



Legal Framework for Trade and Investments

KINSTELLAR



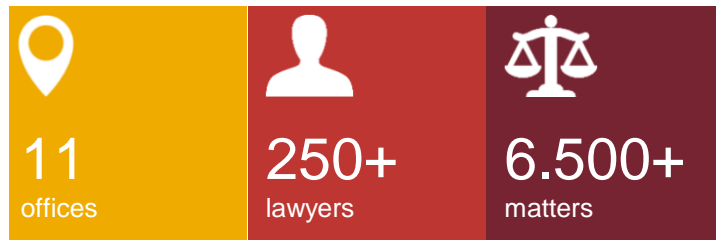
Kinstellar

Introduction

Kinstellar is a leading independent law firm in Emerging Europe, Turkey and Central Asia, with offices in **Almaty** and **Astana** (Kazakhstan), **Belgrade** (Serbia)*, **Bratislava** (Slovakia), **Bucharest** (Romania), **Budapest** (Hungary), **Istanbul** (Turkey), **Kyiv** (Ukraine), **Prague** (the Czech Republic), **Sofia** (Bulgaria) and **Tashkent** (Uzbekistan).

Operating as a single fully integrated firm, Kinstellar delivers consistently high quality services across all jurisdictions in an integrated and seamless style. We are particularly well suited to servicing complex transactions and advisory requirements spanning several jurisdictions.

Our key highlights:



Real Depth

The range and breadth of our specialist practices and sectors set us apart in Emerging Europe and Central Asia.

Sectors:

Aviation	Asset Solutions	Automotive & Industrials
Banks & Financial Institutions	Energy & Natural Resources	Infrastructure
Life Sciences & Healthcare	Private Equity	Real Estate
Technology, Media & Telecomms		

Practices:

Banking, Finance & Capital Markets	Competition & State Aid	Compliance, Risk & Sensitive Investigations
Dispute Resolution	Employment & Labour Law	Energy & Natural Resources
Infrastructure & Projects	Intellectual Property	M&A & Corporate
NPLs & Distressed Assets	Real Estate, Construction & Planning	Restructuring & Insolvency
Tax	Technology, Media & Telecomms	White-Collar Crime

Out of Area

But certainly not out of our depth. Quite the contrary.

We have experience in **coordinating external legal counsel in jurisdictions where we do not have a local presence**. Kinstellar Prague would be your **single point of contact** in order to ensure the unified approach.

In case of any legal **issues under UK law** we working with one of largest and best UK law firms **Osborne Clarke**.



Osborne Clarke is a leading UK law firm receiving **top tier ranking** in the respective fields by all the major ranking companies, **offering a full range of services on domestic and cross-border work**.

Overview

- BREXIT
- International Treaties and BIT
- Enforcement of Decisions / Judicial Cooperation / Arbitration
- Verification of Documents / Apostille
- Corporate Law
- Debt financing / typical security package
- IP



Brexit



2016 Referendum – UK voted to leave the EU

EU Withdrawal Act – UK Government will not be able to ratify the Withdrawal Agreement without the Parliament

Draft Agreement on the withdrawal of UK from the EU and the European Atomic Energy Community – transition period until 2020

UK after Brexit – various possible solutions

Application of EU law – after Brexit no longer applicable unless it is adopted by UK

- Proceedings before effective date of Brexit should be handled under law of EU

Corporations abroad

- Corporations established under form of UK law abroad should transform into proper foreign entity (Ltd.-s.r.o. etc.)

Potential implications for Contracts

Czech Legislation

„Brexit Act“ – Act on adjustment on certain relations regarding UK exit from the EU

- Implements a transitional period until 2020, protecting current rights and status of UK citizens in the CR
- CR expects reciprocity for its citizens from the UK
- It will expire on the date of which the Withdrawal Agreement will enter into force, or on 31 December 2020

International Treaties

Energy

- Energy Charter Treaty (1994)
- International Energy Forum Charter (2011)

IP

- Member state of the World International Patent Organisation (WIPO, 1883)
- Member state of the European Patent Organisation (EPO, 1977)

Finance

- Agreement of the International Monetary Fund (IMF, 1945)
- Member states of the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC) and European Bank for Reconstruction and Development (EBRD) (recipient of funds)

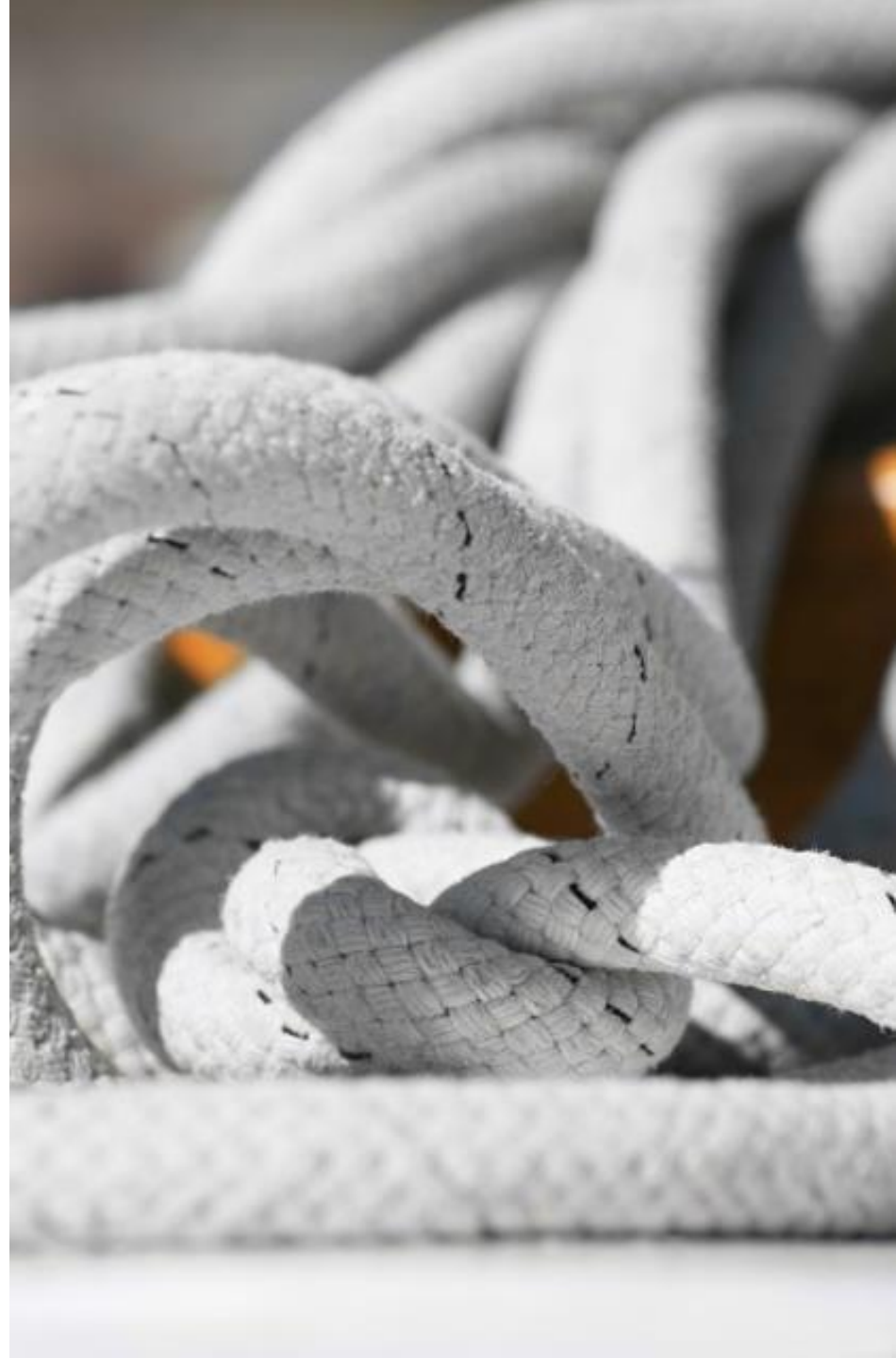
Terrorism and Corruption

- UN International Convention for the Suppression of the Financing of Terrorism (1999)
- UN Convention against Corruption (2003)



BITs

- Agreement between the Government of the Czech and Slovak Federal Republic and the Government of the United Kingdom of Great Britain and Northern Ireland for the Promotion and Protection of Investments (1992)
- Convention between the Government of the Czech and Slovak Federal Republic and the Government of the United Kingdom of Great Britain and Northern Ireland for the **Avoidance of Double Taxation** with respect to Taxes on Income and Capital Gains (1990, **bilateral**)



Enforcement of Decisions / Judicial Cooperation X

- **New York Convention** on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) ✓
- Regulation No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (**Brussels Regulation**) ✓
- **Hague Convention** of 30 June 2005 on Choice of Court Agreements (Hague Convention) ✓
- **Enforcement after Brexit** remains unclear - particularly important for clients seeking to enforce a foreign judgment in the UK to consider which of the many procedural regimes would apply, in order to determine the correct procedural route to be taken to achieve enforcement.



Verification of Documents / Apostille

Hague Convention on Apostilles

Verification of **UK documents** for use in the Czech Republic

- The Legalisation Department of the Foreign and Commonwealth Office

Verification of **Czech documents** for use in the UK

- Ministry of Foreign Affairs of the Czech Republic (documents issued by administration)
- Ministry of Justice of the Czech Republic (documents issued by judicial authority or notary)



Most Common Types of Entities

Unincorporated

- Sole Trader
- Partnership
- Limited Partnership

Incorporated

- Limited Company
- Company Limited by Shares
- Company Limited by Guarantee
- Limited liability partnership

Companies Act 2006



Limited Liability Company

Private Limited Company (Ltd.)

- Liability of members is limited to the amount, if any, remaining unpaid on the shares held by them
- Minimum share capital is £1
- One director at minimum

Public Limited Company (Plc.)

- Minimum capital £ 50.000
- Shares may be issued to the public and may be listed on a stock exchange
- Two directors at minimum

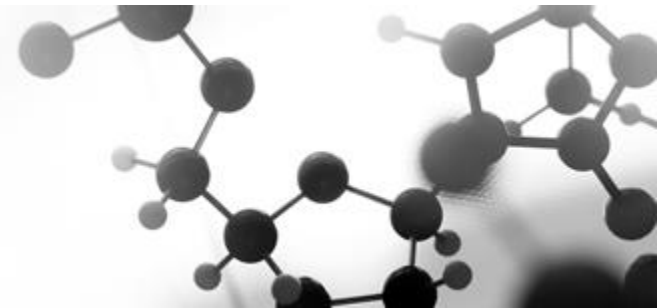
Establishing a Company

Private Limited Company

- How to incorporate:
 - Minimum of one director
 - Simple constitution (within 24 hours)
 - Unlimited capacity
 - May dispense with requirement to hold a physical AGM
 - May not offer its debentures or shares to the public

Branch

- Not a separate legal entity
- Any company registered abroad with a degree of physical presence (branch or place of business) in the UK is required to register as a UK establishment



Restrictions on foreigners owning shares / real estate

SHARES

- No restrictions
- **Ultimate beneficial ownership** of shares is currently required to be made **public** for all shareholdings, via the UK's „Persons of Significant Control“ register.
- It is therefore not possible to veil the ultimate ownership behind a foreign controlled vehicle.

REAL ESTATE

- No restrictions



Debt Financing / Typical Security Package

Debt financing

Most debt financing in the form of a loan is based on leveraged finance, investment grade or real estate finance versions of the **LMA documentation**.

Larger private equity sponsors and financial institutions may also have their own templates - these tend to follow the LMA form.

Typical security package

In a leveraged finance context, the typical security package consists of an all-asset debenture comprising the most appropriate forms of security to deal with each relevant asset class. This is typically a **mortgage** or a **charge** (including a **security assignment**).

A legal mortgage typically transfers legal title to the relevant asset. **Charges** are legally characterised either as „**fixed**“ or „**floating**“. The latter are capable of extending to all assets (including goodwill) of a business from time to time. However, they have the disadvantage of ranking, and recovering in an insolvency, behind a fixed charge in respect of an asset. Security is typically granted in favour of a **single security trustee**.

IP Protection

Trade marks

- The same rules apply as under the Trade Marks Directive. Also common law rights are available for unregistered trade marks.

Copyright

- There is no need to apply for copyright; protection arises on creation.

Patents

- The UK is an EPC member and part of PCT

Designs

- CDR applies for Community Designs. UK registered designs offer equivalent protection. Unregistered UK designs are available for a shorter period of protection



Questions?



Thank You!



Zuzana Valoušková

Senior Associate

+420 221 622 257

zuzana.valouskova@kinstellar.com

We would be pleased to provide you with any further information about any of our offices, lawyers, practice areas or expertise (as well as our fees policy) which you might require. Should you have any questions, all contact information is available on: www.kinstellar.com

KINSTELLAR

