

Light and shade

Green

2 August Russia gave out the greenest signal yet that it is ushering in a new era of transparency as it has finally succeeded in joining the World Trade Organisation (WTO). While the Russian government has once welcomed certain ways to increase transparency in the business sector, there are concerns in the legal market that other changes will give rise to conflicts and even red tape.

bonus

Russia's largest state-owned bank shocked the legal market last month when it published the list of its inaugural legal roster on its website. In contrast to most other banking panel lists, notorious for their secrecy, Sberbank took the unorthodox step of publishing the names of all 13 sub-panels.

Many lawyers have welcomed this development and what it means for the legal market.

Panel reviews are new to many companies and Sberbank has been one of the pioneers in introducing the concept of running panels in the country," comments Oxana Balayan, whose firm is a number of spots on the cover panel.

Sberbank is not alone, however, in considering panels for the first time since the Russian government brought in legislation to force state-owned companies to be more transparent about how they operate in business, according to Brian Handz, managing partner at Morley's Moscow office.

"We've had a state procurement process for a few years now and state-owned agencies are required to have transparent procedures, but it was earlier this year that the law was amended to apply to state-owned

The Russian legal market faces a new era as the government opens the door to greater business transparency, but not everything is open to scrutiny



corporations," he notes. "State-owned corporations are a special animal under Russian law, whereby the state owns a controlling stake. This covers a large number of famous companies, many of which are wonderful targets for law firms."

Certainly, the growing tendency of Russian companies to use requests for proposals (RFPs) in recent years has not gone unnoticed in the legal profession.

"RFPs and tenders for legal services are more widely used in Russia since Russian companies started adopting international standards in retaining outside legal counsel, which also helps them to reduce legal fees," comments Alexander Nadmitov, managing partner at Nadmitov Ivanov & Partners.

To Nadmitov it is only logical that state-owned companies and banks have already jumped on the bandwagon.

"Since state-owned companies and banks are quite active players in the Russian and international M&A and finance areas – as the Rosneft acquisition of TNK-BP shows – it is not surprising that many RFPs and tenders for legal services have come from state-owned

"There are requirements for state-owned companies to disclose information about suppliers. This has been quite a challenge for firms"

Oxana Balayan

In brief

Russia has entered the World Trade Organisation and the government is also ushering in a host of reforms designed to improve the country's business environment. The changes are providing both headaches and opportunities for lawyers.

companies and banks," he adds.

The legislation is still bedding in as companies get used to the idea of establishing procedures for hiring law firms and there have been some teething problems, according to Zimble.

"Some companies are encountering difficulties in converting to the new system and there are situations in which state-owned corporations don't have the right procedures in place for hiring lawyers," he comments. "The rules are rather vague: companies understand they have to announce a tender and have to make it possible for legal service providers to compete for work, but it's been a bit of a shock for clients and law firms."

Moreover, Balayan notes that since the elections earlier this year, the Russian government's increasing pressure on state-owned companies to make their procedures more transparent has had a knock-on effect on law firms.

"Following the elections there have been more requirements for state-owned companies to disclose information about their suppliers as the state wants to see what related parties are doing," she says. "Law firms fall into the category of 'suppliers' and as a result have had to disclose information on their partnerships and so on. This has been quite a challenge for many firms."

As Jennifer Handz, managing director of Chadbourne & Parke's Moscow office, adds, law firms are

now required to provide a lot more information when tendering for work than they did in the past.

"We have not noticed an increase in the number of RFPs we are responding to from state-owned banks and state corporations, but the requirements of the RFP are more onerous and necessitate additional paperwork," she notes.

Structured benefits

Although it may take some time for companies and law firms to get used to the new rules and legislation, most lawyers are optimistic that their firms will reap the results of more structured and transparent procurement procedures.

"There have been a lot of tenders and RFPs requesting a lot of detailed information, and from our point of view this has been really positive, especially in terms of the banks, as it has given us the opportunity to launch new relationships, it brings more openness and transparency, and it gives firms like ours a shot at working for the banks," remarks Sebastian Rice, partner in charge of Akin Gump Strauss Hauer & Feld's Moscow office.

"It has been a bit of a closed shop, but the fact that procurement processes are now being audited should make it much more of a level playing field. Previously, firms were just called to do the work and companies did not have to show any reasoning behind why they picked a particular firm, whereas now they will have to. It's going to be a much more transparent process."

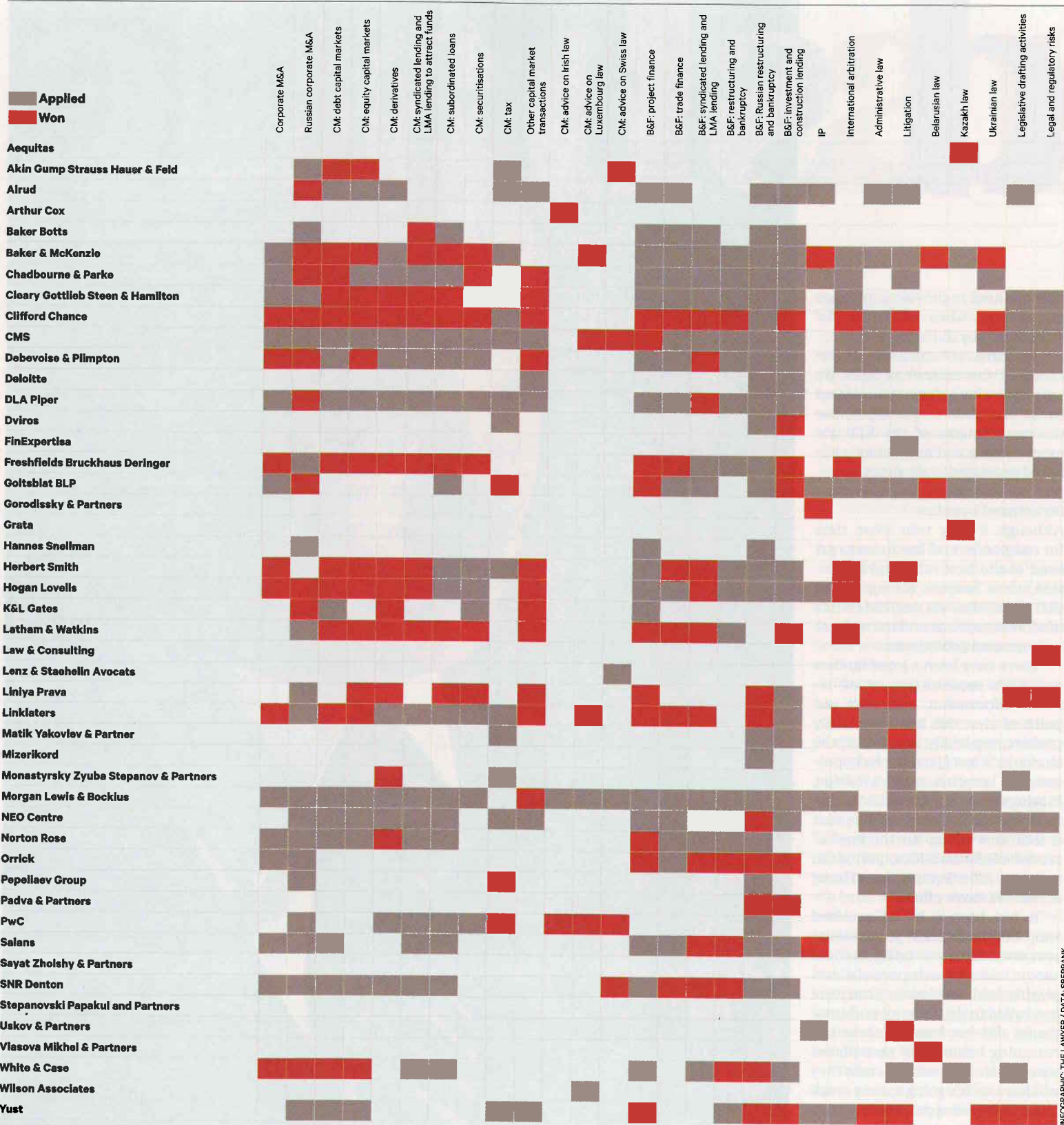
"Getting on a panel in Russia is often down to chance, history and relationships that go back a long way, so this trend will give other firms an opportunity," notes Balayan.

"RFPs are starting to catch on and this is creating a more competitive tender process," adds Rice. "It may also stop complacency as historic relationships are going to be challenged."

Putin: his presidential decree rules state-owned companies out of providing information to foreign regulators

Russia

Sberbank panel review: the winners and losers



Nadmitov agrees that the rise in RFPs will be a good thing for the Russian market.

"Generally, RFPs and tenders for legal services lead to more competition, lower legal fees and more transparent procurement of legal services if they are duly and fairly organised."

Nonetheless, Zimble highlights that a growing number of panel processes may also give rise to conflicts in the local market.

"Many law firms represent multinationals and if they have a joint venture with a company, this could lead to conflict issues – law firms may have to pick a side and this

could rule out certain firms working with foreign investors," he says.

Keeping schtum

While transparency is slowly becoming the order of the day in terms of panel processes, elsewhere in Russia some things are still less than open. A recent presidential decree

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Special report

Russia

ordered state-owned companies not to provide information to foreign regulators without authorisation from the Russian government.

According to reports, the decree came about as a result of an investigation by the European Commission (EC) into alleged anti-competitive practices by Russian energy giant Gazprom in the Central and Eastern European gas markets and was designed to protect Gazprom from the probe by ensuring that the commission had to go to the Russian government first to request the information it required.

The decree's wider ramifications on the Russian market give some cause for concern, says Zimblar.

"There's no doubt it was designed to protect Gazprom in not co-operating with the investigation, but the implications are quite broad and foreign regulators aren't going to take this lying down," he stresses. "It's clearly been done because Russia is unhappy that Europe has investigated Gazprom, but the decree applies to all strategic enterprises and the effect is that Gazprom can block the investigation."

Zimblar believes the decree was not carefully considered and may have damaging consequences for Russian companies in the wider context of the European market.

"This has put Russian companies on high alert as any company that does acquisitions in Europe will need to apply for EU comp-

etition approvals and often merger clearances, and if it has got to give information to the regulators the whole process will be slowed down," he says. "This will have serious ramifications as it doesn't just apply to requests for information, but also issues such as any changes to contracts or sales of property, all of which will now have to be sanctioned by the Russian government."

Serve to protect

Nadmitov, however, thinks the decree may help protect the interests of Russian companies operating in the European market.

"The decree will give Russian state-owned companies incorporated in Russia some additional protection against requests for information coming from foreign state agencies," he says. "For example, if the EC conducts an antitrust investigation into a Russian company and requests information from it, the Russian company can refer to this decree as a legal mechanism that prevents it from supplying information. Therefore, the decree can mitigate the risk of a Russia-based company being held to be an unco-operative entity which intentionally or negligently fails to provide information in response to the commission's request, which could result in negative consequences for the company."

"In such a way the decree can protect companies incorporated in Russia, although it might be less helpful in the case of foreign subsidiaries of Russian strategic companies which will still be subject to foreign regulation and have to comply with the requests of foreign state agencies. In any case, foreign regulators can alternatively seek information from foreign counterparties of a Russian company."

While Nadmitov is sceptical as to the impact the decree will have on the local legal market, it will provide some food for thought.

"We don't think this decree will have a great impact on the Russian legal market, but last year's raids by the EC on European subsidiaries of Gazprom may make Russian companies operating in Europe think about moving their European trading and logistics subsidiaries to more neutral jurisdictions, such as Switzerland, where the EC cannot act without the involvement of the Swiss authorities," he says.

For Alexander Muranov, managing partner of Muranov Chernyakov & Partners, the decree will have a number of consequences.



"The new rules are rather vague: it's been a bit of a shock for both clients and law firms"

Brian Zimblar

Key figures: Russia

GDP (2011)

\$1.86tr

Inflation (2011)

8.4%

Population (2011)

141.9m

Life expectancy at birth

69

Unemployment rate (2011)

6.5%

Source: World Bank, OECD, Federal State Statistics Service

"It will add work for law firms, result in more expense for their clients subject to the decree and make these clients act more cautiously in litigations or administrative proceedings," he stresses.

How the decree will affect arbitration proceedings is an even more compelling question, Muranov notes.

"The most interesting issue is connected with arbitration involving clients subject to the decree, not litigation," he says. "The decree as such does not directly affect arbitral proceedings: it mentions only restrictions on providing information to foreign state authorities or international organisations."

While the wording of the decree may leave some questions unanswered, Muranov is in no doubt that it will be enforced by Russian courts.

"This decree can be invoked by the Russian courts in cases of award enforcement where the relevant information related to the arbitral proceedings was communicated to a non-Russian court, such as in a procedure on setting aside an arbitral award," he says.

Although the decree may have caused some controversy, Balayan believes that it is unlikely to deter foreign investors. Rather, they will simply have to give themselves more time to deal with the additional red tape.

"It's difficult to judge at this stage as it slightly lacks legal ground and may work against them, but I think the market remains attractive to foreign investors – they just need to plan in more time to resolve these formalities," she concludes.



"There have been a lot of RFPs requesting information and from our point of view this has been a positive, giving firms like ours a shot"

Sebastian Rice

"Tenders for legal services are now more widely used, which helps to reduce legal fees"

Alexander Nadmitov



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