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The Rule of Law

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1 Definitions

- rule of law - no agreed definition, concepts vary across legal traditions and cultural contexts
- working definition: where law acts as a safeguard against arbitrary governance, and the civil liberties and property rights of citizens and entities are protected from the unpredictable or abusive use of government or political power
- CEE - all formerly Communist-ruled countries in Europe, Eastern Europe, Southeast Europe and beyond, including CIS countries

2 EU vs. Non-EU

- EU countries generally in better shape than non-EU countries
- Wide spectrum of progress, however, amongst EU accession countries, e.g. Bulgaria and Romania lagging
- Accession countries subject to greater scrutiny, monitoring and pressure by EU Commission (political & financial leverage) and other EU member states (peer pressure)
- CIS countries show marked deficits, e.g. Russia, Ukraine
- Legacies of one-party communist rule, dictatorship, feudal political culture, and systemic corruption still present
- Democratic institutions weak or non-existent; lack of institutional checks and balances

3 Key Manifestations

- Lack of predictability in application of laws
- Corruption in public administration, courts, etc.
- Political interference in public administration, judiciary
- Concessions / public procurements often intransparent / "rigged"
- Informal advantage for state-owned companies / bodies before courts and administrative bodies
- Competition law, consumer protection laws, etc. often used selectively or to favour particular special interests
- Risk of expropriation or other threats to private property
- Failure to fully implement or follow EU law (in new EU member states)

4 Practical Tips

- Implement & monitor jurisdiction risk review
- Hire objective, honest local counsel – avoid so-called or self-described „politically-connected“ counsel
- Lobby senior levels of government in jurisdiction, local bar
- Enlist home jurisdiction governments, embassies, bar associations, Council of European Bars and Law Societies (CCBE), international bar associations (IBA, ABA etc.), etc.
- Lobby EU Commission and responsible Commissioner(s)
- Canvass local litigation vs. international arbitration options, e.g. investor protection treaties etc.
- Support rule of law initiatives (e.g. ABA), anti-corruption initiatives (e.g. IBA), transparency initiatives (e.g. European Transparency Initiative, OECD)
- Use media and internet campaigns