



Q3 2019

Welcome

- **Welcome to the inaugural edition of** Schoenherr's quarterly *to the point: finance*-newsletter. We are excited to present a selection of legal developments in finance, corporate finance, debt restructuring and special situations investment in the wider CEE region. In this edition you will read about several topics that impact the business of lenders, borrowers and sponsors active in the CEE region. You will for instance read about the new rules for insolvency pre-packs in Poland; Serbian netting and financial collateral legislation; and how Croatian courts tackle various aspects of CHF-denominated consumer loans, a topic that has kept law-makers, courts and litigators busy in several jurisdictions. A recent decision by the Austrian Supreme Court in the context of cash pooling will be interesting for corporate treasurers and bankers alike. Finally, there are several topical contributions that showcase how regulation and law-making directly impact transactional finance and NPE resolution activities; these contributions relate to new benchmark rates in Romania, Austrian developments in green and sustainable finance and Bulgaria's application of EBA's NPE guidelines. Clearly, the impact of regulation on transactions is a recurring theme: many of you will have noted that the new EU Restructuring Directive 2019/1023 was published recently. Depending on how Member States (including in CEE) will implement the various rules e.g. on cram-down of dissenting creditors this will be a true game-changer in the CEE restructuring landscape.



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Special Situations | Poland

- **Since 2016 the Polish insolvency law allows** for executing pre-packaged sales as an expedited way of selling insolvent debtors' assets. Pre-packs are more and more frequently used by investors for distressed M&A deals. Currently, a draft bill amending pre-pack rules is being processed through parliament. The proposed changes are designed to enhance transparency and deal certainty of pre-pack transactions. They include a mandatory auction mechanism (applicable when two or more bidders compete for the same asset), and a requirement that 10 % of the offered price is paid up-front as a deposit when an investor submits its offer. The changes may be enacted by the end of summer.

[Pawel Halwa](#) / [Daniel Radwanski](#)

Market Place | Serbia

- **As of 1 January, the Financial Collateral Act ("FCA")** regulates title transfer type of collateral arrangements and has protection mechanisms in place for close-out netting in the event of insolvency of certain eligible counterparties in Serbia. Netting is a key risk management device as it enables early termination of mutual derivatives or repo transactions, calculation of value of the terminated transactions, and determination of a single net sum payable by one party to the other. The FCA is expected to facilitate better access to international derivatives and repo markets by Serbian financial sector entities. The International Swaps and Derivatives Association acknowledged these legislative reforms by publishing a netting opinion for Serbia. This opinion was drafted by Schoenherr.

[Petar Kojdic](#)

Finance | Austria

- **For the first time the Supreme Court has decided on** nominal cash pooling and capital maintenance. The decision confirms the standard of care needed of third parties, in this case a bank: they may base their assessment with respect to possible violations of capital maintenance rules on the respective cash pooling agreement only. Internal arrangements of which the third party was not, and ought not to have been aware of cannot be held against it. Notably, the OGH considered a side- or upstream pledge as foreseen in the agreement not to be a red flag for the third party as it could consider the pledge as being justified by operational needs in this context.

[Miriam Simsa](#) / [Wolfgang Hellsberg](#)

Money Rules | Bulgaria

- **As of 30 June 2019, the Bulgarian National Bank (BNB) has** decided to apply the EBA's Guidelines on management of non-performing and forborne exposures. Such application will affect Bulgarian credit institutions with gross NPL ratio of 5 % or more. The affected credit institutions will be required to adopt robust governance arrangements including an organisational structure with clearly defined and transparent levels of accountability, as well as effective procedures for identification, management, monitoring and reporting the risks to which they are exposed. BNB has additionally decided that, as of 31 December 2019, Bulgarian credit institutions will have to apply the templates of EBA for disclosure of information on non-performing and restructured exposures. These regulatory developments are expected to result in a more active NPL market in Bulgaria
[Tsvetan Krumov](#) / [Milena Angelova](#)

Finance | Croatia

- **Based on the most recent court decisions regarding CHF loans**, thousands of individual cases have recently been initiated by customers against Croatian banks for back-payment of overpaid amounts. The relevant court practices determined that (i) clauses on interest rates unilaterally determined by the bank and FX clauses not understandable to consumers (the "**Clauses**") are null and void; (ii) consumers who have converted CHF loans into EUR may still have a legal interest to individually litigate the Clauses being null and void; (iii) collective redress proceedings have stayed the statute of limitations for individual claims; and (iv) unilateral changes of margin as part of the variable interest rate are not justified.
[Ozren Kobsa](#)

Finance | Austria

- **Sustainable finance** is expected to reach another record high commercially this year with sustainable bonds estimated to peak at USD 250 bln, and in addition the EU seems to be picking up the pace on its legislative efforts to promote green debt. Following the presentation of the Commission's action plan and the establishment of the technical expert group ("**TEG**") in early 2018, TEG recently published its technical report on taxonomy, the top priority action targeting a uniform classification/labeling system to determine whether an economic activity or investment is environmentally sustainable for further consultation. What might sound rather boring at first glance, will in fact be quite to the contrary since it will substantially impact the industry of green finance by defining the parameters as to whether or not a borrower or project will qualify for "green labeling" and other potential regulatory measures such as cheaper financing costs (e.g. from reduced capital requirements for green financed projects).
[Laurenz Schwitzer](#) / [Martina Hiebl](#)

Finance | Romania

- **New IRCC index:**
As of 2 May 2019, lenders have needed to use the new IRCC (instead of ROBOR) for variable interest loans to consumers (including for refinancing loans outstanding on 2 May 2019). Customers may request lenders to refinance the existing loans and lenders must respond within sixty days to each request. In all other situations, the use of IRCC may be agreed freely between lender and borrower. To determine IRCC, the National Bank of Romania ("**NBR**") will calculate a daily index for each business day. NBR will calculate IRCC at the end of each quarter as the arithmetic average of the daily indexes from that quarter.
[Matei Florea](#)

For further information, please contact any of the individuals named above, your usual contacts at Schoenherr or any member of our [banking, finance & capital markets practice group](#)