When M&A gets hostile

As global M&A volumes continue to rise, with shareholder activism growing in the US and Europe, the topic of both defending against hostile bids and disputing post-close was hotly debated across yesterday’s sessions.

Cleary Gottlieb Steen & Hamilton’s Scott Senecal insisted that buyers and sellers should have one eye on future disputes, and draft with absolute clarity, when drafting up M&A contracts. His fellow panelists in the ‘Top 10 of origins of post-M&A disputes’ session, chaired by Igor Maydannik, vice-president, legal support, at OJSC Rosneft, also offered practical tips for avoiding future disputes.

Counsel drafting documents containing share purchase agreements should be aware that one day, a judge could be reading the deal, with none of the context or the realities of the situation at the time of drafting. “Worse still, two well-trained QCs in London could well be poring over that agreement, twisting its meaning to one that serves its clients’ purpose,” said Senecal.

Julia Zagonet, partner at White & Case who specialises in arbitration, agreed. “I often ask myself why a shareholder does not approve of it. I see the results of those decisions made – or not made – during drafting,” she said, adding that transparency between clients and their lawyers was fundamental to the avoidance of future disputes.

“Often there’s an assumption that, until a contract point arises as a problem, it’s best avoided, especially if it causes embarrassment for the client,” said Zagonet. “But in reality, it’s usually this exact issue which arises as a problem at a later date.”

Senecal also offered a warning to buyers facing overly submissive sellers during the negotiation stage. “If you’re drafting a 100-page document which is immediately accepted by the seller, it’s tempting to simply believe you are a master drafts person. But in reality it should be a concern,” he said. In these cases, sellers are simply too focused on commercial priorities and are not cognisant of the drafting points. They should be.

Other pitfalls to avoid include deals with no outside counsel on the sell-side; a common theme on Russian deals of the 1990s, but a rarer feature now. “An English law-governed M&A deal negotiated by a Russian general counsel will create issues, purely due to governing law,” said Senecal.

Fending off hostile bids

For those aiming to block deals entirely, striking differences between public takeover defence options across Europe were debated at another afternoon session by speakers from Germany, the Netherlands, the UK, and Russia. It led one panelist to query the basis of an entrenched Dutch tactic.

Jurisdiction-specific takeover frameworks have created large discrepancies in these countries’ hostile M&A environments. Around 50% of unsolicited approaches in Germany, for example, are lowball offers which do not factor in a premium over the target’s share price. At the other end of the spectrum is the UK, where 95% of unsolicited offers translate into recommended bids. In the Netherlands, that number is even bigger.

This is, to a certain extent, down to Dutch companies’ so-called foundations, which enable the board to buy target assets (to make it less attractive) or exercise options to acquire voting stock. América Móvil’s unsuccessful takeover attempt of telecoms group KPN last year was a rare test for this tactic.

While most companies have these foundations, they are typically like a firehose you see in the halls,” said Amsterdam-based Stibbe partner Allard Metzelaar. “Like firehoses they are rarely used, but this time it was used and quite successfully.”

The deal made the market realise the strategy is a force to be reckoned with, Metzelaar said, adding that it may be unwise for a hostile bidder to approach a company with a foundation unless they are willing to convert into a friendly approach.

But Martin Hitzer of Gleiss Lutz criticised the measure, which essentially makes the company takeover-proof. “I’m still amazed about the structure of foundations,” said the Düsseldorf-based partner. “I often ask myself why a shareholder would approve of a foundation like this.

Under capital markets theory, a takeover offer per se is positive for shareholders as it increases the share price and creates competition for control.” In theory, he said, this should benefit everyone.

Metzelaar responded by noting that anti-takeover foundations are common in companies which, prior to listing, were wholly-owned by a parent or the government and that other shareholders would not approve of it.

Key takeaways

- Panellists advised on ways to avoid post-closing disputes in M&A deals, citing unambiguous drafting as a fundamental requirement;
- Other tips included insisting on the target deploying outside counsel, especially on foreign-law governed deals;
- Delegates were warned of overly complicit sellers, suggesting that difficult negotiations were preferable to no negotiations.

"Two well-trained QCs in London could be twisting the document’s meaning to one that serves their clients’ purpose.” SCOTT SENECAL

Continued on page 7
Question: Which sessions are you looking forward to?

Robert Juodka
Varul
Lithuania
I’m speaking at the session on the origins of M&A disputes and will be attending another panel on corporate issues. The sessions are quite detailed and substantive compared to other conferences, which is great.

Igor Maydannik
Rosneft
Russia
I will be speaking at the session on in-house counsel and will mediate another on the origins of post-M&A disputes. After last year’s acquisition of TNK-BP, it’s important to listen to the opinion of the international community, especially with regards to minority issues.

Nis Hatt
Managing director
Sports Accord Convention
I was invited to speak by the sports minister on the holding of major sports events. Sport is the one thing that truly unites people so it’s an important discussion in an international legal forum, especially with Russia hosting the World Cup in 2018.

Paul Butler
Akin Gump
US
I am speaking at the session on the origins of M&A disputes and will be attending another panel on corporate issues. The sessions are quite detailed and substantive compared to other conferences, which is great.

Roman Rogalev
Director, legal affairs
Russian Standard
With the changing legislation I will attend the session on the nationalisation of transnational tax and the session on enhanced informative cooperation in tax administration. Last year I attended similar discussions that were very useful.

Diana Zhimulina
Professor
STP State University
I am particularly interested in the WTO session as I teach a course on trade remedies. So far the sessions have been interesting and well-organised and I have taken plenty to write articles on when back at university.

Natalya Sokalova
Moscow State Law University
Russia
I will go to the session on legal systems of the world because I want to see a discussion on the problems of interaction between national public law and international public law. I’m also looking forward to the discussion on the philosophy of law.

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Marco Graziani
Legance
Italy
I will be on the panel discussing transnational taxation. There is a general trend, including among developing nations to prevent the erosion of the tax base and increasing pressure on large businesses and high net worth individuals.
The session on arbitration in the 21st century will be important, especially given the recent reform in Russia. I will also attend the session on the modernisation of national civil legislation.

Irina Lukyanova
Institute of State & Law, Russian Academy of Sciences
Russia

My colleagues will be speaking at the session on the legal services market. It will be interesting to hear the arguments for and against tighter regulation as there is a tendency within Russia to want to close the legal services market.

Veronika Horrer
Director
The German Federal Bar

At the moment my work involves a number of tech start-ups. As I have to work across borders in UK and US law, I will be at the session on replicating legal institutions globally. I will also be at the session on the WTO and hope to hear about Russia’s influence on the institution.

Anton Pushkov
IP Center Skolkovo
Russia

I believe competition in the legal market improves quality so it will be interesting to hear the arguments for closing the legal service market in Russia. I’ll also be at the arbitration session tomorrow.

Yaroslav Klimov
Norton Rose
Russia

With fierce competition in the legal markets of Moscow and St Petersburg I will go to the presentation of the regional investment legislation. Investment in the regions is vital for local Russian firms in the future.

Vladimir Klinkorov
Maxima Legal
Russia

I’m moderating the session on long term government contracts in the pharmaceutical industry. The topic is very important as we try to improve the current investment climate and offer investors greater security.

Dmitry Chagin
Chief executive officer
XXI Century Medical and Pharmaceutical Projects

I am flexible with what sessions I attend. Currently I intend to be at the session on the dangers and opportunities of replicating legal systems and global compliance. That will be useful helping to deal with the greater number of Russian firms coming to Finland to invest.

Igor Livchitz
Juridia Butzow
Finland

With the recent increase in post-M&A disputes it is essential to analyse the origins. I will be speaking in the session on this and we hope we can discuss how to improve future deals to reduce the number that end in dispute and the very lengthy litigations.

Oleh Malskyy
Astapov
Ukraine

My friend is speaking at the session on the development of competition policy. This is an important topic when considering future legal policy because of the current consideration of changes to Russian antimonopoly law.

Alexander Nadmitov
Nadmitov & Partners
Russia

Leading experts in International Asset Recovery involving Russia and the CIS

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US lessons in bankruptcy

A US bankruptcy judge yesterday shared his insights on the recent evolution of the country’s highly-regarded business reorganisation regime.

At the morning session titled ‘Cross-border Reorganisations and Liquidations: Legal Aspects’, judge Sidney Brooks assessed the application of Chapter 11 of the US Bankruptcy Code which allows businesses to reorganise while under the protection of the federal bankruptcy court.

“The court protects the business so that it can have the time, opportunity and even new fresh financing for the purpose of undertaking a reorganisation,” he said. Many businesses seek refuge in the US court from their creditors while they attempt to negotiate a settlement arrangement.

In contrast, Alyona Kucher, an associate professor in the law faculty at Lomonosov Moscow State University, described Russia as being at the kindergarten stage of its development, with work to do on both its local and cross-border bankruptcy regimes.

But, Brooks said the US is also still learning how bankruptcy works. “It’s very complicated and in an increasingly globalised economy we are changing our law frequently.”

SIDNEY BROOKS

Russia’s infrastructure options revealed

Understanding and commissioning structures used in Italy and the US could help Russia raise the $1.2 trillion it needs to reach its 2020 infrastructure goal.

The new options are particularly important following recent concerns around the effectiveness – or otherwise – of recent changes to Russian project finance laws.

Panelists from Russian banks and sponsors speaking at yesterday’s session ‘Models of infrastructure investments: classics and new instruments’ outlined their concerns with a number of the available financing tools.

At the centre of debate were life cycle contracts (LCC). A contractual form of public-private partnerships (PPP), these see a governmental entity assign or procure in relation to the types of projects to which they apply as well as over private party responsibilities, the timeframe for budgetary obligations, termination and private parties’ ability to form simple partnerships.

“A framework similar to Italy’s unsolicited bid regime could improve the efficiency of project tenders,” said Aleksey Chichkanov from Dalla Vedova Studio Legale in Rome, explaining a process whereby a sponsor pitch an infrastructure project package to the authorities, which is then opened for tender. The party submitting the second best bid gets on first right of refusal to increase their offer.

When we passed Chapter 15, we set up the architecture so that bankruptcy cases in other countries can access the US courts, he continued. “The US court has an obligation to recognise and approve a foreign representative in a foreign bankruptcy in almost all circumstances.”

Of the process itself, Brooks noted that it is technical and complex. But, he added, the fact that many countries are continuing to use it is a testament that it works.
How mediation can save the children

Children's rights in family disputes are best protected by mediation rather than a court approach, according to panelists at yesterday's Private Law session.

Speakers also praised Russia's recent attempts to keep family disputes out of courts, illustrated by its signing of Hague Conference conventions on children's rights and interests.

In 2011 Russia signed the Hague Convention of 1980 on Civil Aspects of Child Abduction, and in 2015 it signed up to the 1996 Convention on the Protection of Children. For its part, the Hague Conference has made efforts to include mediation in the implementation of conventions covering family disputes since the Hague Convention of 1980.

"The Hague Conference has a huge role in mediating family disputes," said Veniamin Kaganov, deputy minister for education and science of the Russian Federation. Russia's recent membership appears vital, too. Under the convention, Kaganov said that out of 70 recent queries about missing children a staggering 50% involved Russian citizens enquiring about their children that had been abducted and taken to Spain, France, Armenia and the Czech Republic.

"It's important for us that other states recognise Russia is a new member of the convention but we also need to do more with local legislation to implement these conventions," said Kaganov.

Progress is being made. In May, a federal law was passed to implement the convention. In 2013 the country also launched the Federal Institute of Mediation which is responsible for implementing state policy on childless mediation. Kaganov insisted the country would continue to improve federal laws on prosecution too.

Best for the child

Christophe Bernasconi, general secretary of the Hague Conference on private international law, emphasised the Conference's focus on mediation in the area. He noted that all three of its recent conventions (1980, 1996 and 2007) stress the importance of 'amicable resolutions' in family disputes, rather than the court approach.

"By including these provisions, the Conference is essentially trying to find solutions that are best for the child in the situation," he said.

Bernasconi used the example of child abduction to illustrate how mediation better served both the parents and the child involved. Firstly, the method could be used as a preventative measure, with parents engaging in mediation when one party wishes to relocate. Agreeing on access rights and regular contact with the child often prevented the abduction in the first place.

Secondly, when abduction has occurred, mediation can facilitate a prompt return, he said. In cases where the left-behind parent does not insist on the child's return but requests access rights to be guaranteed, mediation can secure this without further conflict. "The effect this can have on the child is enormously positive," said Bernasconi.

Mediation is not a perfect solution though, and a more consistent approach is needed across signatory states. According to Bernasconi, national and cultural differences can impact the process. "Even the basic principles of impartiality and fairness aren't always applied uniformly in mediation," he said.

Jean Ayoub, chief executive officer at International Social Service Network, said the Conference is essentially trying to affect parents. The guide includes input from international experts, with many coming from the Hague Conference.

Mutual insurance should go nuclear

A speaker at one of yesterday's panels has called for nuclear operators to make use of mutual insurance in their sector.

A mutual insurance company is one owned entirely by its policy holders.

The panellist noted that, from its beginnings in the US and Europe, mutual associations have developed into fully-fledged partners in insuring nuclear risks.

"It's now time to talk about this instrument quite seriously, and that's in the hands of the operators," said Larisa Sachenko, the general director of Risk profile.

Sachenko outlined the advantages and the drawbacks of the insurance sector's new tool.

The first advantage Sachenko noted was that mutual insurance companies allow for profits to be distributed among the members. Any such profits are rebated to policyholders in the form of dividend distributions or reduced premiums. Mutual associations are also willing to accept risks that are not taken by conventional insurers.

Speaking at yesterday's panel, 'Risk insurance of civil liability for nuclear damage' Sachenko also noted the ability of mutual associations to pay a so-called retrospective premium. But mutual associations also have drawbacks. "All the capital is virtually in one pocket," said Sachenko. She added, however, that mutual reinsurance companies are being developed and are growing fast.

Among the other disadvantages, there are also restraints in terms of the composition of the accepted risks. Although Sachenko accepted that mutual associations will not replace the conventional insurance industry, she stressed the important role mutual associations have to play in providing insurance for nuclear damage.

The role for mutual associations in the future is to complement the traditional insurance market and offset its risks, said Sachenko.

Speaking on the same panel, Konstantin Sokolov, the chief expert with the Treasury of the state atomic energy corporation Rosatom, noted that his organisation had decided against setting up an industry mutual insurance association.

He highlighted the long time mutual associations need to increase their insurance capacity as a key disadvantage. The European Mutual Association of Nuclear Insurers (EMANI) took 20 years to accumulate the required funds, he said.

Some 20 or 30 years would be needed to achieve the required insurance capacity, he told delegates.
Fighting for arbitration

Former International Bar Association president Akira Kawamura talks to Amy Carlse about his achievements in the post, his hopes for arbitration and why the St. Petersburg Legal Forum will help spread the rule of law.

What are your expectations for the fourth St. Petersburg International Legal Forum?

I look forward to seeing the increasing number of international delegates who plan to attend the forum. St. Petersburg is an extremely unique venue for lawyers to get together, and it is very different from the IBA and other international platforms. The forum’s international appeal is key, with lawyers from a number of jurisdictions including the Middle East, Eastern Europe and Asia having the opportunity to listen to excellent speakers, share ideas with Russian diplomats and discuss a broad range of legal topics. The entertainment is also very attractive. Personal highlights include the boat trips, gala dinners and theatre visits to watch the Russian opera – the forum will be very good for that.

You are due to speak at the session ‘Arbitration in the 21st Century’ in this year’s forum. Could you expand upon this phrase?

Litigation has become a nationalised commodity. It can only be used within the framework of each nation. Instead, international arbitration offers companies operating under regional, bilateral and international agreements to operate in a global economy. Arbitration is better suited to the needs of an international market, the parties are able to decide which jurisdiction they wish to use, and it’s an excellent way for companies operating under varying legal systems to resolve issues. National and local courts are not the answer for those wishing to settle international disputes, whilst arbitration is very much a 21st century remedy method.

Could you give us a sense of what you will be discussing on the panel?

During the Forum I wish to propose a Japanese and Russian International Commercial Arbitration Centre. It is a very good idea, as it allows Russian business people who aren’t well versed in the Japanese courts – and vice versa – to resolve disputes and increase potential business links. The best solution is a middle ground, and I believe this is it.

The scope of international arbitration and other alternative dispute remedies has grown over the last few decades and become a common remedy for resolving international business disputes. Why do you think this is and will it continue?

I’m very confident that the role of international arbitration and alternative dispute remedies will continue, and in the context of international business become the main stream of dispute settlement. The local courts are not necessarily suitable for international disputes, they are limited and regulated by cultural factors. For example, a US litigation court may be very efficient and organised to the west, but for a Japanese business to litigate in the US is unfamiliar and often uncomfortable. Courts are no longer an adequate solution for cross-border disputes.

What were your greatest achievements whilst you were president of the IBA?

One of my priorities was the promotion of international exchange between the IBA in Russia and Asia, and I believe I achieved this. The IBA was not active in either of those regions, and many of my western colleagues were afraid to connect with Russia, with many concerned about the political issues that may be imposed.

But I was, and still am, confident that the Russian lawyers were independent of political power. In fact, from just looking at the success of the St. Petersburg International Forum, the number of western delegates has continued to increase. I also chaired the IBA annual forum in Dubai during 2011, which was the first of its kind in the Middle East, and I strongly pushed for the forum to be held there. I am very proud of the work of the IBA and feel that it must continue to strive to reach all lawyers around the world.

And that is what the lawyers are doing, but not only in the US or UK – lawyers in Afghanistan and Iraq are just as capable. I have been impressed with what they do. They work tirelessly, but lawyers have physical and social barriers, and as such lawyers are sometimes powerless. We must establish a global judicial system, but that is hard to achieve.

China for example is problematic, with the lawyers struggling...
to guard the country’s people. That said, they are very brave, and alongside organisations like the IBA they are fighting. There will always be challenges in countries like China, but that does not stop them, at a previous IBA meeting in London, the Chinese government prevented human rights lawyers from leaving the country, so instead we streamed the meeting to the lawyers in China. It was a great success.

As an M&A lawyer, what do you think is the best solution? Should it be legislation based or market-based reforms?

At this moment, the initiatives via the Organisation for Economic Co-operation and Development (OECD) and the UN mean that anti-corruption rules have been introduced in many countries, and the rules are enforced by the powers of the nation. I believe that so far this is functioning very well and of course, IBA is helping both the OECD and UN vigorously to educate, promote and enforce the anti-corruption rules. Although this is working well, that does not mean that corruption is not prevalent throughout the world, and we must actively fight against it.

However, when countries are given the option to choose which policies to follow, it can mean that a global issue has to compete against numerous unique jurisdictions, and this does not work, we need to adapt common rules, but I am very optimistic for the future.

In the G20 2013-2014 Anti-Corruption Action Plan, it was noted that governments and businesses should work together to remedy the impediment to growth and the integrity of the market that corruption can cause. What do you think is the best solution? Should it be legislation based or market-based reforms?

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Discussed.

Europe and the OECD on mutual
Convention of the Council of
the taxation of international
will have to be considered and
may take, but it is already possi-
cast now exactly what form these
Rustem Ahmetshin, senior partner, Pepeliaev Group
Russian policy
De-offshorisation: a new trend of
nothing becomes reality.
ensure that the Russian President's
lic resources will be allocated to
the session on aspects of estate
Switzerland who is speaking at
session will tackle the problem.
"Inheritance without borders",
Switzerland who is speaking at
the UK, for instance has very
Russia's double taxation
procedures.

The session promises to be
interest for both researchers
the discussion. Attempting to find
a joint solution for such specific
issues of cross-border inheritance
disputes as forum shopping, inter-
national practice of recognition
and execution of judicial acts.

O ne unintended conse-
quence of globalisa-
tion's continued
growth has been its
impact on inheritance. As borders
crumble, the act of passing prop-
erty between generations has
become increasingly taxing.
Throw in the evolution of the
classical domestic family to one
often spread across the globe, as
as increased life expectancy,
and the problem grows further
still.

Today's session, entitled ‘Inheritance without borders’, will tackle the problem.
Laurent Besso, partner at de Preux Besso & Schmidt in Switzerland who is speaking at
the session on aspects of estate planning thinks the issue has been going on for some time. "In one
respect this is a recent topic because of the globalisation aspect, but in Switzerland, for
instance, it’s an old problem,” he said. “We are a small country in the middle of Europe so the trans-
border aspects of inheritance are common, with multi-nationality
families often holding assets
across multiple countries.”

How important has the rise of
migration been? “It’s hard to
quantify how much more people
are migrating these days,” says
Besso. “But there are certainly
more expatriates working abroad,
while some prefer to spend their
final years in sunny countries.
Both of these issues push up the
number of trans-border estates,” he
adds.

Differing domiciles
In today’s session, speakers will
touch on this, discussing the
notion of residents of domicile
and exactly what form these
may take, but it is already possi-
cast now exactly what form these
Rustem Ahmetshin, senior partner, Pepeliaev Group
Russian policy
De-offshorisation: a new trend of
Russian policy
Rustem Ahmetshin, senior partner, Pepeliaev Group

In December, in his
annual address to the
Federal Assembly, Vladimir Putin announced measures to ‘de-offsho-
rise’ the Russian economy. It is
beyond doubt that significant pub-
lc resources will be allocated to
ensure that the Russian President’s
wishes become reality.

Radical changes in tax legisla-
tion in this area could be in effect
as early as 2015. It is hard to fore-
cast now exactly what form these
may take, but it is already possi-
ble to predict general trends that
will have to be considered and
discussed.

Firstly, Russia, like other coun-
tries, is making rapid strides
towards greater transparency in
the taxation of international
transactions and holding struc-
tures. In the very near future, it is
proposed to ratify the 1998
Convention of the Council of
Europe and the OECD on mutual
assistance in tax matters. There
are already 64 signatories to the
Convention and it extends to
the UK’s overseas territories. It pro-
vides not only for so-called stan-
dard information to be supplied
on request, but for information
automatically to be exchanged,
for one-off (parallel) and joint tax
audits to be held involving tax
authorities from two or several
countries, and for assistance to be
given in recovering taxes.

Secondly, amendments to the
Tax Code are under discussion,
and a definition may be brought in
of a legal entity’s tax residency.
Currently, residency and the regime
for taxing legal entities are general-
ly based on a single factor – the
place of establishment (state regis-
tration) of the legal entity.

Russia’s double taxation
agreements with over 100 countries
(including the Netherlands,
Luxembourg and Cyprus) also
contain other indicators of a legal
entity’s residency but in practice
these are applied extremely rarely.
However, it is specifically a legal
entity’s residency that determines
whether or not its worldwide
income (ie income earned outside
Russia) is taxable, and the formal
non-residency of offshore compa-
nies does not now allow their
income to be taxed abroad.

Finally, the notion of the con-
trolled foreign company (CFC)
will be introduced into the Tax Code
along with a regime for taxing
CFCs. The notion of a CFC presup-
poses that the undistributed profit
of a foreign subsidiary will be taxed
as income of the Russian parent
company if the dividend of
transferring money, important decisions actual-
ly being taken by another person,
there being no profit or some kind
of market margin accrued in con-
nexion with the activities under-
taken and so on.

At the same time, such a signif-
ificant change in the law seems to
affect almost all international cor-
porations acting through Russian-
based companies. To put it mildly,
the level of legal literacy, profes-
sionalism and competence in inter-
national tax matters in this coun-
try leaves much to be desired, and
this certainly means that basic con-
cepts and rules of law are inter-
preted in an arbitrary manner.
The bottom line is that our
country is only at the start of the
path. Taxpayers, tax inspectors
and courts all need more time to
develop the expertise they need,
to study experience in other coun-
tries, and to devise unified
approaches to matters that in
Europe and the USA have been
discussed and tested out over
decades of practice.

De-offshorisation: a new trend of
Russian policy
Rustem Ahmetshin, senior partner, Pepeliaev Group

"In one respect this is a recent topic because of the
globalisation aspect"
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Caspian dreams: Azerbaijan’s energy challenges

Until recently Middle East’s grip on the oil markets seemed unshakeable. Such importance was attributed to the region because over the past several decades Western countries had few, if any, options other than to purchase its oil and gas from Middle Eastern markets, despite the headaches – including occasional political unrest – that came with it. But now, with the newly found fields of oil and gas in central Asian countries such as Kazakhstan and more recently Turkmenistan, as well as the oil from Azerbaijan, that could be about to change. Oil and gas opportunities continue to grow in eastern Europe and central Asian economies. The Caspian region is expected to play a major role in European ambitions to add more diversity to an energy market dominated by other suppliers. Here, Janet Nussbaum of Greenfields Petroleum speaks to Adam Majeed about her role as in-house counsel for a international company looking for opportunities in the oil and gas industries of Azerbaijan.

How long have you been working in the energy industry?

I have been working with Greenfields since 1987. Before that I worked for 12 years at Amoco Corporation, in its international legal group and I have also worked in private practice, where I represented a variety of small to medium-sized oil and gas companies.

How much experience do you have when it comes to oil and gas in the Caspian region?

Greenfields has been active in Azerbaijan for over five years. It currently participates in a company that holds a production-sharing contract for a field offshore Azerbaijan.

What are Greenfields Petroleum’s main targets for its activity in the Caspian region?

The company’s goal is to capture and exploit what they call greenfields, which are discovered but not fully developed assets. Greenfields then develops those assets to the point where they might be of interest to someone else. The asset in Azerbaijan is an oil and gas field previously owned by SOCAR, the Azeri state oil company.

What potential do you see in Azerbaijan? How important is it as a source for energy regionally and globally?

Historically, Azerbaijan has been very important as a regional source for energy. Its potential is significant, and Greenfields continue to search for a number of new opportunities in Azerbaijan.

What sort of issues do private investors in oil and gas run into in Azerbaijan? In your experience, what are the biggest risks in looking at a project?

I am fairly comfortable with the oil and gas regime in Azerbaijan from a legal standpoint, due to the established production sharing contract the country has had for some time. SOCAR understands the oil and gas business, and works fairly well with the oil companies. However there are obviously operational risks that come with any developing country.

Are there any recurring problems that you face when carrying out work in Azerbaijan as general counsel? Do you come across any regulatory complications?

The production sharing agreement is operated by a joint operating company in Azerbaijan, which fortunately has a good in-house counsel to handle the day-to-day legal issues that arise. Although I am not involved in the day-to-day operations, from a regulatory standpoint Azerbaijan is not significantly different from other developing countries.

At what point in your experience would you decide to look for external legal counsel?

If there is an area in which I feel that I have insufficient expertise, I will look to external counsel. For example, securities issues and financing matters require a specialisation that I do not possess. Similarly, purely local issues in an overseas venue require specialised knowledge.

How much of your work is done in-house and how much is outsourced?

That depends. For strictly oil and gas work, I would say that 95% is done in-house. When it comes to corporate matters such as securities issues, financing matters or items relating to the stock exchange, we do rely heavily on outside counsel.

How do you structure your fees? Do you prefer fixed rates or hourly rates?

I prefer an hourly rate. I want to know who is working on the project, what specific services are provided, how many hours a particular individual spends on the project, and their hourly billing rates. Does that mean that I can control all costs? No, but at least I know if it is getting out of hand.

“One of my biggest challenges is knowing when to get outside counsel involved”

Janet Nussbaum
General counsel
Greenfields Petroleum
Houston

Janet Nussbaum is general counsel of Greenfields Petroleum and has over 25 years of experience in the international upstream oil and gas industry. After a number of years in private practice, she joined the international law department of Amoco Corporation in 1987. After 12 years she returned to private practice, representing both large and small companies in exploration and production operations in countries as diverse as Azerbaijan, Kazakhstan, Oman, Indonesia, Thailand, Tunisia, and Namibia. She has been with Greenfields, or its predecessor, for the last seven years.

Nussbaum received her JD from Vanderbilt University, where she was a member of the Law Review, and her BA from the University of Virginia. She is a member of the State Bar of Texas.
rt forgery has become big business. And Russia, with its rich cultural heritage and long history of renowned artists, is a pivotal country in moves to fight the increasingly global problem.

Any prudent buyer in today’s art market would investigate its purchase to ensure its value and identity. But when the artwork is to be placed in a state institution, the importance of this assessment takes on a whole new meaning.

In recent years there have been a number of scandals and lawsuits related to the authenticity of cultural heritage items acquired by museums. These instances have brought to the fore questions over examiner liability, insurance and black markets. Lack of transparency in a close-knit industry also raises questions of collusion and insider trading.

Home to some of the world’s most famous galleries and museums, it’s apt that these issues will be discussed in St Petersburg by a panel of leading experts. Marina Tsyguleva, head of the legal department of the State Hermitage Museum, is one of those speakers. As she explained to SPLF Daily News, Thursday’s session titled ‘Delphic Oracle or Subject of Law? Expert Analysis of Cultural Value Items: Setting up Legal Regulation of Relevant Issues’ will be a wide-ranging discussion.

“Since expert examination of cultural values isn’t limited by national interests, we would like to discuss legal, professional, ethical and informational aspects of such problems on the international level together with specialists involved into the expert examination of cultural values,” she said.

These problems include identifying and distinguishing between the scope of responsibilities for expert examiners – which are focused on authenticity and authorship – and appraisers who are focused on the artwork’s value.

Professional liability
Another problem to be discussed revolves around professional liability insurance and the need to underwrite examinations and transactions. While appraiser liability insurance exists, it is difficult to prove any damage they may have caused, which limits the practical benefits to flow from any such policy. For museum examiners, there is no such equivalent, and panellists will recommend changes to build momentum for such a product.

Tsyguleva said the roundtable will be held as an open discussion, which will attempt to articulate the basic problems both the museums and other participants of cultural values exchange. The existing framework creates corruption possibilities, and there are fears the situation in relation to museum valuables could be exacerbated by new regulations in Russia. The analysis of appropriate legal measures will be informed by some of the practical strategies that experts use to detect forgeries, and the limitations of these techniques. And representatives of the State Hermitage Museum, State Russian Museum, Sothebys, Ministry of Culture, as well as law practitioners and professors will draw on real-life examples including a number of criminal cases. Another talking point will be the 2012 UK court ruling that required auction house Christie’s to refund Viktor Vekselberg the £1.7 million ($2.85 million) he had paid for what amounted to be a forge of a famous Boris Kustodiev painting.

The fact that forgeries and examination shortcomings are affecting the biggest art players in the world reveals the seriousness of these issues. And the relevant legal frameworks must be reassessed, if the legacy of Russia’s cultural heritage is to continue. The 13 speakers’ goal is to facilitate conversation on this important topic to determine how the legislation should be changed.

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