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Credit history reporting rules in Moldova

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In Moldova, as in many of the Easter European countries, there has been no credit information dissemination infrastructure in place until recently.

The first step in solving the vexed problem of paucity of available credit information - which was reported as being one of most important impediment in the development of Moldovan lending market that only in banking sector reached an available liquidity of up to € 250 million according to the data of the National Bank of Moldova (NBM) - was made in March 2009, with the enter into force of the Law on Credit History Bureaus (CHB), developed with the support of the World Bank (Under the auspices of the Competitiveness Enhancement Project between 2005 - 2008) and enacted by Moldovan Parliament in May 2008.

Among the two alternative concepts of (private or public-private) *credit bureau* versus (public) *credit register* the Moldovan lawmaker opted for the first one. In doing so it followed by large the WB-IFC model concept of a credit bureau as a "private firm ... that maintains a database on the creditworthiness of borrowers (persons or businesses) in the financial system and facilitates the exchange of credit information among banks and financial institutions".

In the attempt to reach a fair balance between the public interest of (i) safeguarding the rights of the credit histories' data subjects with respect to their personal data, and of (ii) protecting the interest of the potential lenders of said data subjects through compulsory submission to CHBs of the so-called *negative* or *black* information on the data subject, the law provided that the submission by the lenders of the credit information to the CHBs is subject to the consent of the data subject.

This no-exception rule was to be complied with by the credit history reporting lending

institutions through securing prior and written or electronic (substantially in the form provided by law) consent of the data subject. The consent is valid for one month - for inquires of potential lenders of the data subject - with the automatic prolongation in case of extent of a loan by inquiring lender (to cover the full term of the granted loan). The law also provided the right of the data subject to receive reports from the credit history upon request (gratuitously - one report per year, against a fee - in excess of this limit), and in case of depicted errors in the credit history - to demand their correction.

The law provided for the submission by the credit history reporting lending institutions of both the positive (white) and negative (black) information on the data subject, following the best practices in the credit reporting legislations worldwide, and taking into account that according to statistic data the submission of the positive information to CHBs has a higher impact the development of lending sector.

With a view of sustaining the constitution and operation of CHBs, as well as to overcome the reluctance of local financial institutions (primarily banks) in disclosing the data of their clientele to the CHBs, the law obliged the commercial banks to furnish all information on their clientele to at least one of the CHBs licensed by the NCFM, while for the non-banking financial institutions the submission of credit history information to the CHBs were left optional (contract-based). The law did not provide or regulate the access of CHBs to the relevant data of the open public registers kept by local or central public authorities, neither the mechanism of data interflows and/or exchange between databases of open public registers and those of local CHBs.

The term of keeping by the CHBs of the information received into the credit histories was limited to seven years from the last alteration of information contained in the main part - that contains information on borrowings of the data subject - of the credit history. The law provided rather high and strict requirements toward CHBs with respect to collection, storing, processing, transmittal and destruction

of data, to ensure at all times the physical and informational security of the data.

Under the law, the licensing and prudential supervision of CHBs is to be performed by the National Commission for Financial Market (NCFM), which is a regulatory authority of the non-banking financial sector. The licensing of CHBs was to be done in accordance with the regulation to be enacted by the NCFM after entering of the law into force. Taking into account that - the elaboration of the said regulation (enacted in February 2009), its put into force (published and entered into force in April 2009), and the completion by local CHBs of all requirements necessary to receive the license - took time, only in March 2010 the first license has been issued by the NCFM to the *Biroul de credit* - a CHB founded by 14 Moldovan commercial banks. Moreover, even licensed the said CBH is still in the *testing* phase, while the real-time operation of it is expected to commence by July 2010.

Until now the Moldovan law on CHBs did not limit the size of equity holdings in the capital of CHBs, neither provided any qualification requirements (nationality, experience, financial soundness), permissive procedure, or the like with respect to the persons or entities acquiring such equity holdings.

Financial and corporate**Recommended firms****Tier 1**

Turcan & Turcan

Tier 2

Gladei & Partners

Levintsa & Associates

PricewaterhouseCoopers Legal

Tier 3

ACI Partners

Buruiana & Partners

Law Office of Victor Burac

Vernon David

Tier 4

Vladimir Iurkovski BIA in cooperation with Schönher

Due to loose bar association rules, Moldova has a particular legal market with a mix of Moldovan Bar registered and non-barred lawyers, who can even appear in court. For the moment, a good deal of the transactions are handled by non-barred lawyers.

While some peers argue that despite wanting to comply with the bar they are scuppered by the “politics surrounding bar membership”, other barred lawyers feel they face an unequal playing field. Recent changes to bar rules mean that by 2012 lawyers will at least have to be barred before being able to appear in court.

In general, all firms had a tough time in the past year primarily due to political uncertainty, which has prevailed since the inconclusive elections of June 2009. According to one peer, foreign investment into Moldova dropped ten fold over the last 12 months.

“As long as there is an interim government nobody is doing much of anything... bank and telecom privatisations have been put on hold and the announcement of elections in October is not good news because it means there will be instability until after Christmas,” says a peer. The uncertainty may continue longer, says another, as “judging by the fact the Communist Party wants the election in October, it may be that it will happen next Spring.”

Firms also report that a lot of work is being done through in-house counsel.

On the positive side, firms say that a number of big clients “who are not even involved in Romania or Ukraine were [previously] considering entry into Moldova,” and, says a partner, “the government is in fact doing a better job in terms of orienting the country towards the west and the EU.”

On the legal side, there are a growing number of higher quality services emerging, both locally (PricewaterhouseCoopers and ACI

Partners) and from foreign firms (Vernon David and Schönher). There were also a number of significant financing and project finance transactions, primarily in infrastructure, that kept firms busy. Especially active in Moldova are the International Finance Corporation (IFC) and European Bank for Reconstruction and Development (EBRD).

The government has announced that the EU, IMF and other donors have pledged an unconditional \$2.5 billion state donor package to be disbursed following elections, much of it earmarked for infrastructure and industrial projects.

Turcan & Turcan

Turcan & Turcan is undoubtedly the leading all round practice in the market. It is “very business driven and very professional and it was a great pleasure to see them at work,” says a client.

“Everything they produced was absolutely first class,” says a client, “and to get that level of service from anywhere, and Moldova of all places, was quite an impressive thing.” Another client says the firm is “quite young and well connected to businesses and politicians while keeping a neutral stance ... in a small country, this is very rare to find.”

Other clients were impressed by the firm’s knowledge of English law and by its “capacity to have a very good understanding of overall balance of risks ... that can be put in place and be confident over the results.”

In top deals, the firm acted alongside Linklaters to advise a group of international lenders led by Renaissance Capital on a \$60 million short term facility to a Moldovan-owned international company.

It advised the International Financial Corporation (IFC) and European Bank for Reconstruction and Development (EBRD) on a \$30 million financing to RED Union Fenosa, and a US private-equity fund in the acquisition of a controlling interest in the largest Moldovan winery.

In a fourth highlight deal, the firm advised the EBRD and World Business Capital as lenders of a \$24 million financing to the Trans-Oil group of companies for grain and oil seed procurement.

Octavian Cazac, Marin Chicu and Mariana Stratan advised on all the firm’s key deals.

Leading lawyers

Octavian Cazac

Alexander Turcan

Gladei & Partners

Gladei & Partners has been increasing its numbers since its establishment, although Roger

Gladei remains the main draw to the firm for corporate matters thanks to his experience of banking and finance matters, which is almost unparalleled in the market.

He is “extremely knowledgeable, highly experienced and driven toward the best possible solution; a high-calibre, best-in-class professional,” says one client. His “native intelligence, business acumen and deep legal expertise make him the lawyer you can always rely on,” says another. “Should be regarded as the best finance and banking firm,” says a competitor.

Partner Vitalie Ciofu has a good reputation in litigation, and along with associate Aelita Orhei advised on some of the highlight transactions. The firm also recently recruited a new associate in Tatiana Stefanet. “You can be sure they will explore all alternatives and find the most appropriate practical solution, both from a business and legal perspective,” says one client, while another highlights “intelligence, business acumen and deep legal expertise” as key attributes.

In top deals, the firm advised the European Bank of Reconstruction and Development (EBRD) on a €20 million senior loan to Moldova-Agroinbank, the biggest local bank, a second loan to the same bank for €7 million for the financing of energy projects, and a \$2 million secured loan or the first private medical diagnostics centre.

The firm also acted for Kronor Business Group USA on a €1 million restructuring and equity and debt capital raising and advised the Trans-Oil group of companies as borrower of a \$24 million loan from the EBRD and Société Générale France. In other work, Gladei assisted Comerbank Moldova on corporate governance and structuring matters and Donaris Group insurer on business expansion matters.

Leading lawyers

Roger Gladei

PricewaterhouseCoopers Legal

PWC Legal enters the rankings for the first time. It was created in 2009 from the legal team of PricewaterhouseCoopers, which had been giving legal advice since 2002. The firm has about six lawyers, dedicated to all aspects of corporate law including litigation.

In the transactional side they split their time primarily between real-estate, banking and finance. The firm is experienced in advising both local and international clients.

The key lawyers at the firm are Adrian Candu, Marin Moraru and Alexandru Munteanu. “They are really doing well in terms of the standard of their work,” says a competitor, while a leading lawyer adds that “we have worked with them on a couple of transactions and they came across as a very good group.”

In top transactions, the three leading lawyers advised Société Générale and the European Bank for Reconstruction and Development (EBRD) on a \$24 million financing to a group of Moldovan and foreign companies, including advice regarding shares and assets.

Moraru and Munteanu acted for Unicredit Corporate Bank and the Société Européenne de Banque on a high value financing to an international group of companies with subsidiaries in Moldova for the group to carry out a complete restructuring.

In other matters, the firm advised METRO Cash & Carry Romania and Moldova on restructuring, to separate parts of the company, and assisted on financing to the International Airport of Chisinau. Other recent clients include Radu Trading Company and McDonalds.

Leading lawyers

Adrian Candu

Levintsa & Associates

Levintsa & Associates is one of only two established big firm law firms in the country. The firm has been in the market for over 15 years and has a well established network within the country. Some peers suggest that the firm has been slightly less visible in recent years.

Its core areas of strength include corporate, banking, capital markets and privatisations. Peers consistently recognise the firm as an established leader in the market.

Leading lawyers

Victor Levintsa

Other ranked firms

ACI Partners is tipped by one peer as a "one to watch". The young firm has quickly developed a good name for itself in the corporate transactional sphere. ACI was established in 2006 after it separated from Ernst & Young.

The firm has advised the European Bank of Reconstruction and Development (EBRD) on a number of complex issues, including a review of commercial law judicial decisions in Moldova, establishing a framework for a Mortgages and Mortgages Lending law (which the firm drafted and was passed in 2008).

In recent highlight transactions, the firm acted for the EBRD to co-finance with €10 million the Chisinau Trolleybus Company's acquisition of 90 trolley buses and development of infrastructure, and to advise the city and transport company on the contract.

The firm acted for Alliance Venture Capital on a €25 million acquisition of a wine producer, including advice to the target company

for the restructuring of a €10 million debt. It acted also for Bemol on a €10 million financing from Moldova-Agroindbank and on the concession for the construction of a quay in the International Free Port Giurgiulesti.

ACI also acted for an oil trader on a \$25 million loan from Credit Suisse.

Elsewhere, the firm advised a global IT solutions company on a \$2.7 billion debt restructuring and potential share capital increase schemes and an investment fund on a \$23 million concession for the construction and operation of an underground commercial centre. It also advised BT on corporate matters and handled recent deals for media and private equity companies.

Buruiana & Partners is managed by Mihail Buruiana, an accomplished solo practitioner focused on corporate and finance work. Buruiana has been active in the market for almost 15 years, through which time he has developed a strong reputation among peers as a counsel to both local and international clients.

"He is very, very competent and especially good in financing with a government component," says one competitor. Buruiana has recently been deepening his academic credentials.

Law Office of Victor Burac is managed by Victor Burac. Burac is a very well known sole practitioner with a focus on transactional corporate law. The office represents one of the big local banks and is noted for having a strong French client base.

In past highlight work, Burac has advised on an acquisition of state-owned property and advised a utilities company on an infrastructure project. Burac is also strong in commercial and investment matters.

Vernon David has further consolidated its position and is beginning to develop a reputation on the bigger corporate stage. The core of the firm is partner Diana Neagu, managing attorney George Teodorescu and barred associates Sergiu Bivol and Roman Ivanov.

"Very good, worked very smoothly, we got prompt responses and the quality was outstanding," says a client. "Teodorescu handled the Moldovan aspects of international cases with corporate, competition and commercial law matters, and though the Moldova parts were small they still had to be done at the same level as the rest," says the client. Teodorescu is a former associate at CMS Cameron McKenna.

The firm has the resources of its Romania office and its lawyers are all multi-lingual, between them speaking English, Russian, Romanian and Spanish. In the past, it has helped draft the country's leasing law.

In top deals, the firm was mandated by Unicredit Bank to advise on regulatory issues regarding its potential incorporation as the first

major Western bank in Moldova. The firm also advised BCR Chisinau on the expansion of its banking and retail businesses and acted for the majority shareholders in Moldova-Agroindbank on a potential minority divestiture. It also advised international firm Dewey & LeBoeuf on a media company's interest in setting up in Moldova.

Elsewhere, it advised an oil company on a concession for the operation of a port and Ernst & Young Kiev on Moldovan law issues related to a merger of one of its international clients.

Vladimir Iurkovski BIA in cooperation with Schönherr is the name of the Schönherr Moldova desk, which operates in collaboration with the Law Office of Vladimir Iurkovski. Iurkovski was formerly in the Vienna and Bucharest offices of Schönherr and the Moldova desk is built around him.

One of the key associates at the firm is Anna Cusnir, who covers banking, finance and M&A. She "appears to be very committed and ambitious" says one peer. The firm recently recruited Andrian Guzun, a member of the Moldovan bar. It has a strong network with expertise and is overseen by Austria based partner Markus Piuk, who well regarded by competitors.

The team is specialised in corporate, M&A and advising foreign investors. It is especially useful to Austrian based investors.

In top deals, the team advised an EU based telecom company on the potential acquisition of a majority stake in a Moldovan telecom company, OMV Petrom on a corporate restructuring of its subsidiary Petrom Moldova and an EU investment group on potential investments related to power transmission lines.

Elsewhere, the firm acted for a Romanian insurer in relation to a potential acquisition and an EU based gambling company on potential investments in Moldova.

Other notable firms

Bondarciuc & Partners is a Moldova based firm of legal consultants with a focus on corporate transactional advice and assisting foreign investors.

Law Office of Valeriu Gritco is managed by sole practitioner Valeriu Gritco. Gritco has an excellent reputation in the market and peers note that he has been quite active in court.

Gritco is focused almost entirely on the litigation, but is worth noting as a key figure in corporate law and for his business acumen and responsiveness. Gritco provides some transactional advice to clients including foreign investors.