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GETTING IT RIGHT IN POLAND

Law firms have to be resourceful to thrive in one of Europe's toughest markets. Here's how they do it.

Greenberg Traurig's Lejb Fogelman (left) and Jarosław Grzesiak

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POLES **APART**

Poland's fast-growing economy seems to present the perfect environment for international law firms. The reality is quite different.

BY CHRIS JOHNSON


SZYMON SZCZESNIAK

Greenberg Traurig's Lejb Fogelman (left) and Jarosław Grzesiak: Building "a more universal firm"

POLAND REPRESENTS SOMEWHAT OF A conundrum for the world's leading law firms. On paper, the country should be home to one of the most attractive legal markets around.

Since emerging from the shadows of the Soviet Union in 1989, Poland's economy has thrived, recording an almost unprecedented 24 consecutive years of growth. Its relentless charge could not even be halted by the global financial crisis, with Poland the only European Union country not to fall into a post-Lehman recession, leading to it being dubbed the "green island." The country's economy has grown 25 percent since 2005 and is now the world's 23rd largest, according to the International Monetary Fund, and unlike many higher-growth markets, such as China and Brazil, there are no regulatory or cultural restrictions imposed on foreign lawyers practicing in the country. To cap it all off, labor and real estate costs are among the lowest in Europe. What's not to like?

Indeed, international firms have flocked to Poland. Large U.S. law firms have 587 lawyers in Warsaw, according to the NLJ 350—a head count that's ahead of the number of lawyers at big American firms in Moscow, Munich or Milan.

But the reality on the ground is not quite as rosy. The big-ticket M&A and IPO deals that first attracted many international firms to the market during the privatization era of the 1990s and early 2000s have all but dried up. Some firms have downsized. White & Case's Warsaw office, for example, has shrunk by around 30 percent in the past three years, to just over 40 lawyers. Attorneys now face the double whammy of fierce competition from rivals and severe fee pressure from clients.

"Poland is a discrepancy—it is a very strong economy but a very tough legal market," says Willibald Plesser, the regional co-head for Central and Eastern Europe at Magic Circle firm Freshfields Bruckhaus Deringer, which doesn't have an office in Poland. "Poland was very attractive when the market first opened up, but firms rushed into Warsaw and it quickly became overlawyered, which led to a dramatic fall in pricing. A market that is damaged in that way does not recover easily. Once clients discover that lawyers can be had for cheap, the prices rarely go back up. The rates in Poland are at the bottom end of what you'd see and it will be that way for a long time."

POLAND'S LEGAL MARKET IS BARELY 25 YEARS OLD. UNLIKE many jurisdictions, where domestic firms have a natural advantage through simply having been around for longer, international practices in Poland have been there from the very beginning.

"It's impossible to describe that period," says Lejb Fogelman, senior partner of Greenberg Traurig's Warsaw office, recalling the end of communism in Poland. "There were no law firms, no stock exchange. Everything changed in one year."

Poland's successful transition to a vibrant market economy led to an influx of global law firms. Allen & Overy; Hogan & Hartson (although the firm's Warsaw office joined K&L Gates in 2010); Weil, Gotshal & Manges; White & Case; and Salans (now Dentons) arrived in the early 1990s, attracted by the prospect of large-scale M&A and IPO work as the country progressively privatized its energy, financial, manufacturing, pharmaceutical and telecom sectors. This period also saw significant investment from the United States, including in the form of enterprise funds that were launched following the inception of the country's Support for Eastern European Democracy act in 1989, and which created lucrative work for Weil Gotshal as the funds' principal adviser. (Weil also scored a slew of privatization deals, as did the teams at White & Case and the now defunct Dewey & LeBoeuf, which joined Greenberg Traurig following Dewey's collapse in 2012.)

International law firms soon came to dominate the legal market. Only a handful of independent firms, including Domanski Zakrzewski Palinka (DZP); Sołtysinski Kawecki & Szlezak; and Wardynski & Partners, managed to establish themselves as regular competitors for upper-midmarket work.

But by the mid-2000s, the privatization wave had subsided, and deal flow has slowed, especially in recent years. In 2013 and 2014, the Polish market only generated six M&A deals worth more $500 million. The aggregate value of all Polish M&A deals slumped to just $5 billion in 2014, according to data provider Mergermarket—the country's lowest level since 2009. In early 2015, Latham & Watkins teamed up with DZP to advise U.S. video content developer Scripps Networks Interactive Inc. on its acquisition of Polish broadcaster TVN, but such marquee transactions are thin on the ground these days: The two-stage $1.97 billion transaction was the largest in Poland for well over a year. And while the total number of acquisitions with a Polish target has remained steady, averaging around 130 deals per year for almost a decade, this is still significantly fewer than one would expect to see in a market so heavily populated by leading international firms. Sweden and Switzerland, which have economies of a comparable size to Poland's, saw 271 and 176 M&A deals in 2014, with aggregate values of $19.2 billion and $65.3 billion, respectively.

The lack of suitable investment opportunities is stifling the country's private equity market, with Sweden's EQT—a client of Germany's Hengeller Mueller, Latham & Watkins, offshore firm Ogier and Austria's Schoenherr, among others—set to close its office in Warsaw.

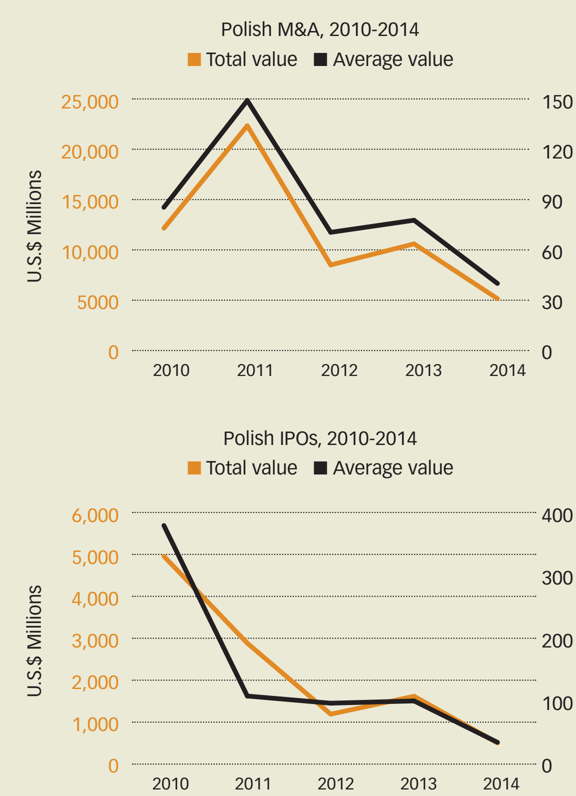
"There's no doubt that there has been a shrinkage of the premium work, which is what we go after," says Barry Wolf, global chair at Weil Gotshal, which acted on more Polish M&A deals than any other international firm in five of the last seven years, according to Mergermarket. "Whenever a market isn't growing, you have to increase your market share. That isn't easy."

The state of Poland's capital markets is even bleaker. The total value of IPOs on the Warsaw Stock Exchange was a paltry $422 million in 2014, according to Mergermarket—a more than 90 percent fall from the $4.9 billion raised in 2010. The largest IPO that year, of Polish aluminium alloy manufacturer Alumetal S.A., which was advised by Polish firm Dubinski Fabrycki Jelenski, raised a mere $96 million. (Weil Gotshal represented the underwriters on the transaction.) There have only been three listings of more than a billion dollars in the past five years.

Allen & Overy corporate partner Jarosław Iwanicki says a reform of the country's pension system in 2014, which saw the Polish government transfer 150 billion PLN ($38 billion) of government bonds and government-backed securities from privately run funds back into state control, has had a significant impact on capital markets.

"The government effectively killed the pension funds," he says. "Before [the reform], we had a system where all employees mandatorily contributed to their pension, so the funds had a steady flow of money. That contributed to the boom of the Warsaw Stock Exchange. The situation is now more challenging."

WITH MORE FIRMS COMPETING FOR LESS WORK, THE pressure on attorney fees has increased considerably. While most legal markets around the world have enjoyed gradual increases in average attorney billing rates over time, Poland has seen a net, real terms decrease over the past 25 years. When international firms first arrived in Poland in the early '90s, they were able to command rates similar to those seen in New York. Top international partners



Source: Mergermarket

in those early days billed at around $600 per hour. Few partners now charge more than $500 per hour.

"When we send secondees to London, they charge more than me," jokes Clifford Chance's Warsaw managing partner Grzegorz Namiotkiewicz.

Almost all deals for Polish clients start with a competitive procurement process, while adviser panels and capped fees are common for all but the most complex work. Government-related entities are particularly aggressive on pricing, lawyers say. And with the majority of the largest corporations in Poland retaining a degree of state control, it's a serious problem.

But in part, lawyers only have themselves to blame. Low-balling is rife, particularly on high-value transactions. "The depression in fees isn't because the market is overlawyered. [Lawyers] created the situation ourselves by being too competitive," says Linklaters Poland managing partner Artur Kulawski.

As with many jurisdictions, pricing is one area where local firms have the advantage over their international peers. Average rates at even the leading independent Polish firms are in the region of 20 percent lower than those of U.S. and U.K. practices, providing clients with a compelling alternative for smaller and midsized deals and nontransactional work.

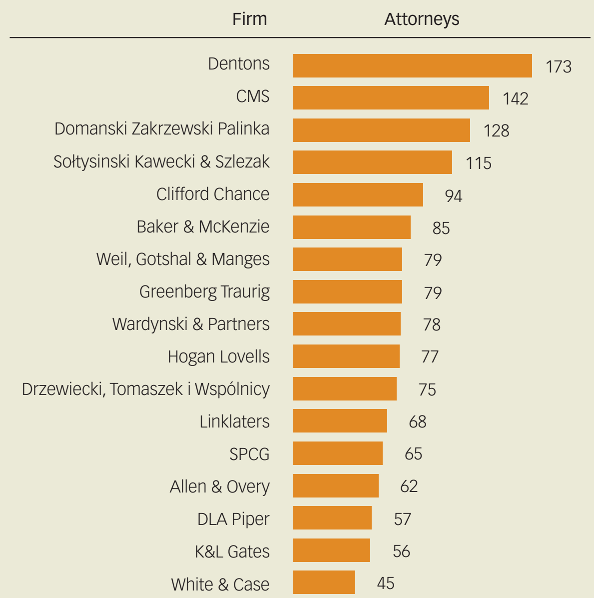
This discrepancy has led to a number of lawyers and teams spinning off from international firms to establish independent boutiques, particularly in areas such as life sciences and employment, which generally command lower fees than corporate, finance and other core practices areas. In 2014, the entire life sciences and pharmaceuticals practice of Baker & McKenzie left the firm to establish Kieszkowska Rutkowska Kolasinski, now one of the market's most successful boutiques. Other recent spinoffs include banking and finance specialist Kycia Legal, which was set up in 2011 by former Linklaters associate Anna Kycia and Grzegorz Kycia, a former European partner at Squire Patton Boggs.

"Being in a big law firm was limiting my practice," says Tomasz Jedwabny, a former partner at CMS, who left in 2014 to launch his own finance and infrastructure projects boutique, Jedwabny Legal. "Having your own firm gives you much more flexibility in terms of rates and the type of work you can do. You also don't have the same problem with conflicts."

The intense pricing environment has put Poland ahead of the curve on alternatives to hourly billing. Malgorzata Surdek, head of the dispute resolution and insurance groups at pan-European firm CMS, says that at least 75 percent of the firm's work in Poland is now handled via alternative fee arrangements. "There has been a shift of power from law firms to general counsel—that has really pushed firms to be more efficient," she says. "Clients want predictability. Working purely on hourly billing is now rare."

CMS has come up with a novel solution to help reduce its cost base and squeeze more profit out of reduced fees. In 2012, the firm opened a second office in Poland, in Poznan. The 13-lawyer outpost, led by real estate partner Wojciech Koczara, handles a mix of property, banking and energy work at greatly reduced cost compared to CMS's office in the Polish capital. The city's location—it is only 270 kilometers from Berlin—also gives it strong links to Germany, Poland's largest trade partner.

Leading Law Firms In Poland By Attorney Headcount



Source: Focus Europe reporting; NLJ 350

"It was an experiment for us—we weren't sure if it was going to work, but it has more than proved its worth," Surdek says, adding that the firm will over time gradually shift resources from Warsaw to Poznan to generate further cost savings.

Although CMS remains the only major international firm to have established a near-shored legal function in Poland, Linklaters in 2014 set up a 60-strong business services center in Warsaw, after deciding not to renew its outsourcing contract with business technology consultant Infosys Limited. The base does not carry out any legal work, but provides the firm's 29 global offices with support in areas such as contact data management and invoicing. (Linklaters does handle some volume legal work through paralegals in its U.K. support center in Colchester.)

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LAW FIRMS AREN'T THE ONLY ONES OUTSOURCING SUPPORT functions in Poland. The country is Europe's leading hub for business process outsourcing, with major corporations flocking to cities like Gdansk, Kraków, Łódz, Poznan and Wroclaw to take advantage of the lower costs, highly skilled workforce, stable economic environment and proximity to key western markets. This has helped contribute to a boom in real estate work, with lawyers being kept busy by a steady flow of logistics, office and retail transactions. Hogan Lovells recently advised real estate developer Panattoni Europe on the construction of two 100,000-square-meter distribution centers for Amazon.com Inc. near Poznan.

One of the market leaders in real estate in the U.S., Greenberg Traurig recently boosted its team in Poland by hiring the teams at Allen & Overy and Norton Rose Fulbright, including respective practice heads Radomil Charzynski and Agnieszka Stankiewicz.

"At Dewey, we were predominantly focused on New York law firm stuff: M&A, banking and capital markets work for foreign clients," says Greenberg's Fogelman of his previous firm. "Since joining Greenberg, we've tried to build a more universal firm and looked for practices with opportunities to grow, like real estate. As M&A and capital markets lawyers, it's easy to look down on real estate, but we've come to realize that it's the best game in town." Greenberg now has 30 lawyers specializing in real estate, giving it one of the largest teams in the market, alongside Dentons.

Paweł Debowski, head of the central European real estate team at Dentons, says his practice is growing at more than 10 percent per year. At press time in November, Denton's Warsaw office was advising TPG Real Estate, the property arm of U.S. private equity firm TPG Capital IP, on its $550 million acquisition of Hungarian retail and office developer TriGranit, one of the largest European asset and management platform deals in 2015.

SINCE JOINING THE EU IN 2004, POLAND HAS BEEN THE largest single beneficiary of EU funding, having received more than $70 billion. Much of this has been spent making much-needed improvements to the country's transport infrastructure. Poland's cohosting of the UEFA Euro 2012 soccer tournament kickstarted a €4 billion project to regenerate the country's infrastructure and to build a new national stadium, which saw Linklaters advising the government. (Eversheds acted for the Polish government on its pitch to host the tournament.)

More class actions and large-scale commercial disputes have suddenly made litigators a hot commodity in Poland.

Such projects are likely to remain a significant source of work for international firms in Poland—particularly for Allen & Overy, Baker & McKenzie, Clifford Chance, CMS and Dentons, which are among the strongest infrastructure practices in the market. The Polish government has recently shown an increased appetite for public-private partnerships, with local firm DZP securing roles on a number of PPP projects, including advising German construction company Hochtief Aktiengesellschaft on the construction of a new district court in the southern Polish town of Nowy Sacz. (Dentons advised Bank Gospodarstwa Krajowego on the project's financing.)

With new, stricter EU targets on CO2 emissions and potentially lucrative subsidies coming into effect, lawyers are also gearing up for an increase in renewables projects. Dentons has advised the European Bank of Development and Reconstruction on the financing of several wind farms in Poland, including the $78 million financing of a 79.5 megawatt project near Pawlowo, one of the largest wind farms in the country.

The sector is attracting investment from Asia, particularly from China. In 2014, Norton Rose Fulbright advised Chinese private equity fund CEE Equity Partners on its $80 million investment in wind park operator Polish Energy Partners SA. CEE said at the time it has $500 million to invest in the region by 2017. (At press time in November, reports claimed that CEE was looking to sell its stake.)

The Polish technology, media and telecoms sectors have also provided lawyers with a steady flow of transactional work, including three of the five largest M&A deals since 2013, according to Mergermarket, while consolidation within the country's banking sector has generated M&A and restructuring assignments.

For international firms, litigation in Poland is a new bright spot. In the past, Polish disputes tended to be too small—and not sufficiently lucrative—to interest U.S. or U.K. practices, but the continued growth of Poland's private sector companies has led to an increase in larger-scale commercial disputes activity. There has also been a growth in class actions since the country passed legislation allowing collective proceedings in 2009. CMS, for instance, fields a team that specializes in defending financial institutions in such cases.

Litigators have suddenly found themselves in demand in the lateral market. In one of the market's largest lateral moves for years, the bulk of White & Case's Polish litigation practice, including former office co-head Paweł Pietkiewicz and three local partners, recently left the firm for Baker & McKenzie and Greenberg Traurig. Pietkiewicz joined Greenberg to launch a standalone disputes practice for the firm, while three of the five partners that joined White & Case from CMS in 2011 to establish that firm's litigation practice have moved to Baker & McKenzie. The two other ex-CMS partners, Michał Subocz and Paweł Samborski, remained at White & Case, with Subocz appointed as its new disputes head.

Yet overall, as the Polish legal market continues to evolve, top international firms find themselves in an uncomfortable lull. Although the state now accounts for less than a third of Poland's GDP, the country's private sector has yet to mature to a size that generates consistently profitable work for elite law firms.

Lawyers in Poland remain bullish over the market's long-term prospects, however. The International Monetary Fund predicts that Poland's economy will continue to grow at around 3.5 percent for the next four years—almost twice the forecasted EU average of 1.8 percent. It is worth noting that in 2008, when Linklaters ditched its CEE outposts in the Czech Republic, Hungary, Romania and Slovakia—now part of Kinstellar—it chose to keep just one office in the region: Warsaw. And despite the market's challenges, Freshfields Bruckhaus Deringer, Dechert and Jones Day have all investigated possible office launches within the past four years, according to three sources with knowledge of the situation. (Dechert and Jones Day declined to comment. Freshfields did not respond to requests for comment.)

Under the latest EU budget, announced in March 2013, Poland will receive a further €82.5 billion in funding up to 2020. The country's embattled lawyers will have to fight hard to get their share of the spoils.

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