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to the point
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Editorial | CEE

- At the beginning of 2021, it seems safe to say that while the flood is not yet over, doves have started flying back carrying freshly plucked leaves from nearby shores. Businesses all around the world are busy planning for a post-pandemic world. Many will have to be restructured and freshly financed, some will go bankrupt, but new opportunities will also arise. We may gain immunity to the virus, but no one will be immune to the changes. It is reasonable to expect that the future will bring interesting novelties in law and finance. In this edition of TTP Finance, I have asked my colleagues from the CEE region to share their views on some legal developments that will be relevant in the fallout of the COVID-19 pandemic.

  The implementation of the **EU Restructuring Directive** (Directive (EU) 2019/1023) is underway in Slovenia, Croatia and Hungary and standstill agreements are back to stay in the Romanian restructurings practice. Many expect a wave of restructurings and insolvencies in 2021 (check out our designated Restructuring Directive info corner). The EU has amended the **2016 Benchmark Regulation** to bolster legal certainty in relation to "tough legacy contracts" that lack "suitable" fall-back provisions. **Convertible bonds** in Austria might offer future upside potential for investors in case the issuer's share price was hit by a COVID-caused sell-off in 2020. New banking laws transposing EU legislation on **bank resolution** in Montenegro have brought new challenges and Serbia has ambitiously introduced **legislation on investment funds** hoping to broaden the sources of funding to local businesses.

  I hope that these brief reports will be of interest to you and will encourage you to **get in touch with us** for more details on any of these topics.

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Lending | EU

- **The EU's amendments (Regulation (EU) 2021/168) to the 2016 Benchmark Regulation (BMR) (Regulation (EU) 2016/1011)** came into effect on 13 February 2021. To reduce risks from "tough legacy contracts", the European Commission (and in certain instances also national authorities) can designate statutory fall-back benchmarks and spread adjustments and conforming changes to contracts. For pre-BMR contracts that lack "suitable" fall-back provisions (as defined in the Amended BMR), the amendments are designed to establish legal certainty, and thus to safeguard financial markets stability. The Amended BMR has extraterritorial effect. This is because the powers granted to the Commission not only apply to contracts / financial instruments subject to the law of an EU Member State, but also to contracts between EU parties subject to the law of a third country where that law does not provide for the orderly wind-down of a relevant benchmark. Moreover, the amendments extend the transitional period for third-country benchmarks, exempt certain third-country spot FX benchmarks and amend the EMIR.

  Martin Ebner

Capital Markets | Austria

- **Convertible bonds** may be interesting instruments in the current capital market environment and in the aftermath of the COVID-19 pandemic, both for issuers and for investors. Due to their equity-link component, convertible bonds offer future upside potential for investors in case the issuer's share price was hit by a COVID-caused sell-off in 2020 and has not yet reached pre-crisis levels. On the other hand, issuers profit from the attractiveness of the finance instrument and a certain flexibility: if converted, claims for delivery of issuer shares can be settled by means of a capital increase (from contingent capital or, sometimes, also from authorised capital) or by delivery of treasury shares. Also, cash alternative options are seen in the terms and conditions of convertible bonds.

  Christoph Moser

Restructuring | Romania

- **Standstill agreements are back to stay** in Romanian restructurings practice. They can be useful tools, particularly in multi-lender complex situations where more time is needed to share information, to cement trust and to consider the feasibility of debt restructuring scenarios. Conversely, standstill agreements can also increase the legal and operational risk profiles of an already complicated situation, be it because of strict limitations imposed under Romanian insolvency regulations on contractual mechanisms or other regulatory limitations (including antitrust concerns). Nevertheless, with the right combination of good faith transparency and cooperation, legal skills and practical experience in debt restructurings, an "acceptable" standstill agreement can be achieved quickly and may constitute a strong platform for a successful debt restructuring.

  Matei Florea

Restructuring | Hungary

- **Hungary will soon adopt the Restructuring Directive,** providing debtors with a pre-insolvency tool to rescue their viable but struggling enterprises. Until now, in Hungary these enterprises had only one legal tool – insolvency proceedings – to settle their debts with creditors, but insolvency proceedings are unpopular due to their inflexibility and riskiness compared to restructuring proceedings. We therefore expect that restructuring proceedings will strengthen enterprises (also recovering from the ongoing coronavirus pandemic) and the position of their creditors in the Hungarian market, which will have a positive impact on the economy in the long run.

  Gergely Szalóki - Virág Palguta

Restructuring | Slovenia

- **Restructuring Directive implementation** is underway in Slovenia, with the draft legislation comprising add-ons to the existing preventive restructuring process (enacted in Slovenia as early as 2013). Most notably, corporate debtors facing the likelihood of insolvency will obtain recourse to a court-sponsored restructuring toolbox with features currently only available against a formal declaration of insolvency. Other notable features of the legislative proposal include the (long-awaited) cross-class cram-down, ipso facto clause restrictions and a revised set of management obligations in the vicinity of insolvency. Practitioners and market players will welcome the fact that – rather than introducing brand new features (increasing uncertainty) – the proposal largely builds on the existing toolbox.

  Vid Kobe

Marketplace | Croatia

- **Amendments to the Insolvency Act announced.** According to the annual plan of legislative activities published by the Government, changes to the Insolvency Act have been announced for March 2021. However, it is more likely that a legislative process will commence in the second half of 2021 at best. The changes should not only involve full transposition of the Restructuring Directive into Croatian law, but potentially also create an adequate close-out netting regime between corporates. So far, close-out netting applied only to agreements involving banks and financial institutions.

  Ozren Kobsa

Marketplace | Montenegro

- **New banking laws transposing EU legislation to Montenegro are not without issues.** The Credit Institutions Act and Credit Institutions Recovery Act were adopted in 2019 with their application (initially planned for 2021) has now been postponed until 2022. But some provisions of the BRRD, which was the basis of the Credit Institutions Act, were not precisely implemented, leading to considerable differences between the Montenegrin and EU framework for resolution of credit institutions. In addition, both laws contain inaccuracies of different kinds, including incorrect references to articles, which required the enactment of two amendments to correct the mistakes. Full harmonisation with the EU acquis will require additional (substantial) amendments and a more diligent approach.

  Petar Vučinić

Corporate Finance | Serbia

- **Serbia enacted legislation on UCITS and AIFs.** Serbia's first Investment Funds Act was passed in 2006, and its first funds set up just before the 2008 financial crisis. After the global turmoil, the Serbian IFs market never really picked up. At the end of 2019, Serbia got its new UCITS and AIF Acts, transposing the 2009/65/EC and 2011/61/EU Directives. Now, however, Serbia's UCITS and AIFs potential is poised to be affected by the global COVID-19 pandemic. As things stand, not a single AIF has been set up since the enactment of the new law. Still, both the SEC and market participants expect an upturn in fundraising activity in 2021 and hope to see the first Serbian AIFs set up soon.

  Jelena Arsić

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For further information, please contact any of the authors named above, your usual contact person at Schoenherr or any member of our banking, finance & capital markets practice group.