Wolf Theiss

CURRENT ENFORCEMENT ENVIRONMENT IN CENTRAL AND EASTERN EUROPE

What to Anticipate in the Reconstruction of Ukraine

JANUARY 25, 2024



Learning Objectives

- ▶ Discuss the main compliance challenges and current regulatory environment in Central and Eastern Europe.
- ▶ Describe how to do business in Ukraine currently and how to be better prepared for the Ukrainian reconstruction phase.
- ▶ Identify ways to support anti-corruption efforts in Central and Easter Europe.

Agenda

01	Introduction: BDO Moderator and Wolf Theiss Regional Team
02	Overview of Enforcement of Corporate Criminal Liability in the Region (Jitka Logesová)
03	International Judicial Cooperation (Bogdan Bibicu)
04	Sanctions (Bogdan Bibicu)
04	Sanctions (Bogdan Bibicu)
04 05	Sanctions (Bogdan Bibicu) Selection of Law, Selection of Dispute Resolution Form and Protection of Foreign Investments in Ukraine (Marie Talasova)
	Selection of Law, Selection of Dispute Resolution Form and

Wolf Theiss: CEE & SEE Region

LOCAL KNOWLEDGE, STRONG INTERNATIONAL CAPABILITIES

Wolf Theiss Local focus on

a global scale.

13 countries in Central and Eastern Europe and in South-Eastern Europe, including Ukraine.

Wolf Theiss

One region one firm.

Founded in 1957, Wolf Theiss is one of the leading law firms in Central, Eastern and South-Eastern Europe (CEE/SEE). With 390 lawyers in 13 countries, we have built our reputation on unrivalled local knowledge which is supported by strong international capabilities.

NOTE: Wolf Theiss possesses regulatory and legal expertise in the identified countries, while BDO has a comparable presence for collaborative purposes.





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Geographic Corruption Statistics

Jitka Logesova



Corruption Perceptions Index 2022: Transparency International

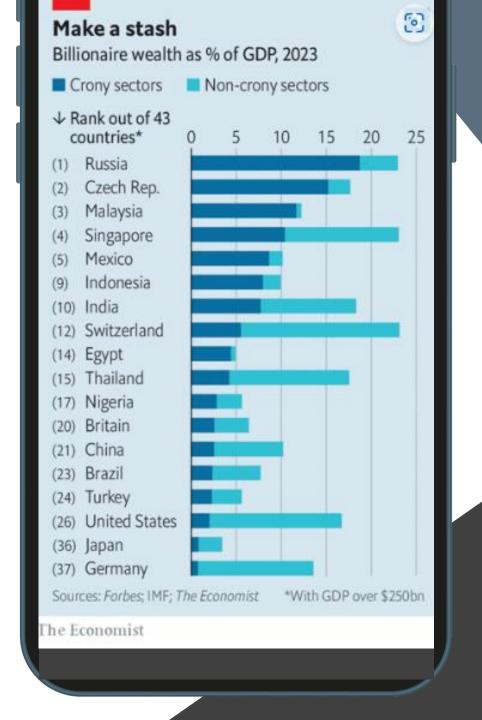
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87	•	New Zealand	2
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42	•	Trinidad and Tobago	77
42	•	Vietnam	77
41	1	Kosovo	84

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40	•	India	85
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The 2023 Crony-Capitalism Index THE ECONOMIST, 2 MAY 2023



Enforcement of Corporate Criminal Liability in CEE & SEE

- Most countries in CEE/SEE have adopted corporate criminal liability legislation
- The enforcement of local corporate criminal liability laws is on the rise although main trigger remains to be the U.S. Foreign Corrupt Practices Act (FCPA), the UK Bribery Act, the French Sapin II anticorruption legislation and the Nordics anticorruption laws

- A strong push for companies to investigate misconduct internally was provided by the Whistleblowing Directive which has been finally implemented across the region
- Environmental, social and governance rules (ESG) are another reason why companies are looking more diligently into certain allegations
- Increased importance and role of reputation

Enforcement of Corporate Criminal Liability in CEE & SEE

- Most of investigations conducted by external attorneys are corruption and bid rigging allegations; legal privilege/duty of confidentiality and reporting duties to be considered
- ► Increase in **employment-related investigations** concerning allegations of harassment
- ► Fraud internal investigations
- ► Third party-related investigations, which have chiefly been triggered by the German supply chain law entitled "Lieferkettensorgfaltspflichtgesetz", but also (although to a lesser extent) by the EU Corporate Sustainability Due Diligence Directive
- ▶ Reputational and compliance DD in M&A transactions to assess impact of target companies on environment but also to exclude any breaches of sanctions or any reputational issues
- ► Sanction evasion-related investigation
- ► Sectors most exposed to governmental corruption related investigations: Construction, Pharma, Medical devices, Energy, Telecommunications



Outlook: EU Anticorruption Directive

- ► EU proposal of **Directive No 2023/0135 on combating corruption**
- ▶ Last version as of 3 May 2023, before the first reading in the EP
- ▶ Minimum rules on Corruption-related offences and their definitions
 - Sanctions
 - Prevention
- Use of new terminology ("high level official") and unification of existing one ("legal person")
- ▶ Harmonization of sanctions and statutes of limitations
- ► Foresees the criminal liability of legal persons in all states, in the form of parallel and independent enforcement of criminal liability of natural persons
 - Some sanctions can be non-criminal in nature
 - Sets the maximum limit of criminal and non-criminal fines to at least 5% (though only tentatively "should not be less than") of the total worldwide turnover of the legal person, including related entities, in the business year preceding the decision imposing the fine



International Judicial Cooperation

- Increased cooperation between jurisdictions, especially the EU ones - significant difference than few years ago
- Most of CEE/SEE jurisdictions cooperate very effectively also with non-EU countries, such as the U.S., the UK, Canada or other jurisdictions having laws with extraterritorial effect
- ▶ Judges and prosecutors take part in common training programmes with fellow professionals from the EU, the U.S., the UK, etc.
- Backlog of cases from the COVID pandemic period

- ► The European Public Prosecution Office operational in 2021
- ► The Chief Prosecutor of the EPPO is the former General Prosecutor and Chief Prosecutor of the Romanian Anti-corruption Unit
- In some of the European countries, the Russian invasion in Ukraine meant an increase of national security related cases and a slowdown on corporate crime enforcement due to lack of resources
- Proposal for EU Directive on anti-corruption to be followed

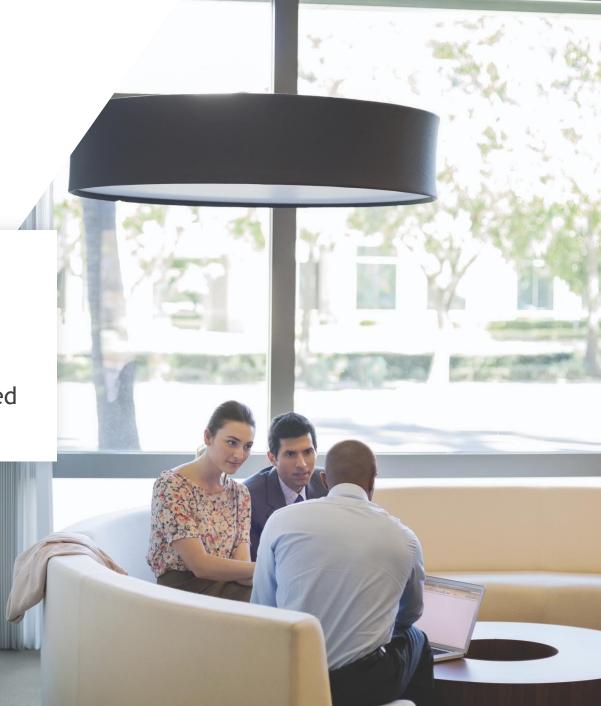
Non-Trial Resolutions

CURRENT STATUS

▶ Plea bargaining in Czech Republic on increase for corporates

► Similar situations in other countries in CEE/SEE region

► In the absence of more effective NTRs tools, vigorous corporate defense is likely to be chosen by investigated corporates



Sanctions: From an EU and Local Perspective in WT's Jurisdictions

- Sanctions are far more than KYC and AML
- AML standards have increased
- Sanctions compliance, AML, backlog of investigations and other developments gave rise to additional challenges to corporates and authorities
- ► From no or very little communication and no coordination to a more mature approach from authorities
- Still room to improve on unitary and consistent compliance and enforcement
- Increased informal cooperation between various regulators

- Corporates operating in several jurisdictions face higher challenges
- Proposals to criminalize and harmonize the violation of EU sanctions
- Expected more focus and more enforcement around sanctions evasion schemes and proposals for new criminal offences around eluding sanctions regime
- Confiscation of frozen assets: remains a goal, still various local legal hurdles in most of the countries

Selection of Applicable Law

- Investors are not bound to choose Ukrainian law as governing law of their contracts (subject to matters of public policy and mandatory laws of that other jurisdiction)
- Investors should choose the system of law with which they are familiar, e.g., U.S., German, Czech law



Selection of Dispute Resolution Mechanism

- Investors are not bound to choose Ukrainian state courts as the only venue for resolving their disputes
- Options:
 - Foreign national courts, e.g., Polish, German, Czech, etc.
 - Ukrainian national courts
 - International arbitration court, e.g., ICC, LCIA, SCC, etc.
 - National arbitration courts, such as DIS, ICAC, BRS

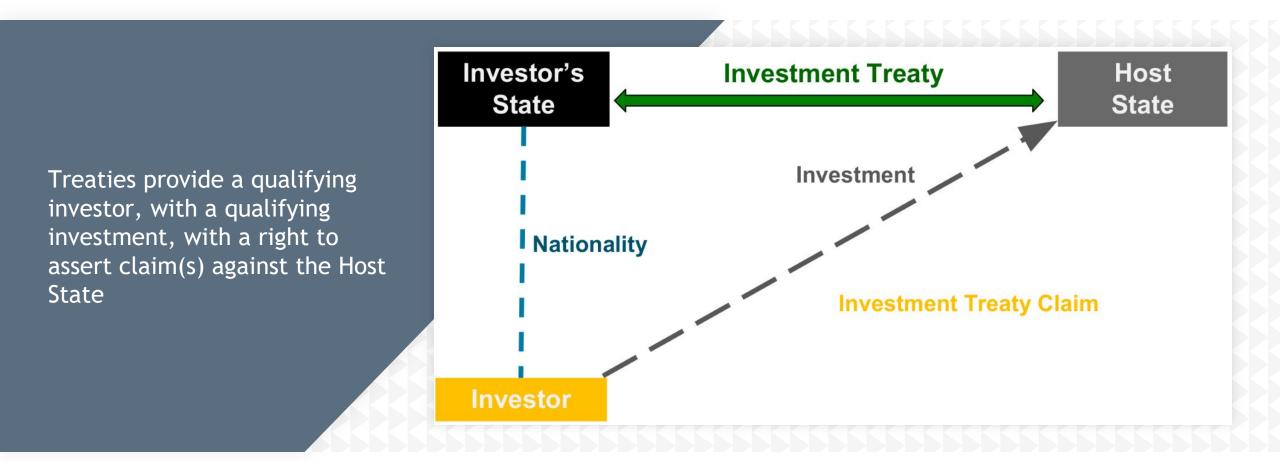


Protection of Foreign Investments / General

- Protection of foreign investors in Ukraine under international law
- ► With over 78 states Ukraine signed bilateral treaties investment treaties on promotion and protection of foreign investments
 - Establish special rights for foreign investors
 - Neutral dispute resolution mechanism (investment arbitration)



Protection of Foreign Investments / Investment Arbitration



Reconstructing Ukraine - Progress Vision

- Implementation of the FIDIC construction agreements models into Ukrainian law.
- Incorporation or designation of the special arbitration institution to resolve disputes related to the reconstruction projects, including disputes involving Ukrainian state authorities.
- Liberalization of the immigration and labor regulations for foreign employees and consultants.

- Resolving of ambiguities as to the contracts in foreign languages.
- Stabilizing foreign exchange control regulations for the companies implementing reconstructing projects.
- Further reforming of the land related legal framework, as land is the basis for development of many of Ukraine's important industries as well as the source of disputes and investigations.

Conclusion

- ► Corporate criminal liability in the regions is on the rise. This is partially driven also by US, UK and EU enforcement actions that trigger additional local enforcement
- ► Continued international judicial cooperation will mean that understanding local law will be key in navigating internal inquiries and investigations
- ► The CEE/SEE regulatory enforcement can be complex and needs to be coordinated with US, UK or EU investigation protocols Consult local counsel with an understanding of local laws when operating in these countries
- ► International investors need to consider contractual options to have a path towards dispute resolutions when and if needed
- Contracting in in CEE and SEE has its challenges, there are safeguards that can be utilized for contracting in Ukraine
 - Selection of applicable law
 - Alternative Dispute resolution mechanisms
 - Structuring investments under International Investment Treaties
- ► Thank you CPE, Content distributions and questions

Reconstruction Needs Are Creating Business Opportunities



Opportunities Are Shadowed by Legal Risks

- While for Ukraine this is a reconstruction, for the rest of the world it is a major investment opportunity
- Lessons learned from the Marshall Plan point to the need to identify the bottlenecks that could jumpstart reconstruction efforts, especially in energy, tech and telecoms, agriculture, and construction sectors

Already Happening

Short-term projects involve critical infrast ructure and social agricultural sectors. See list of western-backed investment projects below.

Will Happen

The long-term horizon includes integrating Ukraine within the EU (compliance with EU norms) and Ukraine operating as a post-conflict economy. A Second wave of investment, especially in real estate and logistics, will be needed to meet demand for housing and facilities.

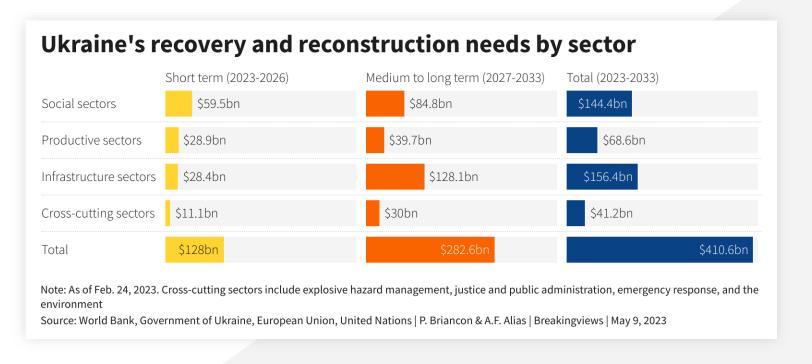
- Identifying the right projects
- Navigating procurement processes
- Securing financing
- Managing collateral
- Ensuring sustainability of business

A market still finding its regulatory footing means a **major exposure to potential liability** under U.S. FCPA, UK Bribery Act

- De-risking private investment with public sector involvement means extra scrutiny from various governmental agencies and legislatures
- Regulatory-heavy agenda for clients with serious repercussions of non-compliance
 - Note the post-war reconstruction experiences in Iraq (U.S. spending on reconstruction \$220 bn) and Afghanistan (\$145 bn), where contractors faced long-term legal and legislative investigations

- ▶ Ukraine's reconstruction estimated to cost more than \$500 bn
- ▶ By mid 2023, a total of \$60 bn in international commitments were made to support the reconstruction of Ukraine (governments & 400+ global companies)
- ▶ Ukrainian Ministry of Economy is working with U.S. private investment companies to establish the **Ukraine Development Fund** (BlackRock Financial Market Advisory to provide support services).
- ▶ U.S. and UK proposed new legislation would allow the seizure of hundreds of billions of dollars of frozen Russian public and private assets to finance the reconstruction.

Financials OVERVIEW



Financials

EU'S FINANCIAL INSTRUMENT TO REBUILD UKRAINE

SOURCE: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-06/COM_2023_338_1_EN_ACT_part1_v6.pdf

- ► EU is taking the lead in rebuilding Ukraine as efforts are linked to Ukraine's EU accession path
- Since the start of the war, the EU and its Member States and the European financial institutions are making available over €67.7 bn in financial, humanitarian, emergency, budget and military support
 - €40.6 bn to support its overall economic, social and financial resilience. This includes an unprecedented financial support package of up to €18 billion for 2023
 - Around €27 bn in military assistance has also been made available under the European Peace Facility and by Member States directly
 - EU created <u>Ukraine Facility</u> mid 2023 to support Ukraine's recovery, reconstruction, and modernization for 2024-2027, resting on 3 pillars (see right)
 - European Bank for Reconstruction and Development, Ukraine's biggest institutional investor, met its target of deploying €3 bn of financing in Ukraine's real economy in 10/2023
 - Main focus is on energy security, vital infrastructure and food security (<u>link</u>)

Pillar 1: Support to Ukraine Plan

EU support to Ukraine's Plan through grants and loans to the state budget

Support to address the **urgent financial needs of the country** to maintain macro-financial stability

Support to investments to foster recovery, reconstruction and modernisation

Support to reforms needed for EU accession

Pillar 2: Ukraine Investment Framework

De-risking mechanism available to investors through international financial institutions to scale up investments and crowd in new investors

Support to the Ukrainian private sector

Pillar 3: Assistance programmes

Technical assistance to the Government (EU acquis, structural reforms)

Capacity building of the authorities at national, regional and local level

Support to the civil society

Financials

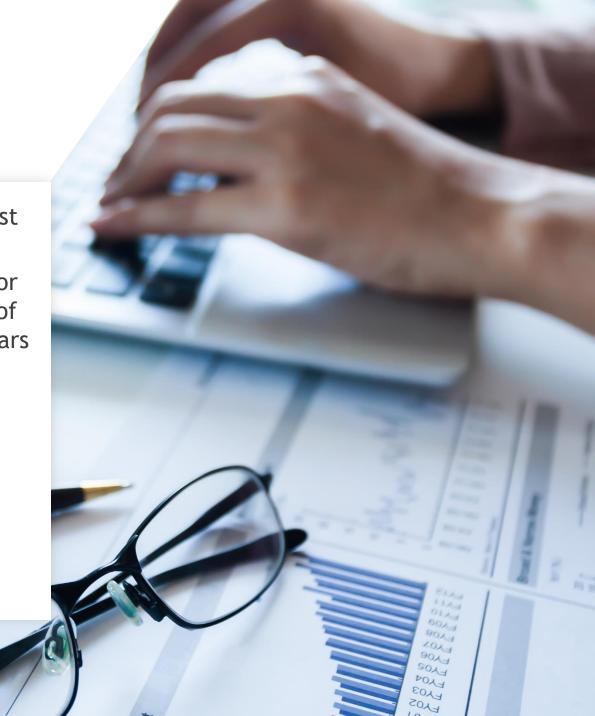
UK

- ► UK a prominent supporter of Ukraine and second-largest donor of military support (GBP 4.6 bn)
- ▶ June 2023 Ukraine Recovery Conference set out a major package of financial support, including the guarantee of USD 3 bn of World Bank loans to Ukraine over three years



Despite the risks, the UK's crucial role as one of Kyiv's foremost allies has provided the UK Government with the impetus to quickly rebuild relations with the EU in addition to supporting Ukraine's advances on the front lines.

Source: Wilson Center



List of Major UK's Financial Commitments to Ukraine:

- A £45mn envelope of funding, part of the UK's wider £62 mn programme, to support **Ukraine's energy recovery over the next two years**. Of this, £25mn is going to the International Finance Corporation's Ukraine economic resilience action platform, to bolster Ukraine's energy security. £3mn will support a new technical assistance facility to speed up Ukraine's energy sector reform and decarbonization.
- ▶ A £26.3 mn equivalent loan backed by UK Export Finance, allowing the Ukrainian government to start **rebuilding six vital bridges** damaged as a direct result of the illegal Russian invasion, reopening supply routes near the capital, Kyiv.
- ▶ £12 mn to the Partnership fund for a resilient Ukraine to enable the government of Ukraine and its communities to remain resilient in the face of Russia's aggression, including support to identify and respond to immediate recovery priorities in newly liberated territories in the east, south and in Ukraine's border areas.
- ▶ \$25 mn from the UK's development finance institution, British International Investment (BII), to support the International Finance Corporation's (IFC) global trade finance program to help **keep cross-border trade lines open**. This follows the prime minister's announcement [...] that the UK is committing £250mn of new capital to BII.
- A further £15 mn for a new anti-corruption e-governance project, being delivered with UK support, to build transparency and accountability into key public services in Ukraine.
- ▶ £2 mn to the government of Ukraine's digital system for reconstruction management, the Digital Restoration Ecosystem for Accountable Management (DREAM) platform which will increase the transparency of reconstruction projects.

Financials

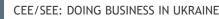
Recent Investment Projects

WESTERN-BACKED
DEALS TO REBUILD
UKRAINE



Investment in Ukraine's recovery and reconstruction cannot wait until the end of the war.

- ► <u>UK Government backs £26.3 mn equivalent loan for reconstruction of Kyiv bridges</u>
- Rheinmetall wins over \$150 mn contract to produce shells for Ukraine
- Carlsberg Ukraine presents one of the largest investment projects of 2023
- Bayer to invest EUR 60 mn in a corn seeds production plant in Ukraine
- New Ukrainian-Polish hub plans to attract EUR 900 mn ininvestments to Ukrainian real estate market
- ▶ Ireland's Kingspan Group implementing \$280 mn investmentproject in Ukraine
- ► The U.S. Development Finance Corporation to finance five projects in Ukraine costing \$380 mn



Ukraine

FOCUS DEFENSE

The war in Ukraine has highlighted several key issues in the defense market in Europe:

- ▶ Military expenditure saw its steepest year-on-year increase in at least 30 years
 - Military spending will continue to rise. (<u>Stockholm Intl Peace Research Institute</u>)
- National governments tend to act individually, and established relationships are key for manufacturers
- ► To address critical defense capability gaps and to jointly procure defense products, the EU is looking into ways of **reinforcing the European defense industry** by integrating local markets
 - Joint defense spending, currently just 18 % (the target is 35 %), is expected to grow significantly (<u>European Parliament</u>)
- Much is expected from the new phase (kick-starting in 2025) of the Permanent Structured Cooperation (PESCO) initiative, which legally binds member states to meet defense spending plans
- As a leading regional law firm with a proven track record in real estate and construction, public procurement, administration law, regulatory compliance, permitting, corporate law, tax advisory, and banking and finance projects, we have the expertise to provide strategic legal solutions to the defense industry

Whether it's navigating the complexities of factory expansion, negotiating joint ventures, or advising on acquisitions, our team is ready to provide tailored legal solutions to help defense companies achieve success in their operations.



Wolf Theiss - Areas of Expertise

Our most sought-after expertise in relation to Ukraine includes:

- ▶ Enforcement of corporate criminal liability: Local legislation including EU Anti-corruption Directive, EPPO activity, internal investigations & compliance defense
- ▶ **Protection of international investments and business:** War-risk insurance, dispute resolution mechanisms including arbitration, FDI laws, litigation risks (in relation to foreign-owned assets)
- ▶ Sanctions: export controls, embargoes, asset recovery
- Corruption & wider AML, supply chain due diligence
- ► Current state of judicial system & international judicial cooperation
- Navigating through the newly emereged environment: Market entry and exit, business and operations diversification, pretransactional due diligence and customized business intelligence reports on Ukrainian targets/counterparts
- Financing business in Ukraine: Advice on secure financial infrastructure, raising funds, navigating financial regulatory landscape.
- ▶ **Risk assessment and mitigation for financial and banking institutions:** Supporting entry of banks, financial institutions, payment systems and other market participants

Ukraine

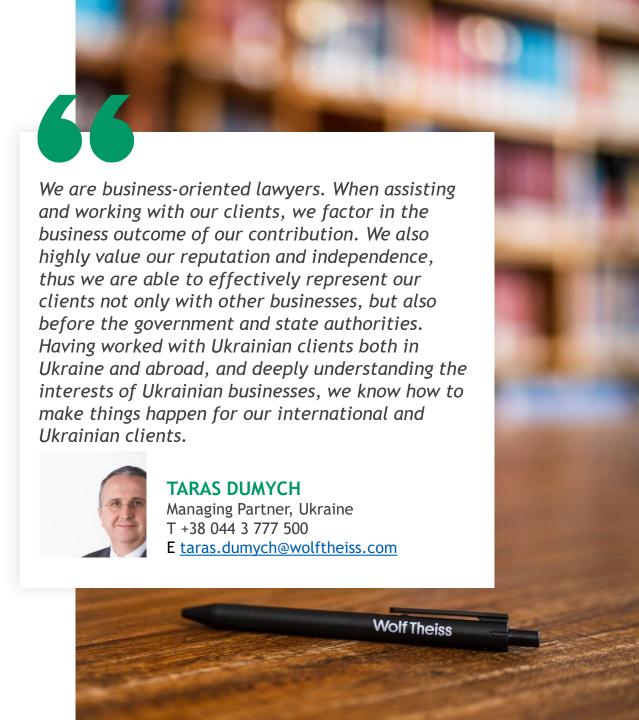
WOLF THESIS - YOUR LEGAL ADVICE

As the war in Ukraine continues, so too does the legal fallout of the conflict. Together with **our Kyiv office**, we advise clients in all challenges and opportunities they face in doing business, investing or trading with Ukraine.

In addition to untold humanitarian costs, the war in Ukraine has caused **immense damage to Ukrainian businesses and entrepreneurs**. Both Ukrainian domestic and international businesses have been affected. We help our clients to navigate this newly emerged environment. Find out more in our <u>Guide to Diversification of Ukrainian Businesses</u>.

Understanding sanctions regimes and how they are impacting industries across Europe and the world requires legal expertise and business know-how. See our <u>regular updates</u> on how to stay compliant.

Regional projects that drive **post-war reconstruction** offer international investors various business opportunities. **Our offices in neighboring countries**, such as Poland, provide local advice not only to exporters affected by the fallout of the invasion but also to global players seeking a point of entry into Ukraine. (See more on governmental initiatives in <u>Poland</u> and <u>Czech Republic</u>).



Thank You for Your Attention



Wolf Theiss has a leading practice with a strong track record of working on multinational arbitral award enforcements, as well as criminal and civil litigation proceedings. The firm is sought after as counsel on investment arbitrations, contractual disputes, bankruptcy claims and public law disputes.

Wolf Theiss

Over the years, we've been consistently ranked among the leading law firms in CEE/SEE and we have won numerous awards. Here are just a few.



Austrian Law Firm of the Year / 2009, 2012, 2013, 2018 & 2022 Austrian Client Service / Law Firm of the Year 2011 Central & Eastern Europe / Law Firm of the Year 2017



Law Firm of the Year / Austria, 2014, 2017, 2020, 2022 & 2023

Law Firm of the Year / Central Europe, 2010, 2014 & 2021

Law Firm of the Year / South Eastern Europe, 2009, 2012, 2015 & 2023

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Austrian Law Firm of the Year / 2011, 2012, 2015, 2016, 2018, 2019 & 2023
Bulgarian Law Firm of the Year / 2020, 2022 & 2023
Czech Republic Law Firm of the Year / 2010
Hungarian Law Firm of the Year / 2009
Romanian Law Firm of the Year / 2022



Austria M&A Legal Adviser of the Year / 2022 & 2023 CEE M&A Legal Adviser of the Year / 2016

