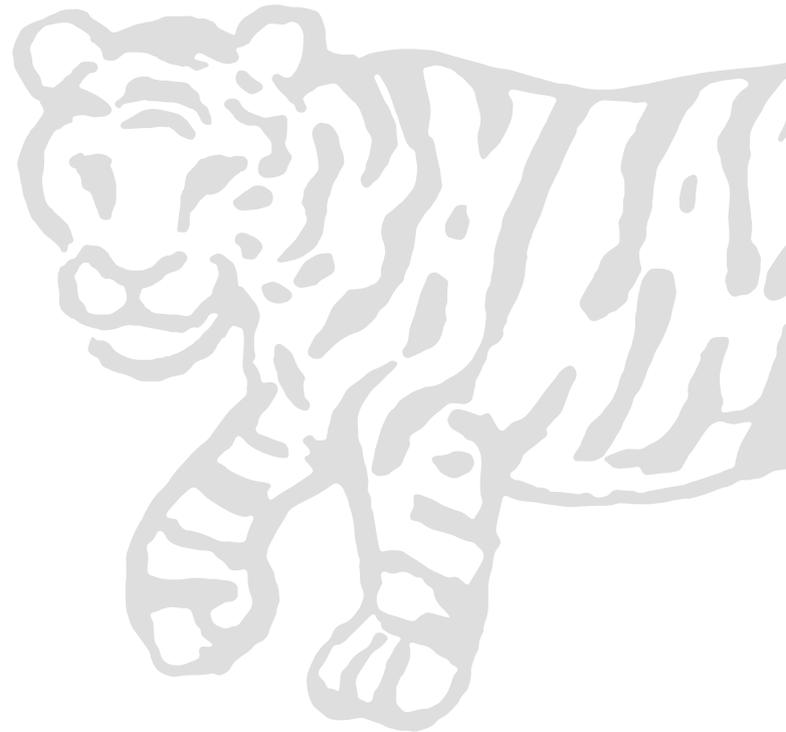


GESSEL



art of effectiveness

YEARBOOK M&A
2018



Ladies and Gentlemen,

As the new year gets underway, we take this opportunity to present to you a brief overview of our firm's M&A-related work in 2018. This has been a busy and productive year for our Clients and, in consequence, for us. We are proud to have supported them in several dozen M&A transactions, of which almost 30 have been brought to closing. To risk a little immodesty, 2018 was also special for us in that it marked our firm's 25th anniversary; ever since our inception, we have pursued work in M&A, then an all-new field in the Polish economy, and our growth and development proceeded hand-in-hand with the sector as a whole.

As always, we are grateful to our Clients for the trust expressed in entrusting us with such a variety of challenging projects.

A year older, a year wiser... As we embark on a new quarter century, we stand ready to put our experience accumulated so far at your disposal in the M&A market, in Poland and in other jurisdictions!

Thank you, happy reading,



Marcin Macieszczak

managing partner
attorney at law



Małgorzata Badowska

partner
attorney at law



Maciej Kożuchowski

partner
attorney at law

STATISTICS

28

closed M&A transactions

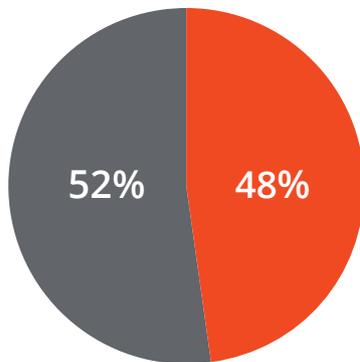
20

publicly announced M&A transactions

Aggregate value of closed deals in excess of

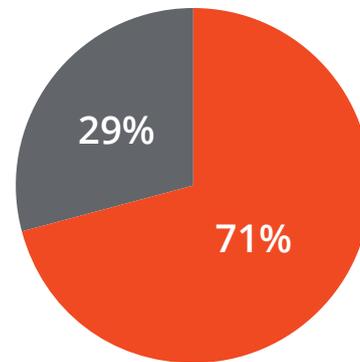
PLN 1.2 billion

We have advised on the buyer
as well as seller sides:



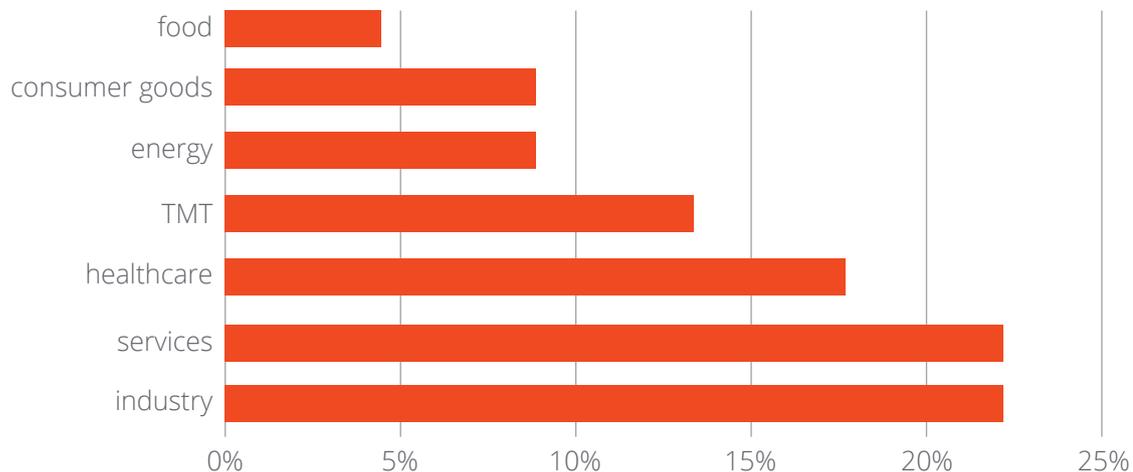
■ buy-side
■ sell-side

Most of the closed transactions concerned
majority stakes:



■ Purchase of a majority stake
■ Purchase of a minority stake

The single largest category of closed transactions was the industry and services sector, ahead of healthcare and TMT (Technology, Media and Telecom). Compared to previous years, there has been a noticeable decrease of deal volume in the consumer and food sectors:



Apart from Poland, the transactions closed with our participation involved a number of other jurisdictions in the European Union and further afield:



SWITZERLAND



ROMANIA



LUXEMBOURG



SPAIN



GERMANY



PORTUGAL



CHINA



ITALY

OUR TRANSACTIONS

While every transaction is unique in its own way, we take this opportunity to share with you some highlights, presenting a selection of disclosed deals on which we advised in 2018.

Acquisition

of a minority stake
in **Anwim S.A.**, operator
of the **MOYA** fuel stations
network

GESSEL for



Sale

of a majority stake in
Velvet Care Sp. z o.o.

GESSEL for



Purchase

of stake
in **Exact Systems S.A.**

GESSEL for



Investment

in **PG Energetyka Sp. z o.o.**
and, indirectly,
in **Elektromontaż Poznań S.A.**

GESSEL for



Purchase

of a 76.05% stake in
**Swissmed Prywatny Serwis
Medyczny** (deal value PLN
14.5 mln)

GESSEL for



Purchase

of shares
in **Superauto24.com Sp. z o.o.**

GESSEL for



Acquisition

of three hosting entities in Romania – Gazduire Web, mxHost and xServers (deal value EUR 5.3 mln)

GESSEL for



Purchase

of a majority stake in **Stemlab**

GESSEL for



Sale

of a majority stake in the **Fit Fabric** fitness club chain to the **Fit Invest** network, a member of **Benefit Systems**

GESSEL for



Buy-out

of a majority stake in **Golpasz S.A.**

GESSEL for



Acquisition

of a 100% stake in the Swiss company **Biocell Lugano S.A.**

GESSEL for



Sale

of shares in **Kuźnia Jawor S.A.** by **First Private Equity FIZAN**

GESSEL for



Sale

of a 95.6% stake in **SciGen**

GESSEL for



Purchase

of shares in **Userengage Sp. z o.o.** by **Vercom S.A.**

GESSEL for



Purchase

of shares in **Graviton Capital**

GESSEL for



Sale

of shares in **Profim**
to the **Flokk Group** by way
of a share exchange

GESSEL for

profim

Sale

of a majority stake
in **Fast White Cat S.A.**
to **SARE S.A.**

GESSEL for

FAST WHITE CAT

Legal advice

on obtainmnet
of external financing

GESSEL for

THE CONSTRUCT

Investment

in Jars Sp. z o.o.
by **BGŻ BNP Paribas**

GESSEL for

JARS
jars.pl

Legal advice

in the proces of obtaining
financing for **PerfOps**
(an IT start-up)

GESSEL for

FINCH CAPITAL

SELECTED TRANSACTIONS

SELECTED TRANSACTIONS

Investment by Enterprise Investors in Anwim S.A., operator of the MOYA fuel station network

GESSEL provided wide-ranging legal support to Polish Enterprise Fund VIII, a private equity fund managed by Enterprise Investors, in the acquisition of a significant minority stake in Anwim, one of the largest independent operators of fuel stations in Poland, trading under the MOYA brand. GESSEL's input included legal due diligence, obtaining antimonopoly clearance from UOKiK, preparation of transaction documentation and technical documentation, negotiations and support at closing.

Seeing as the acquisition concerned a company whose operations require a license, it had to proceed with due regard for the complex legal environment of the fuels and oil market, including the position of the Energy Regulatory Office.

Enterprise Investors is one of the largest private equity firms in Central and Eastern Europe. Active since 1990, the firm has nine funds with total capital exceeding EUR 2.5 billion. These funds have invested EUR 1.9 billion in 143 companies across a range of sectors and exited 128 companies with total gross proceeds of EUR 3.7 billion.

Anwim was founded by two entrepreneurs in 1992 and was initially focused on wholesale fuel trading. In 2009, the company launched retail operations, which currently generate half its revenues. Anwim's chain of MOYA fuel stations comprises over 180 stations attractively situated in high-traffic locations nationwide, selling quality fuel at affordable prices. Modern, well-designed stores are integral to each station. The company plans to dynamically grow the chain and to at least double the number of stations in the next five years. In 2017, Anwim generated over EUR 730 million in revenue from fuel wholesale and retail operations. The company currently employs 250 people.

*The GESSEL team working on this project was led by **Marcin Macieszczak**, managing partner.*

Acquisition

of a minority stake in **Anwim S.A.**, operator of the **MOYA** fuel stations network

GESSEL for



Enterprise Investors

GESSEL's perspective:

"The investment in MOYA is yet another transaction in which we had the pleasure and the privilege of supporting Enterprise Investors. In its substantive aspect – to mention only the scale, complexity and dynamics of the company's operations and the volume of due diligence materials – this transaction posed a number of challenges for our team, and we acquitted ourselves well in overcoming them."

Marcin Macieszczak, managing partner

The Client's perspective:

"We are happy to be able to support development of Anwim and of the MOYA network, and we believe in the perspectives for growth of the company in terms of scale and value alike. Needless to say, a minority investment in an entity operating in a sensitive regulated sector is a complicated proposition in the business aspect as well as the legal one. Accordingly, we insisted – even more than usual – on working with counsel capable of appreciating this complexity."

Sebastian Król, Enterprise Investors partner responsible for the project

SELECTED TRANSACTIONS

GESSEL as advisors to AVALLON on the transaction for sale of Velvet Care

In another chapter of our long-standing relationship with the AVALLON fund and with the management team of Velvet Care Sp. z o.o., we advised on the transaction for sale of a majority stake in the latter to Abris.

GESSEL provided comprehensive legal support at all stages of the transaction, among other aspects in drafting the documentation for sale of Velvet Care and representation of the seller in negotiations.

The involvement of our firm in AVALLON's investment in Velvet began at the very inception of the project in 2013, when we provided legal support in the management buy-out of the company from Kimberly Clark. We then went on to advise Velvet on various strategic aspects of its operations, including an international joint-venture, so our present involvement in AVALLON's exit is something of a culmination.

Velvet Care is an established leader in the Polish market for paper hygienic and cleaning products (tissues, toilet paper, paper towels etc.) and owner of the well-known brand Velvet. Its paper mill and main production base in Klucze has been active for 120 years and, while Velvet Care in its current form was incorporated in 2013, the roots of the operation go back to 1897.

AVALLON is an independent Polish private equity fund manager with a strong track record in management buy-outs, having participated in some 100 such transactions as of 2001 and being a Polish pioneer in this field.

*GESSEL's work on this project was coordinated by **Maciej Kożuchowski**, partner.*



GESSEL's perspective:

"We welcomed the opportunity to support AVALLON in its exit from Velvet Care with especial pleasure in that we have been involved in this project from its very beginning. We have advised on the management buy-out of the company from Kimberly Clark, and then on its key strategic decisions. It is only natural, therefore, that we rejoice at the company's indubitable success. The experience gleaned over the years of working with our Client has enabled us to efficaciously augment the entire process with our legal expertise. We take this as testimony to how a Client and professional transactional counsel can forge a strong relationship and parlay it into shared successes in the longer term."

Maciej Kożuchowski, partner

The Client's perspective:

"Our investment in Velvet Care is, without doubt, a success story. Since AVALLON's purchase of the company from Kimberly Clark in 2013, the company doubled its sales, multiplied its profits and invested close to PLN 250 million in development, including a new paper machine of key importance to further growth. At turning points throughout this process, we required competent, comprehensive legal support – exactly as ensured by the GESSEL transaction team led by Maciej Kożuchowski"

Tomasz Stamirowski, managing partner, AVALLON

SELECTED TRANSACTIONS

GESSEL advises funds managed by CVI

GESSEL provided comprehensive legal advice in the complex transaction for a leveraged management buy-out of Exact Systems S.A. by Paweł Gos and Lesław Walaszczyk, with the support of funds managed by CVI, through Remango Investments, an SPV.

Consequent to this transaction, Remango Investments purchased from the previous majority shareholder, Work Service S.A., a stake which leaves it with 100% of the shares in Exact Systems S.A. (which, in turn, purchased from Work Service S.A. the company Exact Systems GmbH).

GESSEL advised Remango Investments and Exact Systems S.A. on obtainment of bank financing and on fundraising with the use of subordinated bonds; we also represented Remango Investments Sp. z o.o. before the Polish antitrust authority in securing clearance for the acquisition of Exact Systems S.A.

CVI Dom Maklerski (CVI) (CVI) is an independent investment firm recognised as a leader in non-bank financing for businesses in Poland and around Central and Eastern Europe. Since 2012, CVI (working under the business name Credit Value Investments) completed more than 700 transactions, including 450 in the private debt category, and it currently manages assets of PLN 5.6 billion in seven closed-end investment funds.

Exact Systems is a leading provider of quality control (selection, repair and sorting) solutions for parts, components and finished products for the automotive industry, supplying car producers as well as members of their supply chain and also volume producers of electronics, household appliances and cosmetics.

*GESSEL's work on this project was led by **Marcin Macieszczak**, managing partner and **Małgorzata Badowska**, partner.*



GESSEL's perspective:

"The transaction for purchase of Exact System – a leading service provider for the automotive industry – was a highly complex one for a variety of reasons, to mention only the involvement of many entities (along with their respective advisors), the need to reconcile what were at times conflicting interests and the time factor. Our work on this project was challenging, but very satisfying."

Małgorzata Badowska, partner

The Client's perspective:

"The leveraged management buy-out of Exact Systems, a company with enormous potential for growth, was one of the biggest and most interesting MBOs in the history of the Polish M&A market. The GESSEL team led by Małgorzata Badowska stood by us from the outset of this multifangled project. We needed multidisciplinary support in the areas of M&A, banking & finance and antitrust, and this is exactly what GESSEL delivered."

Pawel Jacel, investment director, CVI

SELECTED TRANSACTIONS

GESSEL advises Bank BGŻ BNP Paribas S.A. on another investment

GESSEL provided legal support to Bank BGŻ BNP Paribas S.A. on its investment in PG Energetyka Sp. z o.o. and, indirectly, in Elektromontaż Poznań S.A.

In this equity transaction, BGŻ BNP Paribas S.A. – upon fulfilment of the conditions precedent – acquired a stake in a company providing services to the electric energy and telecoms sectors.

Bank BGŻ BNP Paribas S.A. is a leading European bank with a large international footprint, pursuing – through its various affiliates – operations in 74 countries, relying on a workforce of over 190,000 employees (including over 146,000 in Europe). It prides itself on being a strong local bank with global outreach; in 2018, it ranked sixth in Poland in terms of assets.

PG Energetyka Sp. z o.o. was established in 2012 in response to the growing demand for electric energy services. Its projects – installation and overhaul of power supply and telecoms systems, switching stations, control and automation systems, structural networks and security installations for industrial facilities – implement state-of-the-art technical and technological solutions.

Elektromontaż Poznań S.A. has honed its expertise in the electric installations sector over more than 50 years. Specialising in production of power supply equipment and its installation.

*GESSEL's work on this project was led by **Małgorzata Badowska**, partner.*



GESSEL's perspective:

"The investment by BGŻ BNP Paribas in PG Energetyka and, indirectly, in Elektromontaż Poznań is yet another project by its Equity Investments Office which we had the privilege of advising on. As in the previous projects, BGŻ BNP Paribas' transaction team and our legal professionals meshed perfectly, and the vast investment experience of our Client augmented with the interdisciplinary approach of our lawyers produced a successful outcome."

Małgorzata Badowska, partner

The Client's perspective:

"We frequently draw upon the legal advice of GESSEL, not only because of their expert legal knowledge, but also their ability to think outside the box which enables them to invariably adapt to the unique circumstances of the given transaction. GESSEL has supported us in many transactions; this time around, their team led by Małgorzata Badowska advised us on our investment in PG Energetyka Sp. z o.o. and – indirectly – in Elektromontaż Poznań S.A. As always, we are very happy with their work, and I am confident that we will call upon GESSEL's services many times to come."

Adam Sarnowski, director, Capital Development Bureau, Bank BGŻ BNP Paribas S.A.

SELECTED TRANSACTIONS

GESSEL advises the LUX MED Group on its purchase of shares in Swissmed Prywatny Serwis Medyczny

GESSEL provided legal support to LUX MED in the transaction for purchase of 76.05% of the shares in Swissmed Prywatny Serwis Medyczny (SPSM) with an aggregate value of PLN 14.5 million.

GESSEL delivered a comprehensive package of legal services which included due diligence, work on the transaction documentation, and advice on execution and closing.

The LUX MED Group is a leader in the Polish private healthcare market and a member of Bupa, the global insurer and healthcare provider. LUX MED offers a full range of outpatient, diagnostic, rehabilitation, hospital, and long-term medical care services; the present acquisition of SPSM marks another step in the expansion of LUX MED's scale of operations.

Swissmed Prywatny Serwis Medyczny in operation for over a decade, provides private outpatient treatment in the Pomerania region, with a total of 1,900 m² of clinic floor space at facilities in Gdansk, Gdynia and Pruszcz Gdański.

*GESSEL's work on this transaction was overseen by **Marcin Macieszczak**, managing partner, and proceeded under the day-to-day leadership of **Michał Boryczka**, managing associate and **Karol Sokół**, managing associate.*

Purchase
of a 76.05% stake in
Swissmed Prywatny Serwis
Medyczny (deal value PLN
14.5 mln)

GESSEL for



GESSEL's perspective:

"Our team welcomed the opportunity to participate in this complex deal with great satisfaction, especially seeing as we were involved at every stage, from drawing up the letters of intent, on to due diligence and negotiation of the transaction documents and through to successful closing. We are particularly pleased with this transaction in that it is another in a series of projects executed by GESSEL for LUX MED."

Michał Boryczka, managing associate

The Client's perspective:

"On behalf of LUX MED, I would like to thank GESSEL for their efficient and professional support in this transaction. This has been very much a multi-faceted and dynamic process, so we do appreciate your assistance, your expertise and your professional approach – then again, this was no surprise for us. Michał, Karol, well done! Especial thanks go out to you and to the rest of the team!"

Bartosz Wiśniewski, director, Acquisitions and Development Department, LUX MED

SELECTED TRANSACTIONS

Investment by Wirtualna Polska Holding in Superauto24.com

GESSEL provided legal support to Wirtualna Polska Holding S.A. in the transaction for purchase of a majority stake in Superauto24.com sp. z o.o., an e-commerce platform active in the automotive sector.

Our work on this transaction proceeded in two stages. During the first, we performed due diligence and then planned and carried out restructuring of the target's capital group. The overarching objective of this stage was to simplify what was a rather elaborate capital structure, bringing the target to a form expected by a professional investor. In the second stage, meanwhile, we were tasked with drawing up complex transaction documentation and with overseeing settlement for the transaction, ensuring that the investor's interests are duly protected.

Wirtualna Polska Holding is a leading media and e-commerce group and owner of one of Poland's most popular horizontal internet portals – wp.pl – as well as of leading e-commerce platforms such as Domodi.pl, Allani.pl, Extradom.pl and Wakacje.pl. Wirtualna Polska Holding is also an active player in the equity markets – suffice it to mention that all the assets just mentioned came to be included in the WPH group by way of acquisitions.

Superautor24.com is an online service which pulls together new car offers from authorised dealers and, in cooperation with the largest banks, insurers and leasing institutions in Poland, assists customers with finding attractive financing packages.

*GESSEL's work on this transaction was overseen by **Małgorzata Badowska**, partner, and proceeded under the day-to-day leadership of **Michał Bochowicz**, managing associate.*

Purchase
of shares
in **Superauto24.com Sp. z o.o.**

GESSEL for



GESSEL's perspective:

"Our participation in this transaction on the Wirtualna Polska side marked another important step in building our specialisation in M&A transactions in the tech, media and telecoms sectors. We are happy that our experience and skills put us in a position to provide professional legal services in what is an ever-changing and developing sector. Our work with WPH was a challenge from the outset, and we gave it our best."

Michał Bochowicz, managing associate

The Client's perspective:

"As an active investor in the e-commerce space, we often engage in transactions for take-over of smaller entities. In light of our overall strategy, these acquisitions tend to be quite complex in their business as well as legal aspects. We are happy to note that GESSEL has been able to meet our expectations."

Grzegorz Kruk, vice president for Corporate Development, Wirtualna Polska Holding

SELECTED TRANSACTIONS

GESSEL advises the R22 Group on acquisitions in Romania

GESSEL provided comprehensive legal advice to the R22 Group on its acquisition of three hosting entities in Romania – Gazduire Web, mxHost and xServers. Consequent to these take-overs, to the aggregate value of EUR 5.3 mln, the R22 Group is poised to command over 15% of the internet hosting and domains market.

Our firm's services included, in particular, drafting of the transaction documentation, negotiations and support at closing.

The R22 holding group comprises a dynamically developing association of tech companies at the cutting edge of e-commerce. The group has adopted a focus on scalable services offered on a subscription basis and in accordance with the SaaS (Software as a Service) model. Various R22 companies are active all along the value chain, creating original solutions, implementing them in their technological aspects, selling and delivering after-sales service to customers.

*GESSEL's work on this project was led by **Małgorzata Badowska**, partner.*

Acquisition

of three hosting entities in Romania – **Gazduire Web**, **mxHost** and **xServers** (deal value EUR 5.3 mln)

GESSEL for



GESSEL's perspective:

"R22's Romanian acquisitions mark another stage in growth of the R22 Group on which GESSEL had the honour of advising. It is with admiration that we observe the successive stages of our Client's dynamic expansion as R22 consistently follows through with its growth strategy. I'm confident that the R22 Group has more coming for it, and I hope that we may have the privilege of supporting them in the future."

Małgorzata Badowska, partner

The Client's perspective:

"Our take-over of three hosting companies in Romania was another natural step in development of the R22 Group and, at the same time, a commencement of our expansion into foreign hosting markets. We compliment the entire GESSEL team on their comprehensive advice on this transaction. The acquisition process was a multi-faceted one, so we are happy to have had such fine legal advisors on our side. I have been working with GESSEL, with Małgorzata Badowska and her team for quite some time now, and I do believe that this cooperation will continue in the future."

Jakub Dwernicki, president of the management board, R22

SELECTED TRANSACTIONS

Take-over of a majority stake in Stemlab S.A. by Polski Bank Komórek Macierzystych

In 2018, GESSEL had the honour of advising Polski Bank Komórek Macierzystych S.A. on a series of transactions, including acquisition of a majority stake in Stemlab S.A., operator of the largest stem cell bank in Portugal.

GESSEL served as main counsel to Polski Bank Komórek Macierzystych, coordinating the work of its Portuguese layers and advising on all stages of the transaction: negotiation of the letter of intent, coordination of due diligence, drafting and negotiation of the transaction documentation (including the SPA, shareholders agreement and warranties and indemnity insurance), and closing and settlement as well as advising on corporate matters at Stemlab subsequent to the take-over.

Polski Bank Komórek Macierzystych S.A., a member of the Famicord group, is Poland's largest stem cell bank as well as one of the bigger stem cell banks in Europe. The factors driving its success include a well-planned course of acquisitions in Poland, in other EU countries and in Turkey.

Stemlab S.A. is one of the largest stem cell banks on the Iberian Peninsula. This core operation is augmented by research and development work in the field of biotechnology. Apart from its home market of Portugal, Stemlab maintains a presence in Spain, Switzerland and in Italy, and it is currently working on establishment of a foothold in China.

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



GESSEL's perspective:

"The complexities of this transaction – inclusion of Stemplab's management, debt financing, the warranties and indemnities insurance element and the international aspect – combined into a considerable challenge, but by drawing on the experience accumulated during our long years of work with Polski Bank Komórek Macierzystych we were able to keep things moving forward. We congratulate Polski Bank Komórek Macierzystych on what is an important international deal, and we are proud to have played a role in it."

Maciej Kożuchowski, partner

The Client's perspective:

"When we find ourselves dealing with a large private equity fund, as was the case during Polski Bank Komórek Macierzystych's investment in Stemplab, we want to make sure that we have on our side an experienced legal team whose commitment and professionalism has been tested many times over. As with our previous acquisitions in the Polish and international markets, our work with GESSEL enabled us to achieve a successful closing also in the Stemplab transaction."

Jakub Baran, president, Polski Bank Komórek Macierzystych S.A.

OUR FORECASTS

OUR FORECASTS – ARBITRATION IN THE M&A

It is relatively rarely that claims arising from M&A transactions are pursued via arbitration. To consider GESSEL's own experience, only some 6% of the transactions we advised on in recent years ended up in arbitration. This comparative dearth of cases combined with the confidential nature of arbitration makes it hard to collate statistics, let alone formulate general conclusions. Against this background, the results of research conducted in 2018 by Dr Beata Gessel-Kalinowska vel Kalisz during preparation of "The Legal, Real and Converged Interest in Declaratory Relief", slated for publication by Kluwer Law International in 2019, become particularly interesting.

Claims for declaratory relief play an important role in disputes rooted in M&A transactions. The analysed awards concerned declarations on, among other issues, validity of share purchase agreements and shareholder agreements, construction of agreements, and effectiveness of acts in law, such as termination of contracts. In many cases, the arbitral tribunal ruled on the contractual breach as such (without establishing its financial consequences) or, interestingly, ruled in principle on liability for future harm, e.g. for breach of representations and warranties or of confidentiality clauses.

It is estimated that, on average, disputes rooted in M&A transactions involved claims for declaratory relief in 16% of all cases. Seeing as the overall level of claims for declaration in proceedings before the general courts hovers at 1%, this is a very high percentage.

Beata Gessel-Kalinowska vel Kalisz, PhD

senior partner, attorney at law
Arbitration
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OUR FORECASTS – BANKING&FINANCE / M&A

2018 was a good year for the mergers and acquisitions market in Poland. The annual report “Emerging Europe M&A 2018/2019” notes that the M&A market in Central and Eastern Europe has posted a 12% increase in the value of mergers and acquisitions in 2018, growing to EUR 80.5 billion. This activity was in evidence in Poland as well as in Romania, the Czech Republic and Hungary.

That said, it merits pointing out that, despite the 12% increase in the number of transactions in the Polish market (translating into 323 announced take-overs), the aggregate transaction value has dropped – significantly so, in fact, by some 40%. Yet “Emerging Europe M&A 2018/2019” ranks Poland in second place (after Russia) in the region in terms of transaction volume and value alike. The most M&A activity was observed in the real estate, industrial and telecoms (along with IT) sectors. The biggest deals in terms of standalone value were in the financial sector.

2019 is unlikely to bring major shifts in transaction numbers or values. A generally good economy combined with ready availability of debt financing and low interest rates ought to combine into a good M&A climate in Poland, and I do hope that our Clients – current and future – may take advantage of this

Małgorzata Badowska, partner, attorney at law
Banking&Finance / M&A
m.badowska@gessel.pl



OUR FORECASTS – CAPITAL MARKETS

2018 is bound to be a memorable one for capital market practitioners, and not in a good way. While we had the privilege of advising on some interesting transactions, among them IPOs, this seems to be a positive stand-out in the broader market, which was for all intents and purposes a bearish one. New listings on the Warsaw Stock Exchange were at low ebb, bond issues pretty much came to a standstill, and the second half of 2018 witnessed an exodus of investor assets from investment funds.

Perhaps counterintuitively, it is our belief that the year 2019 will not be a bad one. In our considered opinion, the Polish capital markets has reached the bottom of the proverbial valley last year and will now begin to pick up again, duly bringing an uptick in indexes and greater IPO activity. One of the factors driving this hoped-for growth will be the introduction of Employee Capital Plans, which are already on the law books and whose effective implementation by the largest employers will begin in the middle of the year. The Employee Capital Plans stand to permanently rearrange savings and investment patterns among the Polish workforce and, in the process, to provide impetus for growth on the stock exchange.

Leszek Koziowski, partner, attorney at law
Securities Law Department
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OUR FORECASTS – TAX LAW

Significant changes to Poland's tax system were brought by signature into law (in November 2018) of legislation amending the personal income tax and corporate income tax acts, the Tax Ordinance and a number of other statutes. This slew of legislative amendments comes into force on 1 January 2019.

We have chosen from among these various changes those which, in our belief, are of greatest relevance to planning and execution of M&A transactions:

- CIT exemption for the earnings of Alternative Investment Companies (a development which promises to be of especial importance from the perspective of development of the capital market);
- Introduction of a preferential 9% CIT rate for the smallest taxpayers;
- Revision of the rules regulating PIT and CIT in the context of debt-for-equity swaps;
- Implementation of the legal construct of the IP Box, i.e. a preferentially taxed company obtaining its revenue from intellectual property;
- Revision of the rules regulating PIT and CIT in the context of purchasing receivables portfolios;
- Implementation of Mandatory Disclosure Rules concerning tax schemes;
- Implementation of an exit tax for entities permanently leaving Poland;
- A more restrictive regime for taxation of foreign controlled companies (CFCs), including foreign foundations;
- New rules concerning collection at source of flat-rate taxes on dividends, interest and licence fees;
- Implementation of a PIT exemption for inherited real estate, extension of the "residential tax break" term;
- Reduction of the civil transactions tax on loan agreements from 2% to 0.5%.

These legislative changes are bound to make life more difficult for entities (especially those with foreign shareholders) transferring payments abroad, and also for tax advisors compelled to comply with the strict MDR regime. The new exit tax rules, as now formulated, are likely to engender interpretational difficulties. A positive development, meanwhile, is presented in the CIT exemption for alternative investment companies, which renders this modern variant of the investment fund more attractive.

Janusz Fiszer PhD, partner, attorney and tax advisor

Tax Law Practice

j.fiszer@gessel.pl



OUR FORECASTS – COMPETITION LAW

Albeit UOKiK, the Polish competition authority, yet has to publish its official report for 2018, we can already say that its Concentration Control Department has had a busy year. In 2015, UOKiK issued 218 merger clearances, in 2016 – 194, and in 2017 – 205; in 2018, meanwhile, the number of clearances for merger transactions approached 230 ! The implications are clear – enterprises in the Polish market are consolidating so as to better compete in the market, especially as they eye expansion into new countries.

There is some likelihood that this trend will continue in 2019. Smaller, family-owned businesses and start-ups are finding themselves at a stage where, following an initial growth spurt, they are thirsty for financial and operational support. Larger companies, meanwhile, want to take their products and services to new markets, or are facing succession issues as the first generation of Poland's post-1989 entrepreneurs approaches retirement age. For investment funds, this is something like a promised land. And not only for PE/VC players; we note that, with increasing frequency, stakes in companies are acquired by their competitors, which entails not only more work in drafting the merger filing, but also opens entirely new issues, for instance as regards exchange of sensitive information in the course of negotiations. In some such scenarios, it may well be necessary to establish a special group for analysing and processing sensitive data (clean team, in industry parlance) to preclude suspicion of unlawful information exchange or of effective collusion before merger clearance has been secured (gun jumping).

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VENTURE
CAPITAL&START-UP

GESSEL for venture capital & start-up

Throughout 2018, our firm continued exploring avenues for growth in the venture capital sector.

Working together with the German fund **Sunfish Partners**, we endeavoured to draw up a set of **model documentation** for use by funds investing in Polish start-ups. Drawing on the expertise of our German colleagues and on the enthusiastic input of the venture capital community, we have drafted a model **term sheet** and model **investment agreement** for use, on an open-source basis, by investors and start-ups alike (available for download on our firm's website). We are proud to note that we have been receiving many positive reviews from the market as regards the practical utility of these reference documents.

Working closely with **Google for Startups** (Campus Warsaw), our lawyers join in various projects, such as advising start-ups participating in the Residency programme on the legal aspects of their operations (Residency brings together the most promising European start-ups from the internet sector). Our lawyers remain in constant contact with the start-ups, helping them to grow their operations.

Apart from that, we regularly advise on venture capital transactions, supporting the investor as well as the start-up sides. Notable projects in 2018 included work for the Dutch fund **Finch Capital** on its investment in the Krakow start-up **Perfops Sp. z o.o.**, operator of a global IT infrastructure testing platform.

Our work on the start-up side, meanwhile, included advice to **theConstruct Sp. z o.o.**, authors of theViewer, an app for architects and designers which enables them to see the spaces they are working on in a VR setting, during the investment by **Data Ventures Sp. z o.o.**, a Polish venture capital fund.

We aim to develop a strong skill set in all aspects of new technologies investment; in this spirit, we look forward to continuing our work within the venture capital ecosystem in 2019.

Michał Bochowicz, managing associate, advocate

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M&A TEAM

OUR TEAM LAUDED IN THE MARKET

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 Kozuchowski
- Christian Schmidt



GESSEL



LEADING INDIVIDUAL



LEADING FIRM



LEADING INDIVIDUAL



GESSEL



Marcin Macieszczak

managing partner, attorney at law

MERGERS AND ACQUISITIONS, / PE&VC



Marcin Macieszczak



MARCIN
MACIESZCZAK



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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

Małgorzata Badowska

partner, attorney at law

**BANKING AND FINANCE,
MERGERS AND ACQUISITIONS / PE&VC**



Małgorzata Badowska



MAŁGORZATA
BADOWSKA



MAŁGORZATA
BADOWSKA



"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

Maciej Kożuchowski

partner, attorney at law

MERGERS AND ACQUISITIONS, / PE&VC



Maciej Kożuchowski



MACIEJ
KOŻUCHOWSKI



"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."

Chambers Europe 2018



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