Dear Committee Members:

We are pleased to present to you this edition of the Eurasia/Russia Committee Newsletter.

In this edition, we are pleased to introduce a new series of interviews of remarkable judges, jurists and lawyers from the Eurasian region (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). Our Legal Proust Questionnaire is inspired by the basic “Proust Questionnaire,” which has its origins in a parlor game popularized by Marcel Proust, the French essayist and novelist, who in his early years studied law. For our inaugural questionnaire, we are delighted to introduce the Honorable Ganna Yudkivska, a Ukrainian Judge and President of the 4th Section of the European Court of Human Rights.

We are also introducing a new series entitled Sanctions Update, which focuses on sanctions developments in the previous three months, and primarily highlights those developments that affect Russia-related activities and, from time to time, will mention other significant sanctions developments. We are pleased to have Jill Williamson, Partner in CKR’s Government Enforcement and White Collar Investigations Practice Group, as one of our special rapporteurs on the topic. This edition also contains two major legislation news, one from Belarus and one from Ukraine. Finally, we close our newsletter with a summary of our Committee’s events and two panels successfully conducted at the ABA SIL Annual Meeting in New York City, for those who missed them.

We would like to thank our contributors to the current edition!

We encourage the Committee members worldwide to contribute to the upcoming editions of the Newsletter!

Sincerely,

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THE LEGAL PROUST QUESTIONNAIRE

Guest: Honorable Judge Ganna Yudkivska (Ukraine)

1. You have served as a Judge at the European Court of Human Rights since 2010; Vice-President in 2015-2016, and President of the 4th Section as of 1 February 2017. What are your current responsibilities as the President of the Section?

I preside over all cases examined by Chambers in my Section, and direct the work and administration of the Section. I am also an ex officio member of the Grand Chamber, and of the Grand Chamber Panel, which examines referral requests, submitted under Article 43 of the Convention.

2. What do you like most about serving as a Judge at the ECHR?

The Court has a unique possibility to make a difference both for an individual human being and for the whole legal system of the State concerned, as quite often an individual judgment reveals a systemic problem that needs to be solved. It is really fascinating to be a part of this process, and to see how the European legal organism is getting better day-by-day. What is more – we are privileged with the most significant intellectual pleasure and responsibility at the same time, namely interpretation of the Convention - drafted almost seventy years ago - in the light of contemporary circumstances. The “living instrument” doctrine makes this job particularly exciting.

3. Which talent and/or skill do you consider the most important in the legal profession and your specialty?

First of all, being a lawyer - is not just a profession, it’s a mission. It means you want to make this world and everyday life of people better. So, you need patience and love for human beings, and understanding of their relationships that are controlled by law. Judges bridge gaps between law and society, as was rightly mentioned by Justice Barak, so a judge needs a deep knowledge and understanding of both law and society. If you deal with fates of people, you also need sobriety, courage, empathy, common sense and responsibility.

4. What books/publications/articles would you recommend for professional development to any lawyer?


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5. What advice would you give to someone just starting out in the legal field?

Read a lot – classical, philosophical, sociological literature, in order to better understand people and society you want to serve. And also - try to become a unique specialist in the field you’ve chosen.

6. What other career might you have chosen?

Journalist or political analyst.

7. Who are your favorite writers?

There are many, it’s hard for me to name just several, literature is my passion. There are times when you need Kafka and Akutagawa, and there are times you need Chekhov, Bulgakov or Harper Lee. I love Russian and French classic literature – Tolstoy, Hugo, Balzac are being read through and through.

8. Which historical/public figure do you respect the most?

I admire women who became high-class professionals, being determined to live their own lives and inure to the benefit of humanity, and not yielded to social pressure; and who remained excellent mothers and wives at the same time, serving role models for their children. Simone Veil, Ruth Ginsburg, Eleanor Holmes Norton, Louise Arbour, Juliane Kokott are among them.

9. What is the best way for you to spend time away from Law?

Reading.

10. What is your motto?

If you want to change this world for a better one – start with yourself.
Countering America’s Adversaries Through Sanctions Act (CAATSA)

Earlier this year, the Trump Administration faced significant criticism for failing to designate any Russian parties under CAATSA. CAATSA, signed into law in August 2017, includes three titles: 1) Countering Iran’s Destabilizing Activities Act of 2017; 2) Countering Russian Influence in Europe and Eurasia Act of 2017 and 3) Korean Interdiction and Modernization of Sanctions Act. Finally, on March 15, 2018, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) announced that it had sanctioned two entities (the Russian Federal Security Service (FSB) and Main Intelligence Directorate (GRU)) and six individuals, all agents or employees of the FSB or GRU, under section 224 of CAATSA, which targets cyber actors operating on behalf of the Russian Government. Notably, the FSB, and four of the individuals were already Specially Designated Nationals (commonly referred to as “sanctioned parties”) under Executive Order 13694, as amended on December 28, 2016.

U.S. Executive Order 13694 - Cybercrime

Executive Order 13694, “Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities”, signed on April 1, 2015, and amended by EO 13757 on December 29, 2016, authorizes blocking the property and imposing travel restrictions on certain individuals engaged in significant cyber-enabled activities, including denial of service, interference with critical infrastructure, misappropriation of funds, economic resources, trade secrets or commercial information or interfering with elections. On March 16, 2018, OFAC designated three Russian entities and 13 individuals pursuant to EO 13694, to “counter Russia’s malign cyber activity”. All of these individuals and entities were subject to the indictment by Special Counsel Robert Mueller, announced on February 16, 2018.

U.S. Executive Orders 13660-2 and 13685 and 31 CFR Part 589 – Conflict in Ukraine

On January 26, 2018, OFAC announced the designations of 21 individuals and 9 entities under Executive Order 13660, related to the conflict in Ukraine and Russia’s occupation of Crimea. Three of the individuals and two of the entities were designated due to the sale and shipment of four turbines made by a Russian-German joint venture into Crimea—a useful reminder that transactions related to the Crimea region are subject to comprehensive multi-lateral sanctions. OFAC added another 25 individuals and 13 entities to the SDN list under EOs 13661 and 13662 on April 6, 2018.
On April 6, 2018, OFAC issued two new general licenses related to the Ukraine sanctions (a general license (“GL”) is a license that may be relied upon without advance application or separate permission). General License No. 12 authorizes activities “ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States” involving one or more of 12 listed SDNs, or entities in which one of more of the listed SDNs owns 50 percent or more. Notably, this GL does not authorize the export of goods from the United States or the unblocking of any property. The GL requires that any related payments to the listed SDNs be made into blocked accounts. Further, it requires that U.S. Persons file a detailed report within 10 business days of June 5, 2018, the date the GL expires. On April 23, 2018, GL 12a was issued, superseding GL 12, to include reference to GL 14, issued the same day. GL 14 adds one additional SDN to the list of SDNs with which US persons are authorized to conduct maintenance or wind down of operations of contracts existing on April 6, 2018.

General License 13 was also issued on April 6, 2018. GL 13 authorizes the “transfer of debt, equity, or other holdings” in EN+ Group, PLC, GAZ Group, or United Company, by one non-U.S. Person to another U.S. Person through May 7, 2018. This GL does not authorize the unblocking of any property or the sale purchase or divestiture of holdings by U.S. Persons. It also requires that U.S. Persons file a detailed report within 10 business days of May 7, 2018.

OFAC also issued 8 new FAQs explaining in more detail activities that are authorized and prohibited under the new GLs.

**Digital Currency**

OFAC added five FAQs addressing sanctions and digital currency to its website on March 19, 2018 (https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/ques_index.aspx). The FAQs underscore the obligations of US persons to block assets and report transactions with individuals and entities on the SDN list, even if the transactions occur in the digital realm. In addition, FAQ 561 notes that OFAC may start adding the digital currency addresses associated with blocked persons to the SDN listings so they can be used in screening.

**US General**

OFAC announced the increase of maximum civil monetary penalties according to the Civil Penalties Inflation Adjustment Act of 2015. The adjustment tracks the Consumer Price Index for Urban Consumers, which for 2017 is 1.02%. Effective March 19, 2018, civil monetary penalties for sanctions violations range from $13,333 to $1,466,485. The specific maximum penalty depends on the applicable sanctions program. Full details can be found at 83 FR 11876 (March 19, 2018).
Belarus Goes Digital: New Law on Digital Economy

by Dmitry Semashko, Senior Associate, Stepanovski, Papakul and Partners, Minsk, Belarus

In the wake of successful, worldwide known IT-projects between Belarusian and the U.S. companies, such as the World of Tanks, Viber, and MSQRD, Belarus took a significant next step in its legislation on the digital economy. On December 21, 2017, the President of Belarus signed a decree “On the Development of Digital Economy”, which became effective on March 23, 2018 (“Decree No. 8”).

The Decree No. 8 brings significant changes to the IT legal framework in the country and creates new opportunities for IT companies that intend to operate at the High Tech Park (“HTP”), a special legal and tax zone in Minsk. The so-called “Belarusian Silicon Valley”, the HTP was established in 2005 for a period of 15 years as a pilot project for a fast-growing IT-sector-- an alternative to the economy dependent on natural resources. In 2017, the HTP exports hit record USD $1 billion. In light of this success, the life term of the HTP was extended through 2049.

The Decree No. 8 provides for a comprehensive reform: It expands the types of entities that can join the HTP as residents, provides for the application of some features of English law to certain transactions involving the HTP residents, establishes new immigration policies, removes prior currency regulations, introduces regulations of cryptocurrency, tokens, blockchain, and Initial Coin Offering (ICO), and provides for various tax exemptions and simplifications.

The HTP residents can now engage in such activities as the ICOs, cryptocurrency and mining, artificial intelligence, training of neural networks, biotechnologies, aviation and space technologies, decentralized information systems, and cyber sport. Prior to the Degree, only outsourcing companies and development centers could undertake these activities. The Decree No. 8 does not, however, change the prior requirement that only Belarusian legal entities and individuals are eligible to become residents of the HTP, and only upon presenting a business project that they intend to implement as the HTP residents.

As modern transactions require flexibility in legal regulation, the Decree introduces some features of English law into the Belarussian legal system. The HTP residents can now enter into convertible loan agreements, agreements on granting an option for a conclusion of a contract, and option agreements that had not been regulated before. The HTP residents can also enter into non-compete and non-solicitation agreements with their employees. All disputes that will arise out of the
shareholders’ agreements may be submitted to a foreign forum (either a court or arbitral tribunal) notwithstanding the parties’ residence.

The Decree No. 8 also introduced a visa-free regime for foreign employees of the HTP residents as well as for the shareholders of the HTP resident entities. The Decree No. 8 provides that foreigners do not need to obtain authorization for employment upon conclusion of an employment contract with an HTP entity resident. The HTP residents, in turn, do not need an authorization to employ foreign employees.

The Decree No. 8 further provides that foreign trade transactions involving the HTP residents are no longer subject to the rules on currency regulation and control. The residents may enter into foreign trade agreements by implication, such as by accepting conditions on a website, by registering on a website, or by using an information resource. The HTP residents may also employ “smart contracts” - special computer protocols intended to digitally facilitate, verify, and enforce negotiation and performance of contracts.

The new regulation legalizes all activities related to cryptocurrency and tokens conducted within the HTP or partly outside of the HTP with the participation of the HTP residents. In some cases, transactions involving tokens benefit from non-application of currency laws. Physical persons may also mine cryptocurrencies and participate in ongoing ICO campaigns. Tokens are now considered to be certifications of property rights for tax purposes.

Finally, the Decree No. 8 established several tax privileges, such as exemptions from VAT and income taxes, including income tax exemption from token exchanges until January of 2023, a number of tax privileges for transactions with tokens, offshore fees, and land taxes.

Sources:

Text of Decree No. 8

Ukraine: Slow Progress Toward a High Anti-Corruption Court

by Eugenia A. Pyntikova, Counsel, World Bank Group Sanctions Board Secretariat

During the three years following Ukraine’s Euromaidan revolution, the country has seen a series of formal reforms, including with respect to public corruption – a pervasive issue that has tainted
public confidence in Ukraine’s institutions and has caused concern and consternation among international donors and partners. A package of Ukraine’s judicial reforms adopted in 2016 appeared to target this vulnerability. Among other things, the package included a new framework law “On the Judicial System and the Status of Judges,” which provided for the establishment of a High Anti-Corruption Court (“HACC”), conditioned on adoption of a separate specialized law to govern the new court’s function and process.

Pressure to form a new court: In the period of 2016 to early 2018, numerous civil society organizations and international stakeholders have expressed public support for an independent HACC and urged Ukraine’s elected leaders to move forward with adoption of the specialized law necessary to do so. Stakeholders argued that establishment of an independent institution of this type was all the more urgent given that Ukraine had already established specialized investigative and prosecutorial authorities that focus on high-profile corruption: the National Anti-Corruption Bureau of Ukraine (“NABU”) and the Specialized Anti-corruption Prosecutor’s Office (“SAP”). Without an independent court to bookend this new system, advocates argued, allegations of corruption have little chance of resulting in convictions and the young NABU and SAP institutions are vulnerable to loss of credibility.

Points of disagreement: One point of particular contention among stakeholders is the HACC’s expected independence and its roster of judges. Civil society representatives and several international partners have consistently expressed support for an approach that would formally separate the future HACC from potential influence of other courts in Ukraine and would allow international donors to participate in selection of candidates for HACC. Ukraine’s political leadership, however, proposed that the HACC instead be integrated into the existing judiciary system as an “anti-corruption panel” within the Supreme Court of Ukraine. Public discussions came to a head in the summer of 2017, when the President of the European Commission, Jean-Claude Juncker, after a conversation with Ukraine’s President Petro Poroshenko, publicly supported the Ukrainian government’s views that an anti-corruption panel “would be better” than an independent new court. This sentiment was met with alarm and protest from civil society organizations, which reiterated their support for an independent and specialized HACC.

Draft laws and advisory opinions: In early 2017, Ukraine’s High Council of Justice (a judicial selection body), reviewed a draft law “On Anti-Corruption Courts” (Draft Law No. 6011). This draft law had identified a framework generally consistent with the views expressed by civil society and global partners: a new anti-corruption court of first instance and a court for appellate review, both independent and outside the current judiciary system, plus a new Anti-Corruption Chamber of the Cassation Criminal Court under the Supreme Court of Ukraine. Ukraine’s High Council of Justice recommended against adoption of this law, citing constitutionality concerns and inconsistencies with other laws. An alternative bill was submitted to the Ukrainian Parliament (Verkhovna Rada) in May of 2017, departing significantly from Draft Law No. 6011. The bill
would largely integrate anti-corruption judges and cases within the existing system. Shortly thereafter, before a vote, Ukraine requested that the European Commission for Democracy Through Law, known as the “Venice Commission”, comment on both drafts. The Venice Commission’s opinion expressed support for the approach taken in Draft Law No. 6011, noting that the establishment of the HACC appeared both consistent with Constitutional and other legal principles, and appropriate in the context of Ukraine’s broader anti-corruption reforms.

Legislators and stakeholders: In the months following the Venice Commission’s opinion, Ukraine’s leadership did not indicate enthusiasm for Draft Law No. 6011. Indeed, President Petro Poroshenko urged lawmakers to remove that bill from the Verkhovna Rada’s session agenda in favor of an unspecified new bill that he would author. By late December, a new Draft Law No. 7440 was introduced, reflecting departures from Draft Law No. 6011 in several areas including jurisdiction and selection of judges. President Poroshenko’s actions were met with concern from a wave of stakeholders, including the United States, the International Monetary Fund, and the World Bank, which insisted that the new bill be reviewed and revised to bring it in line with the Venice Commission’s opinion and analysis. As of March 1, 2018, the Draft Law No. 7440 passed its first reading. It remains to be seen whether this draft will indeed be revised prior to the second reading to more closely reflect earlier recommendations regarding HACC independence, staffing, and resources. As the legislative process takes its time, the investigative and prosecutorial anti-corruption agencies in Ukraine continue to sound the alarm that delays in the establishment of a fully independent and well-resourced HACC are a central barrier to their mission.

Sources:

   Full text available at:
Highlights from the ABA SIL Annual Conference NYC - April 19, 2018

The Section of International Law’s Annual Conference took place on April 17-20 at Grand Hyatt in New York. The Eurasia/Russia Committee-sponsored events kicked off with a presentation and signing of *Russia Corporate, Financial, and Commercial Law* Book on April 19. In addition to the Book Editor Scott Shostak, the presentation was attended by Elena Beier who assisted with the Book’s review and editing, one of its authors Grigory Marinichev of Morgan Lewis & Bockius LLP (Moscow), and a number of other Committee members.

Later in the day, Grigory Marinichev moderated a Committee-sponsored panel entitled “Hidden in Plain Sight: Pursuing U.S.-Based Assets in Cross-Border Insolvency and Enforcement of Judgments Proceedings,” featuring Timothy DeSieno, (Morgan, Lewis & Bockius LLP), Dmitry Dyakin (Egorov, Puginsky, Afanasiev & Partners Law Offices), Pamela Egan (Rimon P.C.), and John Gutke (Gutke Law Group, PLLC). The panelists discussed legal issues and challenges surrounding enforcement of Russian court judgments in the United States and U.S. judgments in Russian courts, issues arising in insolvency cases involving debtors, assets, and claimants from more than one country, and avenues for pursuing assets in cross-border insolvency proceedings.

The day rounded up with a Committee dinner at Cornelia Street Café where we had a great night of networking among regular and new Committee members and their friends and colleagues from the United Stated and Russia.

On April 20, the Committee presented a panel entitled “The Rise of Foreign Agent Laws: The Emerging Trends in their Enactment and Application in the U.S., Russia and Across the Globe.” The program was moderated by the Committee Co-Chair Michael Shapiro and Diana Tsutieva of Foley Hoag LLP. The panel featured Robert Kelner of Covington & Burling LLP, Maria Kanevskaya of NGO Lawyers Club, Jessica Gavron of the European Human Rights Advocacy Centre, and Melissa Hooper of Human Rights First. The speakers explored and compared the development of foreign agent registration laws across jurisdictions and analyzed them in the context of globalization, legal pluralism, national security, and human rights. The discussion focused on the increase in FARA enforcements in the United States, the Russian Law on Foreign Agents and its effect on civil society organizations in Russia, the ECHR proceedings brought by Russian NGOs that will set a precedent for review of foreign agents laws passed by other countries, the case of RT’s and Sputnik’s registrations under FARA, and the application of foreign agent laws to media companies.

Both Committee-sponsored panels were well-attended and have received universally positive reviews from the attendees for their in-depth and insightful discussion of cutting-edge legal and policy issues.
Russia Corporate, Financial, and Commercial Law
EDITED BY: SCOTT ALEXANDR SHOSTAK

Russia Corporate, Financial, and Commercial Law (Справочник По Праву России) is the only legal reference book to provide practical legal lessons from experienced experts, along with case studies that offer a detailed analysis of complex legal issues.

Following the dissolution of the Soviet Union in 1991, the Russian financial system was transformed from a centrally planned command economy to a market-based economy. With increasing business transactions and investment in Russia, implementing effective investment strategies and successful business relationships with (and between) Russian entities will require the ability to navigate the business laws of Russia.

Written for attorneys, business professionals, government officials, academics, and the general public, Russia Corporate, Financial, and Commercial Law provides an authoritative legal resource on the Russian legal system, laws, rules, regulations, and court decisions.

CHAPTERS INCLUDE:
Chapter 1: Russian Legal System
Chapter 2: Russian Financial System: Overview of Transactional and Investment Laws
Chapter 3: Overview of Mergers and Acquisitions Law in Russia
Chapter 4: Natural Resource Law in Russia
Chapter 5: Intellectual Property Law in Russia
Chapter 6: Dispute Resolution in Russia: Arbitration, Mediation, and Litigation
Chapter 7: Russian Bankruptcy, Insolvency, and Restructuring Laws

ABOUT THE EDITOR
Scott Alexandr Shostak has studied Russian law for over 25 years and provided advice to Russian government municipalities and regional offices, including as consultant to Фонд имущества Санкт-Петербурга, Property Fund of St. Petersburg, and КУПИ, the Mayor’s Office of Saint Petersburg. He has extensive legal experience in economic development and real property law and currently practices law as a Senior Counsel for New York City Economic Development Corporation.

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We appreciate your comments and suggestions regarding the contents of this Newsletter.

If you would like to contribute or have any questions, please feel free to contact Editorial Board members: Diana Tsutieva (DTsutieva@foleyhoag.com); Michael Skopets (mskopets@milchev.com); Ann Sultan (asultan@milchev.com)

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The Eurasia/Russia Committee unites ABA members around the world who are interested in the countries of the Eurasian region: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

The Committee focuses on issues relevant to the region and, through its activities, promotes dialogue and cooperation between legal professionals in business, academic, non-profit, and government spheres.

**Committee Co-Chairs:**

Pamela Egan
Anastasia Herasimovich
Michael Shapiro

For more information, including access to the Committee’s publications and other resources, please visit the Committee’s website.