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to the point
Finance

Q2 2020

Safety, resilience, flexibility, innovation, and underlying all, business continuity

- **In Q2 2020 we faced the new challenges brought about by Covid-19, in earnest.** Lockdowns had already started in some jurisdictions in Q1, but it was Q2 that gave a clearer indication of the many ramifications we would face in 2020 and, most likely, also in 2021 as a result of the pandemic. With the easing of lockdowns and the beginning of the summer period, some may think a return to (the "old") normal could be hoped for by the end of the year. Unfortunately, as I write this we know already we must brace ourselves for a longer challenging period. Covid-19 cases easily gain momentum when safety measures are not strictly observed. And so, we are by now fully engaged in the "new normal" where safety, resilience, flexibility and innovation are all at the forefront of how we do business and fight to ensure business continuity for our clients and ourselves. As you read our news from the region, you will notice finance business continues in all its various forms and areas: long awaited regulatory changes were introduced in the Czech Republic, and new ECJ rulings were passed concerning consumer protection in Austria and in Romania. Two areas already stand out and are expected to continue gaining momentum: special situations (with two cooperative banks in Poland placed into forced restructurings, and a Romanian insurer declared insolvent by the regulator), where further developments are expected once the moratoria introduced during the lockdowns expire towards the end of the year, banks will have to face the impact of Covid-19 on their customers; and green and ESG-linked finance where sponsors and lenders alike seem to gear up to take advantage of the EU investment and financial support programmes. As before, we will become stronger through these new challenges and continue supporting our clients while adapting and growing in the "new normal".

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Finance | Austria

- **With the goal of containing the crisis triggered by the Covid-19 pandemic,** the Republic of Austria has swiftly introduced a number of state support schemes. For larger businesses, state financial support is predominantly available in the form of state guarantees for bank loans. As Q2 came to a close, we have seen an accelerated take-up by borrowing corporates of OeKB-KRR- and COFAG-financings. On the other hand, much debate has been had around banks not swiftly enough deploying the liquidity made available by the ECB under its targeted longer-term refinancing operations (TLTRO III) to support the 'real economy'. This was criticised by some as banks being overly reluctant to lend. This criticism, however, neglects the fact that despite regulators supporting a flexible approach to rules on forbearance and to accounting standards (IFRS 9), those continue to apply, and that banks must of course still apply sound underwriting standards when taking lending decisions – even if part of the financing will be state guaranteed.

  Martin Ebner

Market Place | Czech Republic

- **The long-awaited amendment in the area** of undertakings in the financial market entered into force on 1 May 2020, bringing many exciting regulatory changes. The amendment modifies, inter alia, the Capital Markets Undertakings Act to comply with the EU Prospectus Regulation, and reintroduces the obligation to record calls with clients concerning the provision of investment services. Furthermore, a new category of independent intermediary distributing supplementary pension savings ("SPS") and a separate category of tied agent for SPS is being introduced. Lastly, the amendment introduced important changes to the Insolvency Act addressing the insolvency of entities without legal personality such as sub-funds of investment funds and unit trusts, so that their bankruptcy does not endanger their managers or other funds under their management.

  Matěj Šarapatka

Special Situations | Poland

- **In recent months, for the first time the Polish Bank Guarantee Fund** (BFG) has issued decisions to start the forced restructuring of two cooperative banks (banki spółdzielcze), namely Podkarpacki Bank Spółdzielczy in Sanok (the second largest cooperative bank in Poland, in January 2020), and Bank Spółdzielczy in Przemków (in April 2020). The Polish Financial Supervisory Authority shall report to BFG if (i) any bank is at risk of bankruptcy and (ii) there is no indication that supervisory activities or banks' actions will remove such risk in a timely manner. If these two conditions are met and actions against such bank/s are necessary in the public interest, BFG shall decide on the forced restructuring. In the given cases the restructuring will be performed via a bridge bank taking over the banks' assets, including deposits and loans.

  Weronika Kapica

Market Place | Hungary

- **The Hungarian National Bank (HNB)** together with the Hungarian Stock Exchange (HSE) pledged themselves to boost the underdeveloped Hungarian bond market. The HNB launched its bond purchase programme (NKP) in July 2019, and the HSE established XBond shortly thereafter, a market specified for bonds with relaxed conditions. Since its launch, bonds were registered on the XBond in the value of EUR 660 million; 90 % of which were issued within the NKP. Putting this into context: the aggregate amount of bond issuances since last July is EUR 800 million; whereas in this period only Poland topped Hungary in the CEE region with its transaction value of EUR 1.1 billion. This indicates that Hungary is on the right track of establishing a vivid bond market.

  Gergely Szaloki

Special Situations | Austria

- **In light of the economic effects of Covid-19** the Austrian Financial Market Authority ("FMA") issued a regulation on 18 March 2020 prohibiting the sale of shares or debt instruments which the seller does not own at the time of the sale agreement being entered into (i.e. prohibition of short selling of financial instruments; excluding transactions where there is a market making function as well as certain index-based financial instruments and baskets). Considering the improved Covid-19 situation, the FMA was able to lift the short selling restrictions in the meantime. The restrictions expired on 18 May 2020 which marked a step towards a return to normality, sending a positive signal to investors. The general EU-wide legal ban on naked short selling of shares, naturally remains unaffected by this measure.

  Matthias Pressler / Daria Dolina

Special Situations | Austria

- **The European Commission (EC) issued** a proposal to amend the "Benchmark Regulation" (EU) 2016/1011, under which the EC would be empowered to designate a statutory fallback rate for LIBOR, in the various relevant currencies, by reference to the rate recommendations of the pertinent risk-free-rate-working groups in the relevant jurisdictions. The statutory replacement rate would only apply to contracts of supervised financial entities, but national competent authorities are urged to adopt national statutory replacement rates for contracts between two non-financial counterparts governed by the laws of the relevant jurisdiction. These proposed new powers aim at ensuring legal certainty for existing contracts referencing LIBOR whose cessation would otherwise result in a significant disruption in the functioning of the financial markets in the EU. The amendment would furthermore enable European companies to continue referencing non-EU non-convertible foreign exchange spot rates for hedging purposes after December 2021.

  Laurenz Schwitzer / Viktoria Stark

Consumer Finance | Austria

- **The European Court of Justice (ECJ) has**, in response to a request for a preliminary ruling by a German court, recently ruled that Directive 2008/48/EC (the Consumer Credit Directive) precludes a provision in the withdrawal information of a consumer loan agreement making reference to a provision of national law which itself refers to other national legislation (so-called "cascade reference"). According to the ECJ, in such case the consumer can neither determine the scope of his/her contractual obligations nor check whether the contract includes all required information and the withdrawal period has thus already begun. Hence, following this decision, all required information must either result from the contract itself or a single, independent legal reference.

  Michael Schmiedinger

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For further information, please contact any of the individuals named above, your usual contacts at Schoenherr or any member of our banking, finance & capital markets practice group