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Legal Briefs – A Quick Round-up of Late-Breaking Finance Law Developments in the United Kingdom

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***UK Insolvency Service consultation paper:* Improving the transparency of, and confidence in, pre-packaged sales in administrations.** On 31 March 2010, the UK Insolvency Service released a new consultation paper entitled *Improving the transparency of, and confidence in, pre-packaged sales in administrations.*

The document invites views on how the transparency of, and confidence in, pre-packaged sales can be improved. A pre-pack is a deal for the sale of an insolvent company's business, or assets, which is put in place before the company goes into formal insolvency, usually administration. The sale is then executed immediately following the appointment of the office-holder, usually an administrator.

In January 2009 the Insolvency Service introduced a Statement of Insolvency Practice (SIP 16) to strengthen information for creditors and to ensure that it was provided promptly. Since then the Insolvency Service has been monitoring how this has been working in practice. A recent Insolvency Service report concluded that creditors are now getting better and more timely information, but this is not happening in all cases and confidence in the system is being damaged. Given that, on average, 29 percent of all administrations involve a pre-pack sale, the current degree of non-compliance with SIP 16 affects a material percentage of UK administrations.

The consultation paper sets out various options for consideration, which would require varying degrees of legislative change:

1. No change. All options will be considered against the alternative of making no regulatory change. Some changes to the Insolvency Rules 1986 that will come into force on 6 April may incentivise insolvency practitioners to provide fuller details of their pre-appointment work when involved with pre-pack sales.

2. Giving statutory force to the disclosure requirements currently in Statement of Insolvency Practice (SIP) 16 (pre-packaged sales in administrations), and providing penalties for non-compliance.

3. Following a pre-pack administration, restricting exit to compulsory liquidation, so as to achieve automatic scrutiny of the directors' and administrators' actions by the Official Receiver.

4. Requiring different insolvency practitioners to undertake pre- and post-administration appointment work.

5. Requiring the approval of the court or creditors, or both, for the approval for all pre-pack business sales to connected parties.

The consultation paper invites responses by 24 June 2010.

18 March 2010

Administration expenses in a pre-pack administration:* Re Johnson Machine and Tool Company Limited and another *[2010] EWHC 582 (Ch). Pre-packs continue to occupy centre-stage, and administrators might be forgiven for feeling somewhat under the spotlight. In addition to the Insolvency Service consultation paper described above, a recent English High Court decision has demonstrated a less-than-supportive judicial attitude towards the treatment of costs and expenses incurred in the run up to a company's administration.

The judgment related to not one but two cases. Both cases involved court-appointed administrators who undertook pre-pack sales to parties connected with the company's directors. In both cases, the judge (Purle J) declined to allow the payment of the administrator's pre-appointment costs as an "expense of the administration." As Andrew J. Knight explains elsewhere in this edition of the Update, in relation to the decision in *Goldacre (Offices) Limited v Nortel Networks UK Limited (in administration)* [2009] EWHC 3389 (Ch), rule 2.67 of the Insolvency Rules 1986 provides that certain liabilities of a company in administration are "expenses of the administration" which must be paid in priority to the company's preferential creditors, creditors with floating charges and unsecured creditors.

The decision in *Re Johnson Machine and Tool Company* contrasts with the earlier High Court decision in *Re Kayley Vending Limited* [2009] EWHC 904 (Ch). In *Kayley Vending,* the High Court exercised its discretion (under para. 13 of Schedule B1 of the Insolvency Act 1986) to make any order that it thinks fit in such a manner as to allow as an "expense of the administration" certain pre-appointment costs and expenses incurred by the eventual administration in connection with negotiating a sale of the company – a pre-pack, in other words. The core difference between *Kayley Vending* and *Re Johnson Machine and Tool* was that in the former case, the sale was to a buyer who had no connection with the company's management, whereas in the latter, the buyer did have such a connection. In light of that connection, Purle J did not "consider it right to add what would appear to many creditors to be insult to the injury already suffered by them by subjecting them to the burden of such costs."

On one level, the decision in *Re Johnson Machine and Tool* only reflects the state of the law as it existed prior to 6 April 2010, when (as Matthew Jenkins outlines later in this Update) the Insolvency Rules 1986 were amended to permit pre-appointment costs to become recoverable as "expenses of the administration" in all cases. Under the Insolvency Rules, as they stood at the time of the decision, pre-appointment costs were not so recoverable and administrators wishing to claim such costs would need to rely on the High Court exercising its discretion as described above. The Court was operating entirely within its powers to refuse to exercise its discretion in favour of the administrators.

On another level, however – and given the changes in the Insolvency Rules that have now come into force – the decision on Purle J *Johnson Machine and Tool* may be indicative of a narrower-than-anticipated interpretation of what costs and expenses can constitute recoverable pre-appointment costs under the amended Insolvency Rules. Insolvency practitioners will be watching with great interest how this strand of case law develops.

UK: Administration Expenses – Administrator's Liability for Rent

The recent English court decision in Goldacre (Offices) Limited v Nortel Networks UK Limited (in administration) *[2009] EWHC 3389 (Ch) may be controversial and raises thorny practical issues, especially in relation to restructurings of retail businesses, writes Andrew J. Knight, co-chair of Squire Sanders' European Finance Practice.*

Nortel occupied premises that it leased from Goldacre. Nortel went into administration, an insolvency procedure under the UK Insolvency Act 1986, pursuant to which administrators were appointed to run the company. A dispute arose between Goldacre and the administrators as to the ranking of the liability to pay rent during the course of the administration as against the company's other debts.

Rule 2.67 of the Insolvency Rules 1986 provides that certain liabilities of a company in administration are "expenses of the administration" which must be paid in priority to the company's preferential creditors, creditors with floating charges and unsecured creditors. Goldacre contended that, since the administrators of the company had used the leasehold premises for the benefit of the administration, rent was payable as an expense of the administration and should therefore be paid in priority to the company's other debts.

The administrators disputed this, arguing that only part of the rent claimed by Goldacre should rank as an administration expense because:

- they occupied only part of the premises; and
- they actually occupied the premises only for a portion of the full quarter for which Goldacre was claiming.

The court ruled in favour of Goldacre. In relation to the argument that the administrators occupied only part of the leased premises, the court followed an earlier House of Lords decision and held that an administrator who took the decision to use leasehold premises must do so in accordance with the terms and conditions set out in the lease. The court therefore had no jurisdiction to interfere with the amount of rent, for example by apportioning it by reference to the proportion of the premises occupied by the administrators. Their right to occupy arose from the lease and the rent due under the terms of the lease had to be paid.

The court took a similar approach in ruling whether rent should be apportioned according to the actual time spent by the administrators in occupation. Since the lease specified that rent was payable quarterly in advance, it followed inevitably that each quarter's rent was payable in full as an administration expense on the due date under the leases. It could not be apportioned

simply because the administrators were in occupation for less time than that.

The *Goldacre* decision is considered by some commentators to be controversial and it certainly appears to have far-reaching implications for the manner in which administrators make use of leased real estate in the future. In particular:

- Administrators and their advisers had previously considered that it was lawful to treat rental payments on real estate as administration expenses only to the extent that it related to the period of time for which the administrators were in actual occupation. This comfortable belief has been overturned. Moreover, administrators must now recognize that even the use of a small part of leased premises will oblige them to pay the full rent under that lease as an administration expense.

- It is possible that the decision may be authority for the proposition that, since administrators who choose to occupy leased premises must do so in accordance with the terms and conditions of the lease, costs other than simply rent – dilapidations, for example – may be treated as administration expenses and therefore given priority over the relevant company's other debts. If so, landlords' claims have now been accorded a priority status that seems to be at odds with the UK's rescue culture and the *pari passu* principle that lies at its foundation.

Goldacre is a decision of a court of first instance. It has not been appealed, and it is unclear whether it would have been reversed on appeal. Pending judicial clarification in future cases, administrators will be forced to consider very carefully whether it makes financial sense to hold on to and occupy leased premises. In the case of insolvent companies that occupy large numbers of leasehold sites – retail chains in particular – this problem will be acute. Administrators may find themselves compelled, often in a situation of considerable time pressure, to weigh up not only *whether* to hold on to any given site but also *when* to accept an appointment. An appointment made just after a rental payment date – typically a quarter day in commercial leases – would appear to avoid the issue, especially if the administrators can conclude their work and vacate the premises before the next following quarter day.

UK: 6 April 2010 – Amended Insolvency Rules

On 6 April 2010 a second wave of major changes to the UK Insolvency Rules 1986 (the Rules) came into force. These new rules (the Amendment Rules) are part of an initiative to modernise the UK's secondary insolvency legislation. Matthew Jenkins of Squire Sanders' London office takes a closer look.

According to the UK Insolvency Service, the changes implemented by the project to modernise the Insolvency Rules will provide estimated annual savings of £48 million in the cost of administering insolvencies. These savings are expected to be passed on to creditors in the form of improved returns. New e-delivery provisions will also provide for a significant reduction in the insolvency carbon footprint.

The changes ushered in by the Amendment Rules principally relate to:

- disclaimers;
- administrators expenses and remuneration;
- creditors voluntary liquidations (CVLs);
- company voluntary arrangements (CVAs);
- member voluntary liquidations (MVLs); and
- electronic communications

This article will focus on the changes that affect disclaimers and administrators expenses and remuneration. Some of the main changes that relate to other points stated above will also be covered.

Disclaiming onerous property

Background. Section 178 of the Insolvency Act 1986 (the Act) deals with onerous property. It provides that onerous property of an insolvent company may be disclaimed by a liquidator. A disclaimer made under section 178 releases the company of any further liabilities with regard to the disclaimed property. Liquidators in the UK regularly use the disclaimer power as a means of avoiding continuing liability under real estate leases in particular. Otherwise, the ongoing accrual of rent would rank as an expense of the liquidation and must therefore be satisfied before the claims of unsecured creditors.

Notice to elect pursuant to the Amendment Rules. An office holder may be required to consider disclaiming property by any person that has an interest in that property if he is served with a notice to elect. Pursuant to the Act, within 28 days of receiving the notice to elect, the office holder must issue a notice of disclaimer otherwise he loses his right to do so.

The Amendment Rules set out various ways in which an office holder may be served. They are as follows:

- if the office holder gives consent, by email or any other electronic means;
- by personal service; and
- by any form of delivery whereby the sender can prove that the notice to elect was received by the office holder.

Disclaiming onerous property pursuant to the Amendment Rules. Pursuant to the Amended Rules an office holder must take the following steps in order to disclaim onerous property:

- a Form 4.53 liquidator's notice of disclaimer has to be completed by the office holder, providing enough information to readily indentify the property that is to be disclaimed;
- he must date and authenticate the notice of disclaimer; and
- as soon as reasonably practicable, he must send a copy of the notice to the registrar of companies (if disclaiming interests in registered land a copy of the notice has to also be sent to the Chief Land Registrar).

Furthermore within seven business days after the date of the disclaimer the liquidator must send or give copies of the notice to:

- anyone that has a claim in the disclaimed property; or
- any person that has any liability in respect of that property, unless the liability is brought to an end by the disclaimer.

Recordkeeping. Pursuant to the Amendment Rules certain records must be kept when an office holder disclaims property. These records relate to the recipients of the notice of disclaimer.

The office holder must include in his records of the insolvency a record of:

- the persons to whom that liquidator has sent or given copies of the notice of disclaimer under the two preceding Rules, showing their names and addresses, and the nature of their respective interests;
- the dates on which the copies of the notice of disclaimer were sent or given to those persons;
- the date on which a copy of the notice of disclaimer was sent to the registrar of companies; and
- (where applicable) the date on which a copy of the notice was sent to the Chief Land Registrar.

Administrators' remuneration and expenses

Can pre-appointment costs now be recovered? The definition of administrators remuneration in the Amendment Rules now allows for certain pre-appointment costs to be included as remuneration.

In order to recover any costs, a two-pronged test must be satisfied:

- the fees and expenses incurred have not been paid at the date the company went into administration; and
- the fees and expenses were incurred with a view to the administration of the company.

Only the administrator or an insolvency practitioner that carries out the work with a view to the administration and does not become the administrator himself can recover pre-administration costs.

All the pre-appointment fees and expenses rank equally and may be recovered even if the retainer was with a third party and not the company itself.

Claiming pre-appointment costs – the administrator. All pre-appointment costs of an administrator must be detailed in a proposal that is then circulated to the company's creditors.

Where there is a creditors committee they must sanction the payment of pre-appointment costs as an expense of the administration. If no committee has been established or they do not reach a conclusion, then, if a statement was made by the administrator that unsecured creditors will not have a distribution made to them because of insufficient funds (the Statement), approval must be sought from:

- where there are sufficient funds to make a disbursement to the preferential creditors:
  - o 50 percent of the preferential creditors, by value; and
  - o every secured creditor of the company;
- where there are insufficient funds to make a disbursement to the preferential creditors, every secured creditor of the company.

If no Statement was made by the administrator approval of the unsecured creditors in general meeting is needed.

If the administrator is unhappy with the amount of pre-appointment costs that he is allowed to pay as an expense or the creditors do not approve the pre-appointment costs, then on application to the court, by the administrator, the court can approve the pre-appointment costs.

Claiming pre-appointment costs – an insolvency practitioner other than the administrator. An insolvency practitioner other than the administrator does not have the power to ask creditors to approve his pre-appointment costs as an expense though he does have the right to request an administrator to do so on his behalf.

If an administrator does not call a creditors meeting to approve his costs as an expense, he can be compelled to do so by the court.

Manner of remuneration. There are now three ways in which an administrator can recover remuneration. These are:

- as a fixed fee;

- on a time cost basis;
- on an asset value basis.

An administrator may use a different basis for remuneration on the different aspects of the administration he undertakes. If this is done, when time recording, an administrator must be very clear on exactly what he is working on.

Fixing the administrator's fees. Both the court and the creditors have the power to fix an administrator's remuneration. The following must be taken into account when doing so:

- the complexity of the work undertaken;
- the level of responsibility the administrator has assumed and his effectiveness in relation to the work undertaken; and
- the value and type of assets the administrator has been dealing with.

If there is a creditors committee it will fix the administrator's remuneration.

If:

- there is not a creditors committee; or
- the creditors committee cannot reach a view to the remuneration of the administrator; or
- the administrator is unhappy with the outcome of the creditors committee;

and the administrator has made a Statement, his remuneration shall be fixed with the approval of:

- where there are sufficient funds to make a disbursement to the preferential creditors:
  - 50 percent of the preferential creditors, by value; and
  - every secured creditor of the company;
- where there are insufficient funds to make a disbursement to the preferential creditors, every secured creditor of the company.

If no Statement was made by the administrator approval of the unsecured creditors in general meeting is needed.

Other changes to the Rules

Company Voluntary Arrangements (CVAs). The Amendment Rules also make changes in relation to CVAs. These include:

- a creditor is now entitled to make a supervisor or nominee state how long he has been working on a CVA; and
- there is now an obligation on the supervisor of the CVA to circulate an annual report highlighting the progress of the CVA and the prospects of its implementation.

Creditors Voluntary Liquidations (CVLs). Changes introduced by the Amendment Rules in relation to CVLs include:

- an obligation on liquidators to send annual progress reports;
- an obligation on the liquidator to give details of the property being distributed in relation to

arrangements under section 110 of the Act; and

- at the final meeting of creditors, a liquidator having the discretion to advertise the notice of his appointment.

Members Voluntary Liquidations (MVLs). In relation to MVLs, the more significant changes include:

- an obligation on liquidators to send annual progress reports; and
- an obligation on the liquidator to give details of the property being distributed in relation to arrangements under section 110 of the Act; and
- at the final meeting of creditors, a liquidator having the discretion to advertise the notice of his appointment.

Electronic communications. The Amendment Rules allow for greater use of electronic communication. For instance:

- creditors will be able to attend meetings remotely;
- so long as the recipient has consented documents will be able to be delivered by email;
- documents will be able to be filed both at Companies House and the court electronically; and
- prescribed forms will no longer have to be used, though filings made will be valid only if all the requisite information is provided. That said the Insolvency Service will continue to publish forms as before.

A particularly radical example of the application of the new e-delivery provisions relates to the out-of-court appointment of an administrator by the holder of a qualifying floating charge. An especially valuable feature of the out-of-court appointment right is that it may be exercised out of court hours, under rule 2.19 of the current 1986 Rules. The Amendment Rules have extended the scope of rule 2.19, so that the notice of appointment in Form 2.7B may be submitted as an attachment to an email to the court, with a hard copy to follow when the court is next open for business.

UK: LMA Secondary Documentation Amendments – January 2010

Changes to the LMA secondary debt trading documents will streamline trading processes, facilitate online reporting and reconciliation, and encourage faster settlement, writes Lauren Priest-Stephens of Squire Sanders' London office.

On 25 January 2010 the Loan Market Association (LMA) issued a revised package of standard form documents for the secondary debt trading market. The document package contains the standard terms and conditions; forms of trade confirmation; forms of the various notices that may need to be delivered in order to complete the trade; transfer, assignment and participation agreements; and forms of confidentiality letters. These documents contain cross-references to the other documents within the package and are intended to be used together.

The revised package has been introduced in order to streamline the process of making and settling trades. It forms part of a larger LMA initiative to encourage trades to be settled as soon as possible and for each facility to have a clearly identifiable number or designation. The amendments are also intended to make the growing use of online reporting and reconciliation more straightforward and easy to use.

The LMA describes its revisions to the secondary debt trading documents as having the following five themes:

- the introduction of a single set of terms and conditions for both par and distressed trades;
- the introduction of termination of a transaction upon the insolvency of a party;
- revisions and amendments to buy-in/sell-out damages provisions;
- consolidation of representations and warranties for distressed and par trades; and
- the introduction of a single form of trade confirmation for par and distressed trades.

In addition, clarificatory changes have also been made to the documents to bring them into line with market practice.

A single set of terms and conditions

The new, combined terms and conditions now apply to all trades of syndicated positions, whether distressed or par. The terms and conditions also include representations and warranties to be given by each party, with the result that the representations and warranties are incorporated into all trades, unless specifically excluded.

The biggest change for par trades is the introduction of the concept that "a trade is a trade", which makes the date of the trade the key

date for the transaction. The result is that the terms of the trade are fixed at the time of the trade (not the issue of the confirmation). Any conditions that would affect the completion of the trade must be specified at that time. From this point forward, the trade is fixed and the parties are under an obligation to settle the trade, even if any required third party consent has not been obtained.

The combined terms and conditions still contain a number of provisions specifically relating either to par or to distressed claims. The major areas of difference are that:

- distressed trades have a longer period to settle before delayed payment compensation becomes payable;
- representations and warranties are more extensive for distressed trades; and
- break funding compensation and buy-in/sell-out damages apply only to par trades.

The newly released documents also contain an assumption that the seller is a predecessor in title and is not trading an assignment of rights under predecessor transfer agreements.

Insolvency termination

The combined terms and conditions assume that the transaction may be terminated upon the insolvency of either party. If the parties so wish, the termination may be made automatic upon an insolvency, either by notifying the other party that automatic termination is to apply or by specifying this at the time of the trade. The definition of "insolvency" used in the terms and conditions is based on the International Swaps and Derivatives Association (ISDA) master documentation and matches the definition introduced into the LMA primary documents.

In the event of a termination of the trade upon the insolvency of either party (but not the insolvency of a party to an underlying document), the standard terms and conditions contain a mechanism for calculating the amount of compensation falling due to the non-insolvent party.

Buy-in/sell-out

These provisions have been revised in order to bring them in line with the provisions contained in the long term service agreement (LTSA) standard form. The buy-in/sell-out damages apply only to par trades which have not settled 60 days after the trade date and will apply after the non-defaulting party notifies the defaulting party that it intends to use the provisions.

The mechanism for the delivery of buy-in/sell-out notices and the calculation of compensation is set out in the standard terms and conditions, and the LMA user guide for secondary documentation contains several examples of how the buy-in/sell-out provisions should be used, including the calculation of compensation.

Representations and warranties

The standard terms and conditions now include the representations and warranties that are to be given by each party.

The representations given in relation to a distressed trade are more extensive than those for a par trade, reflecting the more uncertain nature of such trades. Before entering into a trade, each party should ensure that it is clear which representations it is expected to give, especially where the same relate to a predecessor in title.

Combined trade confirmation

The LMA has issued three types of trade confirmation: bank debt, risk participation and claims. However, parties are encouraged to use the bank debt confirmation form for all trades other than risk participation and claims.

The bank debt confirmation contains a number of options which will need to be completed. These options should be discussed and agreed upon at the time of the trade, and the LMA has issued a checklist to assist with this process. Conversely, the forms of confirmation also assume certain points, such as the settlement date (as soon as reasonably practicable) and payment of taxes and costs (by the buyer). Any party entering into a trade should review the forms of confirmation in order to ensure that they are aware of the areas that need to be discussed. Any conditions that are to be satisfied before the trade can be completed should also be specified in the confirmation.

EU: Proposal for a Directive on Alternative Fund Managers

On 30 April 30 2009 the European Commission (Commission) released the Proposal for a Directive on Alternative Investment Fund Managers (AIFM Proposal) to the European Parliament (Parliament) and the Council (Council) to regulate managers of Alternative Investment Funds (AIFs) as part of a legislative package to combat the global financial crisis. Dr. Andreas Fillmann of Squire Sanders' Frankfurt office offers a few thoughts on the proposal.

The AIFM Proposal has been the Commission's most advanced attempt to introduce a comprehensive supervisory and regulatory framework by imposing a combined set of licensing and supervisory rules on EU-based investment managers of all non-harmonized or non-UCITS [1] funds. The Commission has proposed to regulate alternative investment fund managers, rather than the funds themselves, because the fund managers are considered to be responsible for all the decision making in managing the funds.

The proposed regulations discussed are very controversial in Europe, and that controversy has not decreased in the slightest since the AIFM Proposal was officially published. In order to be adopted, the text of the proposed directive needs to be approved by both the Parliament and the Council. The Parliament and the Council have presented their revised drafts, with the latest version of the revised Council draft presented on 5 March 2010. However, there is by no means consensus on an agreed text going forward. Discussion regarding the AIFM Proposal at the ECOFIN (Council of the European Union) meeting on 16 March 2010 was postponed because of the controversy. The main aspects to be considered in the future legislation process concentrate on the fact that AIFs represent a highly diversified group of funds with different business models, including the strategies they employ and the types of products they invest in, the amount of leverage they use and their liquidity. In addition the access of investors to funds located outside the EU should be better reflected. Also IOSCO (International Organization of Securities Commissions) and the Joint Forum [2] have presented ideas and alternative regulation

[1] UCITS are Undertakings for Collective Investment in Transferable Securities, defined as specifically constituted investment portfolios exclusively dedicated to the investment of assets raised from investors. Green Paper on the Enhancement of the EU Framework for Investment Funds, Commission of the European Communities, Com (2005) 314, 12 July 2005. *See also* Directives 2001/107/EC and 2001/108/EC.

[2] The Joint Forum was established in 1996 under the aegis of the Basel Committee on Banking Supervision, the IOSCO and the International Association of Insurance Supervisors to deal with issues common to the banking, securities and insurance sectors, including the regulation of financial conglomerates. The Joint Forum comprises an equal number of senior bank, insurance and securities supervisors representing each supervisory constituency.

proposals which should be considered in the next draft versions.

Overall, there are several aspects to be discussed and considered by the Parliament and Council with regard to the proposed rules and the final wording of the AIFM Directive, which should reflect and consider the inevitable impact to the AIF industry in Europe. Further, in addition to the proposed AIFM regulation it should be noted that there are also extensive future regulations in the financial sector which will result in massive changes in the financial industry.

Germany: Notarization of Share Transfer and Share Pledge Agreements in Switzerland

A decision of the regional court of Frankfurt am Main creates doubts as to the validity of the notarization in Switzerland of transfer and pledge agreements regarding shares in a German limited liability company, writes Jörg Uhlmann of Squire Sanders' Frankfurt office.

Agreements regarding the transfer and pledge of shares in a German limited liability company (GmbH) must be notarized by a German notary if executed in Germany. Because a German notary is required to charge on the basis of a statutory fee schedule, it has become established practice to execute agreements regarding the transfer or the pledge of shares in a GmbH in certain cantons of Switzerland in front of a Swiss notary, where the fees are negotiable and significantly lower than the notary fees in Germany. The established practice is based on decisions of German courts, which hold that such procedure was valid because the notarization process in these Swiss cantons is equivalent to the process practiced in Germany.

In 2008 the Swiss Civil Code (*Schweizer Obligationsrecht*) was reformed and on 1 November 2008 the Act to Modernize the Law Governing the Limited Liability Company and to Combat Abuses (MoMiG) came into force in Germany.

By way of an *obiter dictum* contained in the decision of the regional court of Frankfurt am Main dated 7 October 2009 (file number: 3-13 O 46/09) regarding the transfer of shares in a GmbH, the regional court stated that "it is not only possible, but even likely" that notarizations in Switzerland made after the implementation of the MoMiG would not be regarded as valid in Germany. The *obiter dictum* was not relevant for the case and does not constitute a binding precedent. The regional court based its *obiter dictum* on the argument that only a German notary can fulfill the obligations required under the MoMiG.

It is also debated in German legal literature whether the reformed provisions under Swiss law with respect to the transfer of shares continue to be equivalent to the provisions under German law. The *obiter dictum* may also be applicable to the notarization of a pledge over shares in Switzerland. Due to this *obiter dictum* any party envisaging the pledge over shares in a GmbH as security should consider notarizations of pledge agreements in Switzerland very carefully as long as decisions of higher courts in Germany regarding the validity of such notarizations are outstanding. Currently, the risk that notarizing a pledge in Switzerland will be regarded by a German court as not being equivalent to notarizing in Germany and, therefore, the pledge is invalid may in many cases not be balanced by the lower fees of Swiss notaries.

Germany: Does the Sale of Non-Performing Loans (NPLs) Trigger VAT?

According to Andreas Lehmann of Squire Sanders' Frankfurt office, this question is being discussed (again) in Germany following a recent decision by the German Federal Fiscal Court (BFH) inquiring with the European Court of Justice (ECJ) about certain aspects of the interpretation of the European Directive 77/388/EWG on the harmonization of the laws of the Member States relating to turnover taxes (the VAT Directive).

One of the most important exceptions to the general rule that the sale of goods and services is subject to VAT relates to the banking and finance sector and certain finance transactions. In particular, the sale and assignment of receivables is exempt from German VAT pursuant to section 4 no. 8, lit c German VAT Act (UStG). However, as every market player in the factoring business is aware, things are not that easy: if receivables are sold on a non-recourse basis at a discount to their nominal value, or if the factor applies certain fees, is this not in fact a consideration payable by the seller of the receivables to the factor for other services? Yes it is, because the factor provides services to the seller, namely taking over the default risk of obligors from the seller, and administering and servicing the receivables going forward. That such collection services can be subject to VAT has already been clarified by the ECJ in its decision of 26 June 2003 in the MKG case (C-305/01). Following that decision and the subsequent ruling of the BFH dated 4 September 2003 (V R 34/99), the Federal Ministry of Finance had issued a guideline on 3 June 2004 (IV B7-S 7104-18/04), which clarified the situation for the factoring industry.

The VAT payable by the seller on services provided by the factor in most cases is not a commercially relevant factor, because the seller is a fully taxable commercial enterprise which is entitled to recover any such VAT paid. This is completely different in the case of a sale of bank loan receivables, because usually banks will not be able to recover VAT paid by them in relation to a business which – like lending – in itself is exempt from VAT. Accordingly, even before the factoring rulings came out, banks (and lawyers from the law firms working for the banks) started to argue that the framework applied in the factoring business would not apply to the secondary trading of bank loans in general, and the sale of NPL in particular. The sale of NPL usually takes place at heavy discounts, reflecting the fact that the seller already has unsuccessfully dealt with a defaulted borrower, and often the value of security is insufficient to ensure full recovery. Also, the enforcement procedure to be initiated by the purchaser will take time and may be costly. If the difference between the face value of the loan and the purchase price in an NPL sale would constitute the value of a service by the

purchaser to the seller, and be subject to VAT, the economics of NPL transactions would be severely affected.

There are of course very good arguments why the factoring framework is indeed different from the NPL sale transactions, and why no VAT should apply for NPL transactions. The Fiscal Court of Düsseldorf, in a 15 February 2008 decision (1 K 3682/05 U), explicitly clarified that the sale of NPL is not subject to the VAT rules applicable for factoring, and that no VAT applies in case of NPL transactions.

So far, so good, and the market participants in this business were glad that this controversial question had at least in a court of first instance been decided in a way that was favourable for the industry. However, the fiscal authorities appealed this decision. In its ruling of 10 December 2009 (2009 VR 18/08) the BFH did not – as probably expected by most observers – confirm the prior ruling of the Düsseldorf fiscal court. Instead, the BFH has asked the ECJ to clarify some interpretation aspects of the VAT Directive:

- If a purchaser of NPL pays a purchase price calculated specifically on a receivable-by-receivable evaluation (instead of a discount based on percentages) and where administration and collection of the receivables are playing a minor role compared to such value related discounts, can there still be a service for consideration from the purchaser to the seller of such NPL?

- If yes: is the value related discount exempt from VAT and, if so, does this result also in the collection services being exempt as a (minor) part of this service, or subject to VAT because it is a separate service?

- If collections qualify as taxable service, what is the basis for the calculation: the amounts assumed by the parties in the agreement related to the collection process or the actual costs of collections?

The decision of the BFH to seek guidance from the ECJ on these questions has (re-)opened the discussions on these topics, and for many NPL transactions of the past years the VAT treatment remains an uncertainty. It will take time for the ECJ to respond to the inquiry, and the outcome is open at this point in time. Until then, the VAT guidelines currently in place should restrict the VAT risk to the servicing component of NPL transactions, but even this limited exposure to VAT liability can result in substantial VAT payment obligations in certain transactions.

The inquiry from the BFH relates to the VAT Directive that is no longer effective because it has been replaced by Directive 2006/112/EG of 28 November 2006 (the New Directive). However, the ECJ decision will likely also affect future NPL transactions as the New Directive follows similar principles as the VAT directive. Accordingly, all parties to NPL transactions currently under way should structure the transactions in a manner that addresses these potential VAT risks and avoids unpleasant surprises in the future.

Hungary: Bankruptcy Law Revised

The main aim of the revision of the Hungarian Bankruptcy Law, effective September 2009, was to make the bankruptcy proceeding more attractive for creditors as well as for debtors, to make clearing debt in the course of a bankruptcy proceeding more effective and, with the increasing number of bankruptcy agreements, to decrease the number of liquidations, writes Luca Katalin Bokor of Squire Sanders' Budapest office.

As a result of the revised law, the number of bankruptcy procedures will increase in Hungary. In the current economic environment, however, this may last for a short time only, as most of the ongoing bankruptcy proceedings will finally turn into liquidation procedures, which are regulated by the same law (Act 49 of 1991 on Bankruptcy Proceedings and Liquidation Proceedings).

It is a moot question how far financing banks, as creditors, will benefit from the recent amendment. The answers they are using to the challenging questions of the crisis are mostly based on (foreign) market practice and not on statutory provisions. Instead of entering into formal legal procedures, banks prefer informal mutual agreements with debtors such as standstill agreements and other debt restructuring methods. It should be noted that the Bankruptcy Act does not set out any restrictions regarding the content of the bankruptcy agreement – the creditor and the debtor may agree on anything that might help clear the debt or make the debtor solvent again.

The bankruptcy agreement may be entered into if it is approved by both groups of creditors. The two groups of creditors are (1) creditors with a secured claim, i.e. a claim secured with a pledge, mortgage or security deposit[3], and (2) creditors with no such collaterals.

Previous amendments of the law aimed to give a privileged position to creditors with a secured claim. Based on the law, if the creditor has a claim secured by a lien that was created prior to the opening of liquidation proceedings and the asset serving as security is sold, the liquidator is allowed to deduct from the income only the costs of keeping the asset in good repair including maintenance and the costs of the asset sale (if there is an underlying claim for the lien, the costs of recovery from the proceeds from the enforcement of the claim), as well as a liquidator's fee of up to 5 percent of the net purchase price (proceeds from the enforcement of the claim). The remaining amount shall be used to satisfy the claims for which such asset was pledged. The law expressly uses the term lien (in Hungarian: *zálog*) in connection with the provisions described above, which includes certain types of pledges and the mortgage right. Different provisions apply

[3] The amendment makes it clear that the holder of a security deposit shall be handled the same way as a pledgee.

to the floating charge. For a floating charge, 50 percent of the proceeds from the sale of a property pledged as security, less the costs of sale, shall be used exclusively to satisfy the claims for which such property was pledged up to the amount covered by the lien, provided that the lien was established before the opening of liquidation proceedings. The regulations on claims secured by lien shall also apply to any claim that is limited to seek sufferance for satisfaction from the pledged property (tangible liability, independent lien) and to claims satisfied by judicial enforcement or for which a writ of enforcement has been registered before the opening date of liquidation.

It is important to note that with respect to liquidation proceedings, the amendment leaves no doubt that even creditors with a secured claim must report their claim to the liquidator. The term of preclusion in which the creditors shall report the claims is now reduced from 1 year to 180 days.

The revised Bankruptcy Law grants an additional possibility to creditors with a secured claim: if the second tender procedure calling for the sale of the debtor's assets is declared unsuccessful as well, the liquidator shall, instead of repeating the tender procedure for the third time, move to sell the asset in question at the appraised value to a creditor holding a lien on the asset.

As set out above, the law distinguishes between two types of creditors: those with a secured claim and those with an unsecured claim. The recent amendment established two types of claims as well: pending and non-pending claims (a pending claim is a claim that arises from bank guarantees, insurance guarantees or commitments issued by an insurance company containing surety facilities, if the timing of their payment and maturity is uncertain). Based on the recent amendment, if the creditor holds a pending claim, the asset serving as security may still be sold. However, the liquidator must deposit the amount received from the asset sale, after the expenses and the liquidator's fee have been deducted, to a reserve account. The amount of the security deposits shall be put in the same reserve.

The amendment did not change much on credit securities, although it enhanced important details. The Bankruptcy Law did not change its rather conservative approach – only the holder of typical collateral should feel safe in the case of a liquidation procedure. Holding the security assignment and pre-emption right – forms of collateral that are used widely in practice, but are not considered to be typical collateral by the law – does not mean much if a liquidation proceeding is started against the debtor. This leaves market practice open to inventive ideas, such as the pledge/assignment combo favoured by financing banks in Hungary because it can be quickly executed, thanks to the assignment part, and it is safe for the case of the debtor's liquidation, thanks to the pledge part.

Czech Republic: Financial Collateral Arrangement as an Alternative to Pledge of Bank Account Receivables

Although financial collateral arrangements were introduced into Czech law in 2005, banks in the Czech Republic rarely use them as a form of security for their credit facilities. Danica Šebestová of Squire Sanders' Prague office briefly introduces financial collateral arrangements and summarises differences between them and the more commonly used pledge of bank account receivables.

What is a financial collateral arrangement under Czech law?

Act No. 377/2005 Coll. contains provisions implementing European Directive 2002/47/EC on financial collateral arrangements (the Collateral Directive).

A financial collateral arrangement may be either a "title transfer financial collateral arrangement" or a "security financial collateral arrangement", in each case as defined below.

Title transfer financial collateral arrangement. Title transfer financial collateral arrangements are arrangements, including repurchase agreements (repos), under which a collateral-provider transfers title to financial collateral to a collateral-taker for the purpose of securing or otherwise covering the performance of relevant financial obligations. The intention is that the collateral will be transferred back to the collateral-provider when the collateralized obligations have been discharged. The parties may agree, for example, that the title transfer will not take place until an event of default occurs (suspensive condition).

Security financial collateral arrangement. Under a security financial collateral arrangement, a collateral-provider grants a security interest in financial collateral in favour of, or to, a collateral-taker. This is coupled with the financial collateral being placed in the possession, or under the control, of the collateral-taker by means of delivery, transfer, registration, designation or otherwise. However, beneficial ownership of the financial collateral remains with the collateral-provider notwithstanding the creation of the security interest. The parties may agree, for example, that the collateral-taker is entitled to (1) use the financial collateral, in which case he or she is obliged to return the equivalent financial collateral, or (2) set off the collateralized financial obligation against the equivalent financial collateral.

Financial collateral. The financial collateral to be provided must consist of *cash* (money credited to

an account in any currency or similar claims for the repayment of money) or *financial instruments* (shares, bonds, other forms of debt instruments if these are negotiable on the capital market, derivatives or any other typical securities which give the right to acquire any of the instruments mentioned above). It is not possible to use movable or immovable assets as financial collateral.

Relevant financial obligations. Relevant financial obligations are the obligations secured by a financial collateral arrangement which give a right to cash settlement and/or delivery of financial instruments. Relevant financial obligations may consist of or include:

- present or future, actual or contingent, or prospective obligations (including obligations arising under a master agreement or similar arrangement);
- obligations owed to the collateral-taker by a person other than the collateral-provider; or
- obligations of a specified class or kind arising from time to time.

In implementing the Collateral Directive, the Czech Republic extended the scope of application to include receivables arising from credit facilities.

Collateral-taker and collateral-provider. The collateral-taker and the collateral-provider must each belong to one of the following categories:

- a Czech bank or foreign bank; a financial or credit institution (as defined in Directive 2000/12/EC); an insurance undertaking; a reinsurance undertaking; a broker; an investment firm; an investment fund; a pension fund or other financial institution subject to prudential supervision; a central counterparty; a settlement agent, clearinghouse or similar institution regulated under national law acting in the futures, options or derivatives markets; a savings and loan undertaking; an institution entitled to issue electronic money organized and established within the EU or EEA and carrying out its business activity in the Czech Republic; the government of the Czech Republic; a Czech municipality; a public authority including a foreign public authority or another state; the Czech National Bank; a foreign central bank; the European Central Bank; the International Monetary Fund; the European Investment Bank; the Bank for International Settlements; a multilateral development bank; or
- a person *other than a natural person,* including unincorporated firms and partnerships, provided that the other party is an institution as defined above.

Differences between a pledge of bank account receivables and a financial collateral arrangement

Form. The agreement for a financial collateral arrangement must be evidenced in writing, but there are no other formal requirements for its creation, validity, effectiveness or enforceability (such as notarial deed, registration, notification or public announcement).

The agreement for a pledge of bank account receivables must be in a written form, and for the agreement to be effective against the bank at which the account is maintained, that bank must be notified in writing. In practice, the collateral-provider often spends considerable time negotiating the form of acknowledgement of such notification that the account bank must give.

Realization. Parties to the financial collateral arrangement may agree, for example, that the collateral-taker (1) is not obliged to return the exact same financial collateral that it receives from the collateral-provider, but merely equivalent financial collateral or (2) may set off the financial collateral against the collateralized financial obligation. This means that the collateral-taker may transfer the financial collateral to a third party or may use the collateral, during the security period, for its own purposes. The collateral-taker is not obliged to notify the collateral-provider of the form of realization of the financial collateral arrangement.

In practice, the realization of a pledge of bank account receivables is very similar. Strictly, however, the bank should not use funds deposited in pledged accounts for its own purposes, nor transfer such funds from the pledged accounts prior to the enforcement of the pledge.

In addition, although pledges of bank account receivables are commonly used in the Czech Republic, there is no provision of law expressly regulating such pledge, especially the bank's right to offset its claims against the debtor. The fact that financial collateral arrangements are regulated provides the parties with higher legal certainty.

Disapplication of insolvency proceedings. Most importantly, certain provisions of Czech insolvency law do not apply to financial collateral arrangements. The claim of the collateral-taker (as creditor) can be satisfied outside any insolvency proceeding applicable to the collateral-provider. The creditor need not submit its claim against a debtor to the insolvency court, and financial collateral is excluded from the insolvent estate of either the collateral-provider or the collateral-taker.

In contrast, in the case of the pledge of bank account receivables, the creditor's claim cannot be satisfied outside the insolvency proceeding. After the commencement of an insolvency proceeding, the creditor must submit its claim against the debtor to the insolvency court, and its claim is examined by the appointed insolvency trustee. Although creditor claims secured by a pledge of bank account receivables are generally satisfied preferentially from the funds deposited in the pledged accounts, there may be other similarly secured creditors and not enough assets to distribute.

Conclusion

The main advantages of the financial collateral arrangement over the pledge of bank account receivables are (1) the removal of administrative burdens, (2) greater legal certainty with respect to enforcement and (3) elimination of negative effects caused by insolvency of the parties.

Poland: E-Court Starts Expediting Collections

According to Peter Swiecicki and Maciej A. Szwedowski of Squire Sanders' Warsaw office, legends of even the simplest collection procedure taking years in Poland may be a thing of the past. On 1 January 2010 Poland's first e-court began operations. The electronic court promises to simplify procedures and cut the time for issuing judgments in uncomplicated collection cases.

E-courts apply to proceedings for an order of monetary payment (*elektroniczne postępowanie upominawcze* or electronic abbreviated civil proceedings (EPU)). All complaints are filed electronically through the court's website, www.e-sad.gov.pl. Following receipt of a complaint, the court reviews the complaint and will issue a payment order if the circumstances pled in the complaint do not raise questions. The defendant has two weeks from issuance of the payment order to respond or make the payment. If payment is not made nor a response filed within two weeks, the order is converted to an enforceable judgment. If a response is filed, the payment order loses its validity and the case proceeds on the basis of the pleadings. In such case the proceedings are transferred to a court with appropriate jurisdiction, where the case would be considered from the beginning. Consequently, only where the debtor decides not to challenge the payment order would the latter become immediately enforceable.

Why is the e-court important?

- From experience, no response is filed to 80 percent of payment orders, meaning that these become enforceable judgments. Expectations are, therefore, that the new type of proceedings will help unload the caseload of the other Polish courts.
- Complaints can be filed against any person over whom the Polish civil courts have jurisdiction.
- Filing fees for these types of electronic abbreviated proceedings are 25 percent of the fees for an ordinary proceeding.
- EPUs avoid the delays and costs associated with hand and mail delivery of documents.

The e-court is the XVI Civil Division of the District Court in Lublin, being the only court in Poland with statutory jurisdiction to resolve disputes in the new EPU proceedings. The court is modelled after similar e-courts that have commenced operations in England and Wales, Germany and the Czech Republic. The court has been equipped with appropriate computer hardware and software, and IT specialists to enable it to operate in a paperless environment. All pleadings are filed, and all correspondence is conducted, electronically (as pdf files). Attorneys need to register with the court to make the electronic

filings. Evidentiary documents are not attached to the complaint – they are only described in the complaint. The plaintiff does not receive a copy of the payment order – it must check the court's website to determine if an order has been issued. Responses can be filed by email or by regular mail. The latter possibility was considered a necessary evil since it would be considered unconstitutional to expect all defendants to register with the e-court in order to be able to file a valid response against a payment order.

Enforceable judgments can be sent to the bailiff by email for commencement of enforcement proceedings.

To date, tens of thousands of complaints have been filed (mainly by collection agencies) and several thousand persons have registered to use the system. However, the advantages of the system are not limited to collection agencies, but form a useful basis for anyone to commence a collection proceeding based on an undisputed but unpaid contract. Despite some minor setbacks during the early period of the e-court's operations (such as problems with timely registration of potential plaintiffs and attorneys) so far the results, mainly in terms of how quickly the payment orders have been issued, have been encouraging.

Justice Ministry officials expect that, depending on a review of the efficiency of the e-court in the coming months, this development may become the first in a series of efforts to increase the use of new technologies in Polish civil proceedings.

Contributor Profiles

Andrew J. Knight co-chairs Squire Sanders' European Finance Practice. His practice focuses on international financial law in the context of asset-based lending, syndications, restructuring, loan and receivables finance book sales, secondary market transactions and distressed debt trading. Mr. Knight mainly represents banks and other lending institutions, especially asset-based lenders based in the United Kingdom and the United States. He has particular expertise in negotiating, documenting and restructuring multijurisdictional credit facilities extended to transnational borrowers and groups including cross-border insolvencies and pre-packed exits.

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Andreas Lehmann co-chairs the firm's European Finance Practice. He advises banks on all aspects of debt financing structures including syndicated loans, corporate bonds and securitization transactions. Mr. Lehmann has advised institutional investors, in particular investment funds, venture capital funds and real estate funds, in respect to their investments in Germany. His finance experience includes financial restructurings and nonperforming loan (NPL) transactions and other distressed debt investments as well as the refinancing of real estate acquisitions. His experience also includes factoring, receivables finance and asset-based lending structures. Mr. Lehmann has advised corporate clients in obtaining financing, particularly in structured finance transactions.

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Matthew Jenkins serves as editor of Squire Sanders' *European Finance Law Update.* His practice focuses primarily on cross-border asset-based lending and debt finance. Mr. Jenkins also has experience in cross-border restructuring, advising on the disposal and reorganization of distressed businesses. Prior to joining Squire Sanders, Mr. Jenkins worked in the banking department of a Ukraine-based law firm. His experience included working on syndicated loans and structured credit facilities.

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Luca Katalin Bokor focuses her practice on finance and corporate matters. She has assisted in the representation of international and domestic companies in a wide variety of finance-related transactions including project financing and real estate financing. Dr. Bokor has experience in syndicated lending, acquisition and asset finance, mergers and acquisitions, bank financings and greenfield projects. She was also involved in several competition law-related transactions.

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Dr. Andreas Fillmann's practice has focused exclusively on banking and capital markets. He provides advice in the fields of banking and finance regulatory, structured finance, securitizations, syndicated loans and derivatives, as well as representing hedge funds and banks in issues relating to capital markets law. Dr. Fillmann's experience in derivatives includes advice to investment banks and hedge funds on swaps and hedging activity. In addition, he has advised on a large number of capital markets transactions, in relation to both equity and debt finance, including primary and secondary stock placements and the issue of stand-alone and structured bonds, as well as issues programs for medium term notes (MTNs) in which Dr. Fillmann was active for both issuers and consortium banks.

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Lauren Priest-Stephens focuses her practice on asset-based lending, banking and debt finance matters. Her experience includes financing transactions from the negotiation of term sheets and the structuring of a transaction to the completion of financing documents. Ms. Priest-Stephens is familiar with the negotiation and drafting of documents for complex cross-border transactions and has extensive experience representing all parties in a financing including lenders, borrowers and syndicate members. Following the completion of transactions, she often undertakes ongoing portfolio support work, including the review and drafting of syndication documentation, and has experience with the termination of transactions, through refinancings and restructurings.

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Danica Šebestová focuses her practice on financial services and general corporate matters. She also has experience in international arbitration. Ms. Šebestová's finance experience includes the representation of major financial institutions and real estate funds in connection with financing development and the acquisition of residential, office and commercial projects throughout Central and Eastern Europe. Ms. Šebestová's corporate experience includes mergers and acquisitions, and assisting large international clients with corporate and commercial matters on an ongoing basis.

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Peter Swiecicki's practice includes some of the largest infrastructure financings and privatizations in Central and Eastern Europe. His experience includes financings of the largest and most complex toll motorway project in Poland, as well as the main gas pipeline and the tallest office building in Central Europe. During the telecommunications boom, he handled both debt and equity telecommunications financings. He has represented international companies in a wide variety of matters relating to cross-border investments including financings, acquisitions, divestitures, restructurings, governance and real estate matters.

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Maciej A. Szwedowski focuses his practice on litigation and arbitration, as well as on real estate and construction law, insolvency and corporate issues. He represents corporate clients in court and arbitration proceedings including in relation to disputes arising as part of construction and development projects and in securities-related litigation. He has acted on behalf of directors of several companies in management liability proceedings in Poland.

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Jörg Uhlmann's practice includes all aspects of banking and finance transactions including acquisition finance, syndicated lending, asset finance and real estate finance as well as capital markets issues. He advises banks, hedge funds and other financial institutions as well as borrowers in all aspects of finance transactions and securitization.

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Distinctions

Chambers Global 2010 ranks our banking and finance practice highly in the Czech Republic, Hungary, Poland and Slovak Republic. ***Chambers Europe 2009*** lists our financial services lawyers as leaders in the Czech Republic, Germany, Hungary, Poland, Russia and Slovak Republic.

IFLR1000 2010, the guide to the world's leading financial law firms, lists our lawyers as leaders in the field for financial services matters in the Czech Republic, Hungary, Poland and Slovak Republic.

European Legal Experts 2009 names our financial services lawyers as leading practice area experts in Bratislava, Budapest, Moscow, Prague and Warsaw.

The 2009 edition of ***The Legal 500 Europe, Middle East & Africa*** recognizes us as a recommended firm for financial services matters in Bratislava, Budapest, Prague and Warsaw.

The inaugural edition of ***The Best Lawyers in the Czech Republic*** lists lawyers from our Prague office, and the inaugural edition of ***The Best Lawyers in Poland*** lists a lawyer from our Warsaw office.

PLC Which Lawyer? Yearbook 2009 recommends us for banking/finance in the Czech Republic and Hungary, and recognizes us for banking/finance in the Slovak Republic.

The 2009 ***Guide to the World's Leading Banking Lawyers,*** the international legal market's leading guide to the top practitioners advising on banking law, names a partner in our Prague office.

Recent and Upcoming Speaking Engagements

Squire Sanders is proud to announce the renewal of its longstanding sponsorship of the ***Business Money* All-Asset Finance Conference,** which will take place on Thursday, April 29, 2010 at the CBI Conference Centre, Centre Point, London. Partners **Andrew J. Knight** (London) and **Guy F. Guinn** (Cleveland), together with consultant Professor **Grant M. Jones** (London), will be speakers at the conference, which also features presentations by Mike Carsella, Dr Sandra Frisby and Nicholas Perkin, among other distinguished guests. To view the full conference agenda and reserve your place, go to http://www.business-money.com/events_diary.html#1.

David M. Wack (London and Moscow) served as chairman of **C5's 6th Annual CIS Private Equity and Venture Capital Forum,** "Generating Alpha in a Market Returning to Growth," on 23-24 March in Moscow, offering the opening address and closing remarks on both days of the event. In addition, **Christopher A. Rose** (Moscow) led a panel discussion with Mr. Wack and senior associates **Patrick J. Brooks** (Moscow) and **Anna E. Manyatkina** (Moscow) entitled "Practical Tips for Protecting Your Investment" on 23 March. Squire Sanders was also pleased to sponsor a cocktail reception at the forum on 23 March.

Squire Sanders was proud to once again sponsor the **European Real Estate Opportunity & Private Fund Investing Forum,** a two-day event that presented panels and discussions dealing with high-performance property investments in direct real estate, private equity and merchant banking on 18-19 November 2009 in London. **Daniel E. Larkin** (London) served as a panellist for "Project- and Entity-Level Workout Plenary," and **Thomas J. Salerno** (Phoenix), leader of Squire Sanders' international financial restructuring practice, participated in a panel entitled "Multi-Jurisdictional Workout Issues."

Squire Sanders participated in **C5's 14th Annual CEE Private Equity Forum,** "Achieving Best Risk-Adjusted Returns in the Post-Crisis World," from 5 to 6 November in London. In addition to serving on the 2009 forum advisory board, **Christopher A. Rose** (Moscow) moderated the programme "EU Regulation of the Private Equity Industry," which also featured panellists **Kevin T. Connor** (London), chair of Squire Sanders' Central Europe practice, **Dr. Andreas Fillmann** (Frankfurt) and **Guido Panzera** (Bratislava). In addition, **David M. Wack** (London and Moscow) served as moderator for the programme "Russia and CIS: The Biggest Bubble to Burst or the Best Investment Destination?"

Squire Sanders was pleased to sponsor **Structured FINANCE Deutschland,** the fifth annual congress and exhibition of modern corporate finance and structured finance products, in Karlsruhe, Germany on 3-4 November 2009. **Dr. Andreas Fillmann** (Frankfurt) and **Jan Sudmeyer** (Frankfurt) were in attendance at this prestigious event.

Media Appearances

Dr. Andreas Fillmann (Frankfurt) was quoted 25 February on **Law360** regarding steps taken by European and US authorities investigating an investment bank's role in arranging controversial swaps alleged to have disguised Greece's debt.

Czech Business Weekly quoted **Vladimira N. Papirnik** (Prague) 15 February regarding the global financial crisis' impact on the Czech Republic legal market.

Vladimira N. Papirnik (Prague) was quoted by ***Hospodarske noviny*** on topics ranging from the current Czech Republic government and the global economic crisis to a recent trip to Prague by the Washington Capitals alumni that Vladimira helped to coordinate. Vladimira was interviewed as part of a feature on the 25 most powerful businesswomen in Prague.

In "National Bank of Ukraine Resurrects Interest Rate Limits for Foreign Loans," published in the November 2009 edition of the ***Russia/Eurasia Executive Guide,*** **Peter Z. Teluk** (Kyiv) and **Kateryna S. Kokot** (Kyiv) discussed the details of a regulation recently enacted by the National Bank of Ukraine that brought back to life limits on maximum interest rates for foreign loans.

Peter Z. Teluk (Kyiv) and **Volodymyr Smelik** (Kyiv) offered an in-depth look at a new law in Ukraine, "On Amendment of the Law of Ukraine 'On Securities and Stock Market' With Respect to Some Rules Applicable to Issuers and Investors," including the step-by-step process for converting shares from paper to electronic format, in the November 2009 edition of the ***Russia/Eurasia Executive Guide.***

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EUROPEAN FINANCE LAW UPDATE

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