LAWYER PROFILE

Tower talk

As former in-house legal counsel for ExxonMobil in Poland, Piotr Spaczyński has spent some time looking at the business case for oil and gas. As the head of the energy and natural resources practice at SSW, a firm he co-founded, the UK-trained lawyer has gotten his chance to put what he's learned into practice.

BY HUNTER DIAMOND PHOTOGRAPHY BY SZYMON SZCZEŚNIAK

AS A YOUNG MAN RAISED in communist Poland, Piotr Spaczyński went abroad to the UK to trade the dictums of Marx for John D. Rockefeller's adage: If you want to succeed you should strike out on new paths.

Mr. Spaczyński studied law at Clifton College in the UK and was even accepted for a program in economics at St. John's College at Cambridge, but returned to Poland and completed a degree in law as well as management and marketing in Poznań.

"I was in love with my then fiancé [current wife]. I even have a stack of used British Telecom calling cards at home to prove it," Mr. Spaczyński reminisced on one fall afternoon in the Rondo 1 office building in Warsaw.

Mr. Spaczyński heads the energy and natural resources practice of SSW, a law firm he co-founded. As the former head of legal at ExxonMobil, Mr. Spaczyński is familiar with the structure and function of large corporations. He also understands that international oil companies (IOCs) tie their strategic decisions to the long-term profitability of the country where they operate. The profitability - and thus the business case - in large part depend upon the degree of state taxation.

Mr. Spaczyński's blend of legal acumen, oil and gas experience, and formal business training is perhaps unique among Warsaw lawyers. At Exxon, he was responsible for the divestment of a large number of downstream assets which were sold to a state-owned Polish energy company in a pattern Mr. Spaczyński says was replicated by other foreign companies.

TALKING TAXES

Recently, Mr. Spaczyński sat down to talk to the *Shale Gas Investment Guide* about an early proposal put forward by the government in October 2012 to describe the shape of the shape of a future royalty regime.

"All of the companies who came to Poland after 2007 did an analysis. They asked the questions: what's the legal environment? What are the general levels of taxation? What are the royalties in mining? They also asked the question, is Poland a transparent country to do business? Their idea was that yes, Poland is a very attractive place to do business. The 19% percent corporate income tax rate was good and there was decent infrastructure in place. Compared to other countries, they made a decision that Poland is a country where they wanted to be," Mr. Spaczyński said.

"It seems to me that the new proposal would be less attractive for foreign investors. The historical attractiveness of Poland seems to be gone once the new regulation will be introduced," he added.

Mr. Spaczyński cautions that the proposal is in its early stages, and most of

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▶ the regulations that would dictate just exactly how the royalty regime would function have yet to be written, much less put into practice. Take for instance the 25 percent tax on “cash flow”. The government has not yet made it clear how cash flow would be calculated, and whether a government regulator would have the authority, or the interest, to audit the books of a company at work in a shale play.

GOVERNMENT JV

As for NOKE [Narodowy Operator Kopalin Energetycznych], the national operator who would function in some respects as a regulator and in others as a joint venture, it's not yet clear what dominant role the entity would take on.

“Certainly, NOKE is not going to be welcomed warmly. Nobody wants to have a partner who is not really freely chosen. Still, we don't know any details. We know that [NOKE] would be owned 100 percent by the treasury and is supposed to protect the interest of the state. But it also plans to be involved as a shareholder in various consortia. Will it be a JV in the form of a partnership or LLC? What corporate rights will the entity have? What stake will be taken by NOKE?” Mr. Spaczyński said.

As regards the ministry of environment's suggestion that their proposed total tax burden amounts to a de-facto 40 percent of gross proceeds, Mr. Spaczyński calls this math “acrobatics.” In his view, it would be hard to add up all the numbers and come up with 40 percent.

“Consider CIT: 19 percent. This new royalty of 5 percent [tax on natural gas]. Then a 25 percent tax on cash flow. Then real estate taxes. Then increased concession and mining usufruct fees. It is really difficult to come up with an effective tax rate at 40 percent,” Mr. Spaczyński said “

“Look at the example of other new taxes, for instance, the tax on copper. The effective tax rate on copper went up from 38 percent to 89 percent. Here, the assumption is that 5 percent is also to be value based. This increase [on copper] was also a royalty that was value based,” he added.

OUTSIDE OF OIL

Mr. Spaczyński is on the board of the Polish Wind Energy Association. When asked about his involvement with renewables, he doesn't find it odd that a lawyer can maintain expertise and credibility in both energy segments.

“Some say that these businesses are pretty contradictory. Oil and gas and wind energy. I don't agree with such an approach. In Poland, they seem to need one another,” Mr. Spaczyński said.

“Due to the fact that wind is not a stable source of energy, it needs an alternative that is flexible, as are gas turbines. So these could have more in common than one would expect,” he added.

He's also able to draw lessons from the wind sector. Several foreign energy concerns who have invested considerably in the Polish wind market, are considering acting upon existing treaties between Poland and other European countries. Given the proposed support scheme for wind energy, where one of the major changes is reducing the subsidy for onshore wind by 10 percent, these companies have considered taking action against the state.

Mr. Spaczyński cautions that the Polish government's role in regulating the oil and gas business could indicate behavior that borders on nationalization.

“It's a pretty complex story. The question is whether foreign investors are going to consider to protect their rights based on treaties for the protection of foreign investment. This is due to the fact that it might be the case that with the new level of taxation Polish shale gas is being nationalized,” Mr. Spaczyński said.

NARY A DAY AWAY

Give him time off, and you'll find Mr. Spaczyński on the pitch playing soccer with friends.

Last year, he twisted an ankle and spent a few weeks in a support cast, but that hasn't diminished his winter-time enthusiasm for snowboarding and ice-skating. As for the challenge of running his own law practice, one might say that finding a balancing between work life and family life is a bit like going to a public school in the UK coming from a former communist state. From one to the other, a man has to adjust a bit to the change in rhythm.

Piotr Spaczyński: the government's 40 percent total tax rate on shale gas is "acrobatics"