

GESSEL



art of effectiveness

M&A
YEARBOOK
2017



Year in, year out, the skills, experience and renown of GESSEL as well as of individual members of our team are recognised in the most prestigious industry rankings in Poland and internationally in the field of M&A. GESSEL's market position has been noted, among others, by Legal 500, Chambers Global, Chambers Europe and Expert Guides.

Individual recommendations in the field of M&A were received by:

- Marcin Macieszczak
- Małgorzata Badowska
- Maciej Kożuchowski
- Christian Schmidt


DIAMENTY
PRIVATE
EQUITY

GESSEL
WINNER IN CATEGORY
LAW FIRM OF THE YEAR



INTRODUCTION

It is with pleasure, and with a certain pride, that we present to you our M&A Yearbook for 2017.

The year 2017 has been a very busy one for us. We accompanied our Clients through more than 20 successfully concluded M&A transactions, and we advised on many more.

Our hard work has been recognised in numerous distinctions for GESSEL as a whole and for our individual lawyers in prestigious rankings, including Chambers Global and the 3rd spot in the ranking of law firms in terms of the number of Polish transactions in 2017 in the Mergermarket report.

The large number of transactions testifies not only to our effectiveness and our market position, but also to ongoing interest in M&A deals among the major players of the M&A market.

As far as deal finance goes, we are still living in an easy money climate of good availability and comparatively low interest rates. In 2017, private equity funds investing in Poland and in other CEE countries have been able to augment significant dry powder stockpiles with more than 1 billion euro for new investments in the region. Low interest rates and the proactive stance adopted by many banks has rendered credit facilities a major stimulant driving the transaction market in its own right. There are also the mezzanine funds, thriving in their own market niche. This confluence of factors has been generating pressure to go shopping, and also increasing competition among suitors. Naturally enough, this competition has been leading to spiking valuations, with the result that 2017 was a record year for Poland in terms of transaction values (to witness the most important example, the take-over of Żabka by the CVC Capital Partners fund).

These hefty valuations have been whetting the appetites of prospective targets and their owners as they weigh new strategic opportunities for their businesses. In this context, the indelible factor of generational change is making itself felt; entrepreneurs who built up thriving companies from scratch during the first 30 years of Poland's market economy are slowly retiring from active business life, and soliciting an outside investor is oftentimes the best way forward for their enterprises. 2017 also witnessed much action in the start-up ecosystem. Public money fortifying venture capital funds has been translated into a growing number of transactions involving start-ups, and – might we add – many of these projects are coming GESSEL's way.

At the macroeconomic level, M&A is benefiting from positive assessment of the economic situation in Poland and around the world, this despite lingering uncertainty caused by non-economic factors. The bull market on the global stock markets, including the American one, is approaching new records in duration; to state the obvious, this has implications for investor sentiments closer to home.

Of course, these boom times cannot go on forever. Industry experts, including the KKR fund, maintain that a recession in the USA is bound to make itself felt by late 2019; the bank Nordea, meanwhile, forecasts that an economic crisis will catch up with Europe in 2021. Time will tell.

For the moment being, it is our belief that the various elements which fuelled M&A transactions in 2017 will continue to manifest themselves and that the spectre of recession remains a distant one. This conclusion is borne out by the transaction activity observed by us in January and February 2018 as well as by the observations of our Clients. So, as we look forward to a good 2018,

We wish you enjoyable reading,

Beata Gessel-Kalinowska vel Kalisz

Senior Partner

Marcin Macieszczak

Managing Partner

OUR TRANSACTIONS

In 2017, GESSEL is honoured to have advised on the following transactions:

(publicly announced transactions; this summary does not encompass deals which have not been disclosed to the general public)

Sale
of 100% of the shares
in **Madej Wróbel**
to **Bruno Tassi**

GESSEL for



Sale
of majority stake in
Inelo and OCRK
to **Innova Capital**

GESSEL for



Investment
in the **TLC Group**;
convertible bond issue

GESSEL for



Sale
of 100% of the shares in
FPIŃ Wapienica
to **Leszka Sobika**

GESSEL for



Acquisition
of majority stake in
Bezgluten by
Bounty Brands

GESSEL for



Sale
of a stake in
Melvit to
Polfood Group

GESSEL for



Sale
of majority stake
in **Profim** to
Innova Capital

GESSEL for



Sale
of shares in companies
controlling the
MILA stores network
to **Eurocash**
(deal value PLN 350 mln)

GESSEL for



Sale
of 100% of the shares
in **Comfort**
to **GOLDBECK**

GESSEL for



Acquisition
of 100% stake
in **Jantón**

GESSEL for



Investment
in **H. Cegielski-Poznań**
by **Polish Development Fund**

GESSEL for



FIPP FIZAN

Acquisition
of 100% stake
in **Currency One**

GESSEL for



Sale
of controlling stake
in a public company
Harper Hygienics

GESSEL for




Acquisition
of stake
in **Rotometal**

GESSEL for



Sale
of a 32.99% stake in the
publicly listed company
Skarbiec Holding

GESSEL for



Sale
of a stake in the
Avia Prime group
to **Hartenberg Holding**

GESSEL for



Purchase
of a network
of three specialised
Prima-Dent clinics

GESSEL for



Purchase
of a majority
stake in **EBS**

GESSEL for



Sale
of a stake in
Catermed for
Naprzód

GESSEL for



and minority shareholders

Granting of
mezzanine financing by
AMC Capital IV Nestle
to **Nettle**

GESSEL for

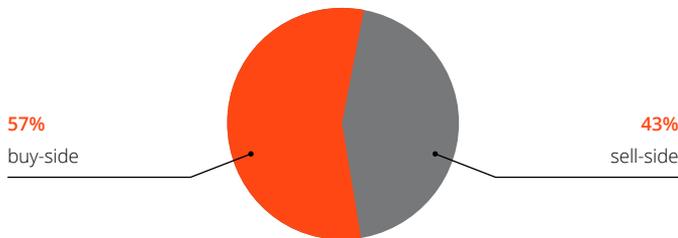


STATISTICS

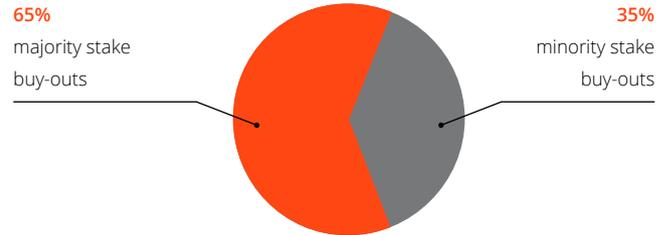
In 2017, we advised our Clients on 23* transactions, of which 20 have been publicly announced.

In all these projects, we delivered a package of legal services typical for transactions comprising, in particular, due diligence (which we actively performed as counsel for the purchasing side, or in which we assisted on the seller's side), drafting of the transaction documentation, negotiations, assistance with the corporate aspects, and/or support in obtainment and drawdown of financing. In more than half of the transactions (52%, to be exact), GESSEL's professionals also provided tax advice geared at optimisation of the transaction structure.

TRANSACTION SIDES



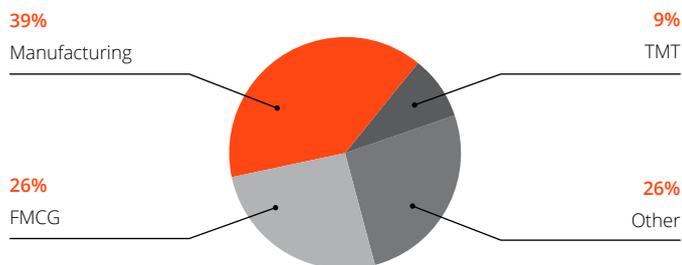
TRANSACTION BREAKDOWN



Whether on the purchaser's or the seller's side, we strove to provide utmost value for our Client. In 2017, our briefs on the purchasing side numbered more than those on the selling side (57% and 43%, respectively). We take this as proof that our firm is well regarded by professional investors as well as by the business community at large.

In more than half of the transactions, we represented professional investors, including private equity funds and banks. Our major Clients in investment or exit transactions effectuated in 2017 included, in particular, the funds Enterprise Investors, Avallon, Resource Partners, Mezzanine Management, Coast2Coast Capital, and Highlander Partners as well

TRANSACTION INDUSTRIES



as BGŻ BNP Paribas S.A. (a bank which operates a dedicated investment unit).

Most of the transactions that we advised on in 2017 were buy-outs of majority stakes or of 100% stakes (65%). These included leveraged buy-outs, management buy-outs, as well as hybrid structures combining characteristics of these two basic deal mechanisms. As regards transactions concerning minority stakes (35%), apart from typical exit transactions we also advised on transactions geared at securing expansion/growth capital.

Just over half of the transactions we advised on concerned exit of existing shareholders from

a given equity structure. In many of these cases, our firm provided legal support to the founders of a business selling some or all of their shares to an institutional investor (approximately 40%); in many instances, we joined forces with renowned transaction consultants. In this way, our firm contributed to the generational changes gathering pace in Polish business.

The transactions referred to here involved targets active in all and sundry sectors of the economy, first and foremost manufacturing (including, most notably, tools, machines, and furniture) and FMCG (26%). We also advised on notable transactions in the new technologies / ICT sectors, aviation, and finance.

* These statistics cover transactions closed in 2017 or in Q1 2018, provided that the actual deal documents had been executed in 2017.

Marcin Macieszczak

focuses on M&A transactions in the private as well as public sectors. He is singled out by market commentators for his experience, client care and down-to-earth approach.

Chambers Europe 2018



NOTABLE TRANSACTIONS

TAKE-OVER OF JANTOŃ BY ENTERPRISE INVESTORS

GESSEL advised Polish Enterprise Fund VII, a private equity fund managed by Enterprise Investors, on its purchase of a majority stake in Jantoń, a producer of alcoholic beverages.

The transaction was structured as a leveraged management buy-out effectuated by Enterprise Investors together with Mr Jakub Nowak, President of Jantoń's Management Board. We advised Enterprise Investors on all stages of this highly complex deal, performing due diligence of Jantoń, devising the transaction structure, and drafting the voluminous transaction documentation. We also assisted in obtainment of W&I insurance and of antitrust clearance from the Polish Office of Competition and Consumer Protection as well as supporting our Client in the challenging negotiations.

Enterprise Investors is one of the oldest, and largest, private equity funds in Central and Eastern Europe. Since its launch in 1990, Enterprise Investors has established 9 consecutive funds with a capitalisation

in excess of EUR 2.5 billion. Between them, these funds have invested in 139 entities and continue to maintain an active investment posture, currently through Polish Enterprise Fund VIII, established in 2017. GESSEL is honoured to count Enterprise Investors among its Clients for 25 years; over this period, we have worked with the fund on dozens of projects, investments as well as exits.

Jantoń specialises in production of beverages with an alcohol content of up to 22%. Led by an able management team, in 2016 Jantoń posted revenues of PLN 170 million. Various Jantoń products are distributed under 20 different brands and are available from all modern retail channels, including discount supermarket networks. The company's production centre and main warehouse are located in Dobroń by Łódź.

GESSEL's work on this project was led by **Marcin Macieszczak**, Managing Partner.

GESSEL perspective

Although we have been working with Enterprise Investors for years, every new project with them brings new challenges and huge responsibility. We know that the Fund is a demanding partner, so we bring our best to the table, making sure that our input is of the highest quality. The take-over of Jantón has been a special project for many different reasons – the sheer complexity of issues to be covered during the due diligence, the complicated transaction structure, the long negotiations. We are happy that the transaction has been brought to a successful conclusion.

Marcin Macieszczak

Managing Partner

The Client's perspective

We are satisfied with our investment in Jantón. Thanks to its modern infrastructure and to the knowledge and experience of its Management Board, Jantón has all the prerequisites for dynamic growth and for building up a leading position in this constantly shifting market. The investment process itself has been a rather complicated one, so we are happy to have had recourse to agile legal advice as offered by GESSEL.

Sebastian Król

Partner, Enterprise Investors

NOTABLE TRANSACTIONS

INVESTMENT BY THE HARTENBERG HOLDING FUND IN THE AVIA PRIME GROUP

GESSEL's M&A team continued its cooperation with the owners of the Avia Prime group, a regional leader in aircraft MRO (maintenance, overhaul & repair), supporting them in another transaction – an investment in the company by Hartenberg Holding, a Czech fund.

This has been one of the more multi-faceted transactions which we recently advised on, if only due to the fact that it spanned three national jurisdictions and required us to coordinate the work of several legal teams in Poland, Slovenia and the Czech Republic. GESSEL was tasked with devising a multi-dimensional legal structure for the transaction and then leading its implementation. We also drew up the transaction documentation, with due heed for the finer points unique to the aviation sector. We then led our Clients through the negotiations and through fulfilment of the conditions precedent so that the transaction could be finalised.

Avia Prime is a corporate group comprising Linetech of Poland and Adria Tehnika of Slovenia, both of which offer a broad spectrum of MRO services for narrow-body passenger aircraft. Relying on a combined workforce of over 700 specialists and mechanics in Poland and in Slovenia, these two companies performed over 1,750 inspections and checks of various levels of complexity on Airbus (320 family), Boeing (737 family), Embraer and Bombardier aircraft for customers such as Swiss, Lufthansa, EasyJet, Wizz Air, Enter Air and Travel Service.

Hartenberg Holding is a Czech private equity fund with a portfolio which includes, among other companies, FutureLife a.s. and Good Food Products.

GESSEL's work on this project was led by **Marcin Macieszczak**, Managing Partner, with day-to-day leadership provided by **Michał Bochowicz**, Managing Associate.

GESSEL's perspective

This is another in a series of projects in which we had the pleasure of working for Avia Prime. Our firm played its part in establishment of the Avia Prime group in that, back in 2015, we advised Linetech on its take-over of Adria Tehnika from the Slovenian state, which provided the direct impetus for the group's creation. Aviation is quite a dynamic industry, and decisions – whether operational, or transactional – need to be taken very quickly. Yet their subsequent implementation makes for some satisfaction. Pretty much the same can be said for work on this transaction. And, considering the growth of this Client, we're certain that there will be more to come.

Michał Bochowicz

Managing Associate

The Client's perspective

GESSEL is our permanent partner in M&A transactions. The lawyers working with us on GESSEL's behalf have thorough understanding as to how our business operates on a day-to-day basis, which affords them a material advantage in negotiations – an advantage which we gladly rely on. Thanks to the investment by the Hartenberg fund, we believe in our continued growth; at the same time, I would be excessively coy if I were to say that this was our last word in terms of acquisition-driven expansion.

Piotr Kaczor

President of the Management Board, Avia Prime

NOTABLE TRANSACTIONS

ALLIANCE OF THE PRZELEWY24 GROUP AND CURRENCY ONE

Pooling the expertise of our M&A and tech law teams, we provided comprehensive legal advice on the transaction forging a strategic alliance between our Client, the Przelewy24 group, and the company Currency One, players in the financial technologies market.

GESSEL lawyers conducted thorough due diligence of Currency One, with especial emphasis on intellectual property rights, cybersecurity, and compliance with respect to laws applying specifically to payment processing institutions, provision of electronic services, and personal data protection. We also participated in the broad-ranging negotiations of the transaction documents, first and foremost as regards securing the position of our Client in the new technologies sector. We then assisted our Client in closing and settlement of the transaction with the good offices of an intermediary (delivery versus payment).

Currency One operates Poland's largest online currency exchange platforms with aggregate turnover in excess of PLN 14 billion per year. The platforms managed by Currency One include internetowykantor.pl, which enables expedient conversion of 20 currencies at a virtual exchange window, and walutomat.pl, a peer-to-peer system within which users come together to exchange money between one another at individually negotiated rates.

The Przelewy24 group specialises in creation and use of software for a broad range of on-line payment services for private and business users. Przelewy24 provides its partners and users with state-of-the-art applications and professional services, fortifying its leading position in the market.

GESSEL's work on this project was led by **Małgorzata Badowska**, Partner, with day-to-day leadership provided by **Michał Bochowicz**, Managing Associate.

GESSEL's perspective

This was a unique project for many different reasons, and it called for extraordinary, interdisciplinary commitment on our part. Significantly enough, our transaction team had to develop a firm grasp of the concept of the internet currency exchange desk and, then, to somehow position it in a complex legal context – to mention only the regulatory aspect – and then to render all this in the transaction documentation. This was no mean challenge, but by bringing together the talents of our M&A and tech law teams we were able to come through.

Michał Bochowicz

Managing Associate

The Client's perspective

Launch of cooperation with the services managed by Currency One marks an important step in growth of the Przelewy24 Group. We discern much potential in this cooperation, so we wanted to be sure that it is duly regulated in its legal aspect. Since we chose to work with GESSEL, we can rest assured on this count.

Piotr Kurczewski

President of the Management Board, Currency One S.A.

NOTABLE TRANSACTIONS

TAKE-OVER OF A MAJORITY STAKE IN PROFIM BY INNOVA CAPITAL

GESSEL advised the owners of Profim, a leading furniture producer, on sale of a 75% stake in the company to a fund managed by Innova Capital. Profim's owners retained a 25% shareholding in their company.

Our legal services for Profim's owners proceeded along several different approaches. We began by devising a legal and tax structure optimal from the sellers' perspective, one which best protected their interests. We then joined in preparation and negotiation of the complex transaction documentation, which covered a share purchase agreement and a shareholders agreement regulating cooperation between Profim's owners and the fund during the investment. Given the high financial stakes involved, the negotiations were difficult, but they progressed in a professional atmosphere, with due respect for each party's interests. We then participated in closing and settlement of the transaction, ensuring smooth completion.

After the Innova Capital deal had been closed, we continued our cooperation with the owners of Profim, assisting them in another transaction as a result of which, along with the fund, they became minority shareholders in the Flokk Group of Sweden, which purchased shares in Profim.

Profim is a Europe-wide leader in production of office seating. Much of its output is exported; Profim sells its products under its own brand within an extensive distribution network, and it works with well-known designers. In recent years, it has been achieving steadily increasing revenues, attracting the attention of major private equity funds.

Innova Capital is a major player in the CEE private equity market, specialising in acquisition of medium-sized companies.

GESSEL's work on this project was led by **Małgorzata Badowska**, Partner, with day-to-day leadership provided by **Karol Sokół**, Managing Associate.

GESSEL's perspective

Profim's strong position in the market and its robust financial condition rendered it a prime target for a private equity fund. These same factors also made for significant comfort during the negotiations, which were conducted in a good atmosphere, in observance of the highest market standards. The quality of our firm's input is best attested to by the good relationship with the Clients, which continued after this transaction's completion.

Karol Sokół

Managing Associate

NOTABLE TRANSACTIONS

EXIT BY THE KROKUS PE FUND FROM COMFORT

The Krokus Private Equity fund, a GESSEL Client of many years, retained us to advise on sale of a 100% stake in Comfort, a leading Polish producer of prefabricated reinforced concrete elements.

We supported Krokus on all stages of the transaction, including organisation of the due diligence process on the seller's side, mapping out the transaction structure, and drafting and negotiation of the transaction structure. All along, the transaction proceeded very smoothly owing to the professionalism of the seller and of the investor – the GOLDBECK group, an industry heavyweight from Germany.

Krokus PE is a private equity fund which invests in small and medium-sized companies in Poland. Its specialists have been active in the private equity market for more than 20 years, with several dozen transactions under their belt.

Apart from residential construction, Comfort's prefabricates are used in large-scale building projects such as shopping centres and supermarkets, industrial installations, sports stadiums, public facilities and civil engineering projects.

GESSEL's work on this project was led by **Marcin Macieszczak**, Managing Partner.

GESSEL's perspective

The opportunity to work on this project has been a source of considerable satisfaction, especially seeing as the Client has celebrated it as a success. We were especially glad in that we not only supported our Client in his exit from this company, we had also helped him buy into it a few years back. We take this as proof that a client and a professional transactional advisor can forge a strong bond which they can parlay into shared success in the longer term.

Marcin Macieszczak

Managing Partner

The Client's perspective

We have been working with GESSEL for many years and, each and every time, we are happy to have in our corner efficient lawyers with a keen business sense. We have utmost trust in GESSEL, as testified to by the fact that they advised us on our original investment in Comfort as well as on our exit. This is especially important in that the construction industry in which Comfort operates presents, by its very nature, a challenging business environment, one which calls for a flexible approach to transactions. Thus, a successful exit is particularly pleasing – and, might I add, such a seamless and professional sales process would not have been possible were it not for GESSEL.

Piotr Oskroba

Partner, Krokus PE

Maciej Kożuchowski

is an M&A lawyer noted for his strong client care skills. He represented Sescom in its acquisition of an IT services business in the retail sector from CUBE.ITG.

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NOTABLE TRANSACTIONS

INVESTMENT BY HIGHLANDER PARTNERS IN ROTOMETAL

In 2017, GESSEL worked on yet another project for the American fund Highlander Partners, this time on acquisition of a 50% stake in Rotometal (leaving its founders with the remaining 50%).

Being as we are a permanent member of Highlander Partners' advisory team in Poland, we were involved in all stages of the transaction process, beginning with the due diligence study (which involved painstaking attention to certain technical issues). Next, we drafted the transaction documentation and pursued negotiations through until closing and settlement.

Highlander Partners is a private equity fund which invests directly in enterprises in North America and in Central Europe. Its Central European office was opened in Warsaw in September 2008, with the brief of taking advantage of the extraordinary growth potential offered by burgeoning private enterprise in the region.

Rotometal is a producer of polygraphic tools, specialising in cylinders used to print self-adhesive labels for use in the consumer sector. Since its establishment in Świebodzin in 2006, the company became an unquestioned leader in its sector, constantly expanding its product line-up.

GESSEL's work on this project was led by **Maciej Kożuchowski**, Partner.

GESSEL's perspective

The investment in the technological company Rotometal by Highlander Partners posed an interesting challenge for many different reasons, to mention only the 50%/50% structure, quite an atypical one for a private equity transaction. The experience gleaned from long years of cooperation with our Client enabled us to navigate the successive stages, however, through to a happy closing.

Maciej Kożuchowski

Partner

The Client's perspective

Our fund has been active in Poland for 10 years. Throughout this time, we have maintained a close working relationship with GESSEL, which has supported us in many acquisitions and exits. This time around, the GESSEL team advised us on the Rotometal transaction, in which we employed a joint venture formula to invest in a technologically advanced company operating in the dynamically expanding niche of precision instruments for the printing industry. We believe in the high growth potential of this project.

Dawid Walendowski

Managing Partner, Highlander Partners

NOTABLE TRANSACTIONS

ACQUISITION OF A MAJORITY STAKE IN EBS BY THE AVALLON FUND

Continuing our cooperation with the AVALLON MBO Fund II (AVALLON) private equity fund, we advised on a transaction for purchase of a majority stake in EBS, an independent Polish producer of security systems.

GESSEL contributed a complex package of legal services, including planning the legal structure of the transaction, due diligence, and drafting of the transaction documentation.

EBS, a major entity in its industry, posted approximately PLN 60 million in revenue in 2016. The product range of EBS includes a variety of GSM and IP transmitters, security systems, GPS systems, internal and external signal devices, and appropriate software packages.

AVALLON is a pioneer in the Polish management buy-outs market, active in this field since 2001; it manages funds entrusted by the major international financial institutions interested in growth of the Central and Eastern European region. AVALLON invests in a variety of sectors, mostly in companies with revenues in the range of PLN 50 million to PLN 250 million.

GESSEL's work on this project was led by **Maciej Kożuchowski**, Partner.

GESSEL's perspective

The transaction for take-over of a majority stake in the EBS group was another management buy-out in which we had the privilege of advising the AVALLON fund. A financial investment in an innovative, technology-driven business is invariably a fascinating challenge, one which calls for involvement of an interdisciplinary legal team, so I was especially pleased to be able to take part in the successful finalisation of what have been very intensive negotiations and in closing of this multi-faceted transaction.

Maciej Kożuchowski

Partner

The Client's perspective

Taking over control over EBS with its managers will enable continued development of the internet of things, of the smart home and of mobile devices for monitoring movement of persons. This transaction, on which we worked with GESSEL as our counsel, was a complex one given the structure of the Group, the importance of the intellectual property aspect, and the global character of EBS's operations. It gives me pleasure to emphasise the professionalism and commitment of the GESSEL team in what became yet another joint project completed within the planned time frame.

Krzysztof Kuźbik

Partner, AVALLON

NOTABLE TRANSACTIONS

MEZZANINE MANAGEMENT'S INVESTMENT IN NETTLE

Members of GESSEL's M&A and banking & finance practices joined forces in advising our Client of long standing, Mezzanine Management, on its mezzanine investment in Nettle.

The investment was effectuated by way of an increase of the target's share capital combined with a long-term mezzanine loan. GESSEL's contribution included a comprehensive due diligence exercise, with especial attention devoted to the legal character and on restrictions applicable to dealing in receivables vis a vis health care providers. We also came up with a full set of financial and transaction documentation, including the mezzanine loan agreement, the share purchase agreement, and the shareholders agreement, as well as assisting our Client in the negotiations.

Mezzanine Management is the exclusive advisor of the Accession Mezzanine Capital funds family, a pioneering entity of this sort in Central Europe. Nettle provides direct-to-pharmacy (DTP) services for pharmaceutical multinationals as well as managing receivables portfolios of pharmaceutical companies and financing investments in the medical sector.

For GESSEL's part, this project was supervised and led by

Małgorzata Badowska, Partner.

GESSEL's perspective

The investment in companies from the Nettle group is yet another project in which we have the pleasure of supporting Mezzanine Management, and another case in point as to our harmonious cooperation. In general, Mezzanine Management and we put our heads together already at the transaction structure stage, and we are on board from the very outset – performing due diligence, drafting all the documents, negotiating and through to closing. This is the moment at which everybody feels satisfaction at the closing of the project and, at the same time, looks forward in eager anticipation to the next one.

Małgorzata Badowska

Partner

The Client's perspective

Our investment in Nettle is another in a number of projects on which we worked with GESSEL. Our investment involved debt financing and investment in the company's equity, and comprehensive support in regulating the relationships on both these levels was of tantamount importance to us. Competent, compendious knowledge in M&A and in banking & finance was called for, as was fastidious due diligence, and this is exactly what we received from the transaction team of GESSEL working under the leadership of Małgorzata Badowska.

Przemysław Głębocki

Managing Director, Mezzanine Management

OUR FORECASTS



Dr Janusz Fiszer

Partner, attorney and tax advisor

Tax Law Practice

j.fiszer@gessel.pl

The new year has brought a number of changes in the realm of taxes of relevance to business enterprises and, more broadly, to participants in M&A transactions. The most important changes would include, in particular, introduction of a distinction between different revenue streams for purposes of corporate income tax. Polish tax law now differentiates between operating revenue and capital gains, with the result that, to take just one example, losses incurred on sale of securities and financial rights cannot be applied as a tax-deductible loss against revenue from the company's core operations. Another important example: posting of interest as a tax-deductible expense is now subject to a limit corresponding to 30% of the EBITDA value, a regulation which is

bound to have an impact in the context of leveraging M&A transactions. Another point worth noting refers to changes of the personal income tax regime with respect to incentive schemes. These are but a few of the many recent modifications of Polish tax law; if one adds into the mix the intensified activities of the National Treasury Administration at all levels, tax due diligence assumes new importance in M&A transactions. The new tax avoidance clause, the amended regulations concerning foreign controlled companies, taxation of the earnings of closed-end investment funds – these issues merit even more attention than before, especially seeing as some common tax structures are now in need of adjustment.

**Małgorzata Badowska**

Partner, attorney at law

Banking & Finance/M&A Practice

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Increased M&A activity in 2018 will contribute to growing demand for debt financing for acquisitions. On the other hand, the fact that bank financing remains plentiful and inexpensive will likewise make for a lively M&A market. Economic sectors attractive to investors – new technologies, financial services, or healthcare – will also be the object of attention of financial institutions.

Thus, we can look to the coming 12 months with optimism. 2018 should be one of growth for our practice, centring as it does on that sweet spot where M&A and banking overlap.

OUR FORECASTS



Bernadeta Kasztelan-Świetlik

Partner, attorney at law

Competition Law

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If M&A activity in 2018 comes anything close to the levels observed in 2017 (188 permissions for merger and acquisition transactions), the antitrust specialists of the Office of Competition and Consumer Protection (UOKiK) are in for another busy year. One would hope that, the high number of filings notwithstanding, the Polish antitrust authority might keep up what has been a brisk tempo of issuing antitrust clearances in cases which do not give rise to antitrust concerns (in what are known as first phase proceedings, where permission is granted within 30 days of the filing).

At the same time, it must be noted that, given the growth of the Polish economy and the increasing tendency towards consolidation, a growing number of proposed mergers go into the second phase of proceedings (one example being the take-over of the Mila stores network by Eurocash). In these more complex cases, UOKiK conducts market studies, with the effect that the proceedings can run for a year or more.

Małgorzata Badowska

acts on transactions related to the financial sector and regularly assists clients with LBOs. Clients emphasise her people management skills, such as the ability to “release tensions during negotiations”, as well as the skill to “build personal relations with clients”.

Chambers Europe 2018



MAŁGORZATA
BADOWSKA



MAŁGORZATA
BADOWSKA

ARBITRATION IN M&A



Dr Beata Gessel-Kalinowska vel Kalisz

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Arbitration

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During the first two decades of Poland's market economy, when M&A transactions were still a novelty, disputes arising from such deals were few and far between. This was due to the lingering uncertainty as to the underlying definitions and legal constructs used in M&A contracts and, consequently, as to the merits of claims rooted therein. Also, Polish courts – general / state courts as well as ADR tribunals – were perceived as unlikely to appreciate all the subtleties of M&A transactions. As the M&A market developed and as the first treatises on the subject – such as my own “Representations and Warranties in a Limited Liability Company Share Purchase Agreement (in Light of the Freedom of Contract Principle)” (Wolters Kluwer Polska, 2010) – began to appear, enforcement of claims associated with M&A transactions became somewhat more predictable and investor-friendly.

M&A transactions generate a relatively small percentage of disputes in juxtaposition with, say, the construction industry. GESSEL's experience as counsel indicates that, of the arbitration proceedings brought over the past 5 years, over 50% centred on construction contracts.

During the past 5 years, GESSEL advised on approximately 100 M&A transactions, of which a mere 6 – or, if you will, 6% – ended up in arbitration.

All in all, over the past 5 years, GESSEL's arbitration team handled 8 M&A cases before arbitration tribunals (including ones which did not involve GESSEL as counsel at the transaction stage), of which 6 were international in character.

ARBITRATION IN M&A

Our practice teaches us that disputes arising from M&A transactions basically concern two underlying issues – the price definition mechanism (3 out of 8 cases) and truthfulness of the representations and warranties set out in the deal contracts (another 4 cases). Also, one of the cases which we advised on concerned a pledge securing a contractual obligation, and another – culpa in contrahendo claims.

In 6 of the cases, we found ourselves dealing with claims for payment, and in 2 – for declaratory remedies.

The proceedings were conducted before the ICC International Court of Arbitration in Paris, the Arbitration Court of the National Chamber of Commerce in Warsaw, and the Arbitration Court of the Lewiatan Confederation in Warsaw. One of the proceedings had the nature of ad hoc arbitration.

Of these 8 cases, two were settled without awaiting the judgement, and one was discontinued due to bankruptcy of one of the parties; in the remaining 5, the arbitration tribunal handed down a judgement on the merits.

As these statistics show, disputes arise in the context of M&A only sporadically and, when they do, the parties consider arbitration to be a last resort.

M&A disputes increasingly often feature claims for declaratory relief. This is due at least to some extent to the less strict approach to legal interest favoured in arbitration. We expect that, in the coming years, the number of post-M&A disputes in Poland is likely to increase, what with introduction of the optimisation clause to Polish tax law and what seems to be an appetite on the part of the Polish tax authorities to seek out transactions to which it might be applied.

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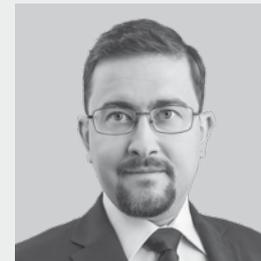
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