WHITE & CASE

Annual Review 2011

A Letter From Our Chairman

Europe's sovereign debt dominates the headlines…China steps up outbound investment…The UK Bribery Act takes effect…Sub-Saharan Africa taps into international capital markets…Brazil is booming…

In our 2011 Annual Review, White & Case partners share their perspectives on these and other developments that defined the year.

The insights we offer here reflect the events and trends seen by our practices around the world, but they are not isolated opinions or narrow views. They are grounded in a global mindset, gained through our long history as a global law firm.

The forces of globalization and technological advances have changed the way we do business and our day-to-day lives. The immediacy of information flow and its accessibility have made the world smaller. Greater interconnectedness means a change in one market is likely to have an impact on others.

As we saw in the wake of the devastating earthquake and tsunami in Japan, communities around the world are more closely connected, too. Increasingly, our success depends on the success of others. As a global law firm, we have a responsibility to support the rule of law and address the challenges we face as a global community.

To understand the complexities of today's world, we must step back and look at the big picture. Our perspective comes from helping our clients navigate the risks and opportunities of a world that is more and more interconnected.

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Perspectives

From our vantage points around the world, we offer our perspectives on global legal and business issues of 2011.

Brazil: Market Maravilhoso!

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PERSPECTIVE

DONALD BAKER
Donald Baker is the Executive Partner of the Firm's São Paulo office, where he has worked since the office opened in 1997. His practice includes a broad range of corporate and corporate finance transactions in Brazil and elsewhere in Latin America.

JOHN VETTERLI
Based in São Paulo, partner John Vetterli represents issuers, underwriters and other participants in the full range of securities transactions.

FERNANDO DE LA HOZ
São Paulo partner Fernando de la Hoz represents issuers, underwriters, borrowers and financial institutions in a wide variety of corporate finance transactions.

FOCUS:

Oil and Gas Deals Aid Brazil's Transformation

Discoveries of substantial oil and gas reserves located below 7,000 meters of water, sand, rock and the presalt layer have the potential to transform Brazil into one of the world's largest oil producers. These reserves were once unreachable, but modern technology, massive investment and Brazilian determination are working to break production barriers. Over the past few years, White & Case closed more than 20 finance transactions in this burgeoning sector, with proceeds exceeding US$15 billion.

Accessing funding is critical to financing Brazilian oil and gas exploration and production and services companies, and in 2011 we saw clients turn to the equity capital markets and project financing arena. White & Case represented Queiroz Galvão Exploração e Produção, the oil and gas exploration and production arm of the Queiroz Galvão (QG) Group, in its US$777.7 million offering of common shares, Brazil's largest IPO of the year. We also represented the arrangers in two drilling vessel financings—the US$575 million project financing of the technologically advanced QG Alpha Star offshore oil drillship and the US$850 million project financing of the Floating Production Storage and Offloading (FPSO) vessel OSX-2, the latter named "Latin American Oil & Gas Deal of the Year 2011" by both *Project Finance* and *Project Finance International*.

White & Case also advised the arrangers in the largest cross-border high yield issuance of the year in Brazil, the US$2.653 billion inaugural bond offering by OGX Petróleo e Gás Participações S.A (OGX), an oil and gas exploration and production company controlled by pioneering Brazilian entrepreneur, Eike Batista, and in the US$700 million project bond issuance by the oil and gas services affiliate of QG. The QG issuance was our third Latin American oil and gas sector project bond in recent years, coming on the heels of the innovative US$1.5 billion Odebrecht Norbe project bond in 2010.

Q&A

2011 saw substantial investments by Brazilian project sponsors and corporate clients outside of Brazil. Do you see this outbound trend continuing in 2012?

BAKER: Yes, I think it will. A number of our Brazilian clients are world class and compete on the international stage. They intend to be global players and that means they will be looking increasingly outside of Brazil for opportunities. I wouldn't say it is a 2011–2012 thing. It started well before that and will continue for many years to come.

DE LA HOZ: I also think the outbound trend will continue as more multinational Brazilian companies—such as Votorantim, JBS, Odebrecht, Vale, Camargo Corrêa and Embraer—continue to look to make strategic investments outside of Brazil.

Foreign investment in Brazil recently reached new highs. What do you see in terms of foreign investment in 2012?

BAKER: A lot depends on the economic environment globally. Much of that foreign investment came in the first half of 2011; lately Brazil has been impacted by the global economic turmoil. I think in part that the answer for 2012 will depend on what happens in Europe and elsewhere—if there is greater stability globally, Brazil will get its fair share of the amount that companies and private equity and other investment sources have available to invest globally.

VETTERLI: The crisis has adversely affected the ability of Brazilian companies to get financing outside of Brazil on the terms and at the pricing that they find attractive. When the crisis eases, people will look to Brazil and want to finance companies here.

DE LA HOZ: To add to that, I think the non-Brazilian companies making direct investments in Brazil are investing for the long term. I believe these companies view the domestic Brazilian market as a market that will provide relatively good growth opportunities in 2012 and beyond, given the increase in credit available to a growing number of Brazilian consumers, among other things.

Brazilian companies explored alternative asset classes in 2011. Do you see this trend continuing in 2012?

VETTERLI: I would say that in the second half of 2011, we didn't see as many equity IPOs as we saw in the first half. However, we saw other deals—debt and equity—in the form of private placements, and we are seeing more structured deals. So it seems that the markets are coming up with options in terms of what types of deals can be done and we are working to accompany those changes.

DE LA HOZ: We are definitely seeing some interesting deals that are far from plain vanilla and clients looking for more creative solutions to their funding needs. Companies are responsive to the fact that there isn't necessarily as much available funding, as John mentioned, in terms of equity offerings and are seeking increased ingenuity from bankers and lawyers.

BAKER: This trend plays to our strengths, given the wide variety of complex deals we have worked on in the market. For instance, we have worked on two significant project bonds in the Brazilian offshore oil and gas sector over the past year or so—the first of which received industry-wide recognition as being truly innovative. Not only does this type of offering blend project finance and debt capital markets, it provides a significant funding alternative for the market. Given the substantial demand and expected growth for more offshore drilling rigs and related vessels, project bonds offer a creative way to access secure financing at favorable rates during this period of uncertain liquidity.

What are the biggest growth areas and sectors going to be in 2012?

BAKER: Oil and gas is certainly a significant one with the ongoing development of ultra-deep water presalt oil and gas resources. I expect metals and mining and other natural resource areas to be key growth areas as well, depending on how commodity prices play out. Agribusiness is another area in which we envision growth, given global food needs and Brazil's leadership in biofuels, as well as Brazil having significant land available for further agricultural development.

VETTERLI: There should be continued growth in the consumer and retail areas because of Brazil's increasing middle class, assuming that inflation can be kept in check. The "emerging middle class" has been the big growth story in Brazil in recent years. That rapidly increasing class of consumers, which didn't exist five or more years ago, has created tremendous interest for global companies and those who want to provide financing to Brazilian companies.

DE LA HOZ: I would add electricity generation and telecommunications as areas to watch.

BAKER: On a final note, we've seen a number of US and international private equity firms opening up shop in Brazil recently and actively prospecting for deals. As part of this trend, we are also seeing other private equity firms visiting to get the lay of the land with the idea of doing business here in some way. Some of these firms use Brazil as a base for their operations in Latin America more generally. We definitely expect to see increasing opportunity and greater growth in this area over the next few years. Of course it depends upon foreign investor demand and liquidity in the international market, but Brazil is certainly at the top of the list for many, given its growth prospects.

Eurozone Debt: Searching for Solutions

02
PERSPECTIVE

ERIC LALO
Eric Lalo is a Managing Director of Lazard and Co-Head of its Sovereign Advisory Group. He has advised sovereign clients in Africa, Central Asia, Europe and Latin America, most often in sovereign or quasi-sovereign debt restructuring transactions.

FRANCIS FITZHERBERT-BROCKHOLES
Francis Fitzherbert-Brockholes is a partner in the Firm's Global Capital Markets Practice. For more than 30 years, he has worked for sovereign governments in such areas as international financing, external debt rescheduling and restructuring and privatization, and he has represented sovereigns' lenders and underwriters.

FOCUS:

Working on Sovereign Debt Matters for Diverse Parties

White & Case is experienced in representing many diverse parties in sovereign debt matters—sovereigns, underwriters and creditors alike. Two of our earliest sovereign clients were Turkey and Indonesia. More recently, one of our most notable successes was our work in Kazakhstan in 2009 and 2010. The White & Case team, led by partner Francis Fitzherbert-Brockholes, worked around the clock with the Kazakhstan government to draft a new banking restructuring law for the country. We then worked with Kazakh banks BTA and Alliance Bank to restructure more than US$20 billion of liabilities under the new law. Our work has been acknowledged as the first "bail-in" restructuring of a financial institution.

At the end of 2011, we took on a landmark role in the restructuring of Greek debt. Led by partners Gavin McLean, Ian Clark, Michael Doran and Mark Glengarry, a key player in our Kazakhstan work, White & Case is co-counsel to the steering committee of private creditors of Greece. We are currently advising the private investor steering committee on the terms of the private sector initiative (PSI) to restructure approximately €200 billion of Greek external debt in what is the biggest sovereign deal worldwide to date.

"The Greek PSI is an unprecedented initiative on account of its size and the fact that the debtor state is an active member of the Eurozone. This European dynamic has introduced a new set of political challenges into an already complex debt restructuring and the outcome will be important for European capital markets," says Glengarry.

Q&A

How is the current Eurozone sovereign debt crisis both different and similar to previous debt crises?

LALO: It is similar in the sense that a time lag always exists between when the debt problem occurs and when policy makers realize there is a problem. There is always a denial period—you believe that if you wait, the problem will be sorted out on its own. You try to sweep it under the carpet, but with time passing, you finally have to accept that the carpet is not big enough to cover the problem. The situation in Europe is not very different from previous debt crises in that sense. What is different, however, is that the institutions in charge of elaborating and funding the economic and fiscal adjustment programs are not just the IMF or the World Bank—as was the case in the past—but also the European Commission and the European Central Bank, who both have a direct vested interest in the success of the programs.

FITZHERBERT-BROCKHOLES: One other big difference is in the perception of the cause of the problem. With Greece, for instance, the cause of the problem is viewed as fiscal profligacy as opposed to balance of payment issues in past sovereign debt crises, which can only be addressed by dealing with competitiveness. The solution for Greece and other Eurozone countries is seen as fiscal integration—but if you apply only this solution it means a huge cutback of spending and could cause social disorder.

LALO: One issue making it more complex than previous crises is the very late recognition of the indebtedness problems. In the Latin American debt crisis, recognition of the problem occurred when debt ratios were much lower. With the European crisis, the problem wasn't recognized until debt-to-GDP ratios were much higher, because unlike other developing countries that experienced debt crises in recent history, the Eurozone countries were perceived as wealthy and financially well-managed. It was considered inconceivable that the Eurozone could turn into a problem. Now the Eurozone is viewed by certain investors as a very rocky ocean with no stable and predictable governance.

FITZHERBERT-BROCKHOLES: Even now the solution is not clear.

LALO: Another difference: Everything started at the level of one member state—with Greece and the discovery of flaws in the reporting system to Brussels. As a result of the flaws in the European policy response, the problem is now much larger and affects the whole Eurozone and its banking systems.

What role will budget cutting take in dealing with the problem?

LALO: The sovereign debt situation is like a supertanker; it takes a long time to turn around a supertanker, just as it does to correct a deficit. Even Germany doesn't pretend it will have a large budget surplus soon. It takes a lot of time to address problems as a sovereign. A corporation can just make cuts, but it is not as simple as that for a government.

Budget cutting can prove very counterproductive. After nearly two years of dealing with the crisis, the Troika group (the European Commission, the International Monetary Fund and the European Central Bank) has not demonstrated the effectiveness of harsh austerity measures. Taking a long-term view with Greece, it would be better to make sure the measures you ask for aren't so severe that they will "kill the patient" and its ability to grow.

The IMF's view now is that it is necessary to adjust budget deficits but not to the extent of impairing long-term growth prospects. Generally speaking, long-run fiscal sustainability is impacted by the differential between the interest rate paid to service government debt and the growth rate of the economy. To maintain a stable debt-to-GDP ratio, the interest rate you pay to service your debt must not exceed the nominal growth rate; if the interest rate exceeds the growth rate, you can't reduce the debt-to-GDP ratio, save for a large positive primary balance. So it's very counterproductive to ask for adjustment programs that create a risk of a prolonged recession. Some Southern European countries must make serious adjustments, but the time horizon must be considered, otherwise the restoration of debt sustainability is simply impossible.

What is the outlook for restructuring of Eurozone sovereign debt?

LALO: Several months ago when discussions started on Greece, restructuring Greece sovereign debt was considered inconceivable, as it would lead to the end of the Euro and the Eurozone. Now we are talking about private sector creditors accepting a "voluntary" 50 to 70 percent haircut, and no one is talking about the end of the Euro. On the contrary, market perception has made an interesting U-turn, and a failure to implement the Greek private sector initiative is viewed by many as a systemic risk to the Eurozone. So it seems that even though Eurozone leaders stated several times that the Greek case should be considered as exceptional and that other European sovereigns would never benefit from a similar treatment, financial markets have now acknowledged and priced the risk of another sovereign restructuring, understanding that debt restructuring is the most radical but at times the most efficient way to deal with an unsustainable level of debt.

Q&A

Legal incentives such as exit consents and collective action clauses (CACs) were successfully used in many debt restructurings in the past to convince private creditors to participate. Will they be used in Eurozone restructurings?

LALO: The exit consent approach is perceived as a very radical and aggressive approach, so it's not on the table at the moment. It would send a pretty hostile message to the private financial community, whose participation to restructuring is supposed to be voluntary.

CACs, which allow a supermajority of bondholders to agree to a debt restructuring that is legally binding on all bondholders, including those who vote against the restructuring, currently do not exist in most European jurisdictions. However, it was decided in November 2010 that CACs will be included in the future in all European sovereign debt issuances starting in 2013.

FITZHERBERT-BROCKHOLES: And given that Greek debt has maturities stretching into the 2020s, it will be a long time before things are fully CACed. There are also issues as to the enforceability in some countries of aggregation clauses. In my view, what is needed is a forum under the auspices of which sovereign debt can be restructured and a model law that individual countries can adopt saying that the consequences of such a restructuring will be recognized and enforced in those countries. That is a project we are currently working on.

What are the prospects for bank restructurings in the Eurozone?

LALO: In the Eurozone, sovereign debt restructuring in the past was out of the question. But now with Greece a precedent has been set for the possibility of such restructurings.

The situation could be quite similar for bank debt in the near future. Bank debt restructuring has not been implemented in the Eurozone, except for subordinated debt. Debt restructuring that hits senior debt holders is still taboo. The Irish situation shows that European governments—unlike the United States or Kazakhstan, for instance—are very reluctant to let banks enter into a restructuring mode. The notion is that financial institutions cannot restructure in an orderly way and must be bailed out to prevent contagion and systemic risk. We've seen the limits of this in Ireland where the large domestic banks were bailed out by the sovereign, and it remains to be seen whether this approach will or can continue.

There is now less fiscal maneuvering room for a sovereign to bail out its domestic financial institutions because of the sovereign's own debt-to-GDP levels.

Also, European policymakers have now sensed the level of frustration and anger in the Irish population, which had to pay for the bailout of foreign lenders who had engaged in irresponsible lending to Irish banks.

Can mechanisms be created to adopt a burden-sharing approach between state and private creditors regarding bank restructurings that is more feasible?

LALO: Yes. Denmark, for instance, has been very aggressive in adopting such a comprehensive plan. Three Danish banks have fallen into this plan and other Danish banks continue to operate. In other words, the Danish framework didn't lead to the failure of other domestic banks. Denmark, however, is not part of the Eurozone.

The European Commission is trying to draft a legal framework for bank "bail-ins" applicable to the Eurozone, but no consensus has been reached among member states, and the EU Commission had to delay its legislative proposal.

Will inflation in Germany be accepted to help solve the Eurozone debt problems?

LALO: Inflation in Germany won't be accepted for both cultural and practical reasons. There is very little elasticity in German prices. Their products are viewed as top quality with little price resistance. Also, some of the products Germany is selling in the Eurozone—such as heavy machinery—are products that are primarily manufactured only in Germany. The need to preserve the real value of saving is another major concern in Germany because of demographic trends.

What does the future look like for the Eurozone sovereign debt crisis?

LALO: It all depends on growth prospects on a worldwide basis—the situation in the United States and the BRIC countries. If there is a positive economic environment, the prospect for growth in Spain, Portugal, Italy, Greece and Ireland will remain. Those countries would then benefit from restored growth, and at the same time continue to fight for a reduction of their fiscal deficit.

We must hope that we don't get any new surprises that would erode confidence regarding sovereign debt. If confidence is restored thanks to support mechanisms drawn up by the Eurozone or the European Central Bank, there could be a greater chance for quicker debt resolution.

Everything depends on the outcome of the Greek debt crisis. If an orderly restructuring can be implemented in time, markets will calm down.

If sovereign debt restructuring occurs, what is the key to its success?

LALO: Any restructuring must be done in an orderly manner if you don't want to lose confidence. In the last two years, the European experience has been viewed as very chaotic and not confidence-building.

What else can be done to restore confidence in Europe?

LALO: European Central Bank involvement is essential to improve market sentiment. The European Central Bank providing three-year funding in the form of longer-term refinancing operation at the end of 2011 to the EU banking sector was a huge help to the sector, which was under stress and experiencing liquidity fears. Shortly after it was provided, Spain and Italy were able to place new short-term debt at very attractive rates because of increased liquidity of domestic banks interested and ready to buy government debt paper. The biggest users of this three-year funding window were rumored to be Italian banks.

A second three-year LTRO will occur on February 29, 2012. That could be another important step for restoring confidence with domestic banking sectors, and we can hope institutional investor confidence will follow.

It took nearly 15 years for Latin America to deal with its debt crisis. If Europe can deal with its own crisis in three to four years, that would be a superb achievement.

This interview was last updated on February 10, 2012.

> "In the Eurozone, sovereign debt restructuring in the past was out of the question. But now with Greece a precedent has been set for the possibility of such restructurings."
>
> ERIC LALO, MANAGING DIRECTOR, LAZARD

New York

Our New York office, where the Firm was founded 110 years ago, is home to international lawyers who deliver their expertise to clients across the globe and virtually every practice area.

PHOTO: Light reflecting on a New York street.

INSET: A photo of Times Square taken by Jose Pariente, our Global Director of Strategic Sourcing and Procurement, who is located in New York.

Rethinking Restructuring: Innovating on Insolvency

THOMAS LAURIA
Thomas Lauria is White & Case's Global Financial Restructuring and Insolvency Practice Leader. He has led White & Case teams in efforts to restructure more than US$100 billion of debt in some of the largest and most complex restructurings in history.

FOCUS:

Groundbreaking Approach Maximizes Senior Noteholders' CDO Recovery

Maximizing a client's position in a restructuring or insolvency often requires taking a groundbreaking approach. That's what White & Case did for the creditors it represented in the Zais Investment Grade Limited VII (Zais) insolvency, the first-ever involuntary prepackaged bankruptcy case brought under the US bankruptcy code, and the first and only use of chapter 11 to unwind a collateralized debt obligation (CDO).

Led by partners Gerard Uzzi and David Thatch, we represented Anchorage Capital (Anchorage), which held the majority of a tranche of Zais-issued super-senior notes. Zais, a Cayman Island cash-flow CDO, had been in default for more than two years. Its notes had been accelerated and its assets were no longer managed due to the default.

We guided Anchorage with the goal of allowing Zais to unwind in a value-accreting manner. Before the filing of involuntary petitions placing Zais in bankruptcy proceedings, three Anchorage entities solicited acceptance of their plan of reorganization for Zais using two bankruptcy code provisions previously thought mutually independent. "Before Zais, most people had not even considered the possibility of linking the code provisions allowing for involuntary petitions with those allowing for prepackaged plans in a single one-step process," says Uzzi.

The US Bankruptcy Court for the District of New Jersey granted an order for relief against Zais and terminated its exclusive right to file a plan, paving the way for confirmation of the prepackaged Anchorage plan on December 21, 2011. This bold approach resulted in substantial economic benefit for senior noteholders. "Stakeholders, and senior noteholders in particular, will now receive materially higher cash recoveries through an actively managed liquidation by Anchorage, as the post-petition investment manager, than if the CDO were to continue in default outside of bankruptcy," says Thatch.

Q&A

Are restructurings and insolvencies becoming more complex?

LAURIA: Yes. As they increasingly become globalized, companies typically have assets and liabilities in multiple jurisdictions. As a result, parties to restructurings and insolvencies of any size must deal with material cross-border issues—whose law is binding? how are conflicts resolved? For instance, what is binding in one jurisdiction may not be in another.

On top of these cross-border issues, parties to a restructuring or insolvency must deal with local laws and substantive rules, as well as local financing and local labor issues. They must contend with the complexity caused by legal schemes that don't necessarily mesh together.

For example, we are currently acting for a coordinating committee of lenders to Torm A/S, a Danish shipping group that is undergoing a restructuring. Torm has diverse interests in Denmark, China and Singapore, among other locations. The lenders are from equally diverse locations.

This kind of growing complexity requires global legal representation—a trend that allows us to capitalize on our sweet spot as a global firm. We have the expertise needed to obtain a successful outcome all under one roof.

In 2012, will the global focus be on European restructuring and insolvency?

LAURIA: Yes, Europe is in the center of a financial tsunami. Our newest and most interesting assignments heavily involve Europe. We are, for example, representing lenders to Greece holding €80 billion of Greek private bond debt.

What is unique about the crisis?

LAURIA: What's particularly unusual here is that in the European debt crisis, the lenders are almost, if not as much, at risk as the borrower. The magnitude of the issues in Greece—as well as Portugal, Italy and Spain—have been a significant contributor to stress on European financial institutions.

If you forgive Greek debt (and sovereign debt of some of those other countries), a bevy of European banks could face significant challenges. Therefore, whatever debt restructuring occurs must be done in a way that won't sink these banks.

We are all going to learn a lot from this dynamic.

What is most unique about White & Case's restructuring practice?

LAURIA: In addition to our global reach, we are unique in that we have substantial experience in representing all sides—creditors, secured lenders, bondholders, debtors—in restructurings and insolvencies. We've learned that the key to success for all of these disparate parties is coming up with creative approaches to optimize our client's position.

Looking at it another way—not relying on the ordinary playbook can achieve extraordinary results for a party to a restructuring or insolvency.

How do creative approaches arise?

LAURIA: There's no one set approach for a particular restructuring or insolvency problem. It can be anything from applying a never before taken approach to strategically best position a client when it has to move forward—as we did in the Zais restructuring, which was the first-ever involuntary prepackaged bankruptcy case, as well as the first and only use of chapter 11 to unwind a collateralized debt obligation—to bring together well-known legal principles in an unusual combination.

How does a party strategically best position itself?

LAURIA: Again, there's no one answer—it varies from matter to matter. It could be by being the first to file a competing plan, if the debtor's plan puts you at a disadvantage.

We did that in the Lehman Brothers bankruptcy, the largest-ever bankruptcy filing. The creditors we represented were the first to file a competing plan, thereby establishing a key strategic position in the case that all the other parties had to go through. As a result, we achieved a settlement that gave substantial recognition to our arguments for our clients.

Q&A

Will creative approaches be needed for cross-border matters?

LAURIA: Absolutely; the need for creative approaches knows no boundaries. Staking out strategic positions and challenging the status quo will be essential for maximizing a client's position in cross-border restructurings and insolvencies.

For example, in 2011 we represented a group with €300 million in subordinated bondholders' claims against the Bank of Ireland. We ended up getting this group par plus accrued interest on their claims.

How did we do this? We first tried to negotiate with the Irish Minister of Finance. When that failed, we filed a lawsuit in the United Kingdom against the Irish government arguing that it couldn't come into a non-state owned bank and unilaterally tell holders of bonds denominated in pounds and controlled by UK laws how the debts would be disposed of in an Irish insolvency proceeding. The Minister of Finance threatened the possibility of a subordinated liability order (SLO) that would have wiped out the bondholders. But ultimately, in large part because of the strategic position we had staked out by filing the UK lawsuit, the Minister agreed not to implement an SLO, and our clients benefited from our approach.

Bottom line: Whatever the matter, reflexively taking the tried-and-true approach will not provide optimal results. Instead, developing creative approaches and tenaciously following through on them will be the route to success for stakeholders in distressed companies in 2012.

> "Staking out strategic positions and challenging the status quo will be essential for maximizing a client's position in cross-border restructurings and insolvencies."
>
> THOMAS LAURIA, PARTNER

Big Projects, Big Financing Needs

04
PERSPECTIVE

ARTHUR SCAVONE
Arthur Scavone is White & Case's Global Project Finance Practice Leader. He has extensive experience involving international and domestic projects.

FOCUS:

Public-Private Partnership Building €7.8 Billion French High-Speed Rail Line

Public-private partnerships (PPPs) are increasingly becoming a key method for financing infrastructure projects. In 2011, White & Case worked on a huge PPP project—a €7.8 billion, 50-year concession to build and operate France's Sud Europe-Atlantique (LGV SEA) high-speed railway line. The project, a 303-kilometer high-speed rail line connecting Tours and Bordeaux, is the largest-ever project finance deal in the French railway sector and one of Europe's most important infrastructure investments in the past 20 years.

As counsel to the consortium's lenders, we represented nine commercial banks, the European Investment Bank and the Caisse des Dépôts et Consignations on the common financial documentation, project contracts and all legal aspects of the project—from preparing the consortium's bids to financial closing on June 16, 2011.

"This project, which is fundamental to the European railway network, is unprecedented in many respects and represents a number of firsts," say Paule Biensan and Jacques Bouillon, the Firm's lead partners on the project. "Not only is it the first railway concession concluded by Réseau Ferré de France, but it is also the first contract concluded with a state guarantee provided under the new French recovery scheme."

The winning consortium was led by VINCI Concessions and included VINCI SA; CDC Infrastructure, a wholly owned subsidiary of Caisse des Dépôts et Consignations; SOJAS, a dedicated investment entity; and AXA Private Equity.

Q&A

Where will funding for projects come from in 2012?

SCAVONE: That's one of the big uncertainties for the project finance marketplace in 2012.

In the past, funding has originated from multiple sources around the world, including commercial banks, export credit agencies, multilateral agencies, project bonds, tax equity and sponsor equity. Often, funding was drawn from a combination of these sources to support a particular project.

One of the most prevalent sources of commercial bank funds has been European banks. However, the current European debt crisis has affected the ability of European banks to fund dollar-denominated project loans, and it appears the impact of the crisis will continue into 2012. As a result, many project sponsors will need to look to Japanese and Canadian banks for funding, since US banks have not been a major source of project loans in recent years, except in limited, client-driven circumstances.

In the United States, the expiration of a number of federal energy credits, grants and loan guarantee programs will eliminate some key sources of funding that have sustained the US project finance market for the past couple of years, particularly in the renewable energy sector. To fill this funding gap, project sponsors will need to rely more heavily on the tax equity market, which, fortunately, is beginning to rebound, as tax equity participants begin to recover from the economic downturn and find themselves in need of more tax-driven investments.

Outside the United States, I expect project sponsors to continue to rely on export credit agencies and multilateral agencies, with perhaps additional sponsor equity being required to fill any voids resulting from certain European banks not being able to participate in dollar-denominated project loans.

While project bonds have, from time to time, been a source of funding for projects, the market for project bonds has not been robust for several years and, at this time, there are no indications that the project bond market will rebound substantially in 2012.

What kinds of projects do you anticipate predominating in the global energy, infrastructure and project finance marketplace in 2012?

SCAVONE: There is a clear need for increased global power generation in both developed and emerging markets. With the growth in personal electronic devices, an increasing population and continued pressure from environmental groups and governments to retire older, less environmentally friendly power plants, there will be a corresponding need to provide more efficient and cleaner power from new generating facilities.

With this in mind, I would expect to see more renewable energy projects and gas-fired power projects around the world. In the renewables area, I would expect to see continued interest in wind projects, but I would also expect to see solar projects gaining an increasing share of the renewables marketplace, particularly photovoltaic projects if the price of solar panels remains at its current low levels.

Given the environmental concerns, I would not expect to see many coal-fired power projects being financed, particularly in the United States and the rest of the developed world. Moreover, the much anticipated "nuclear renaissance" has, as we all know, been derailed by the disaster at the Fukushima nuclear power plant in Japan.

Is shale gas exploitation in the United States a reality? How will these projects be financed?

SCAVONE: All indications are that it is a reality. The desire for energy independence and cleaner-burning power plants provides a strong stimulus for finding ways to produce shale gas in an economically and environmentally viable manner. Major domestic and international oil companies are spending billions of dollars buying up shale gas properties in the United States. New technologies, including horizontal drilling and hydraulic fracturing, have made it easier to produce shale gas economically. One of the remaining major hurdles in the full-scale development of shale gas in the United States is the environmental concerns around the hydraulic fracturing or "fracking" process, but the general feeling seems to be that the industry and the regulators will be able to find a workable solution to ensure that this abundant supply of domestic energy can be exploited safely and reliably.

Shale gas has the ability to lower and stabilize gas prices, making the development of gas-fired plants more attractive. The key to financing new gas-fired power plants in the United States will then be an improving US economy, which should increase the demand for electricity and reduce the currently existing reserve margins in the key load centers. This combination of increased demand and reduced reserve margins should provide the necessary incentive for US utilities to enter into long-term power purchase agreements, which is an essential driver for the long-term development and financing of a new wave of baseload and mid-merit gas-fired power plants in the United States.

What other trends do you anticipate in the United States?

SCAVONE: In the United States, I see four other trends in addition to those I've previously mentioned.

First, as renewable energy projects continue to be sited in remote locations that are largely inaccessible to the electric transmission grid, I would expect to see the development of more "backbone" electric transmission projects. These transmission projects will be designed to bring large quantities of power from remote areas of the country that are rich in renewable energy resources to major cities and other load centers. An example of this is the One Nevada Transmission Line project that we successfully closed last year. It is a new 500 kV north-south electric transmission line running down the center of Nevada and is designed to bring electric power from solar, geothermal and wind projects in remote areas of Nevada and neighboring states to the major load centers, such as Las Vegas, Reno and Southern California.

Second, with the expiration of key federal energy legislation at the end of 2011, I would expect to see more reliance on the tax equity market to help fund US renewable energy projects, not only from the traditional tax equity participants such as General Electric, MetLife and J.P. Morgan, but also from new entrants like Google and KKR.

Third, at the end of 2011, we began to see increased activity in the US infrastructure market. With the lack of stimulus funds, the current political gridlock in Washington for future funding and the continued need of states to find the necessary funds to maintain and improve their infrastructure, I would expect that trend to accelerate in 2012.

Fourth, discoveries of presalt dome oil off the coast of Brazil have brought a number of drillship project financings over the past couple of years, many of which we worked on through our Washington, DC, New York and São Paulo offices. Given the size of these discoveries, I would expect these drillship project financings to continue into and through 2012.

What does the project finance landscape look like in 2012 for Europe, the Middle East and Africa?

SCAVONE: It appears that the Middle East may weather both the global financial crisis and the recent Arab Spring-related unrest relatively well. The region has well-established funding sources and a high demand for its products such as oil and gas, and its derivative products such as petrochemicals. Saudi Arabia, the United Arab Emirates, Qatar and other Gulf nations have spent liberally on infrastructure projects like roadways, wastewater treatment facilities and power plants in order to modernize their industrial capabilities. Since financing capacity from commercial banks may be constrained in the short- to mid-term, Middle East projects may have to rely more heavily on funds from export credit agencies and regional banks, including Islamic financing sources.

Throughout Europe and the Middle East, there will be a continued need for natural gas supplies, which should translate into more gas pipeline projects, such as the Barzan gas pipeline project in Qatar, the Nord Stream gas pipeline between Russia and the European Union and the Nabucco gas pipeline that will run from the Caspian Sea region to Austria via Bulgaria, Romania and Hungary, all of which our Firm is handling. Also, downstream oil and gas activity in the region will continue to be strong, such as the US$20 billion petrochemical facility in Saudi Arabia on which our Firm is advising.

> "Outside the United States, I expect project sponsors to continue to rely on export credit agencies and multilateral agencies, with perhaps additional sponsor equity being required to fill any voids resulting from certain European banks not being able to participate in dollar-denominated project loans."
>
> ARTHUR SCAVONE, PARTNER

In Northern and Western Africa, we are likely to see more upstream oil and gas projects, which will probably be funded by a combination of sponsor equity, export credit agencies, multilateral development agencies and, in some countries, commercial bank funds. Nigeria should be a particular focus for projects, given its large population, educated workforce and significant oil and gas resources.

What is the outlook for Asia?

SCAVONE: From a project finance perspective, it is important to keep in mind that the Asia region has several distinct sub-markets—India, Southeast Asia (including Indonesia, the Philippines, Thailand and Malaysia), China and Japan. Forecasting broadly is difficult. However, on a regionwide basis, I would expect to see several trends. In Southeast Asia I would expect to see a continued trend toward power plant developments, particularly in Indonesia. In Japan, we will continue to focus much of our resources on servicing the Japan Bank for International Cooperation (JBIC) as it continues to fund major energy and infrastructure projects around the world. Finally, in China we will continue to devote substantial resources to the Chinese state-owned funding sources, particularly the China Development Bank, as it continues to support Chinese investments in energy projects around the world, particularly in the natural resources sectors.

São Paulo

Our São Paulo office works on some of the largest and most complex high-profile corporate and project financings in Brazil's booming marketplace.

PHOTO: A nighttime street scene in São Paulo.

INSET: A photo of our São Paulo building taken by Geoffrey Thompson, an associate in the office.


TAXI
TAXI

China: Outbound Growth

05
PERSPECTIVE

XIAOMING LI
Partner Xiaoming Li heads White & Case's team in China and has extensive experience in finance, M&A and capital markets transactions.

BARRYE WALL
Partner Barrye Wall leads White & Case's Asia region. He has a broad-based corporate practice with a particular focus on Indonesia.

FOCUS:

Chinese Bank Agrees to Acquire US Bank in Groundbreaking Transaction

Mainland Chinese banks made a number of strategic outbound investments in 2011; perhaps the most notable was our client Industrial and Commercial Bank of China's (ICBC) in-progress acquisition of an 80 percent common equity stake in a US bank, the Bank of East Asia (U.S.A.) National Association (BEA-USA), a subsidiary of The Bank of East Asia (BEA), a major Hong Kong bank. If approved by US regulatory authorities, ICBC will become the first mainland Chinese bank to acquire a controlling stake in a US bank, a groundbreaking development for the US and Chinese acquisition and banking markets.

On January 21, 2011, ICBC signed an agreement to acquire an 80 percent stake in BEA-USA, the first agreement ever entered into by a Chinese bank to acquire a US bank. The acquisition is under regulatory review (at the time of printing) by the Board of Governors of the US Federal Reserve System.

The acquisition could be a harbinger of things to come. "I expect Chinese companies and financial institutions to dramatically increase their US strategic investments and acquisitions in the years ahead," says John Reiss, White & Case's Global Mergers & Acquisitions Practice Leader, who worked on the transaction with partners Ernie Patrikis, Francis Zou and Steven Teichman.

Q&A

Chinese banks and companies were involved in many first-of-their-kind investment transactions in 2011, including Industrial and Commercial Bank of China's (ICBC's) in-progress acquisition of a controlling interest in a US bank—a groundbreaking development for the US and Chinese banking markets. Do you foresee further Chinese bank acquisitions in the United States and Europe?

LI: The ICBC acquisition in the United States is a groundbreaking development and has been closely watched by other Chinese banks, but it remains to be seen whether it will set the scene for other Chinese banks to follow. The present sentiment in China is not one of urgency around opportunism, it is one of careful consideration.

The ICBC acquisition is very much at this level of consideration. Eventually the Chinese banks will need to be in the United States and Europe to follow and serve their clients, but they are taking it one step at a time.

In assessing China's investment into the United States, particularly on the banking side, a look at recent history is helpful. Back in 2008, there was a sense of urgency around the opportunities presenting themselves prior to the collapse of Lehman, largely because Wall Street banks represented what many Chinese banks had wanted to become themselves. We worked on a number of acquisitions that didn't get over the line once it was realized that the financial hole was much bigger than anticipated and the viability of a Wall Street model was in serious doubt.

Over the past few years, Chinese banks have gradually established footholds in the United States, Europe and many other first-tier markets, albeit with (mostly) representative offices. They will eventually shift these representative offices to branches. The other alternative of course is to acquire but, as mentioned already, that is a careful and deliberate process.

What kind of lending trends do you see for Chinese banks and in what sectors?

LI: We are seeing much more activity on the lending side. And lending will remain robust as Chinese corporates continue to move into first-tier markets, placing part of their reserves in areas and sectors useful for the continued growth of China's own economy. A lot of money has gone into resources and energy sectors around the world, particularly in Australia, Africa and Latin America.

For example, we represented China Development Bank on a US$20 billion loan to Venezuela to finance the country's social and infrastructure projects. In exchange, a Chinese oil company will have the opportunity to purchase oil products from Venezuela.

We also worked on a US$1.4 billion financing toward China Niobium Investment Holdings Limited's acquisition of a stake in Companhia Brasileira de Metalurgia e Mineracao (CBMM), a privately held Brazilian miner of niobium.

How will the European financial situation influence Chinese bank activity worldwide? Will it offer new opportunities to Chinese banks?

LI: The European debt crisis presents both challenges and opportunities for the Chinese banks. For example, we have assisted Chinese banks in assessing their exposures to the debt crisis and formulating strategies in dealing with the risks accentuated by the crisis. As European banks retreat to deal with problems at home, Chinese banks are entering into corporate relationships and lending opportunities historically dominated by the European banks.

2011 saw numerous intra-Asia cross-border M&A deals. Will these kinds of intra-Asia transactions continue to grow in 2012, and in what areas are we most likely to see growth?

LI: We believe so, with key areas of growth including resources, power, shipping and aircraft. White & Case advised on many of the significant cross-border Asian deals in 2011, including India's GMR Group's sale of a 50 percent stake in InterGen N.V. to an affiliate of state-owned China Huaneng Group—the largest cross-border M&A transaction between India and China to date—and Haier's acquisition of Sanyo's white goods business in Japan and Southeast Asia.

WALL: I agree with Xiaoming. We expect Chinese clients, as well as Indian clients, to continue to pursue resources in countries like Indonesia, a country where the Japanese and Koreans have been active for years. We also generally expect to see more outbound investment from Japan into the rest of Asia, given the strength of the Japanese yen.

What factors will be most important in influencing Chinese acquisitions?

WALL: As Chinese companies begin to make an increasing number of investments in more developed countries, we would expect them to consider acquisitions in areas involving technology that can be transferred back to China.

It is also a trend for Chinese companies to look at some upstream and downstream opportunities in connection with their own current operations in China so they can capture the most value-added part for the entire supply and distribution lines. Acquisitions of this nature can take place in broad areas of business sectors.

Q&A

What hurdles do Chinese investors face in investing abroad, and how can they overcome these hurdles?

WALL: Chinese investors generally need approvals from their own government to make investments abroad. However, at this point, it is not the Chinese government approvals that Chinese investors are mostly concerned about; rather, Chinese investors worry that, once they start the investment process, they will not be able to complete the transaction due to the regulatory restrictions and required approvals in the host countries.

In addition, they are becoming more and more conscious of the risks or problems associated with their overseas investments, such as environmental liabilities and labor union issues. Most of these issues represent new and unfamiliar challenges for them.

However, they are becoming very sophisticated investors quite quickly and will, as a result, be using global law firms in their transactions because they are rapidly beginning to appreciate the value which firms like ours can provide to them in both the acquisition and the post-acquisition stages of their investments.

> “As European banks retreat to deal with problems at home, Chinese banks are entering into corporate relationships and lending opportunities historically dominated by the European banks.”
>
> XIAOMING LI, PARTNER

Banking on New Opportunities

06
PERSPECTIVE

ERIC BERG
Eric Berg is White & Case's Global Banking Practice Leader. His practice covers a broad range of finance matters, with a particular focus on representing lenders, sponsors and corporate borrowers in domestic and international leveraged finance transactions.

ERIC LEICHT
New York partner Eric Leicht represents major commercial and investment banks as lead agents and arrangers in a variety of lending transactions, with an emphasis on acquisition and leveraged financings.

FOCUS:

"Covenant-Lite" Facility Plays Key Role in US$3.2 Billion Leveraged Buyout

After a three-year hiatus, "covenant-lite" loans returned in 2011 and may play an important role in 2012. Private equity sponsors favor these types of loans as they eliminate default triggers that allow creditors to intervene when a portfolio company's credit quality erodes and they offer more operational flexibility for the company, even during an economic downturn.

White & Case advised on a marketplace-leading covenant-lite financing that was a key element in one of 2011's largest leveraged buyouts in the United States. We represented Deutsche Bank Securities Inc., as joint lead arranger and joint book manager, and Deutsche Bank AG, New York Branch, as administrative agent and collateral agent, in a US$1.44 billion term loan facility and a US$350 million asset-based lending credit facility.

The facilities were used, together with a US$950 million unsecured high yield bond issuance, to partially finance Clayton, Dubilier & Rice, LLC's US$3.2 billion acquisition of Emergency Medical Services Corporation, one of the largest US providers of emergency medical services.

Structured as a covenant-lite facility, the term loan facility contained no regularly tested financial maintenance covenant and included certain "incurrence-based" negative covenants more akin to those in a high yield bond indenture than a traditional credit agreement. It also showcased the full array of the latest top-tier private equity sponsor "document technology," including pre-wired provisions for borrower buybacks, affiliated lender loan purchases, refinancing facilities and exchange debt and amend/extend transactions. It also contained one of the first documented "in lieu of accordion" provisions, which permit the incurrence of additional pari secured, junior secured or unsecured debt outside of (and in lieu of incremental capacity under) the term loan facility, subject to pro forma compliance with an agreed financial ratio, certain intercreditor arrangements and other conditions.

Q&A

What was the banking landscape like in 2011?

BERG: Banking activity in the United States was very robust in the first eight months of 2011. After that, activity in the United States declined as the uncertainty in Europe and the backlog of committed but unsyndicated financings led US banks to forego undue risk concentration toward the end of the year.

Europe experienced a challenging year, with uncertainty in the Eurozone affecting the level of activity of European banks. Asia, on the other hand, was a bright spot, experiencing greater activity in 2011.

What's your outlook for 2012?

BERG: For 2012 as a whole, we are cautiously optimistic, if for no other reason than because banks will have to get back into the business of lending.

The outlook is solid in the United States and South America but cloudy in Europe, with some resolution of the situation possible in the first half of the year. But at the end of the day, the worldwide picture is linked to the outcome of the debt crisis in Europe.

LEICHT: Despite the uncertainties in Europe, some European banks will be active in Europe in 2012—the drop in banking activity will not cut across the board. But European banks will be selective in their approach.

Will there be an increase in US financing for European M&A deals?

BERG: At this point in time, if the European uncertainty continues, we expect to see more demand in the United States for the financing of the acquisition of European entities, especially of candidates with US assets or revenue. US institutional investors, such as CLOs and hedge funds, will have some appetite for financings that European institutional investors will not.

Whatever occurs, we have positioned ourselves to provide seamless representation: if the bank market is more robust in the United States, we're positioned to finance deals overseas, and vice versa.

LEICHT: We are already seeing a higher interest level in US financings for cross-border deals that would historically have originated out of London. Several of these transactions closed late in 2011 and one is slated to close this month.

Financings of companies with some US assets and cash flows will be attractive to US financial investors if they are properly structured. This means ensuring the borrower is organized in a tax-friendly jurisdiction—like Luxembourg, for example—and that subsidiaries outside the US can provide guaranties, collateral and other credit enhancements without undue restriction.

Bringing all these elements together will be challenging. The end result may well be a greater convergence of the US and European markets—both in terms of deal structure and documentation.

BERG: One example of this cross-border trend is our recent representation of Deutsche Bank in its role as administrative agent and joint lead arranger, in a US$2.1 billion senior secured credit facility provided to Colfax Corporation, a US company. The leveraged financing arranged by Deutsche Bank financed the majority of the cash proceeds necessary to effect Colfax Corporation's cross-border acquisition of Charter International plc, a UK company.

The financing was one of the first syndicated leveraged financings done in compliance with the newly revised UK Takeover Code, and our London M&A team also represented Deutsche Bank in its role as financial advisor in connection with the transaction.

What other trends are we likely to see in 2012?

LEICHT: After some retrenchment in the second half of 2011, we are beginning to see banks show an interest in so-called "covenant-lite" term loan facilities—debt facilities that lack a financial maintenance covenant and include "incurrence-based" negative covenants that resemble those in a bond indenture.

The Emergency Medical Services Corporation deal was one of the first large "covenant-lite" financings for a large LBO in 2011 and heralded the return of a "borrower friendly" structure that had its heyday in early 2007. If markets become more robust, we'll expect to see more "covenant-lite" deals, even though the credit risk profile increases.

What kind of role will bank finance be playing in restructurings and insolvencies?

BERG: Bank financing will be a key component of restructurings and insolvencies—and it will need to be cutting-edge and available for increasingly complex transactions.

We've positioned our Global Banking Practice in all relevant jurisdictions to be ready to work seamlessly with our Global Financial Restructuring and Insolvency (FRI) Practice on these matters.

Where else do opportunities lie globally in financing in 2012?

BERG: As I mentioned earlier, we expect an uptick in leveraged finance as 2012 progresses. We are well-positioned for representations in both the bank and high yield bond markets. We also expect more asset-based lending, as well as trade finance.

Project finance will continue to be a robust area (particularly outside the United States and in the renewables sectors).

Debtor-in-possession and exit financing in the bankruptcy sector should continue at roughly the pace we experienced in 2011. In Europe we have seen a real increase in financing advice required in connection with our restructuring business, both in the private and public sectors.

We expect our business to continue to grow in the Middle East and Asia, particularly with respect to outbound lending by Chinese banks. We also expect robust financing activity in Latin America.

> "We are beginning to see banks show an interest in so-called 'covenant-lite' term loan facilities—debt facilities that lack a financial maintenance covenant and include 'incurrence-based' negative covenants that resemble those in a bond indenture."

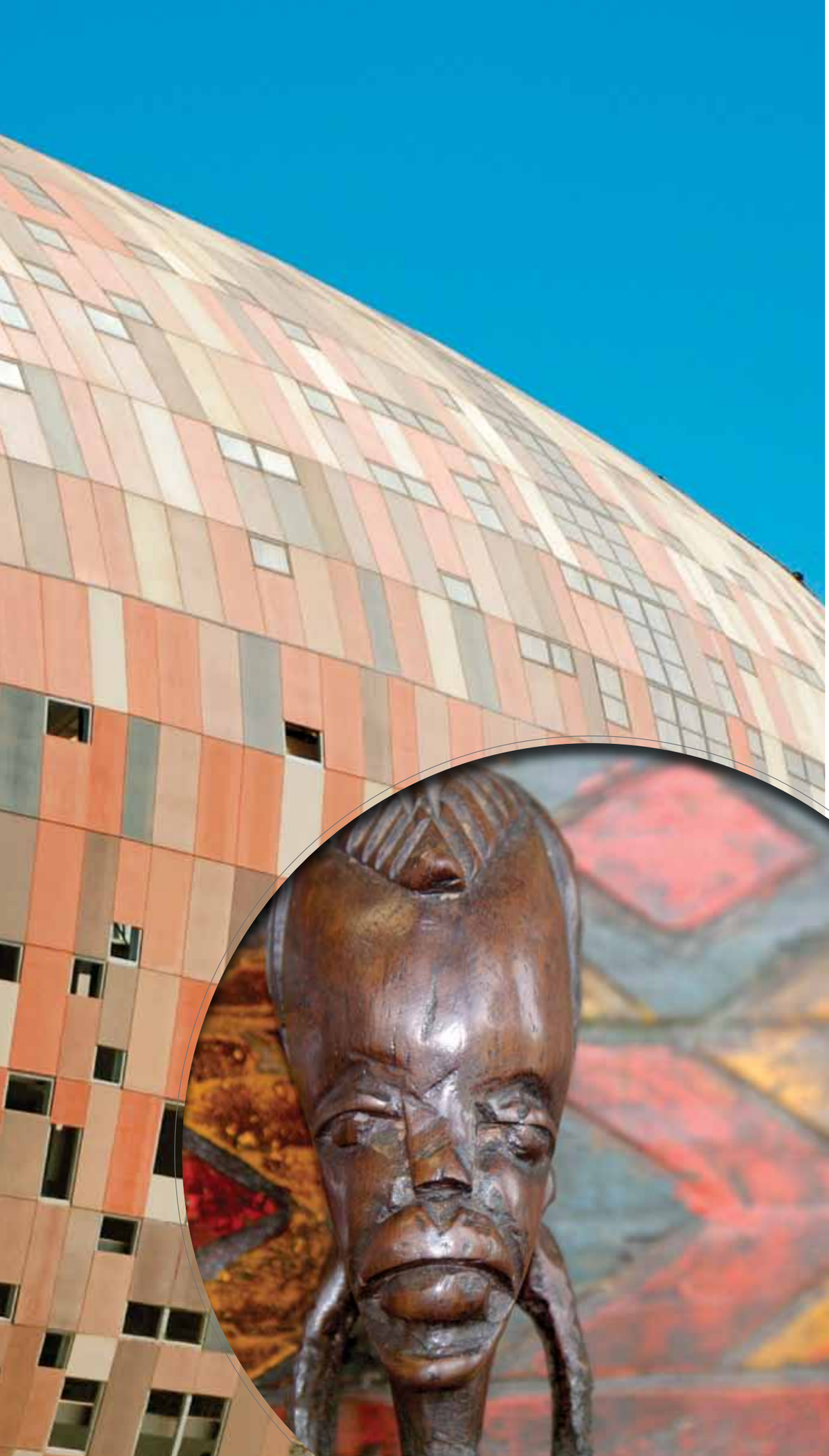
ERIC LEICHT, PARTNER

Johannesburg

The first office established by a foreign law firm in South Africa, our Johannesburg office provides experience and insight into the African market to our clients.

PHOTO: The FNB Football Stadium, also known as Soccer City and the Calabash, was designed to resemble an African pot.

INSET: A traditional carving located in our Johannesburg office's conference center. The photo was taken by Jenna Hamilton, a practice development coordinator in the office.



White Collar Enforcement: No Small Act

GEORGE TERWILLIGER
George Terwilliger is White & Case's Global White Collar Practice Leader. His clients have included some of the world's largest companies in the financial, healthcare, energy, telecommunications and manufacturing industries, as well as business and political figures in investigations and in litigation.

CHARLIE MONTEITH
Charlie Monteith is counsel in the Firm's Global White Collar Practice. Prior to joining the Firm, he was Head of Legal and Operational Assurance at the UK Serious Fraud Office where he was a leading policy maker and a key architect of the new UK Bribery Act. He has advised numerous corporations on the governance and compliance implications of the Act on their businesses.

FOCUS:

White Collar Practice Bolstered in Response to Global Developments

White collar risk management became "exponentially more complex" for multinational companies in 2011, according to George Terwilliger, White & Case's Global White Collar Practice Leader. Potentially the most explosive white collar development is the implementation of the new UK Bribery Act with its long-arm enforcement worldwide.

Responding to this evolving environment and clients' needs, the Firm bolstered its Global White Collar Practice with key hires worldwide. In searching for the best recruits, the Firm looked not only at lawyers at other firms, but also at government lawyers who had key roles in drafting and enforcing white collar laws.

Charlie Montieth, formerly Head of Assurance in the UK Serious Fraud Office (SFO), joined the Firm's London office as counsel. A key advisor involved in the drafting of the new UK Bribery Act, he was one of the UK's leading crime enforcers in recent years, involved in many of the SFO's most high-profile cases.

Our Washington, DC office welcomed partner Matthew Miner, previously a staff director for the US Senate Committee on the Judiciary, counsel for the US Senate Permanent Subcommittee on Investigations and a federal prosecutor. His expertise is essential as business interests more frequently become intertwined with legislative investigations and oversight hearings.

In Warsaw, the Firm brought on local partner Tomasz Manicki, who has extensive experience in administrative regulatory proceedings and business criminal law disputes. This experience will serve clients well as Poland sees more complex administrative regulations and growing scrutiny of commercial transactions entered into by government entities.

Q&A

What were some of the key factors leading to the increased complexity of white collar risk management worldwide in 2011?

TERWILLIGER: Tough new laws, particularly the UK Bribery Act; increased enforcement by India and China of their national anti-corruption laws; increased enforcement of the US Foreign Corrupt Practices Act (FCPA) by the US Department of Justice and growing cooperation between law enforcement agencies internationally all led to greater white collar risk management concerns for companies.

Also, given that the US enforcement authorities have led in this arena, we are now seeing authorities in other countries adopting some of the methodologies US authorities use, which has a significant impact on companies. In Germany, for example, having a law firm help a company do an internal investigation was unheard of five years ago; now it is commonplace. Also, we are seeing the UK's Serious Fraud Office consider use of deferred prosecution agreements, which has been a key to resolving cases in the United States.

What are the biggest dangers the UK Bribery Act will pose to multinationals, and how should they respond?

MONTEITH: The new, strict liability criminal offense of failing to prevent bribery by anyone associated with the company is undoubtedly the biggest danger to multinationals. It has a defense: Provided the company has adequate procedures designed to prevent bribery, the company will not be guilty of failing to prevent it.

A company's response has to be to implement adequate procedures to prevent bribery, not just for itself, but also for all those who are contracted to provide a service for it. We are finding that this is creating a global ripple effect, as many who are not technically caught by the Bribery Act are nonetheless having to adopt adequate procedures for themselves. Otherwise, they are facing warranty and indemnity demands from their counter-parties who are caught by the Act.

It is also affecting value, as those without anti-corruption procedures are suffering the consequences of being perceived of as a higher financial risk, in mergers and acquisitions, in transactions, and also in the costs of their loans and insurance premiums—and, ultimately, in their share price.

What types of multinational company behaviors are enforcement agencies most likely to focus on in 2012?

TERWILLIGER: The principal focus will be on corruption in business transactions—that is, corrupt schemes to obtain or retain business. Given the continued scrutiny banks are under, we'll also see stepped-up enforcement regarding banking activity across the board.

Also, 2012 will be the first full year under the US Securities and Exchange Commission's whistleblower bounty program. Under that program, the SEC pays people who bring it evidence of securities law violations, including aspects of the FCPA that the SEC enforces, so it is likely that SEC prosecutions of FCPA violations will increase in number.

What areas of the globe will pose the greatest white collar crime risk to companies?

TERWILLIGER: The greatest risk will be in emerging markets, because that's where the action is, and in countries holding energy resources, because those resources have a great deal of value. There is a lot of competition to gain access to those resources. Also, the European financial crisis portends increased regulatory and enforcement attention to European banking.

MONTEITH: In many instances, banks who are latecomers to transactions will need to have a heightened awareness of the risks involved, particularly those raised by the UK Bribery Act, and quickly, if possible, conduct due diligence on the parties to the transaction.

How will the trend of growing international cooperation between law enforcement agencies play out?

TERWILLIGER: The geographic reach of enforcement agencies will continue to increase. Because cooperation in international investigations is becoming much more the norm, the processes of evidence gathering are becoming more streamlined and regularized, and cooperative relationships on a one-to-one basis are becoming more widespread by agencies on an international front.

What risk management strategies will best serve global companies in 2012?

TERWILLIGER: Recognizing that no company can eliminate all risk is a key factor in a time of economic challenge like this, when the cost side of the corporate ledger is under close scrutiny. The best strategy is to assess where risk is the greatest and target compliance attention to those high-risk operations.

MONTEITH: Given the growth in extraterritorial enforcement and coordinated global prosecutions that 2012 is likely to bring, companies will need to rely on counsel who can offer them sound cross-border advice regarding multijurisdictional enforcement activity and strategies to avoid enforcement actions.

International Arbitration: Mass Appeal

PAUL FRIEDLAND
Paul Friedland is White & Case's Global International Arbitration Practice Leader. He has served as counsel or arbitrator in numerous international arbitrations, both commercial and investor/state, and holds leadership positions at the American Arbitration Association and the International Bar Association.

FOCUS:

Arbitration Green Light for Italian Bondholders

White & Case achieved success in 2011 for tens of thousands of Italian bondholders who are claimants in a landmark investment arbitration against the Argentine Republic before the International Centre for Settlement of Investment Disputes (ICSID) at the World Bank.

The bondholders claim that Argentina breached its obligations under the Argentina-Italy bilateral investment treaty (BIT) when the Argentine government defaulted on its sovereign bond obligations in December 2001, failed to pay just compensation, passed a "cram down law" contrary to Argentina's guarantees in its legal regime and subsequently refused to negotiate meaningfully as part of a restructuring process. The bondholders have brought claims exceeding US$1 billion as compensation for the total loss of their investments in Argentina.

Argentina sought to have the bondholders' claims dismissed on jurisdictional grounds, but the ICSID Tribunal rejected Argentina's arguments. In a highly anticipated decision, the Tribunal ruled that the "dispute does not derive from the mere fact that Argentina failed to perform its payment obligations under the bonds, but from the fact that it intervened as a sovereign by virtue of its state power to modify its payment obligations toward its creditors." It also ruled that the "mass aspect of Claimants' claims" is no barrier to the admissibility of the claims—thereby giving the green light to the first-ever mass claim in ICSID investment arbitration history.

White & Case partner Carolyn Lamm says, "This was a victory for tens of thousands of individual Italian bondholders and demonstrates that Argentina must confront its violations of fundamental investment protections that it guaranteed to the bondholders in order to induce their investment in Argentina." The case now moves to the merits phase.

Q&A

Is the Italian bondholders decision a useful precedent to other groups of sovereign creditors who are potentially facing a default on their loans?

FRIEDLAND: Yes. The *Abaclat and others v. Argentina* decision is the first time that an International Centre for Settlement of Investment Disputes (ICSID) tribunal has found that it has jurisdiction to decide a claim filed by thousands of claimants as provided for in the applicable bilateral investment treaty.

It is also an important and potentially trend-setting decision for its ruling that purchases of sovereign bonds on the secondary market constitute an investment by purchasers in the host state. This aspect of the decision may prove to be even more significant than the mass claims aspect.

As with any arbitration award, the relevance of the *Abaclat* decision for other disputes will depend on the facts and the language of the applicable investment treaty in each of those disputes. The fact that this decision is the first of its kind and that there is a vigorous dissent guarantees that it will be an important reference for similar disputes and will be carefully examined by other groups of claimants, as well as the investment community at large.

Where do you see international arbitration growing?

FRIEDLAND: We foresee growth in East Asia, Latin America, the Middle East, Russia and Central and Eastern Europe (CEE).

In Asia, Singapore and Hong Kong have both become hubs for international arbitration, and significant work is coming from South Korea and Indonesia. The major unknown remains China. Chinese companies are, as anyone reading newspapers knows, entering into contracts for enormous projects globally. In the investor-state sphere, China has signed 130 bilateral investment treaties, second only to Germany, which has signed 137. The international investments flowing in and out of China suggest that it cannot be long before the number of international disputes in China explodes.

Arbitration in Latin America is already thriving and this should continue. There are 165 arbitral institutions in the region, the vast majority located in Brazil. I expect to see the ICSID (the international arm of the American Arbitration Association) continue to attract institutional commercial cases in the region. In the world of investment arbitration, Latin America has in recent years been a hot spot, with multiple cases filed, for example, against each of Argentina, Venezuela and Peru, and this growth has been sustained notwithstanding that several states (Bolivia, Ecuador and Venezuela) have denounced their treaty obligations under the ICSID Convention.

The Middle East is a mature arbitration market, particularly in the construction and oil and gas sectors. Qatar continues to boom with an estimated 20 percent GDP growth in 2011, huge oil reserves, the world's third largest gas reserves and significant construction work in the lead up to the 2020 World Cup. It is predicted US$100 billion will be spent over the next ten years on a new metro system, motorways, stadiums, water supplies and 88,000 hotel rooms. It is unavoidable that major arbitral disputes will emerge from investments of that scale.

In Russia and CEE, the volume of disputes has steadily increased in recent years, and a high proportion of them are now being resolved overseas by international arbitration, particularly in London, where ten percent of the London Court of International Arbitration's caseload involves a Russian or CEE party. Two substantial construction projects on the horizon are the 2012 European Football Championship in Poland and Ukraine and the 2014 Winter Olympics in Sochi, Russia—and it can be expected that arbitral disputes will arise out of these projects.

In which industry sectors do you see international arbitration growing?

FRIEDLAND: The energy and construction sectors generate significant arbitration work, particularly from emerging markets (CEE, the Middle East and North Africa). In the oil and gas area, there are recurrent gas price arbitrations. In the construction sector (which comprises many sub-sectors according to the industry in question), a recent trend has been the growing use of dispute adjudication and review boards which, when successful, resolve disputes short of arbitration.

In the financial sector, banks traditionally have spurned arbitration in favor of local courts for collections on loan defaults, as banks are in a position to impose their local courts on borrowers under loan agreements. However, with increases in lending to counter-parties in emerging markets, and with the increasing complexity of financial transactions, banks have been warming to international arbitration, primarily due to the enforcement benefits under the United Nations Convention on the Recognition and Enforcement of Arbitral Awards (1958) and also due to the sophistication of international arbitral tribunals compared to local courts.

How do you see the practice of international arbitration changing generally?

FRIEDLAND: The international arbitration world does not stand still. Going back even only ten years, our legal landscape was different: Few firms had investment practices or even international arbitration practices. But this doesn't mean that we can assume that international arbitration groups will proliferate. What works now will likely cease to work in five to ten years. For a practitioner, will it suffice to be a generalist in investment arbitration, or in construction arbitration, as distinct from being a specialist in nuclear plant construction disputes, for example? Will the next wave of disputes be a vast increase in international financial arbitrations? I couldn't say. I can say that we must anticipate these possibilities, and counsel, arbitrators and institutions must be open to re-invention.

London

Celebrating its 40th anniversary, our London office offers extensive experience in cross-border, English law and international issues to serve global clients, including some of the biggest names in financial, corporate, institutional and government sectors.

PHOTO: A street scene in London.

INSET: This photo was taken outside of our London office facing our front entrance by Richard Hall, a production designer located there.

EU Antitrust Enforcement: Tough but Tempered

09
PERSPECTIVE

JACQUELYN MACLENNAN
Jacquelyn MacLennan is a member of the Executive Committee of White & Case and serves as the Executive Partner of the Brussels office. She practices EU law and concentrates on competition law.

FOCUS:

Huge EU Antitrust Fine Overturned

Fines imposed by the European Commission against companies for EU antitrust violations often have been very high and difficult to reduce or annul. But in 2011, White & Case won the EU General Court's annulment of more than €100 million in antitrust fines imposed by the Commission.

One significant victory was convincing the General Court to annul the €90.9 million fine imposed on Toshiba for its alleged participation in the Gas Insulated Switchgear cartel on the grounds that the Commission infringed the principle of equal treatment by using a different basis for the fine calculation for Toshiba on the one hand and the European undertakings involved on the other.

"This case is one of only a few where the General Court has annulled a fine imposed on a company accused of participating in a cartel," says partner Jacquelyn MacLennan. "The judgment indicates that EU judges are willing to annul a fine when they have fundamental questions on the methodology used."

In another case, White & Case convinced the General Court to overturn in full the €17.55 million fine imposed upon Unipetrol a.s. and Kaučuk a.s. for their alleged participation in a synthetic rubber cartel.

"This judgment appears to suggest that the tide may be turning for litigants before the EU's courts, as it demonstrates that the General Court is prepared to roll up its sleeves and review the facts in cartel cases," says partner Mark Powell, who pleaded the case before the Court. "A more rigorous judicial review of Commission cartel decisions is to be welcomed and can only enhance the credibility of the European system as a whole."

Q&A

What's your perspective on antitrust enforcement by EU authorities in 2011 as compared to prior years, and what's your outlook for enforcement in 2012?

MACLENNAN: Enforcement in 2011 changed. A new EU competition Commissioner, Joaquín Almunia, took office in 2010, as well as a new Director General for Competition Policy. The previous Commissioner wanted to impose the highest fines possible to enhance her own status as a political "force to be reckoned with." Commissioner Almunia arrived at a time of economic crisis and recognized that the high point of enforcement had probably been reached. There had been increasing criticism that fines had become just too large—fines in the hundreds of millions of euros, higher than US fines, higher than fines for any other type of legal infringement—and there was a rising revolt that the Commission's procedures and decisions were not robust enough and did not give proper account to due process. The European Court clearly listened to the debate, took account of the arguments being made in cases before it and reacted—both in statements made by influential judges in a private capacity and, more recently, in judgments.

As a result, we see a different style with Commissioner Almunia. His reputation is as a politician who actually understands economic policy, an economist by training, a thoughtful, respected person interested in details of cases and in competition policy from an overall economic perspective. While he was careful to publicly defend the Commission procedures, in practice he understood the criticism and has responded to this in many of his speeches. In particular, he has introduced a number of new and useful best practices for the Commission.

While he is not letting up on enforcement, he is much more reflective in how cases are being pursued. Fines are being much more carefully considered, and there's a greater willingness by the Commission to compromise. Large fines are still being imposed, but there is a maturity in the process that was not there in past years. In 2011, a combination of that more reflective approach, which has slowed decision making, and a new settlement procedure, which results in lower fines being adopted for a (somewhat) faster procedure, has resulted in far lower fines on an annual basis than previous years. In my view, that approach will continue in 2012—a strict regime of enforcement of competition law, tempered with a more mature, more considered attitude, particularly with regard to the amount of fines imposed.

How will the continuing economic crisis play into EU antitrust enforcement?

MACLENNAN: The economic crisis will be reflected in the fact that there will be more cases concerning the inability of companies to pay fines. Many companies have made "inability to pay" applications and a substantial number have been accepted by the Commission. The Commission will also have to take account of the realities of the market in how it approaches merger cases and possible remedies.

> "To determine if the Commission has reached a proper decision, the General Court is now reviewing decisions in a more complete way, different from before. The Commission will have to respond to this development in how it reaches decisions."
>
> JACQUELYN MACLENNAN, PARTNER

What other Commission trends can we expect to see?

MACLENNAN: There is also a growing trend in the use of settlement decisions, where the Commission negotiates with companies to conclude a case more quickly and gives companies the incentive of an additional reduction of fines to reach settlement. That procedure is a new procedure, and there is now experience with it over the last year.

Will the EU be looking to focus on enforcing against certain kinds of corporate actions in 2012?

MACLENNAN: Cartels will still be the major focus. However, the largest fines imposed by the Commission have been against individual companies accused of abusing their dominant position in the market. The highest fine ever imposed by the Commission is against Intel—over a billion euros. That fine is under appeal. The case involves conduct by a company in an allegedly "super dominant" position. The Commission and the national competition authorities are now looking closely at Google's behavior in the market, and we can expect increased activity there.

Were there any developments in EU antitrust law in 2011 that will have an impact in 2012? In particular, will the EU General Court's overturning of the large fine against Toshiba impact EU enforcement and decision making in 2012?

MACLENNAN: The approach of the General Court, which is the EU's competition review court, will have a major impact in 2012 on how the Commission pursues cases. The Commissioner is demanding greater care; and the General Court has shown in the Toshiba case and others that it is prepared to reduce and annul fines where the Commission

has made an error. The Court has in a number of recent cases annulled cases completely where it felt the Commission's approach did not stand up to scrutiny. It won't be willing to accept the Commission's mere statement that a cartel exists so any legal impropriety is secondary—it's now prepared to get into the details of the case.

In the Toshiba case, the Court requested a great body of underlying detail from the Commission's investigative findings, and we've now seen this kind of attention to detail in more cases. To determine if the Commission has reached a proper decision, the General Court is now reviewing decisions in a more complete way, different from before. The Commission will have to respond to this development in how it reaches decisions. That is not to say the General Court is doing this in all cases, or necessarily getting it right, but I see a change emerging.

The Toshiba case is a good example of where the General Court is willing to annul wholly a fine where it found there was a general problem with the Commission's approach. The Commission had treated Toshiba in a different way than it did a number of other companies involved in the decision. The Court considered this to be fundamentally wrong, and the fine was annulled in its entirety.

What should a non-EU company, say from Mexico or Japan, be on the lookout for when investing in or conducting business in the EU in 2012 to avoid antitrust difficulties?

MACLENNAN: They must take into account the very high penalties the Commission can impose; the amount of those fines can make a real difference to a company's bottom line—even a parent company. So, when looking to purchase an EU company, they must conduct detailed due diligence to identify any antitrust "bogies" that may be lurking in dark corners. They must take into account that a parent company is presumed to be liable for the actions of a subsidiary. Interestingly, the General Court this year made it clear that this presumption is rebuttable, but it is still extremely difficult to rebut. A company buying into a group of companies must take this into account in doing its due diligence and be sure it has very good indemnities in place in a purchase agreement.

A non-EU parent company must also generally ensure that it has robust compliance mechanisms in place to prevent illegal cartel behavior. It must understand that the Commission's approach to competition law is different than that of the United States. Knowing US antitrust law is insufficient to protect a company against a potential infringement in the European Union. The Commission, in particular, is developing the law in the area of information exchange, and there have been two recent cases where fines have been imposed for bilateral information exchange, something that would not be considered a violation under US case law.

Finally, although the European Union does not impose criminal penalties, companies should be aware that national competition law follows the same principles as EU law, but applies them at the level of the EU member state. A number of EU member states can now imprison employees for infringement of national antitrust law.

Private Equity Eyes Opportunities

JOHN REISS
John Reiss is White & Case's Global Mergers & Acquisitions Practice Leader. He represents parties in mergers and acquisitions, private equity transactions, securities transactions and financings of all types. His clients include numerous corporations and private equity groups.

OLIVER BRAHMST
Oliver Brahmst is a partner in the Firm's Global Mergers & Acquisitions Practice. He concentrates on public and private domestic and cross-border acquisitions and divestitures and has particular experience in representing private equity houses.

FOCUS:

Successful Exits for Nordic Private Equity Leader

For private equity investors, conducting a successful exit is a crucial part of the investment process. These days, fluctuations in the public markets make it challenging to price and close initial public offerings. So, many private equity investors explore other types of exit opportunities, such as a secondary buyout (a purchase by another private equity firm) or an asset sale to a strategic acquirer.

We assisted Nordic Capital, a leading private equity firm in Northern Europe, in closing three major exit transactions in 2011.

The €9.6 billion sale of Nycomed by a consortium led by Nordic Capital Funds V and VI to Takeda Pharmaceutical Company Ltd., Japan's largest pharmaceutical company, was the largest-ever cross-border takeover by a Japanese pharmaceutical company and the largest private equity trade sale in Europe. For all parties, according to partner Lennart Pettersson, who was on the team advising the Nordic Capital Funds, the deal was "a match made in heaven."

We also worked on the US$1 billion sale of Point International, one of Europe's largest electronic payment providers, by Nordic Capital Fund V to VeriFone Systems, Inc. and on the secondary buyout of Nordic Capital Fund V–owned equipment supplier Atos Medical by EQT Fund VI—the first deal between these two Northern European private equity giants.

So far, the Nordic region has been shielded from much of the turmoil that the global economic crisis has caused elsewhere. As partner Claes Zettermarck points out, "With a stable currency and bank financing available for ordinary-sized deals, we continue to see strategic sales, buyouts and even occasional IPOs."

Q&A

How big a role does private equity play in the current global financial markets?

REISS: Private equity has been a significant component of overall global M&A activity in recent years, and it remains an important asset class for a variety of investors. Private equity investors these days have a substantial amount of uninvested capital. And this capital has the potential to continue to act as a powerful force for change and growth in the global financial markets.

Are there any major obstacles to the free flow of this uninvested capital?

BRAHMST: Many private investors who paid high prices for pre-2008 acquisitions still find that their assets are valued at less than their original purchase prices. As a result, there is a relative dearth of assets coming to market right now. In addition, fluctuating global economic conditions make it difficult for many sellers to demonstrate a reliable upward trend of forecasted profitability to prospective buyers. Without greater certainty—about projected profits and global trends—many investors have been reluctant to accept offered prices for assets that they would otherwise be willing to sell. This leads to fewer deals and limits the flow of capital.

How is the availability of financing for private equity deals likely to affect purchase prices in the near future?

BRAHMST: Financial institutions continue to be highly selective about what types of transactions they will finance. Banks in many countries are struggling to maintain their own minimum capital requirements and are not lending aggressively. With less leverage available to them, private equity purchasers are often constrained in the prices they can offer. Potential sellers may find that their price expectations have not been met. Thus, only certain deals will be able to proceed.

REISS: Financing sources for private equity deals have contracted somewhat. Both private equity activity and private equity returns are closely tied to the availability of financing, so we are not likely to see huge private equity buyouts any time soon. For the foreseeable future, buyouts are likely to remain approximately US$1 billion or less, with a few standout deals in the US$1–5 billion range from time to time. But the mega-sized buyouts will return some day. People sometimes forget that the largest leveraged buyout in history—KKR's takeover of RJR Nabisco—took place in the 1980s.

What issues besides price are important to private equity sellers in today's markets?

BRAHMST: Certainty of closing is a key goal for most sellers. Sellers are acutely aware of the greater limits on financing options. So it seems to be a nearly universal rule that if one has a strong asset with a fairly robust price, often the determining factor for sellers when selecting among potential purchasers is assurance that the deal ultimately will be financed and approved.

With all of this uncertainty, what areas of growth do you see?

REISS: Our clients are actively exploring opportunities in emerging markets and regions outside of traditional private equity deals. For instance, some of the larger US private equity funds are looking to invest in and raise funds outside the United States, especially in China.

BRAHMST: Brazil is another good example of a growing private equity market. Investors in Brazil and similar jurisdictions are increasingly interested in opportunities in smaller or closely held companies with less operational sophistication. In these cases, an investor can add operational efficiencies, even without the option of using leverage for profitable deals, and achieve positive returns.

Are any industries or sectors performing particularly well in the private equity context?

BRAHMST: Many investors still view healthcare as a nearly recession-proof industry. After all, people around the world will continue to get ill and need care. Private equity firms are also focusing on the entire energy sector, including global petrochemical sources, shale gas in the United States, and all phases of energy manufacture, production and delivery.

For those who have already invested in an asset, what types of private equity exit strategies are most relevant these days?

REISS: Secondary buyouts—in which one private equity firm sells its assets or portfolio to another private equity firm—remain an important exit strategy. Secondary buyouts continue to be an active component of the global M&A markets.

BRAHMST: If the global economy improves, public exits could become as common as trade sales to private parties again. In the meantime, most private equity owners will continue to seek a mixture of purchases by strategic acquirers, sales to other private equity firms and initial public offerings.

What risks loom on the horizon for private equity investors?

BRAHMST: Many private equity firms have already removed significant costs from their existing portfolios. If an economic recession returns, we could see more instances of restructurings.

REISS: On average, new funds for seasoned sponsors have been decreasing in size. In the months ahead, there could even be a small shakeout in the number of private equity funds, if prominent fund sponsors are not able to raise enough capital for their next funds.

Overall, what are the most important things to keep in mind when contemplating the global private equity markets in 2012?

BRAHMST: In all of our years of guiding clients through private equity deals around the world, we have always been aware of the thin line separating risk and reward. Investors need to be able to spot both the less-than-obvious opportunities and the potential pitfalls in those choices. If one examines all available options analytically and works with seasoned counsel to reduce the related exposure to risk, there are nearly always intriguing opportunities to be found—no matter what types of circumstances the markets are experiencing.

REISS: Private equity is and will remain an important component of global M&A activity. Many different types of investors rely on private equity as a key asset class, and the amount of ready capital in the world awaiting productive investment is vast. We may deal with transactional challenges, economic uncertainty and narrower windows of opportunity for the immediate future. But the historic, groundbreaking deals will come back around again.

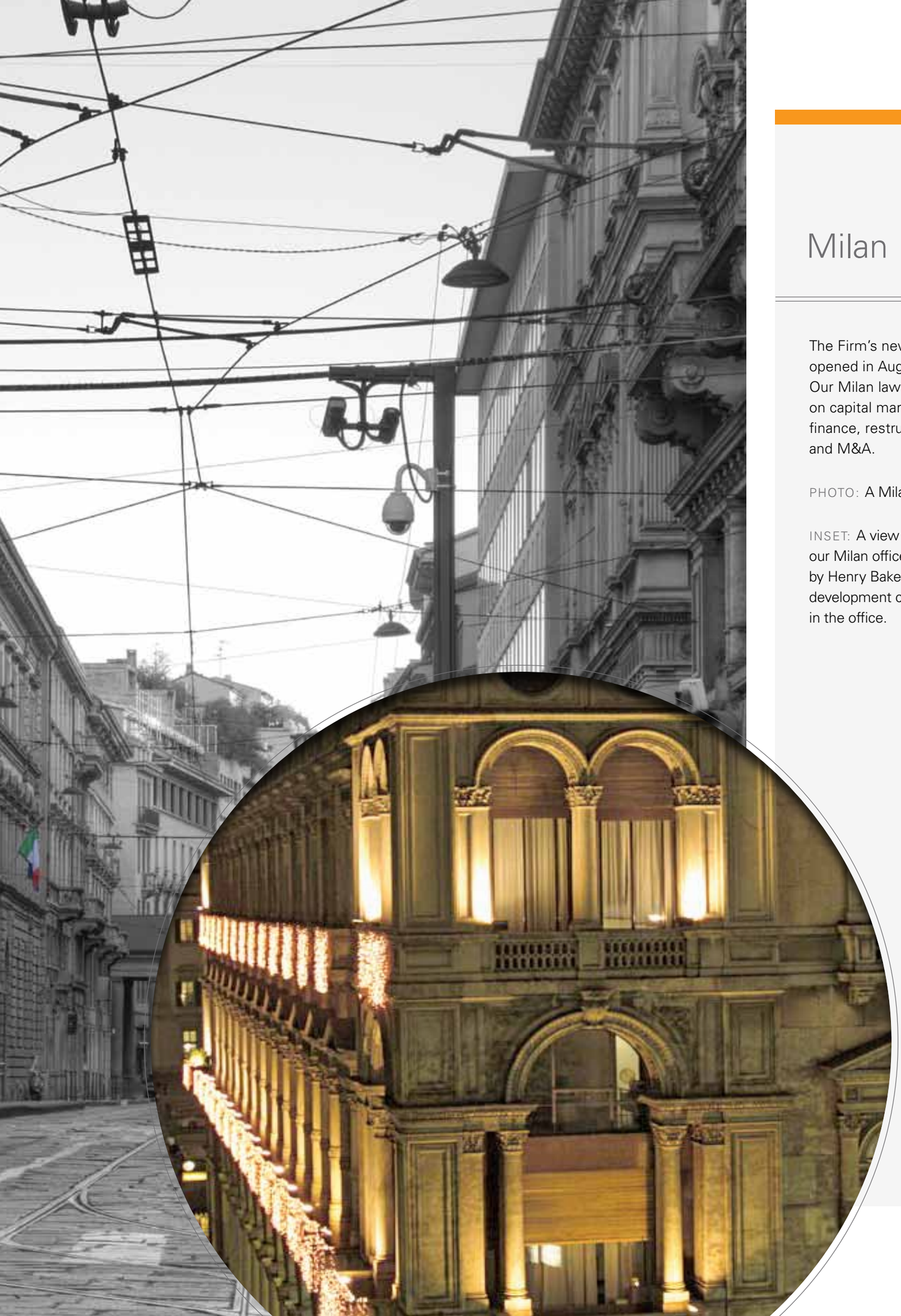
> “Our clients are actively exploring opportunities in emerging markets and regions outside of traditional private equity deals. For instance, some of the larger US private equity funds are looking to invest in and raise funds outside the United States, especially in China.”
>
> JOHN REISS, PARTNER

Milan

The Firm's newest office opened in August 2011. Our Milan lawyers focus on capital markets, banking, finance, restructuring and M&A.

PHOTO: A Milan street car.

INSET: A view from our Milan office taken by Henry Baker, a business development coordinator in the office.



African Capital Markets Re-Awaken

STUART MATTY
Stuart Matty is a partner in the Global Capital Markets Practice, based in the Firm's London office. He has extensive experience advising on all types of securities transactions with a primary focus on debt securities transactions in emerging and frontier markets.

FOCUS:

Debut International Bond Offerings for Three Sub-Saharan Countries

Accessing international capital markets can be difficult for governments in emerging markets. Only three sub-Saharan countries outside of South Africa managed to do so in 2011, all with the advice of White & Case.

White & Case advised the Republic of Namibia on its US$500 million debut Rule 144A bond issue, which closed in November 2011. Earlier in the year we acted for the Federal Republic of Nigeria on its US$500 million debut Rule 144A bond issue, and for the Republic of Senegal on its US$500 million debut Rule 144A bond issue.

"Timing was everything with the Namibian transaction," says partner Stuart Matty, who co-led the Firm's team with London partner Francis Fitzherbert-Brockholes. "In the immediate aftermath of the global market rally following the conclusion of the EU leaders' summit at the end of October, Namibia was able to successfully launch its debut offering. While the international markets continue to remain extremely volatile and risk-averse, this quick-to-market transaction proves that the right credit entering the market at the right time can do so successfully, even in the most dysfunctional market conditions."

The Firm was able to put together the disclosure in record time for a debut 144A African sovereign bond offering, based on its experience advising African sovereigns on debut securities offerings. "This readiness was key to ensuring that Namibia was in a position to launch its debut deal when the market was most receptive," observes Matty.

Q&A

Sub-Saharan Africa saw a spate of debut sovereign international bond issues in 2011—Namibia, Nigeria and Senegal, all of which White & Case advised on. Given the volatile global economy, what factors enabled these debut issues to take place, and will there be an appetite in the international marketplace for sovereign bonds from this region in 2012?

MATTY: Volatility causes risk appetite to subside, and this is felt most acutely in markets where the investment risks (and rewards) are greater. Prior to Lehman's collapse, we had started to see real interest in sub-Saharan Africa from investors seeking exposure to Africa, as concerns over political instability in countries in the region had begun to subside. However, when Lehman collapsed, it paralyzed those markets overnight as investors closed out their existing positions and decided not to invest further. As a result, many African stocks performed badly following significant booms.

After such external shocks, investors tend to be risk-averse, and it was always going to be the governments in such countries who were the ones that could re-open the international markets for issuers by setting a benchmark. The sub-Saharan nations that issued debut sovereign bonds in 2011 were generally resource-backed economies—they all had a story that the global investment community found attractive.

It is likely we will see more sovereign bond issues in sub-Saharan Africa in 2012—given the relatively small size of this market compared to more mature markets, there will always be investor appetite for securities issues from the region. And, many sub-Saharan countries have not yet issued debut sovereign bonds. Kenya, Angola, Tanzania and Zambia, to name a few, are rumored to be looking to access the markets in 2012, and we are in discussions with a number of banks about potential mandates. Capital markets are a convenient way for countries to borrow money and to set a benchmark for corporate issuers to access markets.

There is no doubt in my mind that as the global markets become more stable (which I admit requires a major shake-up in Europe!), there will be increased activity in bond markets generally, and in the emerging markets specifically. All these countries have growing economies—some are experiencing double-digit growth—and growth needs capital. There is going to be less available from traditional funding sources (the loan markets) as banks struggle to rebuild their capital basis and comply with Basel III.

So, there is huge potential. One must be aware, too, of the risks. As quickly as investors pour into Africa, there is the risk that they can quickly withdraw—as we saw following the global credit crunch. But overall, we are very bullish on African growth in general, which will be led by a healthy pipeline of sovereign bond issues.

What are some of the challenges involved in sub-Saharan international bond offerings? How can sovereigns and companies from this region overcome these challenges?

MATTY: For sovereigns, the biggest challenges are overcoming the perception of corruption and ensuring that the quality of disclosure meets the standards of the international community. Since many sub-Saharan countries have just recently emerged from political and/or economic turmoil, drafting the disclosure to meet those standards can be particularly challenging and, in many cases, data customarily available in developed countries simply may not be available in developing ones.

With corporate issuances, a big challenge is corporate governance. The company and its advisors must make certain the company is doing everything it can to meet international standards. If they are looking to access the US market, another layer of regulatory issues must be dealt with.

Good lawyering and communicating with and educating the sovereign or corporate client can aid in overcoming these challenges.

Outside the sovereign bond arena, capital markets in the sub-Saharan region began to re-awaken in 2011. For instance, White & Case advised Guaranty Trust Bank on its US$500 million Eurobond offering, the first debt issue by a Nigerian corporate since the start of the financial crisis. What is the outlook for sub-Saharan corporate transactions in the capital markets arena in 2012, and what kinds of transactions are we likely to see?

MATTY: In 2012, I expect we will see a mixture of debt and equity transactions from sub-Saharan Africa, as well as a number of debut sovereign transactions. We can expect to see increased activity in countries that are perceived as relatively stable with resource-backed economies—countries like Nigeria and Angola. Much of that activity will be generated from state-owned companies or from financial institutions—Nigerian banks, for instance. Nigeria recovered from the 2008 crunch and began to stabilize in 2011 and, as a result, we saw renewed interest in Nigeria—as shown by its debut sovereign bond and the Guaranty Trust Bank issuance. That renewed interest is likely to continue in 2012.

For a number of years, White & Case has viewed the African continent as a gigantic area for growth—in capital markets, for sure, but also in project finance, mergers and acquisitions and banking. It offers huge opportunities to outside investors, with significant interest from China currently. With our office in Johannesburg and our presence in Europe, the Middle East and Asia, we have a unique perspective from which to view these matters for our clients.

Legal Education: Beyond Books and Borders

IAN FORRESTER
Ian Forrester, QC, is the Firm's Global Pro Bono Practice Leader. He practices European law, litigating trade, competition and regulatory cases before the European Courts, and has particular experience in due process and human rights.

A regular lecturer at universities worldwide, he serves on the advisory bodies of the University of Glasgow and Tulane University schools of law.

FOCUS:

New Law Library, Legal Training Support Bhutan's Transition to Democracy

At some 7,500 feet above sea level, one of the highest law libraries in the world was inaugurated in July 2011, when the Himalayan Kingdom of Bhutan marked the official opening of the country's first law library with traditional music, mask-dances and blessings.

The new library is part of White & Case's collaboration with Bhutan's Royal Law Project to help Bhutan improve its legal capacity as it makes a historic, voluntary transition from absolute monarchy to democracy. White & Case worked with Thomson Reuters and Lexis/Nexis to outfit the library with an array of resources, including access to international legal databases. It will serve as Bhutan's primary legal research resource for lawyers and judges in the capital of Thimphu, and the often hard-to-reach small towns and rural areas that comprise most of the country.

Our collaboration also includes training for lawyers and judges on legal research, legal writing and legislative drafting, as well as an annual scholarship funded by the Firm to enable a Bhutanese student to study law at a university in India. In addition, we have provided pro bono legal advice on topics such as foreign direct investment and corporate law.

One of the priorities of our Global Pro Bono Practice is to further rule of law initiatives around the world. We have an opportunity to make a lasting difference in Bhutan. Our goal is to help Bhutan develop its legal capacity in line with its own traditions and values, based on global best practices.

Q&A

What are the strengths and weaknesses of legal education around the world today?

FORRESTER: Legal education systems are as varied as the world's legal systems. In many countries the study of law takes place at the undergraduate level, often followed by a year of studying practical skills before a period as a trainee in a law office. In other countries, a law degree is awarded only after several years of post-graduate study. All law schools aspire to deliver a good theoretical education in the fundamentals of the law, as well as equip students with the skills to distill mounds of data into a few key points.

However, there is a great need for law schools everywhere to improve instruction in commercial law and practical legal skills. At the same time, in many developing societies lawyers do not have access to modern legal thinking or continuing professional training. Practice can be lonely, even risky, without the luxury of such access. Success in legal practice demands knowledge of the law, but it also calls for familiarity with the local society's social and commercial norms; lawyers are not always thought to be subject to a clear code of behavior and may confront pressures to act imprudently without such norms. These are real challenges in some societies.

Do you feel law schools are responding to the need for greater practical training?

FORRESTER: Some law schools are moving away from teaching pure theory, realizing that students need skills necessary to practice. We see the hiring of more practicing lawyers as teachers, increasing participation in legal clinics and emphasis on the value of advocacy competitions. But it is a slow transition, and the pattern is not at all consistent.

What can law firms do to help address this gap?

FORRESTER: Law firms can't solve this problem, but can play an important role. White & Case is involved in many programs that teach practical skills. The most intensive example is our University Lecture Program in Moscow, a series of ten seminars for more than 650 law students at eight universities, designed and led by our lawyers. The seminars teach the fundamentals of commercial law; many are already required courses for certain specialties. In 2011, we also collaborated on a project to deliver one of the first legal ethics courses for students.

There are also opportunities for law firms to work with new schools and develop new models that reflect international standards. In 2011, for example, we began a partnership with Jindal Global University—a first between a major US law firm and an Indian law school. We will be developing legal education programs, exploring appropriate teaching arrangements and organizing conferences and internships.

> "There is a great need for law schools everywhere to improve instruction in commercial law and practical legal skills…Law firms can't solve this problem, but can play an important role."
>
> IAN FORRESTER, PARTNER

The academic community is quite open to collaboration with lawyers and welcoming to joint instructional teams. We have found no resistance at all to the right approach.

How do moot court and mock trial competitions help equip students to practice law?

FORRESTER: Clarity, brevity, focus, a little passion, simplicity and logical order are universally valuable skills for lawyers of any age, and contests have been great teaching aids for hundreds of years. Our Firm sponsors and helps organize some top competitions, including the Philip C. Jessup International Law Moot Court Competition, the world's largest moot court competition; the ICC International Commercial Mediation Competition in France; and the Intercollegiate Negotiation Competition in Japan. These contests are fun, but they are also very effective.

How can law firms help build the legal skills of practitioners in developing countries?

FORRESTER: Many young lawyers are keen to deliver training in developing societies. There are lots of opportunities, though the needs are daunting. White & Case lawyers teach in the Kenyan Trial Advocacy Program run by Lawyers Without Borders, which delivers trial advocacy training to more than 100 Kenyan judges, prosecutors and defense lawyers each year. We have also taught courses on constitutional principles in countries where recent conflicts make the rights of minorities especially sensitive.

There are also opportunities for law firms to engage directly with emerging democracies to help build legal capacity. Our work in Bhutan to help build its legal capacity as it transitions to democracy—including opening the country's first law library this year—is perhaps unique in the world.

Training practitioners in emerging democracies is a practical way to build respect for the rule of law, and it is an activity we value highly at White & Case.

Berlin

Our Berlin office has built a strong reputation in administrative and constitutional law, corporate, M&A, real estate and construction, venture capital and private equity, labor, tax, insurance, information technology and media, and restitution law.

PHOTO: A pedestrian tunnel in Berlin.

INSET: A view of the roof of our Berlin office building, taken by Marcel Pudimat, a practice development manager in the office.

English Law: More Than Common

13
PERSPECTIVE

OLIVER BRETTLE
Partner Oliver Brettle is a member of the Firm's Executive Committee and the Executive Partner of the Firm's London office. His practice concentrates on employment law.

DAVID CROOK
David Crook is a partner in the Firm's London office, and he focuses on international M&A and joint ventures.

FOCUS:

English Law Facilitates Czech Telecommunications Sale

English law is often used in complex, multijurisdictional transactions between international businesses. Take, for instance, the €574 million private equity auction sale of Ceské Radiokomunikace, a.s., the leading provider of nationwide broadcasting and telecommunications tower infrastructure in the Czech Republic, to the Macquarie Group, an experienced global investor in significant infrastructure and community assets. We represented the seller, Falcon Group—a consortium of investors 75 percent controlled by funds managed or advised by Mid Europa Partners, a leading private equity fund in Central and Eastern Europe.

With bidders from around the world and the need to act quickly on the sale, the deal documentation was governed by English law, with disputes subject to the jurisdiction of English courts. Global investors find it difficult to become familiar with local laws in all the countries in which they invest, and they welcome the use of English law, with which they have greater familiarity. They also welcome access to English courts.

We also put into place sell side warranty and indemnity insurance for the Falcon Group, and the use of English law to govern it also helped facilitate the sale. Large international insurers are used to dealing with English law and don't need to do as much work to get comfortable with the transaction risks as they would if the deal and insurance were governed by local law.

With the use of English law facilitating the deal, it closed quickly in January 2011, becoming the second largest-ever private equity sale in Central and Eastern Europe.

Q&A

White & Case is a firm with a US heritage, but has been investing heavily for a number of years to develop a deep bench of English law-qualified international lawyers. Why?

BRETTLE: Companies are increasingly turning to English law to govern their contracts and agreements and the disputes that may arise under them. It has much to do with history. Historically, London has been a center of maritime insurance. With English ships trading worldwide, Lloyd's of London underwrote most insurance and English law-covered shipping contracts. English law is grounded in commerce and continues to be used in many international deals because it is viewed as a reliable and neutral medium between international parties. Centuries of established case law mean parties are often familiar with English law and understand how English courts will treat contractual terms and concepts, yet the common law system is still flexible enough to adapt to changes in how business is done. In contrast, some civil law systems can seem inflexible on issues that are important in many modern business transactions, such as shareholder voting agreements.

While US law shares many of the advantages of English law and is the other dominant legal framework for international deals and disputes, concerns exist about the cost of litigation in the United States. London is viewed as less expensive and less likely to issue punitive awards.

CROOK: The English law approach to interpretation can be very appealing to international parties. Parties must live with the natural and ordinary meaning of the wording they have agreed upon. There is less scope to imply terms or investigate the parties' intentions than under many other systems of law. This brings certainty to a commercial transaction.

The influence of the insurance market continues to this day, as we see increasing use of warranty and indemnity insurance in cross-border deals in regions such as Central and Eastern Europe (CEE), with policies typically governed by English law. Given the need for the sale and purchase agreement and the insurance policy to dovetail effectively, this can be a factor in favor of using English law for the deal as a whole.

A 2010 study on Choices in International Arbitration conducted by the School of International Arbitration, Queen Mary, University of London, and sponsored by White & Case, underscores this trend. Its results indicated that, when they are free to choose governing law for an agreement, corporations that do not choose their own domestic law are more likely to choose English law than any other.

Where is English law being increasingly used?

BRETTLE: In Asia, Russia, CEE and the Middle East. The majority of the work on larger transactions in our Moscow and Beijing offices is governed by English law, for example.

CROOK: English law governs a substantial percentage of the larger cross-border deals in CEE and many deals in Turkey as well. One factor here is that transactions are often financed out of London under English law-governed documentation, and there can be merit in having the whole transaction governed by the same law.

Do you believe English law will continue to be increasingly used?

BRETTLE: You never know! However, I expect emerging market transactions are likely to be more heavily documented as these markets continue to become more sophisticated and these transactions penetrate deeper into daily corporate life in countries where heavy deal documentation is the norm. My guess is that the emerging markets champions will also feel comfortable using English law in transactions as they invest outward into other markets.

CROOK: Also, London is a major international arbitration venue, and it will frequently be seen as a natural fit to choose English law and London as the forum.

Is English law more useful for certain types of transactions?

BRETTLE: Yes, it is often seen as a natural choice for transactions where the deal's financing and structuring are above the level of the country where the assets are located and several jurisdictions are involved.

CROOK: For instance, if a transaction involves selling shares and assets in several countries simultaneously, English law is often chosen for the main sale and purchase agreement governing the overall transaction. This can be especially true of international auctions, where sellers will know that bidders from a variety of other jurisdictions are likely to be willing to work under it. There will, of course, typically be local law matters that need to be dealt with in separate documentation governed by local law. That is usually confined to the mechanics of transferring shares or assets, say real estate. That documentation sometimes must include provisions that are inconsistent with the commercial deal as set out in the main sale and purchase agreement—for example, due to mandatory legal requirements, or to ensure it has the look and feel of a customary, arm's-length

Q&A

agreement, due to the need to have it notarized or to the fact that it must be filed with local authorities. However, it is still possible to maintain the overall English law-governed framework by tying all the parties (including local sellers or buyers where it is a multijurisdictional deal) into that contractual framework and setting out clear rules for the handling of disputes and for which agreements prevail if any conflicts arise.

BRETTLE: It's also very useful for transactions between off-shore companies, as many of the frequently used jurisdictions, such as Cyprus or the Cayman Islands, have English law heritage.

Is there any downside to using English law?

BRETTLE: If the deal goes wrong and you must litigate, some countries don't recognize the enforceability of judgments issued by English courts. Additionally, there can be issues with those promoting that English law be used on a deal being taken to criticize the laws of another country.

CROOK: For instance, Russia does not recognize English High Court judgments. If you obtain a judgment against a party with assets in Russia, you can't attach its assets located there. As a result, for transactions involving Russia, English law may govern the documents, but international arbitration is typically chosen for dispute resolution.

Also, the willingness of some civil law systems, as compared to the UK and US common law systems, to look to good faith principles and to try to establish the parties' intention to fill in gaps can be advantageous in long-term contracts such as shareholders' agreements, where the contract didn't anticipate business developments that may have occurred and a dispute arises.

One rule of English law that international parties must be aware of is the rule against penalties. For example, Russian parties often want to include penalty provisions to incentivize contract compliance. Although the English courts' approach on this is evolving, English law is still unlikely to enforce payment obligations that amount to penalties.

> "Handling English law transactions in emerging markets, for example, requires a blend of expertise in English law and international English law M&A practice, plus an understanding of local market practice and nuances."
>
> OLIVER BRETTLE, PARTNER

How are companies outside the United Kingdom dealing with increased use of English law—do they have the in-house capability to handle the issues that may arise over its application?

BRETTLE: Handling English law transactions in emerging markets, for example, requires a blend of expertise in English law and international English law M&A practice, plus an understanding of local market practice and nuances. Obviously not all international companies will have the in-house experience or resources and will benefit from the involvement of international law firms, which can not only fill those gaps but also handle these kinds of transactions with the right touch. White & Case has, in addition to the lawyers in its London office, nearly 100 lawyers in 18 offices worldwide who are practicing English law professionals and who can provide English law advice to clients globally.

More for Less: A Dialogue

RICHARD SUSSKIND
Professor Richard Susskind OBE is an author, speaker and independent adviser to major professional firms and to national governments. His main area of expertise is the future of professional service, with particular reference to information technology. He lectures internationally and has been invited to speak in more than 40 countries. He has written and edited numerous books, including *The End of Lawyers? Rethinking the Nature of Legal Services* (OUP, 2008) and has written more than 100 columns for *The Times*.

DAVID KOSCHIK
Partner David Koschik is a member of the Firm's Executive Committee and leads our efforts to innovate client service delivery and increase efficiency. His practice focuses on major commercial and investment banks in lending transactions, and in acquisition and highly leveraged financings.

PERSPECTIVE:

SUSSKIND: In the coming decade, the main driver of change in the legal market will be the need to reduce legal costs.

Most general counsel are under growing pressure from within their businesses to reduce their internal headcount and spend less on law firms. Yet, they also claim to have more legal and compliance work than ever before. This is the *more for less* dilemma—how can law firms and in-house lawyers together provide more legal service at less cost?

Two strategies can help meet the *more for less* challenge. The *efficiency strategy* calls for alternative sourcing of routine and repetitive legal work, with much of the process-based work that has traditionally been done by junior lawyers (in firms and in-house) performed by less skilled labor forces, often in lower-cost locations.

The *collaboration strategy* requires in-house lawyers to come together and share legal services costs. For example, some banks, with the support of law firms, might set up a shared services center to take on certain common and yet non-competitive aspects of compliance work.

In combination, executing the two strategies will incrementally and irreversibly transform the way law firms and their clients operate and collaborate.

RESPONSE:

KOSCHIK: While our industry faces an unpredictable future, as Richard implies, the best way to predict the future is to invent it. No firm has this figured out yet—everyone in the industry, clients included, is struggling with these issues. But, if we consider them from the right vantage point, these issues present opportunities.

We are exploring alternative sourcing that will allow us to respond quickly to client demands—modeling solutions that work first for our clients and can work across practices. We are also investigating ways to deploy technology more completely into all aspects of our work for clients and managing our Firm and practices more proactively to increase our efficiency.

Most importantly, we are looking more closely at how we manage our client relationships—as the world changes, the nature of these relationships must change, too.

More than ever, our Firm and our clients need to openly and honestly explore how we can collaborate better. We need to listen more acutely to better understand fundamentally what clients need and want, and what they don't—and then work together to achieve their goals. It is all a part of delivering top client service and re-inventing how we do that in real time.

Moscow

Established in 1991, our Moscow office focuses on banking and finance, corporate and M&A law, tax, capital matters, energy and utilities, real estate and dispute resolution.

PHOTO: An apartment building on Kotyelnicheskaya embankment in Moscow, one of the famous "Seven Sisters" buildings.

INSET: A photo of the Church of St. Simeon the Stylite in central Moscow, taken by web designer Katerina Barry of our New York office, who worked in our Moscow office for more than two years.

Clients + Matters

Highlighting our work
for our clients in 2011

January

White & Case represents the **Federal Republic of Nigeria**, as issuer, in its debut Rule 144A issue of US$500 million of notes listed on the London Stock Exchange.

White & Case represents **Falcon Group**, an entity controlled by funds managed or advised by Mid Europa Partners, in its approximately €574 million sale of Ceske Radiokomunikace, a.s., the leading provider of nationwide broadcasting and telecommunications tower infrastructure in the Czech Republic, to a consortium of funds managed by the Macquarie Group.

White & Case represents **Industrial and Commercial Bank of China Limited**, China's largest commercial bank, in the acquisition of an 80 percent interest in The Bank of East Asia (U.S.A.) N.A., for approximately US$140 million, the first acquisition of a US retail bank by a Chinese bank.

White & Case wins a victory for **Terminal Porte Océane**, a container handler at the port of Le Havre, in which the Paris Court of Appeals reverses a decision of the French Competition Authority and finds that Terminal Porte Océane, a jointly owned subsidiary, had not participated in any anti-competitive practices with one of its mother companies, contrary to allegations of its other shareholder.

White & Case represents **Panasonic** in the settlement of six patent infringement cases in multiple US jurisdictions, including the US International Trade Commission (ITC), brought by a semiconductor manufacturer.

White & Case represents **Calpine Corporation**, as issuer, in the sale of US$1.2 billion of senior secured notes to Deutsche Bank Securities Inc., as representatives for the initial purchasers, the proceeds of which were used to help repay the remaining US$1.2 billion of term loan borrowings outstanding under Calpine's existing credit facility.

White & Case represents **Wilmington Trust (London) Limited** in the €1.2 billion debt restructuring of the Orion Cable Group.

White & Case advises a pool of eight international banks, comprising the **European Investment Bank**, that provided financing of more than €940 million to the consortium Atlandes, which was awarded the A63 motorway contract by the French State.

White & Case represents **Acergy S.A.** in the closing of its combination with Oslo Stock Exchange-listed Subsea 7 Inc., to create an US$8.8 billion global leader in seabed-to-surface engineering and construction.

February

White & Case represents **Credit Suisse**, **Citigroup** and **Deutsche Bank**, as lead managers, in the offering on the international capital markets of UAH 2,385,050,000 (approximately US$300 million) notes by Ukreximbank, the State Export-Import Bank of Ukraine, the first Euroclearable international hryvnia bond.

White & Case represents **Queiroz Galvão Exploração e Produção**, a Brazilian oil exploration and production company, in its R$1.3 billion (approximately US$777.7 million) offering of common shares on the Novo Mercado segment of the BM&FBOVESPA, Brazil's largest IPO of the year.

White & Case represents **Taiwan Semiconductor Manufacturing Company Limited**, the world's leading dedicated semiconductor foundry, in negotiating a favorable settlement resolving its worldwide trademark disputes with Semiconductor Manufacturing International (Shanghai) Corporation, after a victory before the Trademark Trial and Appeal Board of the US Patent and Trademark Office.

White & Case represents **Novatek**, Russia's largest independent natural gas producer, in its dual tranche offering of US$1.25 billion of loan participation notes.

White & Case represents the Swiss specialty chemical group **Clariant AG** in the approximately €2 billion acquisition of more than 95 percent of the shares in Munich-based Süd-Chemie AG from its majority stockholder, One Equity Partners, and numerous family shareholders, as well as in the subsequent mandatory takeover offer to the outstanding shareholders and the voluntary squeeze-out procedure with regard to the remaining outstanding shareholders.

White & Case advises the **Boards of Directors of Latour** and **Säki AB** on the merger of the two companies, both listed on Nasdaq OMX Stockholm. The combined company will become one of the largest industrial holding companies in Sweden with an estimated net asset value of SEK 25 billion (€2.8 billion/US$3.9 billion) and a market capitalization of SEK 20 billion.

White & Case represents concessionaire **Corporación Quiport, SA** and **Canadian**, **Brazilian and US sponsors and investors**, **including Aecon Group Inc.**, **Andrade Guiterrez SA**, **Airport Development Corporation** and **HAS Development Corporation**, an affiliate of Houston Airport System, in the successful restructuring of the US$650 million Quito International Airport Project in Ecuador and resolution of related contract and treaty disputes, after 18 months of negotiations on legal, commercial and financial terms and corresponding investment protections.

Clients + Matters

March

White & Case achieves success for the **Republic of Peru** in an ongoing investment treaty dispute before the ICSID at the World Bank in which the international tribunal ruled in favor of Peru and against a request for provisional measures aimed at discontinuing criminal investigations relating to the construction of a toll road to the international airport outside Lima.

White & Case represents a **coordinating committee of lenders to the National Central Cooling Company PJSC**, an Abu Dhabi-based utility company and the largest district cooling provider in the world, in the restructuring of approximately US$762 million of its debt. The restructuring involved leading Middle Eastern and international banks and a mixture of conventional and Islamic products.

White & Case represents **Barclays Capital**, as initial purchaser and placement agent, and **American AgCredit**, in its first-of-its-kind issuance of US$295 million of notes, which are secured by timberlands and timber deeds contributed by Roseburg Resources Co., the issuer's indirect parent company. White & Case wins a "Highly Commended" award in the Finance category in the *Financial Times 2011 US Innovative Lawyers* report for its work on the transaction.

White & Case represents **the lenders** in a ¥165 billion (approximately US$2 billion) syndicated bank loan to eAccess Ltd., the Japanese Internet service provider. This transaction is the first in the Japanese market to combine a syndicated loan with a simultaneous high yield bond, and it is the first major syndicated telecommunications financing in Japan since the global financial crisis. This financing was ongoing at the time of the terrible earthquake and tsunami that hit Northern Japan, but was nonetheless closed on the original timetable.

White & Case represents the mandated lead arrangers, **BNP Paribas**, **KfW IPEX-Bank**, **Mizuho Corporate Bank, Ltd.**, **National Bank of Abu Dhabi**, **Natixis**, **Société Générale**, **Sumitomo Mitsui Banking Corporation**, **Bank of Tokyo-Mitsubishi UFJ, Ltd.**, **Union National Bank** and **WestLB**, in the US$612 million financing of the Shams 1 solar power project in Abu Dhabi, UAE, the first solar farm in the Middle East and the largest concentrated solar power plant in the world.

White & Case advises the joint venture project company **Nord Stream AG and the sponsors** on the construction and €2.5 billion financing of Phase II of its development of two 1,220-kilometer subsea offshore pipelines that will link Russia and the European Union via the Baltic Sea.

April

White & Case wins dismissal of a putative indirect purchaser antitrust class action in the Superior Court of California against **Stolt-Nielsen S.A.**, a global shipping company.

White & Case represents **Barclays Capital**, **Deutsche Bank**, **ING Bank** and **Slovenská sporitel'ňa a.s.**, acting as joint lead managers, in a standalone issue by the Slovak Republic of €1 billion of notes.

White & Case represents **BNP Paribas**, **Citigroup Global Markets Limited**, **Commerzbank Aktiengesellschaft**, **Deutsche Bank** and **Landesbank Baden-Württemberg**, as mandated lead arrangers, in Heidelberger Druckmaschinen AG's €804 million refinancing of its 2009 financing, which consisted of three financing instruments and included backing by the German State Aid program.

White & Case represents **Natixis**, as administrative agent, and **Crédit Agricole Corporate and Investment Bank**, **J.P. Morgan Securities LLC**, **Mizuho Corporate Bank, Ltd.** and **Natixis**, as lead lenders, in a syndicate of 27 lenders in the negotiation and execution of a US$3 billion senior revolving export credit facility for Vale S.A., the world's second-largest mining company, and its Swiss and Canadian subsidiaries.

White & Case represents **GMR Group**, which has holdings in energy, airports, highways and urban infrastructure, in the sale of its 50 percent stake in InterGen N.V. to an affiliate of state-owned China Huaneng Group, China's largest power generation company, for an equity value of US$1.232 billion. The transaction is the largest cross-border M&A transaction between India and China to date.

White & Case acts as antitrust and international transaction counsel to **Pfizer Inc.**, the world's largest pharmaceutical company, in the US$2.38 billion sale of its Capsugel division to private equity firm Kohlberg Kravis Roberts & Co L.P.

White & Case represents **Quad-C Management, Inc.** in the sale of its 60 percent equity ownership interest in NuSil Technology LLC, a leading global manufacturer and supplier of highly engineered silicone products, to an affiliate of New Mountain Capital.

White & Case represents **Danske Bank A/S**, a Danish banking group, in connection with its DKK 20 billion (US$3.4 billion) rights offering.

May

White & Case represents **Nycomed Sweden Holding 2 AB** in the €9.6 billion sale of Nycomed to Takeda Pharmaceutical Company Limited.

White & Case advises US conglomerate **DuPont** on EU and worldwide merger control filings in its US$6.6 billion public tender offer on the Copenhagen Stock Exchange for the entire issued share capital in Danisco A/S.

White & Case represents the New York branches and representative offices of six Chinese banks—**Bank of China**, **Bank of Communications Co., Ltd.**, **China Construction Bank Corporation**, **China Merchants Bank Co., Ltd.**, **Industrial and Commercial Bank of China Limited** and **Agricultural Bank of China Limited**—in defeating a petition brought by a judgment creditor, Samsun, seeking to require the banks to disclose whether they held any assets of certain judgment debtors at any of their branches located anywhere in the world and to bring such assets in New York to satisfy Samsun's judgment.

White & Case advises **Bank of America Merrill Lynch**, the sole global coordinator and joint bookrunner, **Deutsche Bank**, as joint bookrunner, and **UBS**, as co-manager, on MIE Holdings Corporation Rule 144A/Regulation S debut US$400 million high yield bond, the first independent Chinese oil exploration and production company to issue a high yield bond and one of the largest-ever debut Chinese high yield bonds.

White & Case acts as Mexican counsel to **Bank of America Merrill Lynch**, **Deutsche Bank Securities Inc.** and **Goldman, Sachs & Co.**, as joint lead managers and joint bookrunners, in the US$1 billion offering of notes issued by Comisión Federal de Electricidad, the Mexican government-owned electric company, the company's first issuance in the international debt capital markets in more than 15 years.

White & Case represents the **Republic of Senegal** in its debut Rule 144A issue of US$500 million of notes.

White & Case represents **Deutsche Bank Securities Inc.** and **Barclays Capital**, as joint lead arrangers and joint bookmanagers, and **Deutsche Bank AG**, **New York Branch**, as administrative agent and collateral agent, in a US$1.44 billion term loan facility and a US$350 million ABL credit facility to finance, in part, the US$3.2 billion acquisition of Emergency Medical Services Corporation by Clayton, Dublier & Rice, LLC.

White & Case represents the **Abu Dhabi Water & Electricity Authority** and **the government of the Emirate of Abu Dhabi**, as international counsel, in the closing of US$1.46 billion project financing of the 1,600 MW Shuweihat S3 independent power project in the Emirate of Abu Dhabi, which was launched in March 2010 and is the ninth project on which the Firm acted for the Authority and the Government over the last 14 years.

June

White & Case represents **J.P. Morgan Securities LLC**, **HSBC Securities (USA) Inc.**, **Credit Suisse Securities (USA) LLC** and **Itaú BBA USA Securities, Inc.**, as lead arrangers, and **Barclays Capital** and **Nomura Securities International, Inc.**, as managers, in the Rule 144A and Regulation S offer and sale of US$2.563 billion of senior notes by OGX Petróleo e Gás Participações S.A., a publicly held Brazilian oil and gas exploration and production company. This was the largest cross-border high yield issuance of 2011 in Brazil and the inaugural cross-border bond offering by an EBX Group–controlled company, an entrepreneurial Brazilian group led by Eike Batista.

Clients + Matters

White & Case advises **the consortium lenders (nine commercial banks, the European Investment Bank and the head office of the saving funds—Caisse des Dépôts et Consignations)** on the common financial documentation, the project contracts and all legal aspects of the €7.8 billion LGV-SEA railway project, a 50-year concession which includes the financing, design, construction, operation and maintenance of a new high-speed railway line linking Tours to Bordeaux.

White & Case represents the **State Treasury of the Republic of Poland** in its issuance of a US$1 billion of notes in April under its SEC-registered shelf and then in a US$1 billion tap issue.

White & Case advises **China Development Bank** on its support of a US$1.2 billion multi-sourced Sharia-compliant Islamic financing for PT Axis Telecom, a cellular network operator in Indonesia. The deal is the largest private sector Islamic financing to date in Indonesia and the first Islamic financing supported by the Bank.

White & Case advises **Deutsche Bank**, **DZ BANK AG Deutsche Zentral-Genossenschaftsbank** and **Landesbank Baden-Württemberg**, as coordinators and bookrunners, in the provision of a €600 million credit facility to Südzucker AG. The Südzucker Group is a globally operating food group.

White & Case represents **Barry Callebaut Services NV** and **Barry Callebaut AG**, the largest manufacturer of cocoa and chocolate products in the world, in a high yield bond offering of €250 million and a new €600 million senior revolving credit facility.

White & Case represents **Russell City Energy Company, LLC**, a project company jointly owned by Calpine Corporation and GE Energy Financial Services, in the US$845 million construction and term financing of a 620 MW natural gas-fired, combined-cycle power generation facility in the City of Hayward, California, the first US power generation facility to receive a federal air permit with a voluntary limit on greenhouse gas emissions.

White & Case advises **EQT Funds** on its SEK 21 billion (approximately £2 billion) sale of Securitas Direct AB, a European leader in monitoring and alarm solutions for homes and small businesses, to a consortium formed by Bain Capital, a leading private asset manager, and Hellman & Freidman, a private equity investment firm.

July

White & Case wins the General Court of the European Union's annulment in full of a €90.9 million fine imposed on **Toshiba Corporation** by the European Commission for its alleged participation in the Gas Insulated Switchgear cartel.

White & Case represents **Santander Investment Securities Inc.**, **HSBC Securities (USA) Inc.** and **Citigroup Global Markets Inc.**, as initial purchasers, in the Rule 144A and Regulation S offer and sale of US$700 million senior secured notes by a British Virgin Islands affiliate of Queiroz Galvão Óleo e Gás S.A. (QGOG), the largest Brazilian privately held provider of drilling and production services.

White & Case represents **Jastrzębska Spółka Węglowa SA (JSW)**, Europe's largest producer of high-quality coking coal and a significant coke producer, in its privatization, initial public offering and admission to trading of its shares on the Warsaw Stock Exchange (WSE). The transaction consisted of the PLN 5.37 billion (US$2 billion) sale by Poland's State Treasury of shares representing a 33.1 percent stake in JSW by a public offering in Poland and an international offering to institutional investors outside Poland and the United States under Regulation S and to qualified institutional buyers in the United States under Rule 144A. This was Poland's largest privatization and IPO in 2011, the fourth-largest IPO in the WSE's history and the second-largest European IPO in the first half of 2011.

White & Case represents **Crédit Agricole**, France's state-owned retail bank, in a US$1 billion financing for PMI Trading Limited and PMI Holdings BV, both subsidiaries of Petróleos Mexicanos (PEMEX), Mexico's largest hydrocarbon and petrochemical producer.

White & Case represents **Deutsche Bank AG**, **New York Branch**, as administrative agent, **Deutsche Bank Securities Inc.**, as joint lead arranger and joint book manager, and **Merrill Lynch**, **Pierce**, **Fenner & Smith Incorporated**, as joint lead arranger and joint book manager, with respect to US$2.51 billion in senior secured bank facilities for Silgan Holdings Inc. and other Silgan-related entities.

White & Case represents **GMR Energy (Singapore) Pte. Ltd.**, an entity within the GMR Group and Singapore's only privately owned and independent power producer, in the SG $1 billion greenfield financing of an 800 MW gas-fired power project in Singapore, the first independent power financing in Singapore in the last five years and GMR Group's first greenfield power project outside India.

White & Case represents **Nestlé S.A.** in its US$1.7 billion acquisition of 60 percent of Hsu Fu Chi, a leading manufacturer and distributor of confectionary products in China and in its joint venture with the Hsu family, who retain a 40 percent interest in Hsu Fu Chi.

White & Case provides English and Russian law advice to **RusVinyl LLC** and transaction sponsors **CJSC SIBUR Holding** and **SolVin GmBH** on the €750 million project financing of a 330,000 tons pa PVC plant in Kstovo, Nizhny Novgorod, Russia.

August

White & Case achieves success at the World Bank for **tens of thousands of Italian bondholders** in a groundbreaking decision finding jurisdiction over claims for compensation in excess of US$1 billion in connection with Argentina's issuance of sovereign bonds and subsequent international treaty violations.

White & Case advises **Saudi Arabian Oil Company** on its joint venture with **The Dow Chemical Company** to build and operate a US$20 billion world-scale integrated chemicals complex in Jubail Industrial City, Saudi Arabia.

White & Case secures a victory for **Experian Information Solutions, Inc.**, the leading global information services company, when the US Court of Appeals for the Eighth Circuit upholds a jury verdict and the lower court's granting of summary judgment in favor of Experian in a long-running trademark and antitrust lawsuit brought against the company by Fair Isaac Corp.

White & Case wins affirmance by the US Court of Appeals for the Third Circuit of the dismissal of a securities class action against our client, **a senior executive of publicly traded Horizon Lines, Inc.**, who was sued by a shareholder in the US District Court for the District of Delaware.

White & Case counsels **Goldman, Sachs & Co.**, as placement agent, on a US$450 million cross-border securitization deal for FOVISSSTE (a Mexican decentralized entity of the Social Security and Services Institute for State Workers), the first such deal for FOVISSSTE and the first Mexican cross-border RMBS deal without a third-party guaranty.

White & Case represents **WellPoint, Inc.**, the largest US medical benefits company in terms of membership, in an SEC-registered public offering of US$1.1 billion of debt securities through underwriters led by Citigroup Capital Markets and UBS Capital Markets.

White & Case represents **Votorantim Participações S.A.** (the holding company of one of Brazil's largest industrial conglomerates) in a US$1.5 billion syndicated multi-borrower five-year revolving facility and a concurrent US$1.15 billion syndicated secured export prepayment facility. Twenty banks participated in both facilities.

White & Case advises **The Carlyle Group** on its acquisition of 70 percent of Sagemcom, a French high-technology company, from the investment fund The Gores Group.

White & Case represents **salesforce.com, inc.**, a world leader in enterprise cloud computing solutions and named the World's Most Innovative Company by *Forbes* magazine, in a License and Strategic Alliance Agreement with Dun & Bradstreet that allowed for the creation of a new Data-as-a-Service offering called Data.com.

White & Case represents **PGNiG** in its acquisition of the Polish heat and power assets of Vattenfall, the Swedish energy group, for approximately PLN 3 billion (approximately US$900 million).

White & Case represents **UPM-Kymmene Corporation**, one of the world's largest forest product companies, in its acquisition of Myllokoski Group and Rhein Papier and the related acquisition financing and financial restructuring of the target entities, which have an approximately €900 million enterprise value and paper mills in Finland, Germany and the United States.

Clients + Matters

September

White & Case represents **Brasil Telecom S.A.**, the largest fixed-line telecommunications service provider in the center-west region of Brazil, in its inaugural Rule 144A and Regulation S offer and sale of R$1.1 billion (US$662.1 million) Real-denominated senior notes, the largest-ever Real-denominated bond by a non-sovereign issuer.

White & Case wins the dismissal of a complaint against **Experian Information Solutions, Inc.** in the US District Court for the Western District of Pennsylvania alleging that Experian and other defendants violated Section 1 of the Sherman Act by conspiring to restrain the availability of consumer credit and to fix the prices of loans.

White & Case represents **China Development Bank** and **Industrial and Commercial Bank of China** in their participation in the US$800 million senior secured term loan facility and the SAR 3.969 billion (approximately US$1.06 billion) advance payment guarantee facility which, together, make up project facilities supporting Saudi Oger Ltd's financing of the King Abdullah Project 2, which the company is completing for the Saudi Ministry of Interior in the Kingdom of Saudi Arabia.

White & Case represents **China Development Bank** in its US$1.365 billion financing to China Niobium Investment Holdings Limited, an SPV set up as a consortium, to acquire a minority stake in Companhia Brasileira de Metalurgia e Mineracao, a privately held Brazilian miner of niobium.

White & Case represents **Deutsche Bank and the other managers** in the Republic of Serbia's debut sovereign bond issuance of US$1 billion of Eurobonds.

White & Case represents **Russian Commercial Bank (Cyprus) Limited** (an affiliate of VTB, a leading Russian bank) as arranger of a US$1 billion syndicated loan facility to ENRC N.V., a Netherlands-based company and a subsidiary of Eurasian Natural Resources Corporation Plc.

October

White & Case represents **Credit Suisse Securities (USA) LLC** and **Santander Investment Securities Inc.**, as initial purchasers and joint bookrunners, in the Rule 144A and Regulation S offer and sale of US$1.75 billion notes by Centrais Elétricas Brasileiras S.A. – Eletrobras, a Brazilian government-controlled holding company with significant electricity generation and transmission assets.

White & Case advises the lenders, **Deutsche Bank**, **Crédit Agricole Corporate & Investment Bank**, **UniCredit SpA**, **Banca IMI SpA** and **Mediobanca SpA**, and the state bank, the **Caisse des Dépôts et Consignations**, on the financing of a €1.9 billion public-private partnership to build and operate an electronic tolling system for French roads, sponsored by a consortium led by Autostrade per l'Italia.

White & Case represents the **Republic of Lithuania** in the issue of US$750 million of notes, the fourth time that we have acted for Lithuania's Ministry of Finance on the issuance of a dollar-denominated Eurobond.

White & Case represents **Haier Group** in its acquisition of Sanyo Electric Co., Ltd.'s consumer and commercial use washing machine businesses, its consumer use refrigerator business and its white goods sales divisions in Japan and Southeast Asia.

November

White & Case represents the **Republic of Namibia** in its debut Rule 144A issue of US$500 million of notes.

White & Case represents **Crédit Agricole Corporate and Investment Bank** and **Natixis**, as global coordinators and joint bookrunning managers, and **four other banks**, as co-managers, for French issuer Faurecia's €350 million English law-governed high yield bond offering.

White & Case represents **ConocoPhillips** before the US Supreme Court, which denies a petition for certiorari filed by plaintiffs in a case involving price-fixing claims against ConocoPhillips and three other energy companies brought by 23 municipalities, affirming a January DC Circuit Court of Appeals decision where the Firm secured affirmation of summary judgment in ConocoPhillips's favor.

White & Case represents **Harvest Partners, L.P.** in its agreement to acquire TruckPro Holding Corporation, as well as the related acquisition financing.

White & Case represents **Nordic Capital V**, as deal and regulatory counsel, in the divestment of its portfolio company Point International, Northern Europe's largest provider of payment and gateway services and solutions for retailers, to VeriFone, Inc.

White & Case negotiates for its Taiwanese client **DEPO Auto Parts Industrial Co., Ltd.** the entry of a criminal plea agreement for its US subsidiary, Maxzone Vehicle Lighting Corporation, radically cutting the fine by potentially up to US$200 million and resolving its criminal exposure in a grand jury investigation by the Antitrust Division of the US Department of Justice of the after-market auto lights industry.

White & Case wins the US DC Circuit Court of Appeals' reversal of a summary judgment against **The Richard E. Jacobs Group, LLC** and **Sierra Properties**, the developers of Cypress Creek Town Center in Florida, in a case involving claims that the US Army Corps of Engineers violated US environmental laws in granting a permit for the Center.

White & Case advises the **François-Charles Oberthur Fiduciaire Group** on the €1.15 billion sale of its card systems and identity divisions to private equity firm Advent International. The transaction is one of the few large-scale leveraged buyouts, as well as one of the largest deals, to close in France in 2011.

December

White & Case advises the **State of Qatar** on a US$5 billion sovereign bond offering, including 5-, 10- and 30-year tranches. This was the State's first bond offering in two years and the largest deal of its kind in the Gulf region in 2011.

White & Case represents **BNP Paribas Investment Partners USA Holdings Inc.** in the sale of all the stock of its subsidiary, FundQuest Incorporated, the Boston-based turnkey asset management program specialist with approximately US$15 billion in assets under management, to Envestnet, Inc., a public corporation.

White & Case represents the sponsors, **Qatar Petroleum** and **ExxonMobil Barzan Limited**, in the US$10.3 billion Barzan Gas Project—the largest project financing in Qatar to date. The financing is awarded "Global Deal of the Year 2011" by *Project Finance* magazine and "2011 Middle East Oil and Gas Deal of the Year" by *Project Finance International.*

White & Case represents **IC Ictas Insaat Sanayi**, a subsidiary of IC Holding, in the privatization of the Trakya electricity distribution region (TREDAS) in Turkey in which our client bids for and takes over the shares of TREDAS for US$575 million. It was the biggest privatization successfully closed in 2011 in Turkey.

White & Case represents **Santos Limited** in the US$1.2 billion arrangement of unsecured ECA-backed corporate senior debt facilities. The funds drawn are intended to be used for its corporate activities, including meeting its joint venture funding obligations for the Gladstone LNG project in Queensland, Australia.

White & Case successfully represents **Anchorage Capital** in getting a chapter 11 plan approved for the liquidation of Zais Investment Grade Limited VII, a Cayman Islands-based distressed CDO, the first-ever involuntary prepackaged case brought under the US bankruptcy code and the first and only use of chapter 11 to unwind a CDO.

Shanghai

Our Shanghai office offers clients direct access to on-the-ground legal and business expertise for a wide range of China-related transactions.

PHOTO: Fan dancers on a Shanghai rooftop.

INSET: A photo of the building lobby of our Shanghai office, taken by Tokyo partner Christopher Wells.

Achievements + People

Highlighting Firm and individual accomplishments and events in 2011

January

Partner **David Crook** (Mergers & Acquisitions) joins the Firm in London.

Partner **Paweł Pietkiewicz** (Commercial Litigation) joins the Firm in Warsaw.

Partner **Jacqueline Evans** (Banking) joins the Firm in London.

Partner **Lee Cullinane** (Banking) joins the Firm in London.

Partner **Aalok Sharma** (Los Angeles) is named by the *Daily Journal* to its "Top 20 Under 40" list, recognizing the top 20 lawyers in California under the age of 40.

Partner **Mark Glengarry** (London) is named by *The Lawyer*, a UK legal publication, to its "The Hot 100 2011" list.

White & Case is ranked among the top five in *SNL Financial*'s list of **Top Legal Advisers in Energy M&A Transactions**.

White & Case is ranked **number one by deal volume in *mergermarket*'s 2010 league table** for law firms acting on M&A transactions in Central and Eastern Europe, including Russia and the CIS.

White & Case sponsors 11 regional and national competitions—in Australia, Brazil, Canada, Czech Republic, Georgia, Poland, Russia, South Africa, the United Kingdom and the US Mid-Atlantic—as part of the **52nd annual Philip C. Jessup International Law Moot Court Competition**.

February

Partners **Ayako Kawano** and **Jun Usami** (Mergers & Acquisitions) join the Firm in Tokyo.

Partner **Maxim Telemtayev** (Mergers & Acquisitions) joins the Firm in Almaty.

Partner **Paul Friedland** (New York) is appointed to the Executive Committee of the American Arbitration Association.

March

Partner **Jorge de la Garza** (Mergers & Acquisitions) joins the Firm in Monterrey.

Partner **Gavin Weir** (Mergers & Acquisitions) joins the Firm in London.

Partner **Carolyn Lamm** (Washington, DC) is named by *The National Law Journal* to its 2011 "Most Influential Lawyers" list.

Partner **Edward Keller** (Budapest) is elected to the Hungarian Venture Capital and Private Equity Association Board of Directors.

White & Case scores **76 Band 1 rankings**, the highest ranking, from *Chambers Global 2011*: 32 for practices and 44 for individual lawyers.

White & Case is named "**Law Firm of the Year**" at the *M&A Advisor*'s 5th Annual Distressed Investing Summit and Turnaround Awards Gala, honoring achievement by top performers in the M&A, turnaround and financing industries.

White & Case is named "**Law Firm of the Year**" **in Finland and Sweden**, and Akol Law Offices, one of White & Case's two affiliate firms in Turkey, is named "**Law Firm of the Year**" **in Turkey** at the *International Financial Law Review*'s Europe 2011 awards.

White & Case ranks **third globally** in the ***Global Arbitration Review*'s GAR 30**, which recognizes the biggest and busiest 30 arbitration practices.

A team of law students from the University of Sydney (Australia) wins the **2011 White & Case Jessup Cup**, in the Final Round of the Philip C. Jessup International Law Moot Court Competition.

Achievements + People

April

Partner **Ludek Chvosta** (Commercial Litigation) joins the Firm in Prague.

Partner **Hugues Mathez** (Mergers & Acquisitions) joins the Firm in Paris.

Partner **Caroline Miller Smith** (Project Finance) joins the Firm in London.

Partner **Elena Maria Millerman** (Project Finance) joins the Firm in New York.

Partner **Daniel Woods** (Los Angeles) receives the American Bar Association's 2011 John Minor Wisdom Public Service and Professionalism Award.

May

Partner **Matthew Miner** (White Collar) joins the Firm in Washington, DC.

Partner **Jonathan Hamilton** (Washington, DC) is named to the Vance Center Committee, the governing body of the Cyrus R. Vance Center for International Justice, which mobilizes the legal profession globally to promote social justice, democracy and the rule of law.

Partner **Daniel Levin** and associate **Benjamin Kwak** (Washington, DC) win the **Burton Award for Legal Achievement** for their article "U.S. Authorities Possess Tools, Motivation to Continue to Push the Envelope in Investigating and Prosecuting Financial Crimes," which appeared in the May 31, 2010 issue of BNA's *Securities Regulation & Law Report*. This is the tenth straight year White & Case lawyers have won the award, a record unmatched by any other law firm.

Partner **Owen Pell** (New York) is awarded an honorary Doctor of Laws degree by the State University of New York and gives the Commencement Address at Binghamton University.

Partner **Gary Thomas** (Tokyo) testifies before the US House of Representatives' Ways and Means Committee about Japan's international tax policy and how the country's tax reform efforts helped companies better compete in the global market and create jobs.

White & Case is among the top five of the inaugural "**Global 20**" **preeminent global law firms**, as ranked by *Law360*, an online media company.

White & Case is named "**International Law Firm of the Year 2011 in the Czech Republic**" at the Chambers Europe Awards for Excellence 2011.

White & Case is awarded the "**Law Firm in the Largest M&A Transaction in IT&C in Romania**" by *ZiarulFinanciar* business newspaper for its contribution in the ABC Data—Scop Computers deal.

White & Case honors **Yuriy Maltsev**—the partner who founded and led our Almaty office from 1995 until his death in 2010—by establishing a scholarship in his name at KIMEP University in Almaty.

White & Case celebrates the **Firm's 110th anniversary** and holds its **annual client reception for Deutsche Bank** on the floor of the New York Stock Exchange. More than 250 guests celebrate our longstanding relationship with Deutsche Bank. One of the Firm's first assignments was to organize Bankers Trust Company, which the Firm continued to advise until 1998, when it merged with Deutsche Bank.

White & Case teams up with **Jindal Global Law School** to develop **executive and continuing legal education programs**, the first such agreement between a major US law firm and an Indian law school.

White & Case's **Bucharest office moves** to larger and more modern premises in the Europe House building, located in the city's Central Business District.

June

Partner **Kim Marie Boylan** (Commercial Litigation) joins the Firm in Washington, DC.

Nineteen White & Case partners are named to Handelsblatt's list of "**Best Lawyers—Leading Lawyers in Germany**."

Partner **Tom Winsor** (London) gives oral evidence on his review of policy pay in the United Kingdom to the House of Commons Home Affairs Select Committee.

Partner **George Terwilliger** (Washington, DC) testifies before the US House of Representatives' Judiciary Subcommittee on Crime, Terrorism and Homeland Security about reforming the US Foreign Corrupt Practices Act.

Partner **Douglas Halsey** (Miami) is reappointed by the Florida Bar Board of Governors to serve a three-year term on the Florida Bar Foundation.

White & Case celebrates the **85th anniversary of its Paris office** with an on-site garden party for clients.

White & Case's **Almaty office moves** to larger and more modern premises in the Park View Tower, located in the heart of Almaty.

White & Case wins "**Infrastructure/Energy Team of the Year**" at The Lawyer Awards 2011.

White & Case wins "**Real Estate Deal of the Year 2011**" for its work on the ANA Hotels Portfolio Debt Restructuring at the ALB Japan Law Awards 2011, the second consecutive year we have won this award.

White & Case **ranks second nationwide in *American Lawyer's* "Diversity Scorecard 2011,"** a survey of approximately 200 of the US's largest and highest-grossing law firms according to their percentage of minority lawyers and partners.

July

Partner **Virginia Tam** (Mergers & Acquisitions) joins the Firm in Hong Kong.

Partner **Carolyn Vardi** (New York) is named to *The M&A Advisor*'s "40 Under 40," a list recognizing emerging industry leaders in M&A and private equity.

White & Case is **ranked first globally for project finance** in the first half of 2011, according to data compiled by *Dealogic*.

White & Case opens the **Kingdom of Bhutan's first law library** in Thimphu, the country's capital, as part of the Firm's collaboration with Bhutan's Royal Law Project.

White & Case is named to *Law360*'s "**Class Action Groups of 2010**."

Achievements + People

August

Partner **Carl Hugo Parment** (Banking) joins the Firm in Stockholm.

Partner **Ian Clark** (Capital Markets) joins the Firm in London.

Partner **Michael Immordino** (Capital Markets) joins the Firm in London/Milan.

White & Case opens a **new office in Milan, Italy**.

White & Case is honored with the **General Mills Champions of Diversity Award** in recognition of the Firm's outstanding performance in advancing diversity and inclusion in the legal profession.

White & Case's **Singapore office moves** to new offices.

September

Partner **Campbell Steedman** (Mergers & Acquisitions) joins the Firm in Abu Dhabi.

Partner **Ferigo Foscari** (Capital Markets) joins the Firm in Milan.

Partners **Andrea Menaker** (Washington, DC) and **Ank Santens** (New York) are named to *Global Arbitration Review*'s "GAR 45 under 45 2011" list.

White & Case's **Tokyo office** hosts its 20th annual "**Back-to-Business**" **event**, attended by clients and friends from more than 300 companies.

White & Case's **London office** holds **seven Emerging Markets Seminars** in eight days, attended by more than 370 clients and contacts and featuring White & Case partners from six countries, as well as external speakers from investment banks, the private equity sector and major international corporations. The Firm also launches a new microsite covering emerging markets at emergingmarkets.whitecase.com.

White & Case is ranked the **number one energy law firm** by online energy industry publication *AOL Energy*.

White & Case is ranked the **No. 1 legal advisor**, by deal count, for **M&A transactions in Central and Eastern Europe** in *mergermarket*'s 3Q 2011 league tables.

The Firm's Frankfurt office hosts the "**White & Case Football and Volleyball World Cup**," drawing more than 300 participants from our offices around the world. Our Bratislava office took first place in both football and volleyball.

October

Partner **Grigory Chernyshov** (Commercial Litigation) joins the Firm in Moscow.

Partner **Alex Zhang** (Mergers & Acquisitions) joins the Firm in Shanghai.

Partner **Stefan Koch** (Mergers & Acquisitions) joins the Firm in Frankfurt.

Partner **Carolyn Lamm** (Washington, DC) is named one of the "100 Most Powerful Women" in Washington, DC by *Washingtonian Magazine*.

Partner **Matthew Miner** (Washington, DC) testifies before the US House Subcommittee on Crime, Terrorism and Homeland Security about the need for federal sentencing reform in the United States.

White & Case celebrates its **40th anniversary in London** with a cocktail party at Mansion House, the official residence of London's Lord Mayor.

White & Case scores **22 Tier 1 practice rankings** and **97 "Leading Lawyer" rankings** in the 2012 edition of the *IFLR1000*, an annual guide to the world's leading financial law firms.

Nine White & Case partners are named "**2012 Lawyers of the Year**" by legal peer-review publication *Best Lawyers*.

White & Case is named "**Law Firm of the Year 2011**" by *JUVE*, Germany's most influential legal journal.

White & Case wins a "Highly Commended" award in the "Corporate Law—Emerging Markets 2011" category in the ***Financial Times* Innovative Lawyers 2011** report for its work on client Istrabenz d.d.'s sale of its subsidiary Droga Kolinska, a Southeastern European food and beverage company.

November

Partner **Michael Immordino** (London/Milan) is named "Banking and Finance Lawyer of the Year" by Italian publication *TopLegal*.

Partners **Robert Milne**, **Jack Pace** (New York) and **Jason Kerr** (London) are named "2011 MVPs" by legal publication *Law360*.

White & Case's **New York office** sponsors a corporate counsel summit—"**Investing in Emerging Markets**"—for senior in-house and general counsel for major US corporates focusing on investing in the CEE region.

White & Case is awarded "**Best Law Firm for Alternative Assets 2011**" in Asia by *AsianInvestor*.

White & Case earns **49 Tier 1 rankings in the United States** in *Best Law Firms*, published by US News Media Group and Best Lawyers.

White & Case is ranked **first in *The Deal*'s bankruptcy league tables** through the third quarter of 2011.

White & Case ranks as **one of the most innovative US law firms** and wins awards in the Energy, Finance and Litigation categories in the *Financial Times' US Innovative Lawyers 2011* report.

December

Partner **Thomas Lauria** (Miami) is named an "Outstanding Restructuring Lawyer for 2011" by *Turnarounds & Workouts*, an industry newsletter.

Partner **Bijal Vakil** (Silicon Valley) is appointed to the Judicial Council of the Ninth Circuit.

White & Case transactions are awarded **seven Project Finance International 2011 "Deals of the Year"**, including Europe Rail Deal of the Year, Europe PPP Deal of the Year, Europe Petrochemical Deal of the Year, Middle East & Africa Oil & Gas Deal of the Year, Middle East & Africa Turkish Deal of the Year, Americas Oil & Gas Deal of the Year and Americas Transport Deal of the Year.

White & Case is named "**Russia & CIS Legal Adviser of the Year**" at the European M&A Awards 2011, hosted by the *Financial Times* and *mergermarket*.

White & Case is named "**Airport Finance Law Firm of the Year 2011**" by *Jane's Transport Finance Journal*.

White & Case wins the **Institute for Turnaround Legal Advisor Award for 2011** based on our work on the successful restructuring of Wind Hellas, one of the largest restructurings of 2010.

Executive Leadership

Now serving his second term, Hugh Verrier was reelected Chairman in 2011. He appointed the Firm's Executive Committee to lead the execution of the Firm's strategic priorities. The Partnership Committee comprises nine partners from across the Firm and was elected this year by the Firm's partnership.

2011 Executive Committee

HUGH VERRIER
New York

JACQUELYN MACLENNAN
Brussels

DAVID KOSCHIK
New York

OLIVER BRETTLE
London

2011 Partnership Committee

HUGH VERRIER, CHAIR
New York

DONALD BAKER
São Paulo

OLIVER BRAHMST
New York

NEAL GRENLEY
New York

JAMES HAYDEN
New York

ANTHONY KAHN
New York

JAN MATĚJČEK
Prague

CHRISTOPHER UTTING
London

JASON YARDLEY
London

New Partners

In 2011, 24 new partners joined White & Case and 35 Firm lawyers were promoted to partnership, resulting in a total of 59 new partners for the year.

ABU DHABI
Campbell Steedman
Michael Turrini

ALMATY
Maxim Telemtayev

BEIJING
Baldwin Cheng

BUCHAREST
Lucian Bondoc
Delia Pachiu

BUDAPEST
Edward L. Keller

FRANKFURT
James J. Black
Benedikt Gillessen
Stefan Koch

HAMBURG
Florian Degenhardt
Patrick Narr

HELSINKI
Mikko Hulkko

HONG KONG
Virginia Tam

LONDON
Tom Bartlett
Ian M. Clark
David Crook
Lee Cullinane
Jacqueline Evans
Michael S. Immordino
Kirsti Massie
Louise Mor
Caroline Miller Smith
Kevin Ng
Euan Pinkerton
Jeremy Trinder
Gavin Weir

MEXICO CITY
Sean Goldstein

MIAMI
Richard B. Furey

MILAN
Ferigo Foscari

MONTERREY
Jorge A. de la Garza

MOSCOW
Grigory Chernyshov

MUNICH
Leïla M. Röder
Tobias Freiherr von Tucher

NEW YORK
Douglas P. Baumstein
Donald C. Dowling, Jr.
Stefan M. Mentzer
Elena Maria Millerman
Charles J. Pesant
Carolyn J. Vardi

PARIS
Denise A. Diallo
Bertrand Liard
Hugues Mathez
Matthew Secomb

PRAGUE
Luděk Chvosta
Vít Stehlík

SHANGHAI
Alex Zhang

SINGAPORE
Charlie Wilson

STOCKHOLM
Carl Hugo Parment

TOKYO
Ayako Kawano
Yuji Ogiwara
Jun Usami

WARSAW
Piotr M. Gałuszyński
Paweł Pietkiewicz
Marcin Studniarek

WASHINGTON, DC
Kim Marie Boylan
Richard J. Burke
Matthew Miner
Jane Plomley

Global Presence

Five continents.
Twenty-six countries.
Thirty-eight offices.
One hundred ten years
of global client service.
Innovating for a G20 World.

In 2011, White & Case opened its Milan office, increasing the number of Firm offices worldwide to 38. The Milan office, headed by partner Michael Immordino, focuses on capital markets, banking, finance, restructuring and mergers and acquisitions.

ABU DHABI
ALMATY
ANKARA
BEIJING
BERLIN
BRATISLAVA
BRUSSELS
BUCHAREST
BUDAPEST
DOHA
DÜSSELDORF
FRANKFURT
GENEVA
HAMBURG
HELSINKI
HONG KONG
ISTANBUL
JOHANNESBURG
LONDON
LOS ANGELES
MEXICO CITY
MIAMI
MILAN
MONTERREY
MOSCOW
MUNICH
NEW YORK
PARIS
PRAGUE
RIYADH
SÃO PAULO
SHANGHAI
SILICON VALLEY
SINGAPORE
STOCKHOLM
TOKYO
WARSAW
WASHINGTON, DC

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Many of the images shown in our 2011 Annual Review were taken by our people around the globe. We are pleased to offer photo credit to them for the images they shared.

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This paper is made carbon neutral within Mohawk's production processes by offsetting thermal manufacturing emissions with VERs, and by purchasing enough Green-e certified renewable energy certificates (RECs) to match 100% of the electricity used in its operations.

Our 2010 Annual Review was awarded the "MarCom Platinum Award" and the "GDUSA American Inhouse Design Award." Our 2010 Annual Review website was awarded the "GDUSA American Web Design Award."

All of the information in this Review and more is available on our 2011 White & Case Annual Review website. Please also visit our website for the Social Responsibility Review to learn more about our efforts worldwide in 2011.

annualreview2011.whitecase.com

srreview2011.whitecase.com