Interview: Gheorghe Muşat – Managing Partner, Muşat & Asociaţii – Romania



17.07.2015

Tags: law firm, legal, policy, doing business

One of the original market builders of the commercial law practice in Romania analyses the state of in-country legal firms in catering to the evolving needs of pharmaceutical industry players in a rapidly and radically transforming regulatory landscape. An expert in privatisation, he also explains why attempts to inject market forces and private sector participation into Romanian healthcare have so far floundered.

Could you please start by giving us a few words on your experiences and milestone moments since you founded Muşat & Asociaţii in the early 1990s.

Muşat & Asociaţii's name stands for the highest level of expertise and commitment in assisting clients in business matters. For 25 years, Muşat & Asociaţii has acted for banks and other financial institutions, international businesses, venture capital funds, major Romanian public and private companies and government agencies. We pride ourselves to have been working for many major US and EU corporations, investing or doing business in Romania, most of which are listed in Fortune 500.

I founded Muşat & Asociaţii in the early 1990s as one of the first law firms in Romania, after the fall of the communist regime. Established in an emerging market and having as clients French, German, Italian, U.K. or U.S. corporations looking for business opportunities, Muşat & Asociaţii became rapidly one of the investors' "first choice" for legal assistance in Romania. High profile

international companies such as Societe Generale, Rhone-Poulenc (currently Sanofi Avensis), Cement Francais, Renault, AT&T, A.I.G. (US) and SHELL chose to work with Muşat & Asociaţii since its founding in 1990.

The start of the privatizations era launched by the Romanian Government in 1995 provided the opportunity for Muşat & Asociaţii to enlarge its portfolio of foreign clients, which represents over 80% of the Firm's client base. Muşat & Asociaţii has become one of the most respected names among law firms in Romania, positioning itself as a genuine leader. The firm has been at the forefront of the country's legal and business development, anticipating the evolving needs of its clients, thus acting as a pioneer in the field. Muşat & Asociaţii provided ground-breaking work, by launching new areas of practice and also being involved in the biggest transactions for the local market at that time.

Presently, the firm offers legal support in all areas of business law, including healthcare & pharma, mergers & acquisitions, privatization, litigation & commercial arbitrations, banking law, energy & natural resources, IP & competition, corporate, telecommunications & IT, labour, taxation, capital markets, real estate, environmental law, PPP, insolvency & restructuring, shipping & aviation, insurance.

As one of the original 'market builders' of the commercial law practice in Romania, what is your assessment of the state of legal provision to the Pharma sector: how well equipped are Romanian law firms in catering to the needs of big pharma today?

I was one of the original market builders. The legal sector was liberalized only a full 6 years after the overthrow of Ceausescu. We had much more determination that any incoming foreign lawyers because we were waiting so long to see the communist regime closed down. In those early days, Investors were in need of legal advice because new laws were being passed every day. Also concepts like 'privatization', 'angel investors', and 'joint ventures' were all thoroughly alien concepts.

Today law in Romanian has become normalized and we practice pretty much like any legal firm in Europe. Firms like our have all the capabilities that a pharmaceutical sector client will require so the standard of legal provision is more than adequate. The entities that stand out as being the best to cater to the needs of the Romanian pharmaceuticals industry are those that know the inner workings of the system and have that insider perspective. In that sense any reputable chambers providing counsel to local pharma players has to possess that 'boutique dimension' even if they are a fully integrated service firm. We, for example, have our own specific practice for pharmaceuticals

and healthcare.

To what extent is legal provision to the pharmaceuticals sector becoming more competitive with the emergence of specialist boutique consultancies at the local level alongside increased participation of fully integrated multinational law firms?

Insofar as the specialist boutiques are concerned, we do not see them as our competitors. While we offer the full range of legal services and we handle everything from regulatory to M&A, corporate, antitrust, IP, employment, data protection, tax, insolvency, compliance and other matters, such boutiques generally provide limited advice in relation to specific matters.

Furthermore, even if a pharma company might decide to involve a specialist boutique for a specific legal matter or for a specific project, they might also request our assistance in order to ensure the overall coordination and supervision of the respective project and to provide the necessary legal services.

As regards the fully integrated multinational law firms, kindly note that the majority of the international pharmaceutical & healthcare companies decide to work with Musat & Asociatii by having regard to our market-leading expertise in these highly regulated fields, and to the professionalism and long standing Pharma experience of our lawyers.

We are also affiliated to international network of reputable independent law firms such as Terralex and TAG Law, and we have an excellent on-going professional relationship with prestigious law firms from USA and Europe, amongst which Baker & Mckenzie, Hogan Lovells and Herbert Smith, with whom we are currently working on many pharma projects. Whilst there are some fully integrated multinational law firms acting in Romania, as per our knowledge only few of them are working on pharma matters.

The real competition for work right now is to some extent related to in-house legal divisions. There seems to be a growing tendency for pharma companies to set up their own internal counsel and, often misguidedly, consider that adequate for their needs. They call on us for the most sensitive cases and think their internal legal department can handle the less sensitive tasks. Often they cannot and the supposed cot savings end up being elusive. It is all well and to have internal lawyers for internal affairs such as drawing up of employment contracts and laying of staff, but when you come to matters such as external litigation then you really need the assistance of experts. Some companies are tempted to overlook this fact and end up learning the hard way.

What exactly is it about Muşat & Asociaţii's that makes this firm the partner of choice for so many leading pharma firms?

The answer to this question is both the quality of our pharma department – one of the largest and most qualified pharma departments on the market – and our expertise in other areas of interest to pharmaceutical companies. Meanwhile, our long-standing extensive experience in dealing with, and meeting the expectations of, large multinational companies make us a suitable partners to sophisticated clients such as pharma companies.

Muşat & Asociaţii is an independent Romanian law firm recognized as one of the country's most knowledgeable law firms in the Healthcare and Pharmaceuticals sectors, having advised an impressive portfolio of international clients over the years, including 9 of the top 12 medicine producers worldwide.

We have been at the heart of developments in the pharma field, advising on the highest profile transactions and providing our clients with legal advice suitable to the commercial reality of their business. We base our services on understanding our clients' business and market at a local level, and providing expertise and resources required to help them achieve their business goals.

In a unique position to provide expert advice in all legal matters concerning these highly regulated sectors, the firm has achieved constant success due to the strength and depth of its legal team, which encompasses regulatory, antitrust, intellectual property, corporate, employment attorneys, as well as extensive litigation resources, intellectual property counselors and certified tax consultants. This array of talent enables the firm to consolidate its undisputed top-tier position while developing further expertise in the most sensitive issues and conducting landmark cases.

We are recognized as highly active in the healthcare and pharmaceuticals markets, providing on a continuous basis legal assistance and representation services to leading international pharma companies frequently in connection with various matters related to complex projects they want to implement in Romania, as well as in relation to day-to-day activities.

Do you agree with PwC's assessment that in 2015 will likely be a year of high M&A activity for Romanian pharmaceuticals?

Yes, we agree. The pharmaceutical market in Romania is going through a difficult period, not only at the level of the producers/manufacturers (e.g., due to the high level of the clawback tax, the reduction of the medicines' prices announced by the authorities for 2015), but also at the level of wholesale distributors (some of them facing significant financial difficulties due to the failure to

collect money from their debtors – pharmacies) and at the level of the pharmacies (many of them facing the risk of bankruptcy). This might lead to the concentration of the market, and certain small and medium-sized transactions are anticipated.

While we do not necessarily expect a high degree of M&A activity in relation to the producers, we expect certain consolidation in the distribution / retail (pharmacies) sectors. We are already witnessing the initiation of insolvency proceedings in connection to major distributors on the market, such as ADM Farm.

The Polisano group, which includes both the wholesale distributor Polisano and other companies acting in the healthcare & medical services fields, have also announced that they intend to divest certain commercial activities and business lines.

Where do you identify the main areas of workload looking forward?

In the coming years, certain significant changes might be implemented in the pharma and healthcare fields in Romania, and our clients will require specialized advisory and legal representation services. The matters on which we anticipate working for our clients in the following years include:(i) assistance in connection with transactions, mergers and acquisitions, divestments, restructurings and reorganizations; (ii) guidance in connection with the changes that might be implemented by the Romanian authorities (e.g., in relation to the medicines' pricing, the clawback tax, the medical services, the public health insurance system, other regulatory matters); (iii) assistance in connection with pricing & reimbursement matters – including the update of the list of reimbursed medicines . On top of that, we will expect the usual workload in the areas of competition matters of IP protection, litigation, taxation and compliance all of which concern our pharmaceutical clients.

Given your involvement in many of the big scale privatization deals in Romania (sometimes acting on behalf of the government, sometimes for the private buyers side), why do you think the attempted privatization of healthcare in 2012 failed?

In 2012, the Romanian authorities wanted to implement significant reforms in the healthcare field, claiming that they wish to increase access to medical care, enhance the quality of medical services and to improve the health indicators. At that time, they published for public consultations a draft new Law on the health field, which provided, amongst others, the reorganization of the public health insurance houses, the involvement of certain private health insurance companies in the public health insurance system, the reorganization of hospitals (as foundations), as well as certain other significant changes affecting the entire healthcare sector.

In order to implement such significant changes to the Romanian health system, we think that the authorities should have debated the respective topics with all the relevant actors acting in the pharma & healthcare field, including with the industry associations, the patients' associations and other concerned parties, long before the publishing of the draft new Law. Such assessment would have been necessary in order to establish the most adequate solutions to be implemented in our country. However, they failed to do so.

There were also certain reputable specialists which identified major deficiencies of the draft Law, publicly expressing their disapproval as regards certain changes by having regard to the actual state of the system. In this context, the reform proposed in 2012 struggled with public reluctance, as it was considered to be a potential cause of inequity for population with average or low incomes and limitation of access to medical services. The authorities abandoned this project after a major public scandal arose in connection with Mr Raed Arafat (considered the founder of the public emergency services SMURD), who announced his resignation in case the respective Law would be issued.

On a side note, it should be noted that the private healthcare sector is in an incipient phase but growing at a high-speed. An increasing number of private clinics have been opened and have been well received by those in the middle and upper income segments. Private health insurance services are usually offered by private companies to their employees, as part of the benefits package. In theory, insurance coverage is almost comprehensive. Exclusions comprise certain dental services and high-technology treatments.

What are the next steps for Muşat & Asociaţii?

We pride ourselves with an impressive portfolio of mandates, always setting legal precedents and breaking new ground. This extensive experience in all areas of business law is put to the service of our clients. We are recognized for our focus on constantly developing value added, tailor–made legal services, aimed at enabling our client's business progress in a legally sound environment.

No matter the project assigned by our clients, we will continue to operate in accordance with our business principles of quality, integrity and responsibility. We are committed to use our long-lasting values and breadth of experience to deliver success for the upcoming 25 years and into the future.

Click here to read more articles and interviews from Romania, and to download the latest free pharma report on the country.

See more interviews