

Moldova

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Acquisition in the banking, insurance and leasing industries

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Ranked fifth among 184 countries surveyed under the Banker's 2009 World Financial Health Index, Moldova might well claim that its financial sector is healthy and thus interesting for potential investors. During 2008 the Moldovan banking system continued to achieve a high capital adequacy ratio (32%), low level of lending (35% of GDP), high returns (a return on equity of 20%) and steady growth of banks' assets (up 23%). The same positive trend was followed by the insurance and leasing sectors. High investment returns combined with a stable legal and regulatory environment has put Moldova on the expansion maps of important EU and other foreign investors.

Banking acquisitions

In line with EU Directive 2006/48/EC, amendments to the Law on Financial Institutions enacted in June 2008 have imposed minimum bank capital requirements equal to MLei100 million (€6.5 million). Further, the former rule of investing only from own funds has been abolished, thus opening the possibility of leveraged acquisitions of bank shares.

The potential acquirer of a qualifying holding (5% or more of the capital or voting rights) in a Moldovan bank shall meet the requirements set by the banking regulator, NBM (the National Bank of Moldova), for financial soundness, qualification, experience and moral integrity. Entities originating from offshore jurisdictions, and those created for the exclusive purpose of banking acquisitions or inactive for the last three years before acquisition, are not eligible to purchase qualifying holdings.

The same fit-and-proper test applies upon increasing the equity participation so that it reaches or exceeds 25%, 33% or 50%.

Qualification requirements for local and foreign investors are the same. More extensive requirements apply though in the event of acquisition of a qualifying holding by a foreign bank. The applicant bank shall obtain written acquisition approval from the supervisory authority of its country of residence, and a statement to the effect that the applicant is duly licensed, has been operating for at least two years and is a bank in good standing with no formal enforcement actions outstanding or pending. In addition, the applicant bank shall submit information on its own shareholders with qualifying equity interests, directors and key executives, and all its majority equity interests.

The NBM shall clear the acquisition within 20 days after receipt of all documents. NBM permission for acquisition is valid for six months.

In practice, the most difficult part of the clearance exercise is collecting and submitting the information on related parties of the potential acquirer. Not only data on parties related to the acquirer, but also data on the parties related to the acquirer's related parties, needs to be submitted to the NBM.

NBM permission for acquisition of a qualifying holding shall be sought upon both initial share offerings (primary market) and secondary share transfers. On the primary market, NBM permission must be obtained before the shares are paid for.

Banks are deemed as public entities by operation of law, and shares in banks can be traded only via the bidding platform of the stock exchange (with several exceptions). This rule tends to render ineffective the straight pre-negotiated transfer of bank shares on the secondary market and requires proper structuring of banking acquisition transactions.

Any person who directly or indirectly acquires more than 50% of voting shares in a Moldovan bank is obligated to announce a

mandatory buy-out offer. The law is silent however insofar as the breakthrough rules, target defensive measures and employee consultation rules referred to in EU Directive 2004/25/EC on Takeover Bids are concerned.

Insurance acquisitions

Moldovan nationals are allowed to purchase insurance only from Moldovan insurers, unless a policy is not available on the Moldovan market.

Unlike the earlier legislation, the new Law on Insurance, enacted in April 2007, instituted qualification requirements for acquirers of equity in Moldovan insurers. Thus, the acquisition of a qualifying holding (10% or more of the capital or voting shares), and the increase of such a holding above 20%, 33% or 50% (as well as the reduction of the qualifying holding below these thresholds) are subject to prior consent of the non-banking financial market regulator (NCFM – the National Commission of Financial Markets). As with banking acquisitions, no entity created for the sole purpose of holding equity participations in insurers or inactive for the last three years is eligible to acquire shares in a Moldovan insurance company.

However, unlike banking acquisitions, only own funds can be used to purchase equity participations in a Moldovan insurer. As per the draft amendments to the Law on Insurance, this means that no borrowings can be used to acquire shares in insurers, unless funds are borrowed by a subsidiary from its mother entity.

Participations in existing insurance companies that operate as private entities (limited liability companies) might be transferred through private transactions, subject to observance of the preemption right of the other shareholders. Shares in insurers – public entities – are transferable via the stock exchange (with the same exceptions and subsequent buy-out obligation as in banking acquisitions).

Leasing operators' acquisitions

Leasing is the only financial activity in Moldova that remains neither licensed nor supervised – (the 2008 IMF-World Bank FSSA Update recommended expansion of the NCFM's remit to include leasing). This regulatory freedom has brought about a rapidly-increasing number of market operators and determined some Moldovan banks to spin off their leasing business.

Unlike banks, leasing companies are not bound by mandatory reserves, and leasing exposures are not subject to mandatory provisions. Most Moldovan leasing companies are established as private entities, with equity participations transferred through direct private transactions.

Financial and corporate

Recommended firms
Tier 1
Turcan & Turcan
Tier 2
Buruiana & Partners
Gladei & Partners
Law Office of Victor Burac
Levintsa & Associates
Tier 3
Bondarciuc & Partners
Brodsky Uskov Looper Reed & Partners
Dartax Consulting
Law Office of Valeriu Gritco
Vernon David Associates

Internationalist firms such as Turcan & Turcan and the younger Gladei & Partners lead the way in the banking and finance arenas of Moldova, with Turcan & Turcan maintaining top spot for experience and expertise.

The firms both act for some the most important clients in the market: the European Bank for Reconstruction and Development (EBRD), the Black Sea Trade and Development Bank (BSTDB), the European Investment Bank (EIB) and the World Bank.

Incumbent local firms, which have been operating in the market for up to ten years, still have extensive networks and local expertise, although they may need to develop if Moldova begins to fulfil its potential. "It is not a very developed market and you see big transactions being dealt with by solo practitioners," says one local peer.

The recent parallel phenomena of highly disruptive and contentious elections and the global financial slow down have checked a certain growth say peers.

The country maintains a 0% corporate tax rate and, as one lawyer says: "It is not a very big country but there are four million people and it is a market you want to look at; there is a lack of everything here and you can still conquer the market at a low cost as assets as so cheap."

Additionally, say peers, Moldova has a good relationship with the EU and it is perceived to have a skilled, educated and low paid workforce, which is helping to attract the attention global investors. Especial interest has come from Romania and Germany, investors in Greenfield production developments, car parts manufacturing, real-estate, infrastructure and Moldova's highly regarded wine industry.

Driven by client demand, international firms Schoenherr and Vernon David & Associates recently raised their profiles in the country.

Turcan & Turcan

Turcan & Turcan is widely considered as the leading law practice in the country. It is both well established and has the strongest international profile. According to one client, "They are very knowledgeable on local law and from their international experience they understand the western mentality and the standards that are expected."

The firm has a strong list of recognised international clients in a number of practice areas, and is the preferred local counsel for a number of global law firms.

"They are very professional, very efficient and very knowledgeable," says one client, who is also enthusiastic about the firm's responsiveness. Managing partner Alexander Turcan and partner Octavian Cazac are "very professional and, speaking from experience of having worked with local firms in other CIS [Commonwealth of Independent States] countries, they would be at the top of my list," says another client.

In one deal, the firm represented the European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB) in a €45.5 million loan to modernise the country's main airport. The deal constitutes the biggest EBRD deal in Moldova to date and involved the EIB's first ever sovereign debt deal in the country. Again for the EBRD, the firm advised on a €42.8 million loan to build and operate the large mall: MallDova.

The firm acted for World Business Capital in a \$10 million OPIC (Overseas Private Investment Corporation)-backed financing of a residential mortgage lender. OPIC also instructed the firm in a \$6 million loan to FinComBank, while the Black Sea Trade and Development Bank (BSTDB) mandated

Turcan in an \$8 million loan to Banca Sociala and Russian media company CTC Media.

The firm has also been selected to act in consortium with BNP Paribas in potentially the largest ever privatisation deal in Moldova.

Leading lawyers

Octavian Cazac
Alexander Turcan

Gladei & Partners

For a firm established only in 2007 by former Turcan & Turcan partner Roger Gladei, Gladei & Partners entered tier two very early but has since backed its position with an strong client portfolio and a highly-praised banking and finance practice.

"Other law firms are not so competent in the banking legal area – perhaps they are more generalist – but in the field of banking Roger Gladei is the best," says one client. Formerly in-house counsel for a bank, Gladei "personally understands all the weak points of the legislation and the problems the banks have with the domestic regulator; he also knows all the basic points of interest with the banks," says another client.

Vouching for its international credibility, the firm has begun to win mandates from the European Bank for Reconstruction and Development (EBRD) and the Black Sea Trade and Development Bank (BSTDB) – key international financial institutions in Moldova. One international client who used the firm says: "He delivered a good service; we will definitely use him again."

The firm acted for the EBRD in a €20 million small and medium enterprise credit line to Agroindbank, Moldova's largest bank, and in a €20 million senior loan to Mobiasbank, part of Société Générale. Acting for the BSTDB, the firm advised on a €10 million long-term loan to a key player in the Moldovan glass manufacturing industry.

In M&A, Gladei & Partners acted for Cypriot investors in an €8 million acquisition of a local company owning a hotel in Chisinau and advised the majority shareholders of a Moldovan retailer in a €7.5 million share consolidation in the retailer. Partner Vitalie Ciofu advised for shareholders in structuring a joint-venture carpet manufacturer.

The firm has a progressive stance in terms of ethics and reliability. "They have many strong points," says a client, "and credibility is the first."

Leading lawyers

Roger Gladei

Levintsa & Associates

Levintsa & Associates has a marginally more local focus than its competitors but remains one of the largest firms in the country. With more than 15 years in the market, one local partner calls it “an incumbent firm”.

The firm provides legal advice as well as business consulting services and has an IP practice which helps keep its profile up. Although peers note that the firm has been less visible in the market over the past year, it continues to be highly regarded and its position is not in question.

Leading lawyers

Victor Levintsa

Buruiana & Partners

Buruiana & Partners is one of Moldova's oldest law firms with over 12 years of experience in the market. The firm is managed by the multilingual Mihail Buruiana, who is well regarded by the local legal community.

“Mihail is a respectable lawyer and a respected law professor,” says one peer.

Leading lawyers

Mihail Buruiana

Law Office of Victor Burac

Victor Burac manages a small but very reputable practice. Burac is respected by peers as a noteworthy lawyer. “He should be highly ranked,” says one peer. “He has an interesting style and has done some good work, particularly representing French investors”.

Burac has a strong academic profile and is especially prominent in banking.

Leading lawyers

Victor Burac

Bondarciuc & Partners

Bondarciuc & Partners has developed a good reputation through word of mouth among foreign investors. The firm has a team of multilingual lawyers trained in a number of jurisdictions including the UK and the US. “They compare well to the top firms and I would recommend them to anyone else,” says one international client.

Another international client says: “We chose them because of their experience and their good standing in the market ... and we were happy with them; they provide a good quality service and they have met all the deadlines.” The client adds that the firm is “clear, concise and prepared documents in a very good way”.

The firm worked alongside Greek law firm Goulielmos & Partners to advise a power plant in its \$500,000 acquisition of local company. The firm acted on a \$10 million M&A transaction in the car industry and represented a local bank in a \$3 million share conversion and share issuance deal.

Partner Daniel Cobzac featured on all deals.

Leading lawyers

Alexander Bondarciuc

Vernon David & Associates

Vernon David & Associates split from Ernst & Young in 2004 after three years of practice in Moldova. Following the split, the firm moved back to Romania and re-established itself in Chisinau in mid-2008. The firm has an existing track record in Moldova and through its work from the Bucharest office.

The firm advised the government on its redraft of Moldova's leasing law in an EBRD (European Bank for Reconstruction and Development)-sponsored project, in which managing partner Diana Neagu played a key role. The firm advised UniCredit Bank on the establishment of a corporate presence in the country and acted for the majority shareholders of the leading Moldovan bank Agroindbank in a potential minority divestiture.

The firm has also had a hand in the oil sector, having advised an oil company in the concession for the operation of a port in one of the largest ever concession deals.

Leading lawyers

Diana Neagu

Other ranked firms

Dartax Consulting is headed by former Minister of the Economy Alexandr Muravschi. The firm is a consultancy with a broad practice including tax and business advice.

Brodsky Uskov Looper Reed & Partners is a legal consultancy adept at advising foreign investors in a number of languages.

Other notable firms

ACI & Partners is a young firm practising corporate and commercial work and is noted by peers as up and coming. “This firm has a good code of conduct,” says a local peer, “and we expect to see them in the future of the Moldovan legal market.”

Austrian firm **Schoenherr** has been active in the country through its Bucharest headquarters but opened an office in Chisinau in February 2009 largely to manage ongoing

work related to the acquisition of Moldova's largest oil and gas company.

The firm also acted for a European telecoms company in the acquisition of a majority stake in the leading Moldovan telecom company, and is advising a Romanian insurance firm in a local acquisition.

Markus Piuk is based in Bucharest but advises on a number of Moldovan transactions, and is supported on the ground in Chisinau by locally-trained lawyers. The firm also benefits from its regional network across central and eastern Europe.

A number of consultancies are active in the market, including **BSMB Legal Counsellors**, active locally with a team of five counsellors who can deal in Russian, Romanian and English, and **Dura Lex**, which again has a local focus under the leadership of Serghei Karaghioz and provides broad corporate support. **Avornic & Partnerii** and **Popa & Asociatii** also provide corporate related legal support.