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IN-DEPTH ANALYSIS OF THE NEWS AND NEWSMAKERS THAT SHAPE
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Inside Out: KZP Helps Echo Polska Properties Acquire Seven Office Buildings in Poland

The Deal:

In November 2016, CEE Legal Matters reported that Kochanski Zieba & Partners had advised Echo Polska Properties N.V. on its EUR 265 million acquisition of seven office buildings in Krakow, Gdansk, Katowice, and Lodz from Echo Investment S.A. The sellers were advised by Weil Gotshal & Manges.

We reached out to Kamil Osinski, the Partner at Kochanski Zieba & Partners (KZP) who led the firm's team on the acquisition, for more information.

CEELM: How did you and Kochanski Zieba & Partners become involved with Echo Polska Properties on this matter?

K.O.: At the beginning of the year we represented Redefine Properties, a South African real estate fund, on their acquisition of 70% shares in Echo Polska Properties (at that time called Echo Prime Properties), a Dutch company holding 18 commercial real estate assets throughout Poland. The transaction continues to be the largest

commercial real estate transaction ever in the Polish market. In view of the success of the transaction and the fact that Echo Polska Properties' largest shareholder is Redefine Properties (our original client), we have been retained to act on many of Echo Polska Properties' continuing and future real estate transactions. Moreover, in the original transaction, a mechanism was agreed whereby Echo Polska Properties (EPP) would have the "right of first offer" on 10 commercial (office and retail) real estate properties. It is seven of these properties that the current transaction relates to – therefore, we had first-hand knowledge of the properties and the terms agreed regarding the "right of first offer" (ROFO).

CEELM: What was your initial mandate when you were retained for this project?

K.O.: We were appointed as legal advisers at a very early stage and were involved in term sheet negotiations, which allowed us to highlight any commercial or legal issues from the outset. This proved highly beneficial, and we were able to manage the pro-

ject effectively knowing our client's intentions. On occasion we have been instructed to represent a client at a later stage in the transaction, which can prove problematic (but certainly not impossible), as you are forced to try to get up to speed with a transaction quickly.

CEELM: Who were the members of your team, and what were their individual responsibilities?

K.O.: Due to the structure of the transaction, our legal assistance covered not only real estate issues but also transaction structuring and financial issues. For that reason the team dedicated to this transaction included lawyers from the Real Estate Department and the Banking and Finance Department. The whole team was led by myself as the Partner of the Real Estate Department and Senior Associate Andrzej Zajac. We were responsible for deal management, preparation of the structure of the transaction, and negotiation of the transaction documents. We were supported by Associates Marcin Rzyzsko, Katarzyna Krolikiewicz, and Malwina Stajniak, who



Kamil Osinski, Partner,
Kochanski Zieba & Partners

were generally responsible for complex due diligence of each of the acquisitions. The Banking and Finance team led by Partner Szymon Galkowski and Senior Associate Klaudia Szymannska-Rutkowska was responsible for all financing aspects of the transaction.

CEELM: How was the agreement structured?

K.O.: As we are currently in the middle of the interim period between conclusion of the preliminary sale agreement and final sale agreement, not all details of the transaction may be provided. However, in general Echo Investment indirectly holds the shares in the special-purpose vehicle that is the direct holder of the real property on which the relevant office projects are being developed. EPP indirectly invested some amount of the equity required by the SPV to complete the development of the office projects. In consequence, Echo Investment agreed to grant EPP a right of first offer for those office projects. At the time that EPP exercised that right, the transaction regarding the purchase of seven real properties in Poland was envisioned to be structured as follows: (i) each SPV, as the purchaser, would enter into a preliminary sale agreement with the relevant seller and commit to purchasing each property upon the completion of the construction and commercialization process; and (ii) where the total leasable area on a particular property was not fully commercialized, the seller of that property would provide the SPV with a rental guarantee for an agreed period.

CEELM: What was the most challenging or frustrating part of the process?

K.O.: In our opinion there were no frustrating moments during the negotiation. To the contrary, we found the whole process to be exciting and challenging – and as a

team we rise to a challenge. This was mainly caused by the fact that seven separate agreements concerning seven buildings located in four cities in Poland were to be concluded simultaneously – which meant that a vast number of documents needed to be reviewed, revised, and signed. The operation required the full involvement of the parties, lawyers, other advisors, and supporting staff. In the end, good cooperation and the experience and understanding of both parties made an almost impossible task (considering the tight time frame) possible.

CEELM: Was there any part of the process that was unusually or unexpectedly smooth/easy?

K.O.: In such transactions, there tend to be no easy parts. Full dedication to the task at hand allowed us to overcome all the difficult aspects associated with the transaction. Perhaps from the outside looking in, the transaction seemed an easy process, but that's the art of a lawyer. We were very much helped by the professional attitude of the other party and the lawyers representing Echo Investment. That allowed us to overcome any difficulties and to come up with win-win solutions for both parties of the transaction.

CEELM: Did the final result match your initial mandate, or did it change/transform somehow from what was initially anticipated?

K.O.: The final result did not differ significantly from the initial mandate; however, as you can see from my answers above, the transaction referred to seven instead of 10 projects covered by the right of first offer.

CEELM: What individuals at Echo Polska Properties directed you, and how would you describe your working relationship with them?

K.O.: We worked on a daily basis directly with Chief Executive Officer Hadley Dean, Chief Financial Officer Maciej Drozd, and Chief Operations Officer Rafal Kwiatkowski. The complex structure of the transaction, the number of office projects to be acquired simultaneously, and the timing of the transaction required close cooperation between the client from a commercial perspective and KZP from a legal perspective. In consequence, many conference calls, internal meetings, and negotiations took place, and in our opinion this not only facilitated the process of formalizing various transaction documents

but also accelerated it. We really appreciate working with EPP's representatives as their everyday experience and wide and detailed knowledge regarding commercial aspects of particular projects provided us with a better understanding of the deal, which allowed us to provide them with tailor-made legal advice. It should also be noted that EPP was at the time of instruction a completely new company, and new individuals were joining the company throughout the project. While there were pre-existing relationships in place, the project proved to be quite a bonding experience for all involved, and I believe the team came together very well.

CEELM: How would you describe the working relationship with your counterparts at Weil Gotshal & Manges on the deal?

K.O.: Every transaction proceeds much more smoothly where there are professionals on the other side of the table. Both Echo Investment and Weil represented such a professional standard, thus our cooperation went pretty smoothly. Moreover, the fact that this wasn't the first transaction that we performed together – and the same parties were involved in the earlier transaction – meant that we already knew each other and understood our mutual expectations. This had a major positive impact on our ability to close the transaction within the timelines provided by our clients.

CEELM: How would you describe the significance of the deal to your client, to Poland, and/or to CEE?

K.O.: The deal is very significant to our client as it allows EPP to further its goal of having Poland's leading cash-generating platform of well performing office, retail, and industrial assets. The transaction is also very important to Poland because it's considered to be one of the highest-profile commercial real estate portfolio transactions this year, and yet none of the properties involved are located in Warsaw. We believe this will help set the tone for greater real estate investment in Polish cities other than Warsaw. In terms of the wider CEE region, the transaction is yet another example of how there is growth in investment in real estate from investors originating from regions other than Western Europe and the US – in this case Redefine Properties from South Africa.

David Stuckey