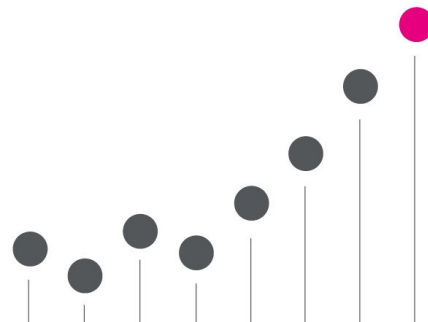


to the point Finance



Q1 2020

Welcome

- **Keep calm and carry on.** Two months into 2020, the financial world remains at a point of uncertainty about the immediate future, but is also seeing a number of interesting developments, both in terms of market movements and regulatory/legislative initiatives.

The current consensus about the global (and, by extension, CEE) macro-economic outlook is that, on the one hand, we find ourselves at the peak of the cycle. On the other, we are facing idiosyncratic uncertainties such as a looming pandemic, a prospect of a disorderly Brexit, and political instability in EU. Thrown into the mix are legacy business challenges facing European/CEE banks, such as the fight to sustain profits on traditional banking products and the quest to tap into new markets (where a new breed of competitors – including Big Tech and fintechs – needs to be fought). Last but not least, looming legal uncertainties are not making matters easier: should the loan syndication (and possibly even restructuring) processes be re-thought in light of DG Comp's [report](#) and market inquiry? What stance will courts and legislators ultimately take on questions regarding foreign law denominated (consumer) loans? Are banks adequately protected against risks in the wake of the transition away from the IBORs? The list goes on.

A gloomy outlook? I think the right term is "challenging". Regulators and private players alike have no alternative but to put on a brave face, take on the challenges and keep going. As you will see in this edition of Schoenherr's *To the Point Finance*, the CEE is doing precisely that. To give you a taste: the Czech Republic, embracing the digital era, has laid down the legislative foundation for a singular e-identity (via banks as ID gatekeepers); Montenegro, learning from recent experience, has revamped the legislative toolbox for resolution of credit institutions; Hungary is making it increasingly easier for companies to tap into capital markets for debt finance; Poland is re-vamping its pension system and the Slovenian bank regulator has stepped on the brakes for consumer/residential lending – for domestic banks only. Enjoy your reading!



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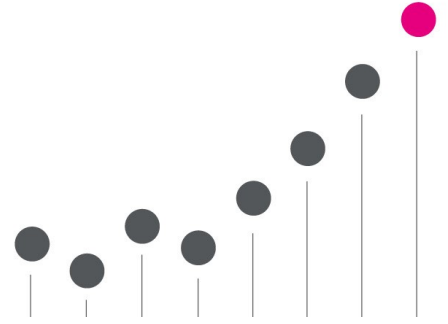
- **The possibilities of electronic identification** for Czech banks will be significantly extended by newly introduced rules on the so-called "banking identity". Their main purpose is to facilitate remote access to various online services for customers who will be able to use their banking identity as an effective means of identification towards third parties (complementing the ID card with an electronic chip, which until now was the sole legally recognised tool for electronic identification). The platform may enhance banks' business opportunities by opening the possibility to provide client verification services, and enable consumers to connect to e-Government services and online services in the private/non-bank sector through their familiar internet banking interface. To be sure, banks will be able to offer client identification services to third parties, such as providers of various digital services – for a fee.

[Matěj Šarapatka / Ondřej Havlíček](#)

Finance | Montenegro

- **A new set of banking laws transposing BRRD** was recently enacted in Montenegro. The year in which the country and its banking sector were shaken by insolvency proceedings initiated against two banks ended with the adoption of new legislation governing *inter alia* the recovery and resolution of banks. The enacted legislative set (comprised of the Law on Credit Institutions, Law on Recovery of Credit Institutions and Amendments to the Law on Insolvency and Liquidation of Banks) was closely modelled after the EU's Bank Recovery and Resolution Directive. The Parliament adopted the legislative set in December 2019. The bulk of the rules governing the insolvency and liquidation of banks have started to apply as of January 2020 with the remainder to come into force as of January 2021.

[Petar Vučinić](#)



Capital Markets | Hungary

- **Several amendments have been introduced to the Hungarian Capital Markets Act.** This is both (i) to reflect the recently enacted amendments to the EU capital market rules (in particular, the prospectus regime) and (ii) to make it easier for Hungarian companies to issue bonds under the Bond Funding for Growth Scheme (sponsored by the Hungarian National Bank) by introducing more lenient information and publication rules for issuances. By way of example, pursuant to the new rules, registering the securities on a multilateral trading platform will no longer automatically result in a "public placement". On a different but related note, in regard to securitisations, the amendment brings about a reliable model regime for the transfer of exposures from the originator to the securitisation SPV.

[Gergely Szalóki](#) / [Virág Palguta](#)

Consumer Finance | Croatia

- **On 30 January 2020 the Croatian Supreme Court** issued a legal opinion regarding the limitation period for restitution claims arising out of the nullity of civil law contracts. According to the Supreme Court, limitation periods must be deemed to commence only as of the finality of a judgment declaring a particular contract null and void. According to established practice, the limitation period was deemed to have commenced as of the performance of the ostensible "obligation" (unjustified enrichment) stemming from the null and void contract. It is generally understood that the opinion – while somewhat controversial – also affects consumer loan agreements with currency clauses in CHF (which could theoretically mean that a party may sue for nullity and restitution indefinitely). We note that the opinion is not formally binding for lower-instance courts.

[Ozren Kobsa](#)

Corporate Finance | Slovakia

- **Up until quite recently, Slovakia was one of the few countries** where providing upstream security (or guarantee) was no concern in financing transactions. That changed with the amendment of the Slovak Commercial Code (inspired by Austrian rules) requiring that the subsidiary must receive adequate consideration for such security. The issue currently affecting financings is that, due to other provisions of Slovak law and lack of court decisions, it is not clear what the

consequences are if this is not the case. One view is that breach of this rule is a problem for the management only, the other that it causes the entire security to be invalid (because it was provided in breach of law). From the perspective of the lenders, there is of course a major difference between these two. Based on our experience in the past year, we see lenders leaning towards the safe approach – requesting that the adequacy of consideration to be paid is externally assessed (e.g. by an auditor) in order to have comfort in this respect.

[Alexandra Adamičková](#) / [Soňa Hekelová](#)

Money Rules | Poland

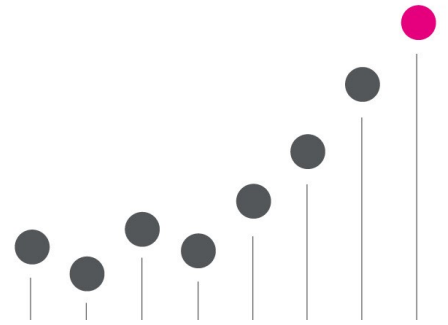
- **Fundamental changes to the Polish pension system** have been approved by the lower chamber of the Parliament. The act is to enter into force as of 1 June 2020. The funds from Open Pension Funds (OPFs) will be automatically transferred to Individual Pension Accounts (IKEs) or to the Social Security Institution, if preferred. In consequence, the pension fund management companies (PTE) that run OPFs will be transformed into investment fund management companies (TFI). About PLN 154bln (EUR 36bln) currently held in the funds will be transferred to IKEs. As the IKE option privatises the pension fund assets (no tax applicable), a 15% conversion fee will be charged, but the funds will be inheritable. This change will raise one-off income for Polish public finances.

[Marcin Antczak](#) / [Weronika Kapica](#)

Real Estate Finance | Serbia

- **The latest amendments to the Act on Enforcement and Security** introduced an amendment (Art. 161) under which leases on property not yet inscribed in the land registry (which includes any object under construction) will automatically terminate upon foreclosure, unless the underlying lease agreements are notarised prior to the oldest writ of enforcement. Although the rationale behind the amendment was to allow acquirers to evict bad faith tenants (a common practice in Serbia was to fabricate backdated leases to keep possession of the property as a tenant despite the foreclosure), it appears that the legislator may not have adequately considered the effect this provision would have on project finance deals in the development phase, especially as financiers and investors typically wish to retain the portfolio of leases / rental income after the foreclosure.

[Jelena Arsić](#)



Consumer Finance | Slovenia

- **The Bank of Slovenia (BoS) issued binding guidance on consumer and residential lending** applicable from 1 November 2019 to Slovenian banks, savings banks and branches of EU and third country banks. Designed to address the rapid growth in consumer indebtedness, these new macroprudential instruments limit the maximum permitted maturity periods and debt service-to-income (DSTI) ratios for new consumer and residential loans. The BoS also recommends (on a non-binding basis) that the loan-to-value (LTV) ratio does not exceed 80 % for residential loans. The impact of these measures – which prompted a vocal public reaction upon their issuance – recently became clearer. According to the Bank Association of Slovenia, consumer lending fell approximately 40 % compared to September 2019 and residential loans saw an approximate 10 % fall.

In terms of market developments, the measures (only applicable to entities regulated by the BoS) may result in an increased (cross-border) presence of EU-based banks in the Slovenian consumer lending market.

[Jurij Lampič](#)

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](#).