-19 was the temporary protection of businesses from creditors outside bankruptcy proceedings and without interference from an insolvency administrator. In the summer of 2020, the Slovak Ministry of Justice prepared a new draft law to effectively deal with crisis situations that would offer a similar insolvency moratorium to businesses even after the end of the coronavirus pandemic and would become a permanent restructuring tool. The proposal aims not only to protect businesses in financial distress (which is different from the corporate law concept of a 'company in crisis') but also to strengthen the position of banks involved in the process.

The Slovak Banking Association worked closely with the legislators. Thus, the draft law includes approval by existing creditors as a prerequisite for granting a moratorium by the court (banks thus perform a sort of gatekeeper function), and the lenders (existing secured lenders have priority) have an option to provide further loan financing with super priority of such financing claims over older debts. In addition to the creditors' approval, a pre-condition for granting such protection by the court would be the submission of an analysis (an independent business review) drawn up by a restructuring adviser/auditor confirming that the operation of the business is sustainable (the analysis should describe the existing situation, risks, a prediction of profitability and a calculation of needs for operation financing).

The moratorium, if granted, would be afforded for two months (with an option of prolongation for an additional four months) and would allow distressed businesses to continue operating without the intervention of the bankruptcy administrator and, hopefully, achieve better creditor satisfaction and more benefits to the businesses and their stakeholders, including the protection of know-how and employment (which is similar in concept to a 'debtor in possession').

The law, if approved by parliament, is scheduled to enter into force on 1 January 2021.



Slovenia

Impact of COVID-19 state intervention measures:
today and tomorrow

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ŠELIH & PARTNERJI

Introduction

The outbreak of the COVID-19 pandemic came as an unprecedented event and governments around the world scrambled to introduce emergency public health measures and mitigating financial interventions to help their economies. While today's economic downturn has no financial origins, the pandemic induced shock to supply and demand and this is undoubtedly affecting the bank lending environments around the globe and in Slovenia.

The economic recovery from the COVID-19 shock will to a great extent depend on the banks' resilience stimulated by the national support measures introduced in response to the pandemic.

This article will focus on certain state measures adopted during the pandemic in Slovenia with the aim of ensuring the liquidity of Slovenian companies and their effect on the recovery of the Slovenian economy and bank lending market in Slovenia to date.

COVID-19 state intervention measures affecting the bank lending market in Slovenia

With its Emergency Deferral of Borrowers' Liability Act (*Zakon o interventnem ukrepu odloga plačila obveznosti kreditojemalcev*), Slovenia adopted mandatory bank loan moratorium rules in March 2020 with the aim of helping the economy bridge its COVID-19-related liquidity issues.

Slovenian banks and Slovenian branches of EU member state banks are obliged to grant to a corporate or retail borrower, at its request, a 12-month suspension of all payment obligations and a corresponding prolongation of repayment time frames (including a shift of the final maturity date). This applies to all payment obligations under loan agreements if either the relevant payment has become due after 12 March 2020 (the date the COVID-19 pandemic was officially declared in Slovenia) or the relevant agreement has been concluded by the end of November 2020. During any such moratorium, related security arrangements are also prolonged, and interest continues to be calculated at the rate agreed when concluding the loan agreement.

The banks' obligation to grant any such moratorium is subject to further conditions, such as the borrower's reasoning as to how, as a result of the COVID-19 crisis, continued payment of its loan obligations could cause solvency problems. The borrower must also provide a description of its business situation (including a plan for re-establishing liquidity).

Further, a moratorium comes with commitments for corporate borrowers, such as reporting obligations and prohibitions on paying profits, success rewards to management and employees or other financial liabilities to parent companies, affiliated companies or owners. All this applies for the period from the borrower's submission of the moratorium application until the termination of the bank's right to exercise the right of surety (see below).

State surety for obligations affected by a moratorium

Slovenia also introduced a €200m state surety scheme. In a nutshell, the Republic of Slovenia acts as surety to Slovenian banks for the performance of borrowers' obligations affected by any such moratorium if the borrowers face payment difficulties due to the consequences of the COVID-19 pandemic in Slovenia (with certain exceptions and subject to further conditions).

The surety covers up to 25 per cent of deferred instalments of the loan obligations falling due within the agreed moratorium period of up to 12 months, or 50 per cent in the case of borrowers (i) whose activity has been temporarily barred under COVID-19-related measures or (ii) that are individuals.

€2bn state guarantee scheme for certain bank loans

As a separate measure, a state loan guarantee scheme was introduced to ensure additional liquidity to Slovenian companies facing liquidity problems due to COVID-19 and to boost banks' crediting activities. It applies to bank loans of up to five years that conclude between 12 March 2020 and 31 December 2020 and purport to finance the borrower's core business. Further conditions must be fulfilled, and commitments must be entered into (similar to those described above for moratoria).

The state's guarantee covers 70 per cent (for large enterprises) or 80 per cent (for SMEs) of the loan principal with the guarantee amounting to up to 10 per cent of the borrower's sales revenue and labour costs (in each case in 2019).

For borrowers, the advantage of a state guarantee comes along with potentially lower interest rates, which may not exceed those prescribed by statutory law and which depend on the borrower's S&P credit rating.

The (short) life of COVID-19 state intervention measures and their effects

Recent available data shows that corporate borrowers requested moratoria in respect of only approximately 5.6 per cent of the total number of corporate loans. Slovenian banks reportedly received 1,200 applications for new liquidity loans, while by mid-July 2020 only three loan transactions backed by the state guarantee were entered into by banks in Slovenia.

Such low volumes of deferred liabilities and state guarantee-backed loans can to a certain extent be attributed to the restrictive conditions of the measures, such as the maximum interest rate applicable to state guarantee-backed loans and the prohibition on dividend payments during the term of the loan, which borrowers are reluctant to accept.

The Slovenian banks' pre-tax profit in the first half of 2020 (€132m) decreased by two-thirds in comparison to the first half of 2019. This shows that their profitability is falling rapidly. Combined with rising interest expenses, this indicates that banks are likely to be hesitant to take additional pressure on interest rates and thereby limit their interest income. On the other hand, the banks' impairments are already increasing substantially, and state guarantees should ensure relatively good (also CRR eligible) collateral coverage. Therefore, state guarantee-backed loans may well become more attractive for Slovenian banks and borrowers in an economy continuing to struggle.

Overall, the adopted fiscal and monetary support measures played an important role in maintaining favourable credit standards for loans to corporate borrowers in Slovenia.

Looking from the point of the past financial crisis, it appears that access to finance will be crucial to the recovery of the Slovenian economy in the aftermath of COVID-19.

Due to the small size and export-orientation of the Slovenian economy, the recovery of Slovenian companies will be focused on finding alternative ways to enter new markets and to optimise business processes and supply chains. The logistic challenges brought to light by the COVID-19 crisis appear to be pushing Slovenian companies to focus on business operations with regional business partners (on both the supply and sale sides) and on the digital transformation of their business. This confirms that the COVID-19 crisis is not just a challenge, but is also providing new opportunities for Slovenian businesses and the banks, as they can together help address the economic constraints created by the COVID-19 crisis.

In the short run, there are opportunities for Slovenian companies to introduce new business models in response to the changing preferences and needs of consumers, as well as to prepare for potential further downturns in case COVID-19 is not tamed in the coming months. Today, this primarily means investments by Slovenian businesses into e-commerce sales channels and innovations with respect to home delivery, remote working, online education and tele-medicine.

Such a reinvention of business models and investments will also require courage from the banks to support Slovenian businesses' growing demand for working capital and capex financing and their overall financial needs in these times of uncertainty.

The state support measures that have been introduced could, despite the initial challenges, therefore prove to be an opportunity for Slovenian banks to ignite their post-pandemic lending activities as well as an opportunity for Slovenian businesses to obtain favourable financing to boost their business transformation. To the extent Slovenian banks do not seize such opportunities, the increased demand for liquidity may also be an opportunity for foreign banks looking at the Slovenian market. Outside the context of large restructurings that will also inevitably need to take place in Slovenia, Slovenian companies are expected to look for general-purpose loans to boost their liquidity in advance, ie even if not needed immediately.

With great risk often comes great reward. Banks and companies that invest courageously in pivoting their businesses towards the new post-COVID-19 reality will emerge from the current situation stronger and be the driving force for growth and innovation in the post-pandemic time.



Turkey

Recent major developments

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BEZEN & PARTNERS

Introduction

This article is intended to provide an overview of the major legal reforms that have taken place in Turkey in the course of 2020 in finance and the capital markets. With the global outbreak of the COVID-19 pandemic, reforms and measures have been largely aimed at alleviating the adverse impact of the pandemic and providing liquidity by way of introducing new investment opportunities and providing incentives to market players (including banks, public companies and financial institutions).

Promotion of the issuance of secured bonds in view of the COVID-19 pandemic

On 14 May 2020, the Capital Markets Board (CMB) amended its Communiqué on Secured Bonds (No. III-59.1) with a view to promoting the issuance and wider use of secured bonds in line with the 2020 annual plan of the presidency. The amendments foresee the loosening of the issuance limits in relation to secured bonds and a decrease in the associated CMB fees.

The CMB has announced that these measures aim both to lower the cost of covered bond issuances in general and to strengthen the Turkish capital markets in an effort to contain the economic effects of the COVID-19 pandemic.

Another objective behind these amendments seems to be incentivising a more effective use of mortgage finance institutions.

Facilitation of restructuring of public companies under state control

On 30 May 2020, the CMB introduced amendments to its Communiqué on Mergers and Demergers (No. II-23.2) with a view to facilitating the merger and restructuring of publicly traded companies controlled by state entities in line with the New Economic Program of the Ministry of Treasury and Finance. Accordingly, such transactions will be exempt from the following restrictions:

- **capital restriction:** the requirement that the capital of a public company may not be less than the capital of a non-public company where a public company is acquired by a non-public company; and
- **share transfer restriction:** the prohibition on the sale of shares of a non-public company on the stock exchange for a period of six months where a public company is acquired by a non-public company.

The amendments appear to be particularly aimed at facilitating the consolidation and restructuring of companies belonging to the portfolio of the Turkey Wealth Fund, which has started playing a major role in the Turkish market.

Facilitation of electronic agreements in capital markets and finance sectors

Pursuant to the amendments in the Banking Law and the Capital Markets Law that have been introduced by the Omnibus Law No. 7247, banks, capital markets institutions, financial leasing, factoring and other financial institutions will now be entitled to conclude any type of agreement with their customers by means of electronic communication. The amendments require that electronic agreements be executed in a way that allows the verification of the customer's identity.

These amendments are aimed at ensuring compliance with the social distancing needs brought about by the COVID-19 pandemic and keeping pace with the recent technological developments that have transformed the nature of business relationships.

Amendments to the Capital Markets Law

On 25 February 2020, significant amendments were introduced to the Capital Markets Law by the Omnibus Law No. 7222. The most notable ones are as follows:

- **Material transactions and exit rights**

A material transaction needs to be voted on and approved by a qualified majority at the general assembly of a company and dissenting shareholders are granted exit rights to sell their shares to such company. The CMB redefined such transactions, thereby changing the corporate structure and investment strategy of the relevant company for disposing of a material part of its assets.

Accordingly, the scope of material transactions has been narrowed down. On 27 June 2020, the CMB also published its new Communiqué on Material Transactions and Exit Rights (No. II-23.3) replacing its former communiqué on this subject.

The new Communiqué on Material Transactions and Exit Rights excludes certain transactions from triggering exit rights regulated under the former communiqué. For instance, dissolution of publicly held companies, delisting from the stock exchange and changing the field of activity are no longer considered as material transactions. The new Material Transactions Communiqué has also introduced certain materiality criteria to restrict the application of material transactions. Accordingly, the CMB will have the discretion to identify a transaction as material if it deems that such transaction ‘may affect the investment decisions of investors’.

Unlike the former communiqué, the Material Transactions Communiqué limits the shareholders who are entitled to exit rights. Only those shareholders holding shares as of the date of the public disclosure of the material transaction are entitled to exercise exit rights. Accordingly, the Material Transactions Communiqué takes a snapshot of the shareholding status as of the date of the public disclosure.

It will thus now be less cumbersome for public companies to carry out material transactions.

- **Debt instrument holders’ board**

The amendments introduced a new organ called the ‘debt instrument holders’ board’, which will consist of the holders of debt instruments issued by the same issuer. The objective of such organ is to facilitate investors to act jointly under changing conditions. The amendments also allow the establishment of a different debt instrument holders’ board for each debt tranche.

The principles concerning the meeting and decision-taking of such boards must be stipulated in the prospectus or issuance certificate of the relevant debt instrument. Unless a higher quorum is set by the board and/or in the prospectus or the issuance certificate, the decision quorum is the affirmative votes of debt instrument holders owning at least half of the relevant debt instruments’ outstanding nominal value. The decisions adopted by such boards will be binding upon all owners of the relevant debt instruments.

The possibility of restructuring the terms and conditions of debt instruments will now be more straightforward.

Also, if an issuer fails to meet its financial obligations, measures such as freezing of execution proceedings, seizures and obtaining interim injunctions during the restructuring process have become available in order to help facilitate such restructuring processes.

- **Mandatory tender offer**

A mandatory tender offer is a statutory obligation of a person (or persons acting in concert) acquiring management control of a public company to make comparable offers to buy out the remaining shareholders. From the investors' perspective, a mandatory offer provides non-controlling shareholders with a path to liquidity and an exit following a change of control in the management structure of a company.

The amendment regarding mandatory tender offer requirements allows shareholders to benefit from the tender offer only if they already own shares at the time the public disclosure regarding the acquisition of control was made. Therefore, those who acquire shares after the public disclosure will not have the right to sell their shares in the mandatory tender process.

Accordingly, the responsibility of controlling shareholders to buy out non-controlling shareholders is now more limited.

- **Security manager**

The new amendments introduced the concept of a 'security manager'.

The role of keeping/maintaining securities (which is usually carried out by 'trustees' in the global markets) will be carried out by investment institutions that are authorised by the CMB as 'security managers' (such as intermediaries, banks, etc). New regulations allow investors to swiftly collect their receivables. Moreover, the powers granted to security managers, the use of security management agreements and limitations on the use of secured assets pave the way for a more robust security system. The CMB has the authority to determine those types of capital market instruments to which the new regulations will be applicable. The CMB is yet to issue a decision in this respect.

- **Introduction of a project finance fund as an alternative financing method**

One of the critical changes brought about by the amendments is a new type of fund called a 'project finance fund', which is intended to provide financing for long-term and high-volume projects.

It will now be possible to fund technology, infrastructure, energy and industrial projects that require high-volume investments through project finance bonds.

This legal reform also clarified that project finance funds can be treated as legal entities before public registries despite the fact they do not possess an independent legal personality and their assets are controlled by managers on the basis of a fiduciary relationship.

Project finance funds will be able to issue project-backed securities based on their assets.

The issuance of project-backed securities will enable project developers to tap into the capital markets as an alternative to traditional forms of financing such as obtaining a loan.

The details of project-backed securities are expected to be regulated by the CMB through secondary legislation.

Assets of project finance funds are subject to similar protections that are granted to other types of fund by law. Accordingly, until the project-backed securities are redeemed, the rights and assets of the fund may not be disposed, pledged or collateralised.

- **Crowdfunding**

The CMB will now have the authority to regulate crowdfunding activities based on either the lending or partnership models. This amendment also clarified that crowdfunding may be debt based.

Amendments to the Communiqué on Shares

On 24 July 2020, the CMB introduced amendments to its Communiqué on Shares (No. VII-128.1), which requires shareholders to submit an information form in relation to share sales if the following conditions are met:

- share sales in respect of a public company whose shares are traded on the stock exchange having reached at least 10 per cent of the entire share capital of such public company during a 12-month period; and
- the relevant seller being either (i) a shareholder that holds (solely or jointly) 20 per cent of the shares of such public company or (ii) a shareholder that holds the right to nominate or appoint a member of the board of directors of such public company.

Such information form is also required to be announced and disclosed to the public via the website of the public disclosure platform.

However, state entities, including the Turkey Wealth Fund, its sub-funds and the Privatisation Administration, will be exempt from the requirement to submit an information form and make a disclosure in this respect.

Conclusion

Although 2020 has not offered market players many opportunities due to the outbreak of the global COVID-19 pandemic, legal reforms enacted so far attempt to ensure a swift recovery and to ease the financial burden on market players. First, there have been various amendments to facilitate the issuance of bonds and other debt securities by decreasing regulatory fees and relaxing procedures. Second, public companies will be able to implement material transactions (such as mergers, demergers and acquisitions) in a less costly and cumbersome manner due to the abolishment and reduction of certain regulatory requirements (eg mandatory tender offer and exit right). Lastly, various new concepts (project finance fund, debt instrument holders' board and security manager) have been introduced to pave the way for project finance transactions.



Ukraine

Recent major developments

Yulia Kyrpa (Partner)

AEQUO

New opportunities in the financial market of Ukraine in the aftermath of COVID-19

To mitigate the adverse effects of the COVID-19 outbreak on the Ukrainian economy, several measures were adopted in the Ukrainian financial sector to support Ukrainian banks, local businesses and households.

Such measures created a number of opportunities for Ukrainian banks and businesses.

Ukrainian banks benefited in particular from a relaxation of the requirements as to the minimum amount of capital and became more attractive for strategic investors.

As a result, several M&A transactions in the banking sector of Ukraine are expected to take place by the end of 2020. Some measures were implemented in the financial sector to tackle the challenges of the global pandemic, ie a legislative prohibition on increasing interest rates under loan agreements and a new approach to debt restructuring, which created more certainty and predictability for businesses. It became easier for Ukrainian companies to plan their borrowings and loan repayments. Moreover, for borrowers who found themselves in financial difficulties as a result of COVID-19, debt restructuring options became more accessible. Remote banking technologies, developed and promoted by the National Bank of Ukraine (NBU), boosted various fintech innovations in the financial sector of Ukraine.

Reduced minimum capital requirements for Ukrainian banks

In May 2020, the long-awaited amendments to the Law of Ukraine 'On Banks and Banking' came into force. They allowed the establishment of commercial banks in Ukraine with a registered capital of only UAH 200m (approximately €6.3m) in contrast to UAH 500m (approximately €15.7m), which was the amount required prior to the COVID-19 outbreak.

The above amendments were introduced to tackle economic challenges facing the Ukrainian economy resulting from the global pandemic and to mitigate the negative impact of COVID-19 on the Ukrainian banking sector.

Such relaxed requirements as to the registered capital of newly established banks should expand the interest in the Ukrainian banking sector to a wider pool of potential investors interested in developing fintech services, e-commerce solutions and other specialised types of banking services focused on remote servicing of clients, which became vital during the times of the pandemic.

Moreover, according to the Ukrainian government, the relaxation of requirements as to the minimum amount of capital of Ukrainian banks will be extremely helpful for the 35 small banks in Ukraine, which are no longer required to gradually increase their capital to UAH 500m. As these banks are already affected by the financial crisis, such an increase in most cases would not be possible without a strategic investor and would lead some of these banks to bankruptcy.

Legislative prohibition on increasing interest rates under loan agreements

On 30 March 2020 the Ukrainian parliament passed a law, which, among others, established a temporary prohibition for Ukrainian banks on increasing interest rates under loan agreements with Ukrainian borrowers. The prohibition will remain effective for the duration of the restrictive measures introduced by the Ukrainian government in response to COVID-19, which are expected to remain effective until the end of the pandemic.

New approach to loan restructuring

On 26 March 2020, the NBU adopted Regulation No 39, which introduced a new approach to loan restructuring and modified requirements as to credit risk assessment by Ukrainian banks.

The following key issues were introduced by Regulation No 39:

- Ukrainian borrowers affected by COVID-19 are eligible for certain types of regulatory relief when restructuring their loans, provided, however, that such borrowers were not in default as of 1 March 2020. In particular, borrowers who managed to restructure their loans by September 2020 are not considered as defaulted borrowers.
- Not only borrowers but also banks may initiate restructuring procedures if they see that their borrowers affected by the COVID-19 pandemic face financial difficulties.
- The NBU proposed the implementation of the following approach in the course of loan restructurings to commercial banks:
 - i) to offer a grace period for the repayment of principal and interest to the borrowers affected by COVID-19;
 - ii) to propose capitalisation of interest payments in the event that borrowers are not able to pay the interest according to the schedule stipulated by the respective loan agreement;
 - iii) when implementing debt restructurings, banks should assume that the financial rehabilitation of borrowers will take place no earlier than in the third quarter of 2020; and
 - iv) banks should not offer borrowers terms and conditions under restructured loan agreements that are less beneficial than those in the original loan agreements and should not increase the interest rates of the loans that are subject to the restructuring.

Payment transactions

Banks and the public have been encouraged to rely on remote banking as much as possible, to avoid visiting crowded places and to mitigate the risk for both customers and bank employees. Modern financial technologies allow for ordering and paying for products and services online and even paying utility bills or executing foreign exchange transactions without leaving home.

To make cashless payments even less expensive and more accessible, the NBU has cancelled tariffs on the System of Electronic Payments for the duration of the quarantine period, which is expected to remain effective at least until the end of 2020.

Moreover, following the above recommendations of the NBU, the most advanced banks have implemented legal innovations designed for the remote identification and onboarding of customers (based on the new NBU Regulation on the Remote BankID System) as well as for business processes and procedures, allowing them to offer a full cycle of banking services without the need to visit the bank's branches or outlets.

Conclusion

Although the pandemic created several unprecedented challenges for banks, businesses and individuals worldwide, the Ukrainian parliament, the government and the NBU acted quite effectively to mitigate the consequences of COVID-19 and their efforts were well-co-ordinated. Hopefully, the measures implemented in these challenging times will allow Ukrainian businesses to recover as quickly as possible. Moreover, some of the opportunities in the financial market resulting from COVID-19 are likely to stay in place even after the pandemic is over, such as the boost to fintech innovations in Ukraine, or the borrower-orientated approach as to debt restructuring.

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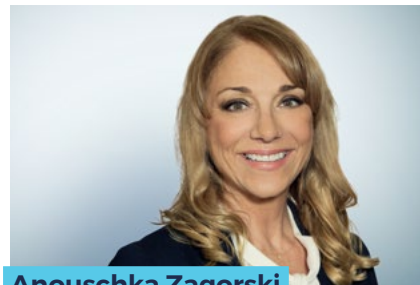


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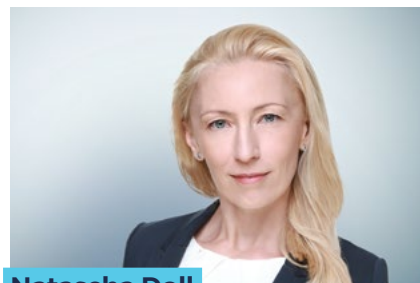


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