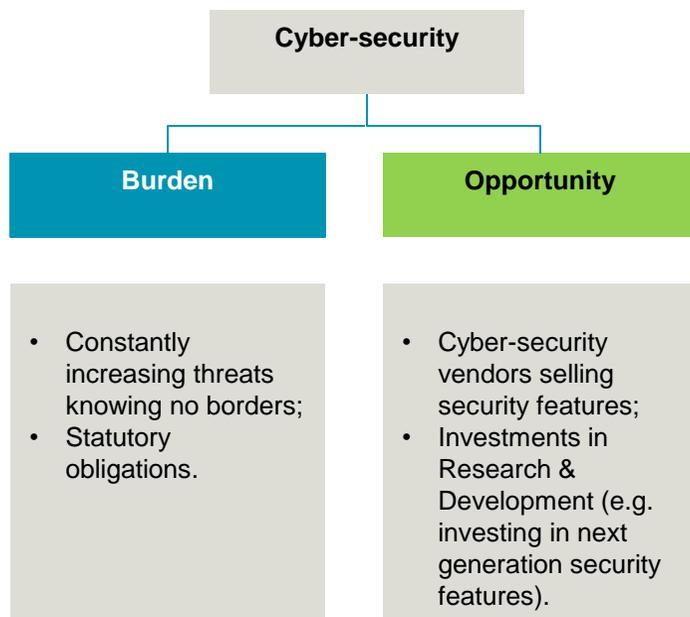


WOLF THEISS

*Supporting the international growth and development of
Entrepreneurial Businesses*

Cybersecurity and Intellectual Property

Cyber-security in the private sector – an issue of national importance



Private companies, small and large, are now regularly subject to cyber attacks, often focused on intellectual property and business secrets (e.g. infringement of intellectual property, thefts, industrial espionage, etc.). These attacks apply not only to the core target business, but also to suppliers, financial consultants, agents and legal advisors working with that business.

Protecting against cybersecurity is also a national security issue for governments and there are a number of new legislative initiatives aim to encourage businesses to put security issues high on the corporate agenda including a new Bulgarian National Cyber-Security Strategy and EU Cybersecurity Directive*. The EC Directive requires each Member State to ensure that ‘operators of essential services’ (e.g. critical infrastructure operators in sectors such as energy, transport, banking and health) and ‘digital service providers’ (e.g. e-commerce platforms, cloud computing platforms, search engines) (i) take appropriate technical and organizational measures to manage cyber-security risks and minimise the impact of incidents and (ii) notify competent authority without undue delay.

It is important each private entity to take precautionary measures such as: (i) to identify its main assets that could be subject of a cyber-attack; (ii) to asses the weaknesses of its information systems and networks (both hardware and software) and (iii) to take steps to improve its cyber-security (e.g. investing in its own R&D team, buying cyber-security features, following sector’s best practices, etc.).

* Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union

Intellectual property – who owns ‘your’ intellectual property?

Copyright

- Type of copyright work (computer program, photographic work, audio-visual work, etc.)?
- Copyright work created under employment or a work made-for-hire (e.g. pursuant to Bulgarian law copyright in computer program originating under employment belongs to the employer, however, it is not so clear when a computer program is created under a civil contract for assignment of work)?
- Which is the country of origin (the developing process took place in one country only or in several countries)?
- For which country a protection is sought (copyright work will be used in the entire EU or in Bulgaria only)?

Trademark

- Type of trademark (individual, service, co-branding, collective or certification mark)?
- Registered or non-registered trademark?
- Protection granted for the territory of one country only, for the territory of the entire EU or for the territory of a few countries (e.g. national trademark registered for the territory of Bulgaria, European Union trade mark, international mark)?
- Is the company still using the trademark (e.g. pursuant to Bulgarian law genuine use of a trademark should not be ceased for a continuous 5-year period – or it could be revoked)?

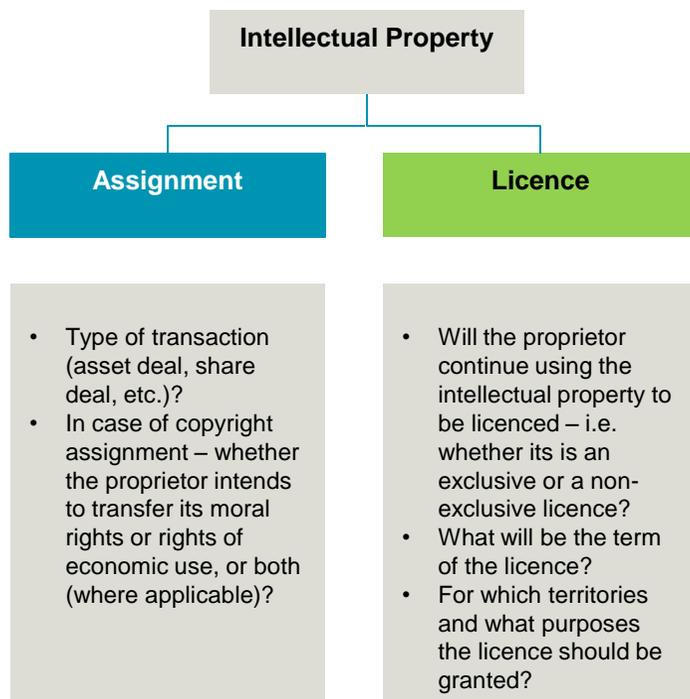
Design

- Whether the design could be protected under respective industrial design law or it might be protected as a copyright work?
- Does the design meet the novelty and originality requirements (where applicable)?
- Registered or unregistered industrial design (where applicable)?
- Protection granted for the territory of one country only, for the territory of the entire EU or for the territory of a few countries (e.g. national design registered for the territory of Bulgaria, Community design, international design)?

Patent (Utility Model)

- Does the invention meet the requirements to be granted patent protection or it might be registered as utility model?
- Patent granted has effect in one or in a few countries (e.g. registered under the Bulgarian law, the European Patent Convention, Patent Cooperation treaty)?
- If a protection for the territory of the entire EU is to be sought, it should be noted that currently in the EU there are no uniform patent laws?
- What is considered as patentable invention (e.g. pursuant to Bulgarian law computer programs are not patentable)?

Assignment or licence of intellectual property



Private entities investing in intellectual property often aim at recovering investments and making profit by assigning that intellectual property or granting a third party right to use it for a consideration. The main difference between the two transactions is that by assigning the intellectual property the proprietor transfers its ownership of the property, while under a licence agreement there is no transfer of property but only authorisation the said property to be used.

Transfer of registered intellectual property in Bulgaria:

Intellectual property that is subject to registration procedures (e.g. trademarks, patents, etc.) can be both assigned and licenced.

Transfer of copyright in Bulgaria:

On the other hand, the approach with respect to transferability and assignability of copyright of the civil law system differs from the approach adopted by the common law system.

1. In some countries, such as the UK, copyright could be transferred, while in other countries, such as Germany, Austria, Bulgaria transfer of copyright is not allowed (the laws of the last two provide one exception - where the transfer of copyright takes effect through an inheritance).
2. In some countries, such as France, Poland, where transfer of copyright is generally allowed, actually one could transfer only its economic rights of use but not its moral rights which are inalienable.

Generally, whether a copyright is transferable and to what extent should be governed by the laws of the country for which a protection is sought.

Non-intellectual property data



Some works (e.g. ideas, data, methods, processes, etc.) developed and used by private entities cannot be protected under intellectual property laws.

In many cases the only way these assets to be protected is by not disclosing them and taking practical and compliance steps to maintain their quality as trade secrets. Currently the existing laws on protection of trade secrets differ across the EU. Differences appear not only in the legal means of protection and respective liability but also in the general understanding what a trade secret covers.

EU law: The new Trade Secret Directive* (to be implemented by all Member States by 9 June 2018) provides an uniform definition of 'trade secret' to be applied by all Member States and stipulates that all Member States should set civil measures, procedures and remedies that could be applied for by any natural or legal person which is a trade secret holder for protection against unlawful acquisition, use and disclosure of its trade secret.

Bulgarian law: Trade secret definition in the Bulgarian Competition Protection Act is quite similar to the definition set in the Directive. However, trade secrets protection under Bulgarian law covers only business-to-business (B2B) relations between competing undertakings.

* Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure

Strategic advice to clients across the region



- Real presence on the ground – our offices in 13 countries in the CEE/SEE region enable us to provide our clients with fully integrated and efficient service, irrespective of the jurisdictions involved
- One of the largest and most experienced teams in the CEE/SEE region – over 340 lawyers, focused on not only meeting but exceeding clients' expectations wherever possible
- Comprehensive full-scope legal advice to help make your opportunities happen
- OUR VISION: To be instrumental in building and safeguarding the future prosperity and success of our clients, our people and the markets in which we choose to operate



Austrian Law Firm of the Year: 2009, 2012 & 2013
Austrian Client Service : Law Firm of the Year 2011



Law Firm of the Year: Austria, 2014
Law Firm of the Year: Central Europe 2010 & 2014
Law Firm of the Year: Eastern Europe & The Balkans, 2009, 2012 & 2015



Austrian Law Firm of the Year: 2011, 2012, 2015 & 2016
Czech Republic Law Firm of the Year: 2010
Hungarian Law Firm of the Year: 2009

Expertise – IP & IT

TRADEMARKS

Intellectual Property assets are becoming more and more important to our clients. Our team is used to handling groundbreaking cases related to trademarks and 3D trademarks. Our comprehensive advice includes trademark portfolio management (including prosecution, clearance and monitoring services), protection and strategy, litigation before courts and patent offices, anti-counterfeiting and M&A related to trademarks, all throughout the CEE/SEE region.

PATENTS

Wolf Theiss has a very active and diverse patent practice. Our work covers all aspects of patent law with a focus on litigation, but also includes acquisitions, licensing and transfers of patents, and dispute resolution services, with a particular focus on infringement proceedings, preliminary injunctions and entitlement issues. We also provide validity and infringement opinions and advice on employee inventions, as well as on pledge agreements on patents and utility models in M&A transactions.

COPYRIGHTS

Our legal expertise covers both the traditional offline sector and new media online. We have extensive experience in devising and advising on copyright protection in relation to literature, art, music, film and TV as well as computer software and online media. In addition, our team consistently demonstrates its strength in handling complex cross-border disputes and landmark cases, including copyright infringement proceedings.

UNFAIR COMPETITION

Advising on unfair competition is one of the team's strengths. We regularly advise clients on matters including misleading and comparative advertisements, sole position advertisements, misappropriation of trade secrets and confidential information and other unfair business practices. Our clients come from traditional sectors such as retail but also include the pharmaceutical industry, software companies and clients from new media online.

IP LITIGATION

One of our major strengths is IP litigation. We represent clients in all types of intellectual property claims, including contract disputes and unfair business practices. In addition to trademark and patent litigation, we represent clients in more heated disputes over issues such as ownership rights and personal rights protection in the media. Our team offers the full range of dispute resolution services including arbitration and alternative dispute resolution proceedings.

LIFE SCIENCES

With our team's broad transactional experience, we guide our clients through some of the most significant cross-border life sciences transactions by advising them on the complex issues regarding IP, regulatory and compliance requirements that life sciences companies face in financing, licensing, M&A, joint ventures and strategic alliances. We regularly advise on advertising and promotional law as well as the self-regulatory rules for medicinal products and medical devices.

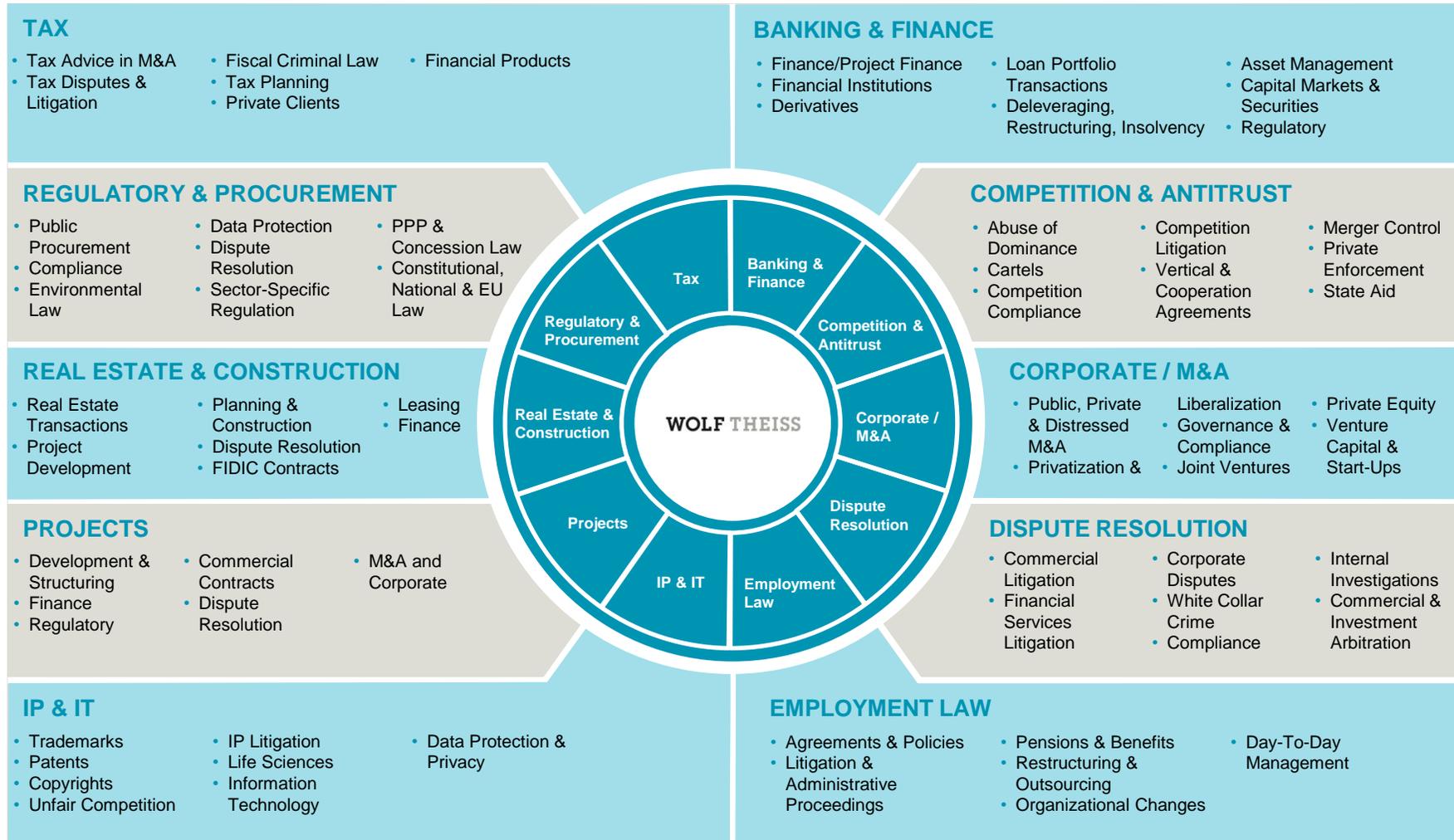
INFORMATION TECHNOLOGY

Our firm stands for cross-border corporate solutions in IT law in the CEE/SEE region. Our services include, but are not limited to, advice and representation on: e-commerce & new media, corporate IT solutions, outsourcing, software and hardware, licensing agreements, cloud computing, cyber security, online business solutions, gaming, online entertainment, telecommunications and media law, as well as e-health and IT services for the healthcare industry.

DATA PROTECTION & PRIVACY

Over the past decade, the significance of data protection and privacy laws for business life has risen dramatically. Dealing with related issues on a constant basis, we watch for relevant developments, since as a response to both technical developments and the ever-increasing number of data breaches, new and strict regulations are frequently enacted that require companies to treat privacy policies and data security as high priorities, while respecting their business needs.

Supported by a comprehensive legal foundation



If you have any questions regarding **WOLF THEISS**, please do not hesitate to contact our experts:



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