

ECA-Flavor Opens Up in Georgia

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This forum has its very own flavor. This comment by **Valikhan Shaikenov**, partner of the **Aequitas Law Firm** (Almaty) on **10th ECA (Europe – Caucasus – Asia) Legal Forum** that was held in Tbilisi and hosted by **BLC Law Office**, was probably the best way to describe the history of this annual venue and its uniqueness.

On 17–20 June the Georgian capital welcomed guests from the wider ECA region with gorgeous wine, sceneries and its own achievements of bringing radical reforms into life.

Georgian state officials and representatives of the legal establishment presented their achievements, best practices and shared further ideas of nation-wide and targeted policy-making.

The Georgian way

Everybody agrees that today's Georgia is totally different from how the country looked two decade ago. Unlike its neighbors, Georgia does not have such rich mineral resources, and in its new philosophy to become a regional heart, it has to be more creative. As **Keti Bochorishvili**, Deputy Minister of Economy and Sustainable Development of Georgia described, the strategic vision of the country's positioning is pursuing the strategy of regional hub from its valuable strategic location.

Among the most successful stages of "big-bang reforms" are fighting bureaucracy, the recently signed Association Agreement with the EU, FTAs with Turkey and CIS states, as well as ongoing negotiations with China, USA, and EFTA. As Ms. Bochorishvili stressed, fighting corruption is a top task in government policy. Among the most recent initiatives for improving the investment climate and streamlining inbound investment flow, is the initiative to establish the Investors Council with the support of the EBRD. In her words, the feedback of the private sector should assist the government in policy making.

Giorgi Jugeli, law professor, Free University (Tbilisi) addressed the European roots of Georgian law. The Private Law Reform Advisory Council was created in 2013. The main purpose of the council is to modernize company law in the country. "The draft should con-



sists of more detailed, predominantly default regulations, providing business and law practitioners with a comprehensive legislative guide containing the possibility to modify statutory regulations and to adapt them to specific business needs", he commented. Another root of modernization is harmonization with EU Company Law in accordance with the *EU – Georgia Association Agreement*.

Improving the performance of the Georgian capital market is another trend. The Capital Markets Working Group, which was established in 2013, has already started its work with a diagnostic study and recommendations. Their practical implementation is on its way.

Corporate counsel advice

Customarily held at the forum, the corporate counsel panel brought some new light on how big multinationals can attract external counsels across jurisdictions where they are present.

Olga Korneeva, legal director Russia and CIS, The Walt Disney Company (Moscow) told participants that the majority of legal work in the company is performed by in-house professionals. As

» Professional cooperation across borders



IRINA PALIASHVILI,
Founder, 10th ECA
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Legal Forum

from Ukraine and Georgia, so I am not qualified to talk about Kazakhstan, or Belarus, or Moldova, etc. Finally I gave up, and, because I had good professional contacts in most of these countries, just told them what I knew and promised to send the contact information of my colleagues located there.

The idea to create a regional forum for business lawyers came to me in distant 2004 after the Clyde & Co International Local Counsel dinner in London. The dinner gathered local lawyers from all over the world, and I was the only representative from our economic region. At that time, we used the abbreviation "CIS" to define it, which we recently changed to ECA (Europe-Caucasus-Asia) for obvious reasons. At the dinner I was astonished to discover that our colleagues from around the world have little knowledge about our region, let alone specific countries, but they were eager to learn more. Everybody was asking me about the legal market and developments in various countries, and I was tired of explaining that I am

This experience led me to an idea: at that time, more than 10 years ago, the professional world was not so interested in each of our countries individually, but if we got together and presented ourselves in the global professional map as a region, we could attract much more significant attention! Also, we had very few connections with each other inside the region, while our clients were actively developing cross-region investment projects, so we also needed to promptly establish professional cooperation across the region's borders! And that was exactly what we did for 10 very successful and memorable years, developing the Forum into a highly effective and beloved institution.

This approach of facing the globalized world as one region could also be extremely beneficial today, but tragic geopolitical events destroyed this opportunity for our region. One of the key principles of our Forum, that it must be entirely free from politics, does not allow me to elaborate, although as a lawyer and as a patriot of Ukraine and Georgia, I have strong opinions about current events. However, this crisis will pass, and our region has no better way but to integrate itself into the global economy and into the civilized world.

Walt Disney carries out different businesses, there is an in-house counsel for every type of business. She emphasized that it is very difficult to find competitive expertise on the market with such niche expertise. And there is no sense in attracting external counsels in Russia. But in the CIS region law firms are nevertheless enlisted. Among the challenges for establishing partnership, Ms. Korneeva mentioned “very often external counsels offer rates instead of the solution to the problem”. Conflict situations may arise because of the very formalistic approach of law firms and formalistic answers to requests made by clients. And the payment issue can be another source of conflict. A cap is used in 70-80% of projects she noted, adding that the recent financial crisis has revealed the reality of client care in law firms, their loyalty to clients, and thus affected the choice of counsels.

Irina Chernenko, legal affairs director, Johnson & Johnson Russia (Moscow) told those present that the company does not have in-house counsels in CIS countries and enlists its law firms. Among the recent successful types of cooperation she named a project called “virtual lawyer”, when by combining the efforts of different local firms the company receives legal services through a one-stop-shop. “This is very suitable for us as a client. Plus the rate is fixed”, she added. According to Ms. Chernenko, during crises law firms have demonstrated their maturity and partnership approach. Johnson & Johnson fixed the exchange rate in rubles with its counsels, and has not reviewed it. “That means predictability and a reasonable price for the client, as budgeting was a very essential advantage in this period”, she added.

Natalya Thotahewage, regional legal counsel Russia & CIS, Abbott Laboratories LLC (Moscow) stated that expertise in the pharma sector is very niche. Hence, law firms are enlisted to handle transactional work, debt collection, etc. There is a global list of law firms that are recommended for legal outsourcing globally. In her words, the procurement department that purchases these services for the legal department, haggles very good discounts. Using a local firm, the company annually sends request for possible rates and offers from them. The most flexible firms may receive legal outsourcing. But in practice, firing a law firm is frequently the consequence of oversized billing, Ms. Thotahewage confirmed.

Not an easy formula of how to get and keep a client, from the in-house counsel perspective, is expertise, personal

» Kazakhstan: Fueled Growth



ADLET YERKINBAYEV,
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Regulation of the legal profession in Kazakhstan continues to be minimal. A legal diploma is sufficient to practice law in Kazakhstan. An advocate's license is required to represent clients in criminal law matters only. As a result, there are no prescribed standards of conduct for non-licensed lawyers (i.e. for non-advocates).

There have been attempts by the profession to self-regulate itself (notably, through establishment of the “KazBar” association) though these attempts are yet to be embraced by a critical mass of the country's lawyers.

The market is dominated by international law firms that tend to do the majority of complex or high-profile work. Local firms mostly serve local clients though there is a handful of local firms which have presented some competition to international law firms over the years (mostly, as a result of their acting as local co-counsel to international law firms not having a presence in Kazakhstan).

English law remains the law of choice for cross-border transactions and inbound investments. As a result, London has firmly established itself as the center for handling transactional work on Kazakhstan-related matters.

Despite the fact that a number of international mega-firms (or firms with aspirations to become such) have offices in Kazakhstan, over the years a significant part of the work has been handled by firms not having an office in Kazakhstan.

The development of the market and the profession have been fueled by the significant growth of the country's economy and business activity over the last 20 years. However, both the market and the profession have not been developing as fast in terms of sophistication, capabilities and consistency of legal service.

The state has become a significant supplier of legal work, increasingly so after the 2008 crisis and the increase of the state's control over key sectors of the economy.

Most firms are concentrated in Almaty (which still remains the center for business and finance, though in recent years the balance has been shifting towards Astana) and Astana (where most state bodies and a handful of major corporations are headquartered).

The Government's plan to create the Astana International Financial Center in 2016 and the proposed relocation of the National Bank of Kazakhstan and the financial infrastructure to Astana to support the Center may tilt the balance towards Astana in the long-term.

The impact on the market and the profession of the recently created Eurasian Economic Union and the related plans to headquarter in Almaty the common supranational financial regulator of the Union in 2025 (though the latter no longer being certain given the plans to develop the Center) is yet to be seen.

The Kazakhstan legal market remains an interesting and developing market, which is still dominated by a handful of international law firms with a steady increase in the number of local firms competing for work with international law firms.

As it often happens, the crisis prompted a new idea. Namely, that our regional legal community can be preserved and can further develop by being integrated into a global institution — the International Bar Association (IBA), which in a global sense is the largest and the most important organization for our profession. Moreover, under the auspices of the IBA we can establish and promote our new platform — the modern Silk Road. Look at the map of our region: it is the most valuable connection between Europe and Asia. In fact, we are the Silk Road, so I proposed to change the current motto of the Forum “Know your Local Counsel — Recognize an Opportunity”, which became outdated in the space of 10 years, with a new one: “We are the Silk Road”. Of course, the modern Silk Road, just like the ancient one, is full of traps, which in turn translates into plenty of work for us, the Silk Road lawyers!

Another idea with regards to the future of the Forum, which thankfully was not prompted by the geopolitical crisis, but was developed organically over the last few years, was the generational change in the leadership of the Forum, which would give it a fresh impetus and reflect a general trend emerging in our legal market.

This two-part vision — joining the IBA and achieving the generational change in the Forum leadership — was successfully implemented by the time the 10th Forum was held in Tbilisi. The Tbilisi Forum was not only a celebration of the past 10 years and the honoring of Forum veterans, the Organizing Committee and the Coordinators, the Host Firms, the Welcome Team, but was also the start of a

new life for the Forum. We came to the Georgian capital, together with the IBA leadership, to announce a mutually beneficial deal, under which IBA will provide a platform for our Forum, will help with all technical and promotional work, while the substance and the program will still be developed by the Organizing Committee. And the new Organizing Committee was formed right before Tbilisi through an open call for candidates, each of whom presented an essay with their ideas about the future of the Forum.

As to our generation of the Forum leadership, many of us agreed to remain as Honorary Advisors, and will be on call in case our advice is sought by the new Organizing Committee. It is a special pleasure for me that two brilliant Ukrainian lawyers, Lana Sinichkina of Arzinger and Oleksandr Padalka of Sayenko Kharenko, became members of the new Organizing Committee, with Lana elected as one of the four Co-Chairs.

I am also very happy that according to our agreement with IBA, the first Forum of the new reincarnation will take place in Ukraine next year (most likely in Kiev and Lviv).

We all are going through extremely difficult times now, but I have no doubt that Ukraine will overcome all obstacles and will become a successful European country, and that our region will be reshaped in a positive way, while our regional legal community, preserved and consolidated through the ECA Forum and IBA, will flourish on the global legal market.



relations, fixed rates and budgets, industry knowledge, and involvement of law firms in designing practical legal solutions.

Adjustments for efficiency

Best practices in local and foreign law firms cooperating in international investment projects in the ECA region were examined in the law firm management section. The main question that is addressed by both sides is to discover if the client's interest is really integrated into such cooperation.

Ilgar Mehti, managing partner at **Ekvita** (Baku), informed that as a huge flow of investment into the oil and gas sector of Azerbaijan comes from the UK. British firms are especially active in hiring local counsels. "As regards looking for the specific instructions on client relationship, it is very important to talk to the senior representatives of the international firm to be sure that we are on the same ground when it comes to specific issues", he said.

Stephen Denyer, head of City and International, The Law Society and Co-Chair,

IBA Law Firm Management Committee (London), paid attention at three elements of success - communication, responsiveness and quality. He stressed that is very important to come to London, where the Law society of England and Wales foster communication between UK firms and counsels around the globe. "In my experience firms that are seeking international business, they really have to devote a lot of time and attention to the issues of effective communication. And it cannot be done simply in the hit transaction", he said. Many firms and legal departments select a small number of counsels with whom they work regularly because it more efficient to work consistently. Ahead of that, of course, they need to invest time and effort to get to know those firms and lawyers.

Addressing the topic of communication on a regular basis, the conference calls for a review the progress and spotting issues ahead of time. Clearing the roles on transactions and updating the accessible contact list are also very important tools.

Armando Ambrosio, partner at **De Berti Jacchia Franchini Forlani** (Milan — Moscow) shared with participants that what is crucial for the selection process is to ask proposals from three equal law firms and then compare three offers. And here is the main issue, as it is difficult to determine expertise. "I understand that I need to learn expertise not only through track records but also through the reputation on the market and opinion of people who worked with that firm to be certain about the quality".

For ten year the Forum gathered business legal practitioners all over the ECA region and definitely established a good annual tradition to be a summer meeting point of this kind. The consistent organizer RULG — Ukrainian Legal Group, forum's dedicated co-chair Dr. Irina Paliashvili, and the team of organizers passed the driving seat to the International Bar Association and the newly inspired members of its organizing committee.

» Belarus: Turbulent but Exciting Times



MAKSIM SALAHUB,
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The legal market in Belarus could not escape major trends in the domestic economy and effects of the situation in our region. Today perhaps more often than ever we find ourselves in one boat with the clients, i. e. dealing with the same economic challenges and risks, and sharing the same concerns about the future. I would name a few factors which in my opinion are of most influence on law firms' life in 2015:

— Economies of Belarus' major trade partners, Ukraine and Russia, are in turbulence. Other traditional export markets have shrunk too.

— Economic stability in Belarus is fragile.

Both population and business have quite gloomy expectations as to what happens after another presidential election in October 2015. Last time, in 2011, it was a massive economic disaster.

— The "Belarus Model" is transforming, step by step, into a more conventional market economy which is recognized both by domestic and foreign business.

— Belarus is investing heavily into relations with China, seeing it as the third center of power, after Russia and the EU. The efforts seem to start paying off in 2015 with significant Chinese investments moving into the country.

— Launch of the Eurasian Union which happened this year seems to be difficult. The member states (Russia, Kazakhstan, Belarus, Kyrgyzstan) agreed on a number of exceptions from the common market, to obvious dissatisfaction of the Belarus' leadership.

In the light of the foregoing, I would share the following observations and expectations with regard to the legal market:

— Generally, the market might shrink, but not as significantly as, for example, during the previous economic downturns (2009, 2011). Unfortunately, no prospects of rapid growth in the foreseeable future.

— We might see more exits from the market, especially foreign firms (e.g. recently terminated relations with local teams: Lithuania's Norcous, Sweden's Magnusson. Glimstedt office has become almost non-existent).

— We might also see new arrivals, especially from Russia and other former Soviet republics. Perhaps a Chinese law firm will open at least a representative office.

— Workflow from Russian corporate clients will remain decreased for some time. On the other hand, we are working on increasing number of projects with Western investors, mostly joint ventures. And, of course, quite many firms in the market are after the large Chinese corporations and banks venturing in Belarus.

— Movement of partners and teams between firms is also a possibility. So we are living in turbulent but exciting times, which also present great opportunities to those who come prepared.