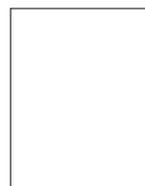


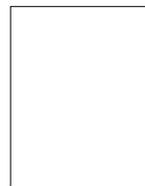
Hungary

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1 The Legislative Framework of the Cartel Prohibition

1.1 What is the legal basis and general nature of the cartel prohibition, e.g. is it civil and/or criminal?

Cartels are, in general, regulated by Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition (the “Competition Act”), which includes the administrative law consequences (prohibition, fine, etc.). The criminal law sanctions of cartel activity are regulated by Act C of 2012 on the Criminal Code. The civil law aspects (e.g. damages) are governed by Act V of 2013 on the Civil Code of Hungary and the Competition Act.

1.2 What are the specific substantive provisions for the cartel prohibition?

Agreements and concerted practices between/amongst companies, as well as the decisions of other organisations which are aimed at the prevention, restriction or distortion of economic competition, or which may display or in fact displays such an effect, are prohibited. An agreement concluded between/amongst companies which are not unrelated shall not be construed as such. The prohibition applies in particular to the following activities: a) fixing prices and defining other business conditions directly or indirectly; b) restricting manufacture, distribution, technical development or investment or keeping them under control; c) dividing the sources of supply and restricting the freedom of choosing from among them, or excluding certain trading parties from the purchase of certain goods; d) dividing the market, excluding any party from selling; e) preventing any party from entering the market; f) discriminating against certain partners with respect to transactions of identical value; g) rendering the conclusion of a contract conditional upon undertakings or commitments which normally do not form part of the subject of the contract.

1.3 Who enforces the cartel prohibition?

The responsible authority with nationwide jurisdiction is the Hungarian Competition Office (in Hungarian: *Gazdasági Versenyhivatal*).

1.4 What are the basic procedural steps between the opening of an investigation and the imposition of sanctions?

The proceeding has two basic phases: the investigation phase and,

following that, the procedure of the acting panel of the competition council. In the investigation phase the officers have the obligation to discover the facts. Within this they are entitled to make a dawn-raid investigation (upon court approval), may oblige the companies under investigation to provide evidence, may collect witness statements, may collect information, including data and documents, from third persons and undertakings. At the end of the investigation phase the investigators shall prepare an investigation report and submit it to the competition council. The investigation report includes the subject of the investigation, the activities investigated, the disclosed facts and evidence found, as well as the legal elaboration of the situation. The investigation report also includes the recommendation of the investigators for sanctioning the illegal activity.

The competition council, based on the investigation report, prepares its preliminary assessment (statement of objection). Before this, the competition council may initiate a settlement procedure to the companies under investigation. In the event the investigated persons agree to the settlement procedure, then the preliminary assessment will be prepared following the consultation with the companies under investigation.

The preliminary assessment is sent to the companies under investigation to which the investigated companies may submit their arguments with the competition council. Before the competition council issues its final decision, it holds a hearing when it considers it necessary, or when the investigated companies so request.

The proceeding is closed by the resolution of the competition council in which it may terminate the proceeding in the event no illegal activities were discovered, or may impose a fine on the cartel participants and may apply other sanctions as well.

1.5 Are there any sector-specific offences or exemptions?

The rules on cartel activity have a general nature and no exemptions or sector-specific regulations apply, except with respect to agricultural products. According to this, cartel infringement cannot be established as long as the restriction serves for the purpose of attaining a reasonable income of the agricultural producers. The agricultural minister has the sole competence to issue a decision on this that is binding on the Competition Office.

1.6 Is cartel conduct outside your jurisdiction covered by the prohibition?

Cartel conduct exercised outside Hungary is governed by the Hungarian Competition Act to the extent the cartel activity has an effect in the territory of Hungary.

2 Investigative Powers

2.1 Summary of general investigatory powers.

Table of General Investigatory Powers

Investigatory power	Civil / administrative	Criminal
Order the production of specific documents or information	Yes	No
Carry out compulsory interviews with individuals	Yes	No
Carry out an unannounced search of business premises	Yes*	No
Carry out an unannounced search of residential premises	Yes*	No
■ Right to 'image' computer hard drives using forensic IT tools	Yes	No
■ Right to retain original documents	Yes	No
■ Right to require an explanation of documents or information supplied	Yes	No
■ Right to secure premises overnight (e.g. by seal)	Yes	No

Please Note: * indicates that the investigatory measure requires the authorisation by a court or another body independent of the competition authority.

2.2 Please list specific or unusual features of the investigatory powers referred to in the summary table.

We indicated in the summary table only the rights and specific requirements of the Competition Office and did not refer to the rights and procedures of the criminal authorities (prosecution authority, criminal court), since these rules have a more complex nature that cannot be expressed in the above table.

2.3 Are there general surveillance powers (e.g. bugging)?

The Competition Office is not authorised to introduce surveillance methods.

2.4 Are there any other significant powers of investigation?

No, there are not.

2.5 Who will carry out searches of business and/or residential premises and will they wait for legal advisors to arrive?

The site-searches are carried out by the investigation officers of the Competition Office. They may involve police officers in the search. Although no legal requirement exists, the officers usually provide a very short period of time for the arrival of the lawyers of the

company under investigation to the site. Lack of legal advisors does not deprive the officers from carrying out the onsite investigation.

2.6 Is in-house legal advice protected by the rules of privilege?

Due to a recent modification of the Act on Attorneys, in-house legal advice enjoys the same privilege and is protected as advice provided by attorneys.

2.7 Please list other material limitations of the investigatory powers to safeguard the rights of defence of companies and/or individuals under investigation.

When during the onsite investigation documents are found which are unrelated to the matter under investigation but may serve as evidence for other illegal activities, then such evidence may be collected by the officers, but can be used in another proceeding only if the Competition Office obtains within 60 days another court order that authorises the use of such evidence.

2.8 Are there sanctions for the obstruction of investigations? If so, have these ever been used? Has the authorities' approach to this changed, e.g. become stricter, recently?

An administrative penalty may be imposed upon any person who performs acts or engages in conduct during the proceeding which are aimed at or result in the protraction of the proceeding or make it impossible to reveal the relevant facts of the case. In case of undertakings the maximum amount of the administrative penalty is limited to 1% of the net revenue of the undertaking during the previous business year. The person may also be obliged to cover the resultant extra expenses from his act.

3 Sanctions on Companies and Individuals

3.1 What are the sanctions for companies?

In the event cartel activity is established, the Competition Office may order the company to cease the illegal activity, may impose a fine and may impose certain obligations to be carried out by the company. As a further consequence: in the event the resolution includes a fine and it becomes final and binding, the company shall be excluded from all public procurement tenders and concession tenders for three years.

Those companies which qualify as small or medium-sized undertakings under Hungarian law may be exempted from the imposition of a fine, provided that the company committed cartel activity for the first time, the cartel does not qualify under Section 101 of the European Treaty and based on the behaviour of the company during the proceeding it can be assumed with due reason that imposition of a fine is not necessary to prevent the company from engaging in further wrongdoing. In this event, the Competition Office establishes the infringement of the law but instead of imposing a fine it applies a warning against the company in its resolution.

Companies are also subject to criminal sanctions in Hungary. Criminal sanctions apply only in the event that the cartel activity was in connection with a public procurement tender or a concession tender. Companies are subject to criminal sanctions only if the company benefitted from the intentional illegal activity or the aim

of the activity was to gain such benefit, or if the act was committed by the officers, employees, legal representatives or the procurist of the company in their activities carried out for the company, or if the said persons could have prevented the illegal act when exercising their controlling obligations. Criminal sanctions against companies include the ordering of the termination of the company, the limitation of the activities of the company, or a monetary penalty. The maximum amount of the monetary penalty against companies is the threefold of the monetary benefit gained or aimed by the company, but it cannot be less than HUF 500,000.

3.2 What are the sanctions for individuals (e.g. criminal sanctions, director disqualification)?

Individuals who were personally involved in the cartel activity are subject to criminal sanctions in cases where the cartel is related to public procurement procedures or concession tenders. The person may be sentenced to 1–5 years' imprisonment. The length of imprisonment may not exceed two years in the event the value of the tender was equal to or below HUF 50 million.

3.3 Can fines be reduced on the basis of 'financial hardship' or 'inability to pay' grounds? If so, by how much?

The reduction of a fine is available only under very limited and special circumstances based on the written request of the company due to financial hardship or the inability to pay, provided that the company justifies with documentary evidence that the company's financial conditions deprive the company from the ability to pay the planned fine amount. It is not sufficient to prove that the company is a "failing company", rather, it also needs to be substantiated that the capacity of the company would disappear from the market (tools and production would not be taken over by other undertakings) and this would cause significant hardship to companies in the chain of production and significant unemployment would also be triggered.

The Competition Office may grant a request from a company that the fine amount be paid in instalments, in the event the financial situation of the company prevents the company, due to reasons beyond its control, to pay the fine amount in one sum. Should the company fail the payment of an instalment in due time, the entire amount of the fine will become due with immediate effect.

3.4 What are the applicable limitation periods?

In the event of cartel activity, the term of the statute of limitation is five years which starts from when the illegal act was committed. In the event the activity was continuous, the statute of limitation period commences when the illegal activity was ceased.

3.5 Can a company pay the legal costs and/or financial penalties imposed on a former or current employee?

Employees are not subject to competition law fines. Payment of the legal costs by the employer company related to the defence of employees against criminal charges is not excluded by law.

3.6 Can an implicated employee be held liable by his/her employer for the legal costs and/or financial penalties imposed on the employer?

In principle, there is no prohibition that would deprive the company

from commencing civil law or labour law action against the employee in the event it was proved that the employee committed cartel activity. From a labour law aspect, the act of the employee must be proved to be wilful; otherwise, there are significant limitations in the amount of damages that can be collected from an employee by the employer.

3.7 Can a parent company be held liable for cartel conduct of a subsidiary even if it is not itself involved in the cartel?

If the member of a group company charged with cartel activity refuses to pay the fine imposed by the Competition Office voluntarily, and if it cannot be enforced against the given group company, then the acting competition council may adopt a separate ruling to confer joint and several liability upon those members of the group company (including the parent company) which were indicated in the original resolution. Court practice clarified that only those group members which were involved in the competition proceeding as parties can be held liable. The ruling of the Competition Office may be subject to individual remedy.

4 Leniency for Companies

4.1 Is there a leniency programme for companies? If so, please provide brief details.

Effective as of July 2014, the Competition Act includes regulations on leniency. No fine shall be imposed on a company which first submits a leniency petition therefor and supplies evidence to the Competition Office: a) serving reasonable cause to request and receive a prior court order for carrying out an onsite search in connection with the infringement, provided that the Competition Office did not have enough information at the time of submission of the leniency petition; or b) sufficient to prove the infringement, provided that the Competition Office did not have enough evidence at the time the evidence was provided to prove the infringement.

In the event that no exemption from the fine can be granted based on the above ground, the amount of the fine may be reduced for the company which supplies any evidence relating to an infringement to the Competition Office that is recognised as being considerably more valuable than any proof in its possession at the time when the evidence was provided. The rates of reduction of the fine are, as follows: a) between 30% to 50% in respect of the company being the first to meet the above conditions; b) 20% to 30% in respect of the company being the second to meet the above conditions; and c) up to 20% in respect of the company being the third or beyond to meet the condition set out above.

Further conditions for exemption from and for the reduction of fines are that: a) the company is to terminate any involvement it may have in the infringement immediately upon submission of the leniency petition; b) the company cooperates with the Competition Office in good faith covering all aspects throughout the entire proceeding; and c) the company keeps confidential that it has filed a leniency petition.

Companies which have been actively involved in forcing another company to participate in the cartel infringement may not be exempted from the fine.

4.2 Is there a 'marker' system and, if so, what is required to obtain a marker?

In the event the petitioner is unable to present all of the evidence in

its possession at the time of filing the petition with the Competition Office, it still may be eligible for the exemption from the fine, if it undertakes to supplement the petition within the time limit set by the Competition Office and makes available all information and evidence underlying the exemption in due time.

Even in this event the petition has to include as a minimum the following information: a) the name and seat of the petitioner; and b) the description and the length of the infringement, its characteristics, the affected products and the territory and the participating companies. The petitioner has to provide its reasons for the subsequent presentation of the evidence and the petitioner's specific pledge to produce additional evidence.

Exemption from the fine or reduction of the fine may also be granted in the event, based on the Commission Communication on cooperation between national authorities responsible for the enforcement of competition laws, the European Commission is most suitable for conducting the proceeding and the petitioner submits a preliminary petition to the Competition Office simultaneously with filing a petition on the same subject matter with the European Commission for exemption from or reduction of the fine. However, if the Competition Office initiates proceeding in connection with the infringement, the petitioner has to supplement the petition within the time limit in the notice of the Competition Office and deliver all evidence in its possession.

If the petitioner supplements the non-definitive petitions described above within the prescribed time limit and presents the evidence necessary, the date of receipt of the non-definitive petition shall be construed as the date of submission of the petition.

4.3 Can applications be made orally (to minimise any subsequent disclosure risks in the context of civil damages follow-on litigation)?

The petition may be made orally at the Competition Office. Nevertheless, in this event, the Competition Office will prepare the minutes of the personal meeting with the petitioner and the minutes will include the oral presentation of the petitioner. Making an oral petition does not exempt the petitioner to submit all evidence it has in its possession in connection with the infringement.

4.4 To what extent will a leniency application be treated confidentially and for how long? To what extent will documents provided by leniency applicants be disclosed to private litigants?

If the petition for exemption from or reduction of the fine is in conformity with the conditions set in the Competition Act, the acting competition council adopts a ruling to declare that the fine may be excluded. Until the passing of this resolution the petition for exemption that makes it possible for the Competition Office to receive a court order for an onsite search and the evidence enclosed therewith may be used only for the evaluation of the petition and requesting the court order, and may be accessed only by the investigator of the case, the acting competition counsel and by the court.

The statement made by the petitioner company on a voluntary basis for exemption from or reduction of the fine in the petition or specifically in connection with the petition, the fact of submission and the evidence supplied in connection with the petition are treated as restricted-access data up to the date when the investigation is completed and the preliminary assessment of the competition council, or the investigation report is delivered to the client/petitioner. Even then, these documents are available only to the

client and only for review and making notes; no copying of these documents is allowed. Third persons may not have access to these documents, and they cannot review, copy or make notes about them. Third persons may have access to the rest of the documents collected in the proceeding normally only after the decision adopted in connection with the proceeding became definitive, or beforehand if able to verify that access to such data is necessary for the purpose of enforcing his legitimate right or for discharging an obligation conferred by law, court or administrative decision.

4.5 At what point does the 'continuous cooperation' requirement cease to apply?

The continuous cooperation requirement does not cease during the proceeding, the leniency applicant has a cooperation obligation with the authority throughout the entire procedure. Should the applicant withdraw its leniency application, it does not have a further cooperation obligation.

4.6 Is there a 'leniency plus' or 'penalty plus' policy?

If a company cooperates with the authority in an investigation of a cartel case and therefore becomes exempted from the fine, its liability for civil law damages will be limited: namely, it will be jointly and severally liable for damages solely to its own indirect and direct purchasers or suppliers, while for the damages of other purchasers and suppliers it will be liable only if these companies are unable to collect their damage claim from the other participants of the cartel.

5 Whistle-blowing Procedures for Individuals

5.1 Are there procedures for individuals to report cartel conduct independently of their employer? If so, please specify.

Any natural person who provides indispensable documentary evidence to the Competition Office leading to the exposure of a cartel infringement is entitled to receive a reward. Indispensable evidence also includes information that enables the court to authorise a site search that eventually results in evidence that proves cartel activity. The amount of the reward is set at 1% of the fine imposed by the Competition Office in a given case, but may not exceed HUF 50 million.

6 Plea Bargaining Arrangements

6.1 Are there any early resolution, settlement or plea bargaining procedures (other than leniency)? Has the competition authorities' approach to settlements changed in recent years?

If based on the final investigation report the acting competition council considers it appropriate, having regard to the relevant facts of the case established and to the underlying evidence to ensure the swift and effective conclusion of the proceeding, it may request the client to indicate in writing whether he wishes to participate in a settlement procedure. In the event the client indicates his intention to participate in the settlement procedure, the acting competition council will interview the client and will disclose to the client the

illegal conduct of which he is accused, the evidence underlying the charges and the minimum and maximum amount of the fine that may be imposed for such infringement. If the competition council and the client reach a common position in respect of the relevant factors, the competition council requests the client to submit a statement of settlement within the required timeframe. The statement of settlement has to contain, amongst others, the following: a) the client's admission to having been participated in the illegal activity; b) the factual and brief description of the infringement and its legal assessment, the objective of the infringement and the manner in which it was carried out, the duration and the client's part in carrying it out; c) the highest amount of the fine the client deems acceptable; and d) the client's waiver of his right to appeal the resolution – based on the aforementioned the acting competition council issues its preliminary assessment. In the event the client submits a statement of settlement, the acting competition council in its resolution will reduce the amount of the fine to be imposed under other provisions of the Competition Act by not less than 10% and not more than 30%. In the event the preliminary assessment or the subsequent resolution differs on the merits from what is contained in the client's statement of settlement, then the client may withdraw its statement of settlement.

Another possible way of avoiding a fine is if the client undertakes the commitment to proceed in a specific way to bring his conduct into conformity with the relevant statutory provisions, in order to ensure that the protection of public interest can be effectively implemented. In such a case, when the circumstances so allow, the acting competition council will adopt a resolution to compel the client to undertake these commitments without establishing the infringement and without imposing a fine.

7 Appeal Process

7.1 What is the appeal process?

No administrative appeal is possible against the resolution of the Competition Office on the merit of the case. The resolution, however, may be challenged at court. The court brief has to be filed with the Competition Office within 30 days from the receipt of the written resolution of the Competition Office. The Competition Office will forward to the court the brief together with the file of the case. The judgment of the court is subject to appeal before the Kuria (the Supreme Court of Hungary).

7.2 Does an appeal suspend a company's requirement to pay the fine?

The appeal does not suspend the company's payment obligation.

Under very limited circumstances the company that challenges the Competition Office resolution at court may be granted, by the court, a suspension of the payment obligation until the end of the court proceeding and when the court resolution becomes final and binding.

7.3 Does the appeal process allow for the cross-examination of witnesses?

Under continental legal systems there is no cross-examination in the sense as it is used in common-law countries. Nevertheless, at the court proceeding, each party may suggest to the court to raise certain questions to the witness; furthermore, the court may allow the party to address questions directly to the witness.

8 Damages Actions

8.1 What are the procedures for civil damages actions for loss suffered as a result of cartel conduct? Is the position different (e.g. easier) for 'follow on' actions as opposed to 'stand alone' actions?

Civil damages actions may be commenced by the deprived persons against the cartel participants directly at the court with authority. The merit of the case has to be based on the regulations of the Civil Code and the Competition Act, while the procedural issues are governed by the rules of the Act on Civil Procedure. In case of a stand-alone action the court has to notify the Competition Office in the event the infringement of the cartel rules is in question. The Competition Office may then submit its comments in writing with the court in connection with the application of the cartel rules. The court is not obliged to apply the comments made by the Competition Office. In the event the Competition Office commences a proceeding on the same merit from a competition law standpoint, it notifies the civil court about the proceeding. The court has to suspend its proceeding until the Competition Office issues its resolution on the merit of the case, in the event such resolution is subject to judicial review, until a final and binding court decision is issued. If the Competition Office established the infringement, the court is bound by this conclusion of the resolution (or that of a court in the event judicial review was initiated). In the event of follow-on cases as well, the court is bound by the Competition Office with respect to the commitment of the infringement (or that of a court in the event judicial review was initiated).

8.2 Do your procedural rules allow for class-action or representative claims?

Rules of the Act on Civil Procedure on representative claims in this context apply only to damages suffered by consumers directly, provided that there are at least 10 plaintiffs.

In addition, the Competition Act orders, with general effect, that the court orders the joinder of actions for damages resulting from the infringement of competition law brought before it, if the relevant legal conditions are satisfied.

8.3 What are the applicable limitation periods?

The statute of limitation in case of civil law damages is five years. In the event of damages caused by a cartel the term begins when the infringing conduct ceases and the injured person became, or could have become, aware of: a) the behaviour constituting the infringement and that it qualifies as an infringement of competition law; b) the damages resulting from the infringement; and c) the identity of the infringing company. If a European Union competition authority opens proceedings in connection with an infringement, the period is suspended for one year from the date of the authority's final decision, or the date of the final court ruling if the decision was challenged before a court.

8.4 Does the law recognise a "passing on" defence in civil damages claims?

Where the loss or damages derives from a price difference between the price actually paid for products and the price that would otherwise have prevailed in the absence of a cartel infringement, the infringing company shall be entitled to allege that the injured

party passed on the whole or part of the price difference resulting from cartel infringement. The burden of proof with respect of the fact and extent of the price difference that was passed on is on the infringing company. If the scope of passing-on cannot be determined, the court will estimate this amount taking into account all of the circumstances of the case.

8.5 What are the cost rules for civil damages follow-on claims in cartel cases?

Under general procedural rules of civil litigation, the costs of litigation, including procedural fees, expert costs and other expenses are to be covered by the party losing the merit of the case. With respect of lawyers' costs, the court does not necessarily accept and order the reimbursement of the entire amount that the winning party spent on legal advisors' fee.

8.6 Have there been any successful follow-on or stand alone civil damages claims for cartel conduct? If there have not been many cases decided in court, have there been any substantial out of court settlements?

We are unaware of any successful civil damages claims.

9 Miscellaneous

9.1 Please provide brief details of significant, recent or imminent statutory or other developments in the field of cartels, leniency and/or cartel damages claims.

The most significant modification of the Competition Act introduced important new regulations in the field of liability for civil law damages. These new rules entered into force on January 15, 2017.

9.2 Please mention any other issues of particular interest in your jurisdiction not covered by the above.

In case of damage claims deriving from cartels, it is presumed by law that the infringement increased the price applied by the infringer by 10%.

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Dr. Bán is a founding partner and has been managing partner of Bán, S. Szabó & Partners since 1997, with wide experience in corporate and commercial law, mergers and acquisitions, securities regulations and competition law. She has represented multinational companies in merger and acquisition transactions, privatisation transactions, green field investments, and corporate, real estate and competition law matters. Between 1993–1997, Dr. Bán served as a senior Hungarian attorney at the Budapest office of Shearman & Sterling. From 1980 to 1993, she was an associate law professor at Eötvös Loránd University (Budapest) and McGeorge School of Law, University of the Pacific (Sacramento, California). The Hungarian Bar Association decorated her in 2012 with the “Outstanding Attorney” award. She speaks English and German.

Bar Admissions

Budapest Bar – 1994.

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Dr. Papp joined Bán, S. Szabó & Partners in 1997. Since January 1, 2009, he has been a partner of the firm. Dr. Papp focuses on competition matters, administrative law, litigation and commercial law.

Dr. Papp regularly published on EU and Hungarian competition law in the International Law Organization's competition newsletters. He is involved in the work of the International League of Competition Law (LIDC) and coordinated the preparation of the Hungarian LIDC Report in 2012. He regularly holds lectures and seminars on competition law matters. Dr. Papp is the member of the executive committee of the Hungarian national group of the LIDC since 2015.

Dr. Papp has been listed, since 2009, in *Who's Who Legal: Competition*, one of the most renowned professional publications worldwide. According to *Chambers*, “Álmos Papp receives particular praise from peers, who appreciate his wide-ranging expertise covering competition, corporate matters and commercial litigation”.

He speaks English.

Bar Admissions

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Education

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Bán, S. Szabó & Partners (“BSP”) is a full-service Hungarian law firm, primarily with international clients, whose practice includes mergers and acquisitions and other transactions, as well as a well-balanced corporate law practice.

In addition to corporate law and mergers and acquisitions, the particular areas of our expertise include antitrust and competition, telecommunications, media and technology (“TMT”), energy and utilities, employment and labour, real estate, and banking and finance matters. Our team has participated in several major privatisation and acquisition transactions in the fields of banking, real estate, TMT, oil and gas utilities and other industrial areas, including food processing, pharmaceuticals and agro-chemicals. We consider that the competitive edge of the BSP team is to combine practical knowledge with solid legal expertise.

BSP was established in 1997. BSP has seven partners, several qualified Hungarian associated lawyers and trainee lawyers. All of our lawyers are fluent in English. Several of our lawyers work in German, while some of our attorneys speak French as well.