



Investing in South Eastern Europe

Foreign Direct Investment in the Stability Pact Countries

SOUTH EAST EUROPE

Vol. II

- MAIN CITIES
- NATIONAL CAPITALS
- PROVINCE BOUNDARIES*
- REPUBLIC BOUNDARIES*



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STEFAN MESSMANN, TIBOR TAJTI EDS.

Investing in South-Eastern Europe

**– Foreign Direct Investment in the
Stability Pact Countries –**

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Tibor Tajti, LL.M. & S.J.D.

Volume II

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PART FIVE
MACEDONIA

by Zoltán Vig

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1. Introduction

1.1. General information

1.1.1. Geography and history

The Republic of Macedonia (hereinafter: Macedonia) lies in the south-central region of the Balkan Peninsula, bordered by Bulgaria, Greece, Albania and Serbia and Montenegro, including Kosovo. Having the geographic coordinates of 41.50 north and 22.00 east, the Republic lies within the geographic and historic region known also as Macedonia.¹

This region was at the center of the Balkan power struggles as the Ottoman Empire retreated from Europe at the end of the 19th and the beginning of the 20th century. During the Balkan Wars, in 1912 and 1913, Macedonia was divided between Greece, Serbia and Bulgaria. Serbia's part of Macedonia was incorporated into the Kingdom of Serbs, Croats and Slovenes (from 1929 Yugoslavia) established in 1918. Modern Macedonia came into existence in 1945 as one of the six constitutive republics of the Federal People's Republic of Yugoslavia (FPRY).² When Yugoslavia disintegrated in 1991,

¹ See The World Factbook 2004 (visited Oct. 19, 2004) <<http://www.cia.gov/cia/publications/factbook/print/mk.html>>.

² See Auswärtiges Amt (visited Oct. 10, 2004) <http://www.auswaertiges-amt.de/www/en/laenderinfos/laender/laender_ausgabe_html?type_id=9&land_id=110>.

Macedonia chose to assert its independence on November 21, 1991.³

Regarding its territory, Macedonia is slightly larger than the US state of Vermont, with 25,333 square kilometers, out of which water surface is 477 square kilometers, and land surface of 24,856 square kilometers.⁴ The boundaries of Macedonia total 766 kilometers out of which the border with Albania is 151 km, with Bulgaria 148 km, with Greece 246 km, and with Serbia and Montenegro 221 km. Macedonia is a landlocked country with three large natural lakes, Ohrid, Prespa, and Dojran (with a combined coastline of 850 kilometers).

1.1.2. Climate

Almost the entire territory of Macedonia lies between latitudes 40' and 42' and is a transitional region between the mediterranean and continental climates. In the southern parts of Macedonia the climate is temperate Mediterranean while the interior has a moderate continental climate with warm and dry summers and cold and wet winters. The openness of the Aegean Sea basin and the high mountains reaching 2,700 meters bring about an influence of the mediterranean and continental climates, as a result of which there is insufficient rainfall (about 500-700 mm annually), badly distributed throughout the year. The temperature range also has huge oscillations. Maximum summer temperatures in the majority of the agricultural areas reach up to 40°C, and the lowest winter temperatures drop to about -30°C, while the average annual temperatures are above +10°C almost everywhere, which is a characteristic of semi-arid areas. The warmest region is Demir Kapija, in the region of

³ See *The World Factbook 2004* (visited Oct. 20, 2004) <<http://www.cia.gov/cia/publications/factbook/print/mk.html>>.

⁴ See *id.*

Gevgelija on the border with Greece, where temperatures in July and August exceed 40°C.

1.1.3. Political transition

Among East European countries Macedonia experienced a distinct, yet successful transition from authoritarian rule to democracy.⁵ The peaceful transformation of the Macedonian society in the early 1990's was, however, followed by an uneasy period of democratic consolidation. The combination of the Greek diplomatic pressure and the economic embargo imposed on Macedonia,⁶ and difficulties stemming from the compliance with the United Nations sanctions against the Federal Republic of Yugoslavia (the so-called rump Yugoslavia) significantly impaired the Macedonian democratic stabilization efforts. Due to Greek objections, the admission of Macedonia to membership in the United Nations in April 1993 required the new member to be "provisionally referred to for all purposes within the United Nations as 'the Former Yugoslav Republic of Macedonia' pending settlement of the difference that has arisen over the name of the State."⁷ However, the United

⁵ On the topic in general and the understanding of reformatory change of the regime see Janos Kis, *Between Reform and Revolution*, 1 EAST EUROPEAN POLITICS AND SOCIETIES 323 (1998); On the democratic transition in Macedonia see Daskalovski Zhidas, *Elite Transformation and Democratic Transition in Macedonia and Slovenia*, BALKANOLOGIE, Sept. 1999, at 1.

⁶ There was a Greek trade embargo imposed on Macedonia from 1994 to 1995. See Simon, Zoltan & Monsaingeon, Flora, *Macedonia Since Independence: (De) Constructing a Multiethnic State* (visited Jan. 14, 2005) <http://www.columbia.edu/itc/sipa/U6868x01/Macedonia_Paper.htm>.

⁷ See Security Council Resolution 817, United Nations Security Council, 48th Session, Res. & Dec., at 132, para. 2, United Nations (UN) Doc. S/INF/49 (1993); General Assembly Resolution

States has recognized the use of the name 'Republic of Macedonia' and the relations between Skopje and Athens are also warming up.

During the democratization period the interethnic relations and the question of minority rights were on the forefront of the political agenda. Following the warlike crisis⁸ in early and mid 2001, and the signing of the Ohrid Framework Agreement,⁹ Macedonia has made amendments to the 1991 Constitution that clarified the position of the national minorities in the legal system.¹⁰ Since then the situation has stabilized, and the Macedonian government has introduced a number of reforms related to minorities and minority rights protection.¹¹

47/225, UN General Assembly Resolution, 47th Sess., Supp. No. 49, Vol. 2, at 6, UN Doc. A/47/49 (1993).

⁸ In late January 2001 there was a kind of rebellion of ethnic Albanians in the northwestern part of the country. The Albanian minority wanted to force more rights from the majority Macedonians with this rebellion. See Simon, Zoltan & Monsaingeon, Flora, *Macedonia Since Independence: Constructing a Multiethnic State* (visited Jan. 14, 2005) <http://www.columbia.edu/itc/sipa/U6868x01/Macedonia_Paper.htm>.

⁹ According to the Preamble of the Agreement it is "an agreed framework for securing the future of Macedonia's democracy and permitting the development of closer and more integrated relations between Macedonia and the Euro-Atlantic community. This Framework will promote the peaceful and harmonious development of civil society while respecting the ethnic identity and the interests of all Macedonian citizens." See Council of Europe (visited Jan. 14, 2005) <http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Police_and_internal_security/Police_cooperation/OHRID%20Agreement%2013august2001.asp>

¹⁰ See Daskalovski Zhidas, *Elite Transformation and Democratic Transition in Macedonia and Slovenia*, BALKANOLOGIE, Sept. 1999, at 4.

¹¹ See e.g., Macedonia welcomes minority rights plan, BBC (visited Jan. 12, 2005) <<http://news.bbc.co.uk/1/hi/world/europe/1982149.stm>>; Also Macedonians Defeat Bid to Block Rights for Albanian Minority, *The Washington Post* (visited Jan. 14, 2005) <<http://>

1.1.4. Population

According to the 2002 population census, Macedonia has 2,063,122 inhabitants of whom Macedonians are 64.18%, Albanians 25.17%, Turks 3.85%, Romas 2.66%, Serbs 1.78%, Boshniaks 0.84%, Vlachs 0.48%, and others 1.04%.¹² The vast majority of ethnic Macedonians is Macedonian speaking – which is a Slavic language – and they are of Eastern Orthodox Christian religion, as are the Macedonian Vlachs and Serbs. On the other hand, most of ethnic Albanians, Romas and Turks are Muslims.

While Macedonians populate the whole country, ethnic Albanians are predominantly concentrated in the northwestern corner of Macedonia, along the border with Albania. Macedonian Albanians also reside in the capital, Skopje, and the towns of northern Macedonia along the border with Kosovo. Except Skopje, Macedonian Serbs also populate the region around the town of Kumanovo. The other ethnic groups are dispersed throughout Macedonia. Since the end of the Second World War, Macedonia's population has grown steadily, with the greatest increase occurring in the ethnic Albanian community. From 1953 through the time of the latest official census in 2002, the percentage of Albanians living in Macedonia rose by 313%. Life expectancy at birth for the total population is 74.5 years.¹³

1.1.5. Political scene

The unicameral Macedonian Parliament ("*Sobranie*") is comprised of 120 members. According to the new

www.washingtonpost.com/wp-dyn/articles/A32730-2004Nov7.html.

¹² See Census data published on Dec. 1, 2003, *Drzhaven Zavod za Statistika* [State Institute for Statistics] (visited Apr. 6, 2004) <www.stat.gov.mk>.

¹³ See *id.*

electoral laws adopted in June 2002 (the Law on Election of Members of Parliament¹⁴ and the Law on the Voters List¹⁵) parliamentarians are elected for a four-year term by those aged 18 and over, in six electoral districts.¹⁶ The Macedonian political system is semi-presidential akin to the French model. The prime minister is the head of the government and is selected by the party or coalition that gains a majority of seats in the parliament. The president represents Macedonia at home and abroad and is the commander-in-chief of the armed forces. He is elected by general, direct ballot and has a term of 5 years, with the right to one re-election.

Macedonia's fourth post-independence parliamentary elections were held on September 15, 2002. The winners, the coalition "Together For Macedonia" comprised of the Social Democratic Union of Macedonia (SDSM), the Liberal Democratic Party (LDP), and a number of smaller parties representing the ethnic minorities in the country, won altogether 60 seats, while their main contenders, the coalition between Internal Macedonian Revolutionary Organization (VMRO) – Democratic Party for Macedonian National Unity (DMPNE) and the Liberal Party (LP) won 33 seats. The new government is effectively a coalition between the parties that made up "Together for Macedonia" and Democratic Union for Integration (DUI) the Prime Minister being the leader of SDSM, Branko Crvenkovski.

On February 26, 2004 President Trajkovski died in a plane crash. Extraordinary presidential elections were held. The turnout was 54% and Branko Crvenkovski was

¹⁴ Published in the Official Gazette of the Republic of Macedonia No. 42/02.

¹⁵ *Id.*

¹⁶ These laws can be found at the web page of the State Election Commission (visited Jan. 10, 2005) <<http://www.izbori.gov.mk/pretsedatelski2004/eng/zakoni.php>>.

elected president on second-round ballot with a percentage of the vote of 42.47%. The main rival, the presidential candidate of VMRO – DPMNE, Sasko Kedev gained 34.07% of the votes.¹⁷ Branko Crvenkovski was replaced first by Hari Kostov, and then by Vlado Buckovski, who is the actual prime minister.

1.1.6. Economy

Macedonia is a small economy with a gross domestic product (GDP) of United States dollars (USD) 13.7 billion.¹⁸ Agriculture and industry have been the two most important sectors of the economy, although both sectors provide only a limited number of high-quality finished products. In the time of the Socialist Federal Republic of Yugoslavia (SFRY) Macedonia was the least developed republic, producing a mere 5% of the total federal output of goods and services. After its independence Macedonia experienced substantial economic difficulties as the result of the loss of sizable financial help from the former SFRY and the collapse of its 'common' market. With mounting enterprise losses being refinanced by the Macedonian Central Bank and severe fiscal imbalances arising from large subsidies and social transfer payments, near hyper-inflationary conditions arose. The stabilization program that was implemented in the early 90's reduced the inflation, but all other economic performances have stayed generally poor up to now.

The Macedonian economy is characterized by the same problems that characterized the former Yugoslav

¹⁷ See Daskalovski Zhidas, *Elite Transformation and Democratic Transition in Macedonia and Slovenia*, BALKANOLOGIE, Sept. 1999, at 2. The author would also like to thank to Mr. Daskalovski Zhidas for the useful help and advice provided for part "The Political Scene."

¹⁸ Based on purchasing power parity – 2003 estimation. See The World Factbook 2004 (visited Oct. 19, 2004) <<http://www.cia.gov/cia/publications/factbook/print/mk.html>>.

economy in the 1980's and in the 1990's: deficit of foreign trade balance, high level of unemployment, wastefulness with the public money.¹⁹ The poor economic performance was influenced by an unfavorable regional environment: the UN embargo against the northern neighbor Yugoslavia (the main trading partner, today named Serbia and Montenegro), the Greek trade blockade, the war in Bosnia and Herzegovina and, later on, the Kosovo crisis and the insurgency in Macedonia. The situation has led to the creation of an unstable political and economical environment in Macedonia lasting ever since and has destroyed investor confidence and much of business motivation. Consequently there has been a significant drop in business activities during the subsequent years.²⁰ Thus, the GDP was negative until 1996. After that – irrespective that it has grown modestly for a short period of time – a sharp drop ensued in 2001.

However, in 2002 the GDP began to grow again, and this growth was first 0.9%, that rose to 2.8% in 2003. This level constitutes an improvement against 2001-2002 but remains insufficient to reduce unemployment and to substantially improve living standard. The Macedonian GDP in the first quarter of 2004 fell by 3.6% and the projected real GDP growth for 2004 of 4.0% is unlikely to be met. Average annual inflation rate (CPI-based)²¹ in

¹⁹ See *Auswärtiges Amt* Info page (visited Oct. 4, 2004) <http://www.auswaertiges-amt.de/www/en/laenderinfos/laender/laender_ausgabe_html?type_id=12&land_id=110>; Centreurope.org Info page (visited Oct. 22, 2004) <<http://www.centreurope.org/macedonia/economy-macedonia.htm>>. See also *The World Factbook 2004* (visited Oct. 19, 2004) <<http://www.cia.gov/cia/publications/factbook/print/mk.html>>.

²⁰ See *id.*

²¹ CPI (Consumer Price Index) based inflation (headline inflation) expresses the increase in the consumer price index over time. See *The SEACEN Research and Training Center* (visited Jan. 02, 2005) <<http://www.seacen.org/newsletter/2004-2ndQtr/mbn-Indonesia.aspx>>.

2003 was 1.2%. At the end of June 2004 it was 0.5%. The country's most significant problem remains unemployment; currently estimated at 36.7% of the active population (approximately 400,000 people).²²

Macedonia was officially accepted as a member of the World Trade Organization (WTO) on October 15, 2002. Following the 1997 Cooperation Agreement²³ with the European Union (EU), Macedonia signed the Stabilization and Association Agreement with the EU in April 2001, giving Macedonia duty-free access to European markets and speeding up the harmonization of Macedonian law with that of the EU and trade liberalization according to fixed deadlines. Macedonia applied for membership in the European Union in April 2004.

The main challenges that are to be faced by Macedonia over medium term – besides maintaining peace and stability especially by easing inter-ethnic tensions – are enhancement of the efficiency of the state, alleviation of poverty, development of human capital, promotion of private sector growth and creation of jobs. Macedonia's foreign trade balance has been in deficit since 1994, reaching USD 849.4 million in 2002. Foreign direct investments at the end of March 2004 were USD 42.0 million. The external debt at the end of May 2004 was USD 1,755.5 million or 34.6% of the GDP. On the other hand foreign exchange reserves at the end of May 2004 were USD 871.9 million. The total 2002 trade volume was USD 3.07 billion or 82.3% of the GDP. Macedonia's major trading partners are Serbia and Montenegro, Germany, and Greece.

²² *See id.*

²³ Full title of the Agreement: Cooperation Agreement between the European Community and the Former Yugoslav Republic of Macedonia. It can be found at Info page 'Europa' (visited Jan. 12, 2005) <http://www.delmkd.cec.eu.int/en/eu_and_fyrom/pdf/cooperation_agreement.pdf>.

Macedonia has signed free trade agreements with Albania, Bosnia and Herzegovina, Serbia and Montenegro, Bulgaria, Croatia, Moldova, Ukraine, Slovenia, Turkey, and the European Free Trade Association countries.²⁴

1.1.7. Synopsis of the court system

The Macedonian legal system is based on the civil law tradition. The judicial power is exercised by independent courts.²⁵ There are 27 local (first instance) civil and criminal courts in Macedonia. Appellate (second instance) courts can be found in three towns: Skopje, Bitola and Štip. The Supreme Court is the highest appellate court. It hears appeals from the courts of appeals. It also has an administrative law chamber with jurisdiction over all appeals of final decisions by administrative organs. It is currently composed of 25 judges. In general, court hearings are public. Cases might be tried either by a single judge or by a panel of judges (grave crimes or complex civil disputes).²⁶

Macedonia has also a system of prosecutors entrusted with powers that exist in most European civil law systems. It is an independent organ with a hierarchical organisation.²⁷

²⁴ *See id.*

²⁵ Regarding this issue *see* Macedonian Court Modernization Project Info page (visited Jan. 12, 2005) <<http://www.courtmodernization.com/components.htm#compl>>. This project is financed by the United States Agency for International Development (USAID), and has as its aim to develop the Macedonian judiciary into a stronger, more effective and independent branch of the government.

²⁶ *See* American Bar Association (visited Oct. 5, 2004) <<http://www.abanet.org/cecli/countries/macedonia/legalinfo.html>>

²⁷ *See id.*

Macedonia has also a Constitutional Court.²⁸ The Court is composed of nine judges appointed by the Macedonian Parliament for nine years.²⁹ This Court has basically the same powers as other East European constitutional courts: it decides on the constitutionality of laws and protects certain specified rights and freedoms of individuals.³⁰

2. Entry of foreigners and foreign investments

It was showed by the above data that the Macedonian economy is slowly, but steadily growing. The economic and legal system is on the way to take over European norms in every field. Cautiously, we might speak about the success of reforms. This claim is best supported by the

²⁸ The Macedonian legal system in this respect follows the German legal tradition where there is a separate Supreme Court and Constitutional Court, unlike in the United States.

²⁹ *See id.*; Also Constitutional Court of the Republic of Macedonia (visited Jan. 12, 2005) <<http://www.usud.gov.mk/domino/WEBSUD.nsf/GlavenE?OpenFrameSet>>.

³⁰ According to art. 110 of the Macedonian Constitution, the Constitutional Court of the Republic of Macedonia: decides on the conformity of laws with the Constitution; decides on the conformity of collective agreements and other regulations with the Constitution and laws; protects the freedoms and rights of individuals and citizens relating to the freedom of conviction, conscience, thought and public expression of thought, political association and activity as well as to the prohibition of discrimination among citizens on the ground of sex, race, religion or nationality, and social or political affiliation; decides on conflicts of competency among holders of legislative, executive and judicial offices; decides on conflicts of competency among Republic's bodies and units of local self-government; decides on the answerability of the president of the Republic; decides on the constitutionality of the programs and statutes of political parties and associations of citizens; and decides on other issues determined by the Constitution. *See id.*

fact that a large number of foreign companies are already present on the Macedonian market.³¹

The most important legal act that foreigners have to take into consideration when establishing business in Macedonia is the Law on Commercial Entities.³² Under this law, a commercial company may be established both by domestic and foreign natural and legal persons.³³ All areas are open to foreign investments except military industry, circulation and trade of arms, trade of narcotics and protection of historical monuments and the cultural wealth of the country.³⁴

There are also some fields covered by partial restrictions. For example, according to the Law on Radio Broadcasting, foreign persons may participate in the capital of broadcasting companies up to 49%, and at the same time one foreign shareholder may not hold more than 25% of the shares.³⁵ There is, however, no restriction on foreign participation in the banking sector regulated by

³¹ Among others: Balkanbrew Holding LTD from Greece, Titan, Holderbank Financière Glaris, Balkan Steel – Liechtenstein, Hellenic Petroleum from Greece, National Bank of Greece, KNAUF GmbH from Germany, etc. Source: Chamber of Commerce of the Republic of Macedonia (visited Nov. 5, 2004) <<http://www.mchamber.org.mk/investen/>>.

³² Law on Commercial Entities, published in Official Gazette of the Republic of Macedonia No. 28/04 (the English translation can be found at: <http://www.maccorpgov.com/data/webdata/documents/Macedonian_Company_Law_Final_Version_December_2004_4.pdf> (visited Mar. 20, 2005). For the definition of commercial entity see *infra* part 3.1.

³³ Law on Commercial Entities art. 30.

³⁴ See Legal information for investors – Chamber of Commerce of the Republic of Macedonia (visited Nov. 5, 2004) <<http://www.mchamber.org.mk/investen/>>.

³⁵ See Law on Radio Broadcasting published in the Official Gazette of the Republic of Macedonia No. 20/98.

the Law on Banks.³⁶ As opposed to that foreign investors (both natural persons and legal entities) may acquire property rights over immovables only for the purpose of their business activities. According to the Law on Agricultural Land both foreign and domestic investors may participate in public auctions for leasing of state-owned agricultural land.³⁷

As far as legal guarantees for foreign investments are concerned, the most important domestic instrument that insures the protection of foreign investment is the Constitution of Macedonia.³⁸ Legal protection of property and the freedom of the market and entrepreneurship are fundamental values of the Macedonian constitutional order.³⁹ Furthermore, the Constitution states that “[no] person may be deprived of his property or of the rights deriving from it, except in cases concerning the public interest determined by law. If property is expropriated or restricted, rightful compensation not lower than its market value is guaranteed.”⁴⁰ The Constitution also guarantees

³⁶ *Закон за банките* [Law on Banks], published in the Official Gazette of the Republic of Macedonia No. 62/00.

³⁷ Law on Agricultural Land, published in the Official Gazette of the Republic of Macedonia No. 25/98, 18/99. The reason that only leasing of such land is allowed is remnant from socialism (*note of the author*).

³⁸ Constitution of the Republic of Macedonia, published in Official Gazette of the Republic of Macedonia, No. 52/91. The text can be found at Soros Foundation Macedonia (visited Oct. 25, 2004) <<http://www.soros.org.mk/mk/en/const.htm#1>> or at the webpage of the Constitutional Court of the Republic of Macedonia (visited Apr. 6, 2005) <<http://www.usud.gov.mk/domino/WEBSUD.nsf/GlavenE?OpenFrameSet>>.

³⁹ Id. art. 8.

⁴⁰ Id. art. 30.

for foreign investors the free transfer of the invested capital and profits.⁴¹

There are also special laws concerning the protection of foreign investments. The Law on Expropriation governs the issue of taking and related compensation.⁴² Foreign investors are entitled to equal legal protection against expropriation as any domestic investor. In addition, Macedonia has ratified a number of bilateral investment protection treaties, which also provide for guarantees against expropriation of property.⁴³

There are various incentives⁴⁴ for foreign investors, including tax holidays and exemptions from customs

⁴¹ Id. art. 59; The same article of the Constitution states that "[...] rights obtained [by foreign investors] on the basis of the capital invested may not be reduced by law or other regulations".

⁴² Law on Expropriation, published in the Official Gazette of the Republic of Macedonia No. 33/95, 20/98, 40/99.

⁴³ For example: United States of America – Macedonia (Former Yugoslav Republic) Commercial Relations Treaty. Source: Trade Compliance Center (visited Nov. 2, 2004) <<http://www.tcc.mac.doc.gov/cgi-bin/doi.cgi?204:64:658948845:158>>. Also Agreement between the Government of the Republic of Macedonia and the Government of the Republic of China on the Promotion and Reciprocal Protection of Investment. See Ministry of Finance of the Republic of Macedonia (visited Nov. 22, 2004) <<http://www.finance.gov.mk/gb/index.html>>. Macedonia has also assumed all bilateral investment protection treaty obligations of former Yugoslavia that were in force at the time of independence on September 8, 1991. See ICSID Info page (visited Nov. 20, 2004) <<http://www.worldbank.org/icsid/constate/c-states-en.htm>> and MIGA Info page (visited Nov. 20, 2004) <<http://www.miga.org/screens/about/members/members.htm>>.

⁴⁴ Foreign investors can import capital equipment without payment of customs duties, during the first three years of operation they do not have to pay profit tax, profits re-invested in fixed operational assets or used for environmental protection are tax exempt, investors re-investing their profit in undeveloped regions may get tax reduction. Large foreign investors may get tax holiday with the decision of the parliament on ad hoc basis. See Foreign

duties. These incentives might be given by the parliament on an *ad hoc* basis to strategic foreign investors.⁴⁵ Given that issues related to taxation will be examined in part 7, here solely the following should be stressed: it is a basic principle that after fulfilling of financial obligations towards the state, the transfer of profit is free in convertible currency. It is also of relevance here that Macedonia has concluded a number of treaties for the avoidance of double taxation.⁴⁶

Regarding branch offices and representative offices of foreign entities, such offices have no status of a legal entity.⁴⁷ However, the law grants them the right to undertake liabilities and the right to access to courts and other official bodies of Macedonia.⁴⁸ Such offices have to register with the company register according to the location of the representative or the branch office.⁴⁹ In legal transactions representative and branch offices act on behalf and for the account of the foreign company.⁵⁰ Therefore liabilities and rights arising from their operations are assumed by the establishing company.⁵¹ Branch and representative offices have to operate under the business name of the founding company, however they may add a peculiar element/sign to it.⁵²

Investments in Macedonia, TIR Info Page (visited Oct. 12, 2004) <<http://www.tir.com.mk/ainv.html>>.

⁴⁵ See Foreign Investments in Macedonia, TIR Info Page (visited Oct. 12, 2004) <<http://www.tir.com.mk/ainv.html>>.

⁴⁶ See *infra* Appendix III.

⁴⁷ Law on Commercial Entities art. 26 (4).

⁴⁸ *Id.* art. 585 (1).

⁴⁹ Decision for the Conditions for Opening and Functioning of the Representative Offices of Foreign Entities in the Republic of Macedonia. Published in the Official Gazette of the Republic of Macedonia No.25/95, 54/98.

⁵⁰ Law on Commercial Entities art. 589.

⁵¹ *Id.* art. 26.

⁵² *Id.* art. 26 (5).

Local agents can represent foreign persons as well. In Macedonia there are three main types of agency regulated by the Law on Obligations:⁵³ commission business,

⁵³ *Закон за облигационите односи* [Law on Obligations] – the text of the law is available at (visited Oct. 30, 2004) <http://www.finance.gov.mk/gb/laws/other_laws/law_on_obligations.pdf>. The general part of the Law on Obligations defines terms like representation, power of attorney and business power of attorney. According to the law a contract or any other legal transaction may be undertaken through the representative. *Id.* art. 76 (1); Furthermore, the law states that the authority for representation is based on law, the articles of incorporation or any other self-governing general provision, authority of a legal entity or a statement of assent by the principal (power of attorney). *Id.* art. 76 (2); “A contract entered into by a representative within his authority on behalf of a principal shall be directly binding on both the principal and the other contracting party.” *Id.* art. 77 (1); “Where an agent exceeds his authority, the principal is not bound unless he consented to the extension.” *Id.* art. 79 (1).

“A power of attorney is a legally formalized authorization conferred by a principal to another person [representative] by means of a legal procedure.” *Id.* art. 81 (1). “The existence and scope of a power of attorney are independent of the legal relationship that serves as basis on which the power of attorney is granted.” *Id.* art. 81 (2). The agent is entitled to undertake only transactions for which he has authorization. *Id.* art. 83 (1). “A representative with a general power of attorney is entitled to undertake only the legal transactions within the range of regular day to day business activity.” *Id.* art. 83 (2). The principal can revoke the authorization at any time, even if he has renounced to that right in the contract. *Id.* art. 84 (1). However, this has no legal effect on a third party “that has entered into a contract with the representative or has performed any other legal transaction without being aware or having to be aware that the power of attorney has been canceled or limited.” *Id.* art. 85 (1). “In such a case, the principal is entitled to compensation from the representative for the damage, except where the proxy was not, and did not have to be, aware of the cancellation or limitation of the power of attorney.” *Id.* art. 85 (2). However, there are certain restrictions in the law: a business representative under power of attorney cannot sell or mortgage real estate, accept bill of exchange obligations or guarantee obligations, take a loan or engage in litigation in court, unless he has received a special power of attorney for each of these

commercial agency and mediation. In case of a commission business contract the agent performs on his own behalf but for the account of the client for a fee (commission).⁵⁴ In case of a commercial agency contract the agent undertakes an obligation to "take permanent care that third persons enter into contracts with his principal, and to mediate in that respect between them and the principal, as well as to enter into contracts, after obtaining authorization, with third persons on behalf and for the account of the principal, while the principal shall undertake an obligation to pay him, for each contract concluded, an agreed fee (commission)."⁵⁵ In case of a mediation contract the agent only undertakes to find a business partner for his client, hence the agent does not perform on his behalf and for his account.⁵⁶ Investors have to decide, taking into consideration the nature of the business, which one would fit the best their needs.

3. Company law

3.1. Introduction

Macedonia enacted its first Law on Commercial Entities in 1996 with an objective to bring order into this field, which was plagued with problems caused by the remnants of the Company Law of the former Yugoslavia from 1986. This Law on Commercial Entities has been enacted in April 2004. The new law, in its essence, is based on a combined French-German company law model.⁵⁷

transactions. *Id.* art. 87 (2). A business power of attorney can be limited, but third parties have to know about such limitation. *Id.* art. 87 (3).

⁵⁴ *Id.* art. 827 (1).

⁵⁵ *Id.* art. 846 (1).

⁵⁶ *Id.* art. 869.

⁵⁷ See Privatization Agency of the Republic of Macedonia (visited Oct. 11, 2004) <<http://www.mpa.org.mk/guide/governance.asp>>; CG & CL project (visited Oct. 12, 2004) <<http://www>.

Under this law, 'commercial entity' is any natural or legal person who/that independently and permanently performs commercial activities in order to gain profit by production and trade or by providing services on the market. These activities may take the form of: (1) purchase of movables, regardless whether they are sold in their original form, refined or processed; (2) sale of movables in refined or processed form from his own production; (3) trading of securities and fund management; (4) banking, exchange and other financial activities; (5) insurance activities; (6) transportation of persons and goods; (7) commission-based activities, freight-forwarding services, storage services and leasing; (8) representation and negotiation related to commercial activities; (9) hotel and restaurant services, information services, marketing and other intellectual services; (10) production of movies and videocassettes, audio-visual records, software, as well as other similar activities; (11) publishing and printing activities, as well as other commercial activities related to trading with books and artistic works; and (12) purchase, construction and decorating of real estate for the purpose of sale or rent.⁵⁸

A 'simple' form of commercial entity is the sole proprietor.⁵⁹ For more 'complex' commercial entity forms the law establishes the category of "company." According

maccorpgov.com/legal.asp>. The Macedonian law was used as one of the models for drafting the new Serbian Law on Commercial Entities, published in the Official Gazette of the Republic of Serbia No. 125 in 2004. See Mirko Vasiljević, *Zakon o privrednim društvima Republike Srbije* [Law on Commercial Entities of Republic of Serbia]. Pravni Informator, (visited Feb. 12, 2005) <<http://www.informator.co.yu/informator/index.html>>.

⁵⁸ Law on Commercial Entities art. 4 (1). However, natural persons engaged in agricultural or forestry activities, or providing hotel or restaurant services and rent rooms in their own places of residence are not considered commercial entities. The same is valid for lawyers, notaries and doctors. *Id.* art. 8.

⁵⁹ *Id.* art. 12.

to the Law on Commercial Entities the following entities, regardless of their activities, qualify as company:⁶⁰

- a) General partnership – “Јавно Трговско Друштво,” (ЈТД) [Javno Trgovsko Drushtvo (JTD)];
- b) Limited partnership – “Командитно Друштво,” (КД) [Komanditno Drushtvo (KD)];
- c) Limited liability company – “Друштво со Ограничена Одговорност,” (ДОО) [Drushtvo so Ogranichena Odgovornost (DOO)];
- d) Joint-stock company – “Акционерско Друштво,” (АД) [Akcionersko Drushtvo (AD)]; and
- e) Limited partnership by shares – “Командитно Друштво со Акции,” (КДА) [Komanditno Drushtvo so Akcii (KDA)].

The above entities acquire legal personality with the entry to the company register, and cease with deletion therefrom.⁶¹

The law also states that a company performs its activities for the purpose of generating profit, thereby distinguishing it from non-profit organizations (otherwise

⁶⁰ Law on Commercial Entities art. 20 (1). The Law on Commercial Entities defines company as “[...] a legal person wherein one or more persons invest cash, kinds or rights in assets used for joint operation and who share the profit or loss from such operation. A company shall independently and permanently perform activities for the purpose of generating profit.” *Id.* art. 19. The Law on Commercial Entities regulates also *silent partnerships*, however, these entities are not legal persons. *Id.* art. 568 (1). The law defines silent partnerships as an enterprise “[...] founded by an agreement under which a person (the silent partner) shall make monetary or non-monetary contribution to an enterprise owned by another person – entrepreneur, and, on the basis of the contribution, that person shall acquire the right to participate in the profit and loss of the entrepreneur.” *Id.* art. 567 (1).

⁶¹ *Id.* art. 25 (2) (3). However, sole proprietor and branch office of a foreign company, or branch office of a foreign sole proprietor also has to register. *Id.* art. 90.

not covered by this law).⁶² The Macedonian Law on Commercial Entities is familiar with the institution of "pre-company," that comes into existence with the adoption of the foundation document.⁶³ The person, who assumes liabilities in the name of the "pre-company" before its entry to the company register, is personally liable for the liabilities of the pre-company. If this is done by several persons they become liable jointly and severally.⁶⁴ Once the company is entered to the company register, the "pre-company" ceases to exist. At the same time, all rights and liabilities arising from the operation of the "pre-company" become rights and liabilities of the company.⁶⁵

Regarding contributions made by the founders, the law allows both cash and in kind contributions for all forms of companies.⁶⁶ Very important issue is the appraisal of non-monetary contributions. According to the law, such contributions shall be appraised by an officially authorized appraiser appointed by the founders or by the members or shareholders of the company in the case of limited liability company, joint-stock company, limited partnership and limited partnership by shares.⁶⁷ The appraiser is jointly and severally liable with his entire assets for the accuracy of his report.⁶⁸ In case of general partnership non-monetary contributions are appraised by the common agreement of all the partners.⁶⁹

⁶² *Id.* art. 19 (2).

⁶³ *Id.* art. 23 (1).

⁶⁴ *Id.* art. 23 (3).

⁶⁵ *Id.* art. 23 (6).

⁶⁶ The law expressly enumerates the following non-monetary contributions: rights with property value and rights that can be expressed in cash, as well as labor and services in case of general partnerships. *See id.* art. 34.

⁶⁷ *Id.* art. 35 (2).

⁶⁸ *Id.* art. 35 (4).

⁶⁹ *Id.* art. 117 (3).

Commercial entities under the Law on Commercial Entities and branch offices of foreign companies have to prepare annual financial statements at the end of the business year.⁷⁰ Some of the commercial entities are even subject to audit. According to the law these are: (1) large and medium size commercial entities registered as joint-stock companies, (2) companies the shares of which are listed on the stock exchange, as well as (3) large and medium size commercial entities registered as limited liability companies.⁷¹

In Macedonia, as a rule, any foreigner may found a company, be a member or a shareholder in a company with the same rights and liabilities as domestic physical or legal persons.⁷²

3.1.1. Company name

According to the Law on Commercial Entities the company name (that shall be written in Macedonian with Cyrillic letters),⁷³ has to contain an expression serving as the 'name,' data indicating the scope of operation, registered office and the type⁷⁴ of the company.⁷⁵ The company name may be used as a trademark⁷⁶ and the name may contain additional symbols, however, there are certain restrictions as to what these might be.⁷⁷ It may not contain personal names (except with consent; *see infra*), flags, coat of arms or other symbols of states, or international organizations, official signs of quality control and quality assurance, or misleading words that

⁷⁰ *Id.* art. 467.

⁷¹ *Id.* art. 478 (1).

⁷² *Id.* art. 30.

⁷³ *Id.* art. 50 (1).

⁷⁴ *See supra* part 3.1.

⁷⁵ Law on Commercial Entities art. 46 (1).

⁷⁶ *Id.* art. 46 (3).

⁷⁷ *Id.* art. 46 (2) and 47.

can be confused with names of other companies, or other entities.⁷⁸ To use the name "Macedonia" or Macedonian state symbols, the approval of the Ministry of Justice is required.⁷⁹ With the consent of natural persons (or their descendants), personal names might also be used as parts of company names.⁸⁰ The company name has to be recorded in the company register, and it should be used by the company in the same form.⁸¹ Concerning filing of business names, the principle of first in time, first in rights applies.⁸²

3.1.2. Company register and the registration procedure

As already mentioned, companies come into existence and acquire legal personality with the entry into the company register. Hence, a brief overview of the provisions of the Law on Commercial Entities related to this institution follows. There is a unified system of registers,⁸³ where company registers are maintained by courts,⁸⁴ and all the information at the company register is public.⁸⁵ Entries can be made both in written or electronic form.⁸⁶ The procedure of registration takes place according to the rules of non-contentious⁸⁷ procedure.⁸⁸ The registration form

⁷⁸ *Id.* art. 47.

⁷⁹ *Id.* art. 48.

⁸⁰ *Id.* art. 49.

⁸¹ *Id.* art. 52 (1).

⁸² *Id.* art. 57. There is a computerized system that makes it possible to determine the exact date and time of filing.

⁸³ According to the law, a centralized computer system has to be built up (a single register) until July 1, 2005, where any data entered at one court will be immediately accessible by any other court. *Id.* art. 608.

⁸⁴ *Id.* art. 83 (1).

⁸⁵ *Id.* arts. 85 (1) and 86 (1).

⁸⁶ *Id.* art. 84 (1).

⁸⁷ Non-adversarial type of procedure.

has to be filed by the management body of the company or by the authorized manager.⁸⁹

The decision of the court to register a company in the company register enters into force the same day the decision is made by the court.⁹⁰ The court must make the decision in writing. In case the court refuses the registration of the company, the applicant may appeal within eight days from publicizing (publication in the official gazette) the decision by the court.⁹¹ If the request for registration is in accordance with the requirements of the law, the court must register the company within eight days.⁹²

The decision becomes enforceable upon the expiry of this eight days period.⁹³ The law does not make clear, whether the company shall be considered as established by the force of the law or not if there is no court decision within the above mentioned eight days. A final point of relevance to registration: it is expected that the efficiency of courts will improve with the implementation of the 'Macedonian Court Modernization Project' that is funded by the United States Agency for International Development (USAID).⁹⁴

⁸⁸ *Id.* art. 87 (1).

⁸⁹ *Id.* art. 92 (2). What is understood under the management body and authorized manager depends on the company form, and should be regulated in the bylaws of the company.

⁹⁰ *Id.* art. 98.

⁹¹ *Id.* art. 102.

⁹² *Id.* art. 97 (1).

⁹³ *Id.* art. 98.

⁹⁴ The objectives of this project are to make more efficient (i.e., faster and more consistent adjudication) the work of courts, to make them more independent from the executive branch, and to help them function in a more transparent manner. See Macedonian Court Modernization Project (visited Jan. 12, 2005) <<http://www.courtmodernization.com/index.htm>>.

3.2. General partnership

The general partnership is a commercial enterprise established by means of an agreement entered into by, at least, two legal entities or natural persons (partners), who are jointly and severally liable⁹⁵ for the obligations incurred by the partnership with and to the full extent of all the assets they personally own.⁹⁶ From analyzing the pertinent section one may conclude that Macedonian rules are essentially equal or at least similar to the solutions known by most modern partnership regulations in civil law countries. Thus, for example, the partners' contributions to the general partnership need not to be on equal terms.⁹⁷ They may assume the form of monetary or non-monetary contributions,⁹⁸ and may regulate the transfer of rights or provisions of labor or services in similar ways.⁹⁹ A share in the partnership of a partner may, for example, be transferred to a third party only with the consent of all the partners. Such transfer may be done only in written form.¹⁰⁰

A general partnership is founded by a partnership agreement.¹⁰¹ This agreement has to include all data

⁹⁵ *Id.* art. 110 (1).

⁹⁶ *Id.* art. 110.

⁹⁷ *Id.* art. 117 (1).

⁹⁸ The monetary value of non-monetary contributions is determined by consensus among the partners. *Id.* art. 117 (2).

⁹⁹ *Id.*

¹⁰⁰ *Id.* art. 123.

¹⁰¹ However, it comes into existence as a legal entity with registration. See *supra* part 3.1.2. The application for entry has to be submitted by all the partners. *Id.* art. 114. Data and attachments that are required for entry of the application are: (1) business name and registered office of the general partnership; (2) full name, unique ID number (EMBG) for Macedonian citizens, passport number or ID number for foreigners or other documentation for determining the identity, valid in their country, and their citizenship, as well as place of residence, or the business name and registered office, if the partner is a legal person; (3) scope of operations of the general

necessary for the identification of the partners, designation of the trade name,¹⁰² the registered office of the general partnership, the scope of activities, form and value of the contributions of the partners, and agreement on the partners' participation in management. It also contains provisions on profit distribution and loss coverage.¹⁰³ However, the partnership agreement may contain further regulations on issues governing the relationship between the partners.¹⁰⁴ Thus, the partnership

partnership; (4) type and amount of each partner's contribution; and (5) representation of the general partnership. The following attachments are required: (1) partnership agreement; (2) copy of the passport or personal identification card for foreign natural persons or other documentation for determining the identity valid in their country, or proof for registration if a legal person is the founder; (3) permit or by-laws of the state body or other competent body if the obligation is stipulated by law for registration of the company with the company register; (4) proof of ownership for immovables; (5) statement from the legal representative of the legal person, or from the natural person, verified by a notary, or submission of proof that there is no obstacle for him to be the founder of the company; (6) partners or other persons that in accordance with the partnership agreement are authorized to represent the general partnership shall enclose their signatures certified by a notary public. Art. 115 of the Law on Commercial Entities.

¹⁰² The trade name of a general partnership contains either the full names of all partners or, where the full names of all partners are not included in the trade name, the full name, the trade name or an abbreviation thereof, of at least one of the partners and the mark "and others." It also includes the phrasing "Javno Trgovsko Drushtvo" (general partnership) or its abbreviation "JTD." Law on Commercial Entities art. 49 (1).

¹⁰³ Law on Commercial Entities art. 112. For more on profit distribution see *infra* sections 7.1.1. and 7.1.2.

¹⁰⁴ As in the case of other legal systems, the principle of the freedom of contract – and so the partners' agreement – plays an important role.

agreement may largely extend the legal scope regulating the relationship between the parties.¹⁰⁵

3.2.1. Management of the general partnership

Each partner has the right to manage the partnership, unless the management is exclusively vested in certain partner(s)¹⁰⁶ or in a third party, upon partners' consent.¹⁰⁷

The right to manage encompasses all activities, rights and duties that constitute the ordinary course of business.¹⁰⁸

Decisions that exceed the power of the managers of the partnership¹⁰⁹ have to be made unanimously by all the partners.¹¹⁰ Removal from a managerial position is preconditioned on the consensus of all the partners, unless the partnership agreement provides otherwise.¹¹¹

The rules of the Law on Commercial Entities on representation and management of general partnerships are very similar.¹¹² As a basic rule, each partner is authorized to represent the partnership independently towards third parties. However, with the general partnership agreement the partners may give authorization to one or more partners, or to third persons to represent

¹⁰⁵ *Id.* art. 116 (1).

¹⁰⁶ *Id.* art. 125.

¹⁰⁷ *Id.* art. 127 (1).

¹⁰⁸ The law does not define explicitly what is to be understood under 'ordinary course of business.' In such case, internal acts of the company may define it, or in the lack of such definition in internal acts, the competent body of the company can do so.

¹⁰⁹ *Id.* art. 128 (1). For restrictions, *see supra* section 2.

¹¹⁰ *Id.* art. 128 (2). The issue when is this power exceeded should be regulated in the partnership agreement.

¹¹¹ *Id.* art. 131 (1).

¹¹² Each partner has a right to represent the partnership, unless the representation is exclusively vested in certain partners. In the course of exercising the right to represent, its holders enjoy full independence. *Id.* art. 72. However, the right to represent the partnership may be subject to unconditional waiver *Id.* art. 73 (1).

the partnership, in which case only these partners or third persons may represent the partnership.¹¹³ Authorization to sign for the partnership is also based on the above principles.¹¹⁴

3.2.2. Termination of the general partnership

Finally, a few words about the termination of the general partnership. The partnership ceases to exist: (1) with the lapse of the time for which it has been formed; (2) on the basis of the decision of partners or that of the competent court; (3) upon completion of a bankruptcy procedure against the partnership or any of the partners (in case the partner is a legal entity); (4) with the death of a partner or dissolution of a legal entity (in case the partner is a legal entity); (5) upon loss of business capacity of one of the partners; (6) upon revocation of permit to perform its activity; (7) or upon a partner's stepping out.¹¹⁵ The partnership agreement may also stipulate other grounds for the termination of the partnership.¹¹⁶

3.3. Limited partnership

Limited partnership is a commercial enterprise established by an agreement entered into by at least two entities or natural persons, where at least one of the partners – general partner – liability is unlimited (that is to a full extent of his own assets) and at least one partner – limited partner – is liable through and only to the extent of his registered contribution, for the obligations incurred by the

¹¹³ Law on Commercial Entities art. 135.

¹¹⁴ "Limitations on the authorization to represent the general partnership shall not have any legal effect towards third parties, regardless of whether they knew or must have known about the limitation." *Id.* art. 135 (5).

¹¹⁵ *Id.* art. 140 (1).

¹¹⁶ *Id.* art. 140 (3).

limited partnership.¹¹⁷ The law explicitly states that the contribution of the limited partner may not be in labor or services.¹¹⁸ Another restriction of the law is that general partners have to furnish at least one fifth of the registered capital.¹¹⁹

As said earlier, a limited partnership is founded by a partnership agreement, however, it comes to existence only upon registration as general partnership.¹²⁰ Signatures of the partners in the agreement must be notarized.¹²¹ This agreement shall contain – besides the name, registered office, scope of operation, data on the partners – the total amount of partners' contributions, the status of the partners (general or limited), and regulations on representation of the partnership,¹²² type and ratio of contributions, payment of contributions, profit distribution¹²³ and the way of covering losses,¹²⁴ as well as on the management and decision making.¹²⁵ Any amendment to the agreement can be made only with the

¹¹⁷ *Id.* art. 148 (1).

¹¹⁸ *Id.*

¹¹⁹ *Id.* art. 148 (2).

¹²⁰ Data and documents needed for registration in the company register are enumerated in art. 153 of the Law on Commercial Entities.

¹²¹ Law on Commercial Entities art. 150. The English version of the Law on Notary Publics is at the web page of the Ministry of Finance (visited Jan. 10, 2005) <http://www.finance.gov.mk/gb/laws/other_laws/public_notary_law.pdf>.

¹²² The limited partnership may not be represented by limited partners. *Id.* art. 161 (1).

¹²³ Profit is distributed among the partners of the limited partnership in proportion to their part in the partnership, unless otherwise stipulated in the partnership agreement. *Id.* art. 160 (1).

¹²⁴ In absence of different agreement, the limited partner covers the losses of the limited partnership only up to the amount of his recorded contribution. *Id.* art. 160 (1).

¹²⁵ *Id.* art. 151 (1).

consent of all the general partners and with the consent of the majority of limited partners.¹²⁶

Shares in the partnership are transferable, yet the transfer regime depends on whether the shares are transferred within the partnership, that is, among the partners themselves, or to a third party. As a general rule, shares in the partnership might be transferred to third parties only with the consent of all the partners.¹²⁷ However, the partnership agreement may stipulate differently such transfer. It may stipulate that the transfer of shares in the partnership of limited partners to third parties require unanimous consent of the general partners and the consent of the majority of the limited partners. Or, that and the transfer of the general partner's business share to a limited partner or to a third party requires the consent of all other general partners and the consent of the majority of limited partners.¹²⁸

The management of partnership is exclusively incumbent on the general partners.¹²⁹ Still, they have the right to supervise the activity of the general partners and the latter are accountable to them for acts beyond the ordinary course of business.¹³⁰ Limited partners have no representative capacity, however, this might be differently stipulated by the partnership agreement.¹³¹

As to termination of limited partnership, it may cease to exist in the same cases as general partnerships.

¹²⁶ *Id.* art. 151 (2).

¹²⁷ *Id.* art. 159 (1).

¹²⁸ *Id.* art. 159 (2).

¹²⁹ *Id.* art. 156.

¹³⁰ *Id.* art. 158.

¹³¹ *Id.* art. 161 (1).

3.4. Limited liability company

Limited liability company (hereinafter: LLC) is an enterprise in which one or more¹³² natural or legal persons (members) participate with their contribution(s) (which might vary in amount) to the enterprise capital.¹³³ In this company form, members are not liable for the obligations incurred by the company itself.¹³⁴ However, they are liable toward the company for their obligations specifically undertaken in the articles of incorporation¹³⁵ and the shareholders bear joint and several liability for damages to the company caused deliberately or out of gross negligence in making contributions to the registered capital. They are in the same way liable for improperly making in-kind contributions. Only acting with due care exempts from liability in these instances.¹³⁶

Contributions may differ in amount as well as in kind. However, they may not be made in form of labor or services.¹³⁷ The registered capital cannot be less than EUR 5,000 expressed in Macedonian *denars*¹³⁸ and the minimal value of a contribution is set at EUR 100.¹³⁹ The

¹³² However, the number of members may not exceed 50. Law on Commercial Entities art. 167 (2).

¹³³ *Id.* art. 166 (1) (2).

¹³⁴ *Id.* art. 166 (3).

¹³⁵ *Id.* art. 168.

¹³⁶ *Id.* art. 181.

¹³⁷ *Id.* art. 174 (1) (2).

¹³⁸ *Id.* art. 172 (2). For the sake of information, the exchange rate on Jan. 10, 2005 of Macedonian *denars* was 1 USD = 46 Macedonian *denars*, or 1 EUR = 61 Macedonian *denars*. See National Bank of Macedonia (visited Jan. 10, 2005) <<http://www.nbrm.gov.mk/default-en.asp?ItemID=41989BA5CE65DA48AC1B50206D0DE89D>>. Conversion rate is based upon the average exchange rate of the referred foreign currency as declared and publicized by the National Bank of Macedonia on the day of signing of the articles of incorporation.

¹³⁹ Law on Commercial Entities art. 174 (4).

registered capital must be expressed in round numbers divisible by one hundred.¹⁴⁰ Prior to filing the application for entry to the company register,¹⁴¹ each member has to pay in at least one third of his contribution in cash. The total amount of cash payments, the value of property and rights brought in at the time of establishment may not be lower than EUR 2,500.¹⁴² The rest is to be paid in within a year from the day of entry of the company into the company register.¹⁴³ In kind contributions have to be made in full before filing.¹⁴⁴ The value of such contributions is determined by a certified appraiser.¹⁴⁵ A single share may belong to more than one owner.¹⁴⁶ Such owners are deemed to be one shareholder in all relevant aspects, such as the exercise of rights and liability.¹⁴⁷ The law allows issuance of certificates of shares in the company,¹⁴⁸ however, these are not deemed to be securities.¹⁴⁹

Shares are transferable as well as inheritable.¹⁵⁰ Other members and persons designated by the LLC have priority purchase rights over potential third person buyers.¹⁵¹

¹⁴⁰ *Id.* art. 174 (4).

¹⁴¹ Regarding registration *see supra* section 3.1.2.

¹⁴² Law on Commercial Entities art. 175 (1).

¹⁴³ *Id.* art. 186 (5).

¹⁴⁴ *Id.* art. 175 (2).

¹⁴⁵ *Id.* art. 176 (2). A certified appraiser is a "person who carries out the appraisal as an authorized appraiser and is registered in the register of authorized appraisers established in accordance with the Law." *Id.* art. 1 (30).

¹⁴⁶ It is a special legal community that is regulated by the agreement of its members and where the rules of collective ownership (of material law character) apply accordingly.

¹⁴⁷ Law on Commercial Entities art. 174 (5).

¹⁴⁸ *E.g.*, to certify membership.

¹⁴⁹ *Id.* art. 194.

¹⁵⁰ *Id.* art. 198.

¹⁵¹ *Id.* art. 198 (2).

Share transfer by means of inheritance may not be subject to neither legal nor contractual impediments.¹⁵² The share transfer is deemed accomplished upon its registration in the book of shares maintained by the company.¹⁵³

The law also states that “[i]f the registered capital, due to any kind of reason, is decreased below the minimum level [EUR 5,000] [...], it must be increased up to the level determined by this Law within a period of six months” or the entity has to be transformed into another form of company with respect to which there is no such requirement, otherwise it has to be deleted from the company register *ex officio*.¹⁵⁴

The next step towards acquiring the capacity of a legal entity for limited liability company is filing of a registration form with the company register, signed by the initial managing body. Attached to the form must be: articles of incorporation, copy of a passport or other ID card (of the founders who are natural persons), or proof of registration if the founder is a foreign legal person, certification from an authorized bank that each founder has paid in at least one third of his share, and that at least EUR 2500 in *denar* counter value has been paid, appraisal report of a certified appraiser in case there were in kind contributions (also a certificate of ownership for immovable contributions from the land registry), resolution for appointment of a manager(s) (with his data), acceptance of such appointment by the manager(s) in a notarial document, resolution on the election of members of the supervisory board or controller, special license from

¹⁵² *Id.* art. 199.

¹⁵³ *Id.* arts. 196 and 200. The transfer agreement has to be a notarial document. *Id.* art. 197 (4). The law does not state who has to apply for registration or what is the deadline for registration.

¹⁵⁴ *Id.* art. 173 (1).

a competent authority¹⁵⁵ if for the activity of the company such permit is needed, declaration from the founder(s) that there is no legal obstacle (e.g., he has legal capacity) for him (them) to be founder of the company.¹⁵⁶ The company is deemed established with the entry to the company register.¹⁵⁷

The articles of incorporation has to contain:¹⁵⁸

- name, domicile, citizenship, ID card or passport number as well as the address of member(s), or if the founder is a legal entity, its business name and domicile;
- company's business name¹⁵⁹ and the registered office of the company;
- scope of business activity;
- duration of the company;
- amount of the registered capital and amount of each of members' initial contribution;
- payment of cash contributions that are not paid in full;
- full name, ID card or passport number of the manager(s);
- representation of the company;
- rights and liabilities (e.g., covering the costs of foundation, or other obligations undertaken) of the members towards the company;
- distribution of profit and covering of losses;¹⁶⁰

¹⁵⁵ The law itself does not provide for a list of such special licenses or the issuing authority of such a license.

¹⁵⁶ *Id.* art. 183.

¹⁵⁷ *Id.* art. 25 (2) (3)

¹⁵⁸ *Id.* art. 171.

¹⁵⁹ According to art. 169 of the Law on Commercial Entities, the business name of a limited liability company founded by a single person must contain the words "*Drushtvo so ogranichena odgovornost osnovano od edno lice*" [limited liability company founded by a single person] or the abbreviation "DOOEL."

- management of the company; and
- termination of the company.

3.4.1. Members' meeting

The members' meeting is the highest decision making body of LLC that includes all the members.¹⁶¹ Thus, it has crucial competencies, like adoption of annual financial statements and annual reports on the operation of the company, making decisions on distribution of profits and coverage of losses, appointment and dismissal of managers, as well as election and revocation of the members of the supervisory board.¹⁶²

The members' meeting is convened at least once a year by the chief executive officer, unless otherwise stipulated by the articles of incorporation.¹⁶³ It may be convened whenever it is in the interest of the company, or if members holding at least 10% of the registered capital, or the supervisory board or the controller initiates it.¹⁶⁴ Members have to be informed about the time and the agenda of the meeting in writing eight days in advance.¹⁶⁵ In the assembly, each shareholder has the right to take part

¹⁶⁰ *Id.* art. 191 (1): "The articles of incorporation may stipulate that all or certain members may make a commitment to payments exceeding the amount of the basic contribution, only when such payments are necessary for covering losses or temporary cash needs."

¹⁶¹ *Id.* art. 214.

¹⁶² It also decides on the amendment of the articles of incorporation, approves contracts between members and the company, contracts for procurement (that exceed in value one-fifth of the registered capital of the company), decides upon control of operation, adopts resolutions related to the compensation for damages suffered by the company. *Id.* art. 215.

¹⁶³ *Id.* art. 216 (1).

¹⁶⁴ *Id.* art. 216 (3) (5).

¹⁶⁵ *Id.* art. 217 (1).

on the meeting¹⁶⁶ and to vote in proportion to his share. For each integral EUR 100 of contribution, the shareholder is entitled to one vote.¹⁶⁷ The quorum is the majority of votes present.¹⁶⁸ Voting by proxy (*i.e.*, by representation) is permitted.¹⁶⁹ Decisions are made by simple majority votes, however, articles of incorporation may prescribe a higher threshold.¹⁷⁰

3.4.2. Management of the LLC

Manager(s)¹⁷¹ is (are) appointed by the members of the company.¹⁷² If not specified otherwise in the articles of incorporation, managers are appointed for 4 years with the possibility of renewal.¹⁷³ However, if a member is appointed manager, his term lasts maximum as long as his membership in the company.¹⁷⁴ The articles of incorporation should prescribe the authority of the manager(s). Otherwise, the manager(s) may take any action that is considered as being 'in the ordinary course of business' for the management of the company.¹⁷⁵ The appointment of the manager(s) and his/their authorization to represent the company has to be registered with the company register.¹⁷⁶

¹⁶⁶ *E.g.*, initiate an issue for discussion.

¹⁶⁷ Law on Commercial Entities art. 218.

¹⁶⁸ *Id.* art. 219 (1).

¹⁶⁹ *Id.* art. 221.

¹⁷⁰ *Id.* art. 219.

¹⁷¹ There is no restriction on the number of managers that might be appointed.

¹⁷² *Id.* art. 232 (1). The law does not provide for the procedure of appointment, thus it is on the members of the company to set up the procedure.

¹⁷³ *Id.* art. 232 (4).

¹⁷⁴ *Id.* art. 232 (4).

¹⁷⁵ *Id.* art. 235 (1).

¹⁷⁶ *Id.* art. 234 (1).

Manager(s) represent(s) the company towards third parties.¹⁷⁷ If there is more than one manager, and the articles of incorporation does not stipulate otherwise, the company is represented by all of them.¹⁷⁸ Managers are personally liable to the company for damages caused by unauthorized acts.¹⁷⁹ It is also the obligation of the manager(s) to maintain the company records and to prepare the annual financial statements. Managers may be revoked from office by a decision of the members in identical way to the one in which they have been appointed.¹⁸⁰

3.4.3. Supervision of the company

The supervision of the company may be carried out either by the members themselves, by the controller or by the supervisory board.¹⁸¹ The latter two possibilities have to be provided for in the articles of incorporation.¹⁸² The supervisory board and the controller are elected and revoked by the members' meeting unless the articles of incorporation stipulates otherwise.¹⁸³

The law disqualifies four groups of persons from being elected to the supervisory board or for the position of a controller. While the first group includes the managers and employees of the LLC, the second extends to their spouses and relatives in direct lineage and collaterally up to the third degree. In the third group are persons who are deprived of the right to perform auditing activities by a final court decision and in the last group are those who are

¹⁷⁷ *Id.* art. 236 (1).

¹⁷⁸ *Id.* art. 236 (2).

¹⁷⁹ *Id.* art. 236 (5).

¹⁸⁰ *Id.* art. 242 (1).

¹⁸¹ *Id.* art. 244 (1).

¹⁸² *Id.* art. 245.

¹⁸³ The supervisory board consists of at least three members. The term of their appointment is four years. *Id.* art. 246 (1) and 247.

members in five boards of either LLCs or joint-stock companies.¹⁸⁴

The main task of the supervisory board or the controller is to supervise the operations of the company. Doing so, they review the books of the company, other documents related to the activity of the company, and the property and financial status of the company.¹⁸⁵ They also review the annual financial statements of the company, the proposal for distribution of the profit and evaluate the annual operations report of the company.¹⁸⁶ They have the right, and at the same time the duty, to convene the members meeting if the interest of the company so requires.¹⁸⁷

3.5. Joint-stock company

The joint-stock company is a commercial enterprise the registered capital of which is divided into equal shares and where the liability of the company is secured solely with the entire assets of the enterprise.¹⁸⁸ The shareholders bear no liability for the company's obligations beyond their contributions to the registered capital.¹⁸⁹ The minimum registered capital depends on whether the joint-stock company is formed by way of a public offer or by private formation. In the former case the minimum registered capital is EUR 50,000, whereas in the latter, it amounts to EUR 25,000.¹⁹⁰ The registered capital has to be expressed in numbers divisible by one hundred and made payable in *denars*.¹⁹¹

¹⁸⁴ *Id.* art. 246 (3).

¹⁸⁵ *Id.* art. 249 (1).

¹⁸⁶ *Id.* art. 249 (2).

¹⁸⁷ *Id.* art. 249.

¹⁸⁸ *Id.* art. 270 (1).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* art. 273 (1).

¹⁹¹ *Id.*

The minimum nominal amount of a share may not be less than EUR 1.¹⁹² A share issued at a nominal amount of less than EUR 1 is void. Shares need to be expressed in numbers divisible by one hundred.

A joint-stock company may issue shares that provide different rights. Depending on the class of rights that are bestowed on their holders, the shares may be common or preferential.¹⁹³ Common shares grant shareholders the right to vote in the assembly and the right to have a share in the profit that will be distributed after payment of preferential dividends, if any. Additionally, the holders of common shares are entitled to a proportionate share in the surplus assets of the company in case of liquidation.¹⁹⁴

Preferential shares, in addition to the rights attached to common shares, may confer on their holders further advantages, like participation in the management,¹⁹⁵ or certain additional rights as to dividends and/or as to surplus property that is left after all the creditors have been paid in case of liquidation. The law distinguishes two types of preferential shares: cumulative and participating ones.¹⁹⁶ Cumulative preferential shares warrant priority in the payment of any dividend whatsoever to holders of common share, not just for the year when the decision on the distribution of dividends is being made, but also with respect to the unpaid dividends from the previous years.¹⁹⁷ Participating preferential shares entitle their holders, in addition to a priority

¹⁹² Law on Commercial Entities art. 273 (2).

¹⁹³ *Id.* art. 277.

¹⁹⁴ *Id.* art. 278.

¹⁹⁵ The management of a joint-stock company can be either based on one-tier system (board of directors) or on two-tier system (management board or manager and supervisory board). For more on this issue see *infra* section 3.5.2.

¹⁹⁶ *Id.* art. 279 (1).

¹⁹⁷ *Id.* art. 279 (2).

dividend, also to dividends that the holders of common shares are entitled to (according to the share issuance rules).¹⁹⁸ Preferential shares have a sub-type: namely, they may be issued in form of non-voting shares, but only for an amount less than 30% of the registered capital.¹⁹⁹

According to the Law on Commercial Entities, shares as securities are issued, transferred and kept in the form of electronic record with the Central Depository of Securities.²⁰⁰

The joint-stock company may be founded by one or more natural or legal persons.²⁰¹ It is deemed founded with the entry to the company register.²⁰² The articles of incorporation have to contain the following data about the company:²⁰³

- company's business name²⁰⁴ and registered office;
- scope of business;
- registered capital;

¹⁹⁸ *Id.* art. 279 (3).

¹⁹⁹ *Id.* art. 280 (3). The face value of such shares may not be more than 30% of the total face value of the shares. Such shares might grant, e.g., special dividend rights to their holders.

²⁰⁰ *Id.* art. 274 (1). See also *Закон за хартии од специјалност* [Law on Securities] art. 2, published in Official Gazette of Republic of Macedonia No.63/00, 103/00, 34/01, 4/02, 37/02, 31/03, that defines securities as meaning instrument, contractual relationship or contract aimed at making profit on the basis of entrepreneurial and/or managerial efforts of others, including but without any limitation shares, bonds, treasury bills, commercial notes, government notes, certificates of deposit and other financial instruments deemed investments by the Commission on Securities.

²⁰¹ *Id.* art. 285 (1).

²⁰² *Id.* arts. 25 (2) (3) and 286 (2).

²⁰³ *Id.* art. 287 (1).

²⁰⁴ The company name must specify the company's main activity followed by the wording "Акционерско Друштво" [joint-stock company] or the abbreviation АД. *Id.* art. 271.

- nominal aggregate value of issued stocks by type and class;
- duration of the company if the company is founded for a definite period of time;
- founders privileges;
- procedure for convening the shareholders meeting;
- type, composition and election of the management board and its competencies;
- type, composition and election of the supervisory board and its competencies;
- form of announcements (e.g., information of shareholders) carried out by the company;
- and any other issue of importance for the company's establishment.

The articles of incorporation have to contain also data necessary for the identification of the founder(s) and managers.

The company may also have another internal document known as bylaws.²⁰⁵ Prior to the company's entry to the company register each stockholder must completely transfer his contributions in kind²⁰⁶ as well as at least 25% of the nominal amount of his contribution in cash. The remainder is to be paid in one or more installments within three years from the day of the company's entry in the company register.²⁰⁷

²⁰⁵ The *by-laws* "in a general manner regulate those relations in the company that are not regulated by the articles of incorporation and they have to be in compliance with the latter (book of rules, resolutions, rules of procedures and others)." See *id.* art. 1 (9). The articles of incorporation determines in what fields has the management or the supervisory board authorization to adopt bylaws and in what fields the shareholders meeting. *Id.* art. 351 (2) and 287 (4).

²⁰⁶ Law on Commercial Entities art. 291 (1). Shares may not be issued against labor or services to the company. *Id.* art. 292 (1).

²⁰⁷ *Id.* art. 290 (3).

The Law on Commercial Entities envisages two modes of the establishment of a joint-stock company – simultaneous incorporation and successive incorporation. In case of simultaneous incorporation the founders, either by themselves or through a representative, subscribe all the shares without public announcement, declaring thereupon that they are establishing a company.²⁰⁸ Successive incorporation is another form of company establishment, however, through a public call for subscription²⁰⁹ of all or a certain number of shares as determined by the prospectus.²¹⁰ The prospectus contains all the specifications regarding the issuance and sale of shares.²¹¹ In such a case, the joint-stock company cannot be deemed established without the subscription of all of its shares that had been offered to the public.

3.5.1. Shareholders' meeting

The central function of the shareholders' meeting is to safeguard the rights and interests of shareholders. The competencies of the shareholders' meeting are defined by the law. They pertain only to matters such as:²¹²

- amending the articles of incorporation and bylaws;
- approving annual financial statements;

²⁰⁸ *Id.* art. 291 (1).

²⁰⁹ Share subscription is effectuated by way of a written statement (subscription form) that among others contains a commitment to buy a certain amount of shares.

²¹⁰ *Id.* art. 303.

²¹¹ E.g. the legal basis upon which the prospectus is being issued; the quantity, type and class of shares offered for subscription; the financial institution at which the shares are subscribed; information on availability of the company's constitutive acts for inspection; the date on which the subscriber's obligation ceases to exist in case of company's failure to get registered; data on the basic contributions in kind; the full name, profession, domicile and citizenship of the founders. *Id.* art. 304.

²¹² Law on Commercial Entities art. 383 (1).

- electing and revoking members of the board of management and of the supervisory board (in two-tier system the members of the management board is elected by the supervisory board);
- approving the operation of the company;
- altering the rights attached to particular types and classes of shares;
- increasing or decreasing the company's registered capital;
- issuing shares and other securities;
- appointing and revoking the auditor;
- transformation or reorganization of the company; and
- termination of the company.

Each shareholder may appoint a representative (proxy) for the shareholders' meeting.²¹³ As a general rule, the management body²¹⁴ has to convene every year a meeting, not later than three months after the preparation of the annual financial statements (at the end of fiscal year), and at the same time not later than fourteen months from the last annual meeting.²¹⁵ However, when the interest of the company requires, the management,²¹⁶ the supervisory board or the non-executive members of the board of managers may convene (with the majority votes of its members) the shareholders' meeting upon their own initiative. Any shareholder may initiate the convening of the general meeting, however, convening becomes an obligation when such a request is made by the owners of shares representing not less than one-tenth of the registered capital of the company.²¹⁷

²¹³ *Id.* art. 392 (1). The authorization has to be certified by a notary public. *Id.* art. 392 (2).

²¹⁴ *See infra* 3.5.2.

²¹⁵ Law on Commercial Entities art. 384.

²¹⁶ *See infra* section 3.5.2.

²¹⁷ *Id.* art. 385 (1) (2).

The quorum required for passing valid decisions at the assembly is the presence of shareholders holding, at least, the majority of all the voting shares.²¹⁸ If such a quorum cannot be attained, a second meeting shall be scheduled within fifteen days from the date of the one that was unsuccessful, without any quorum requirements whatsoever. This, second meeting will have the agenda of the first one, short of matters whose decision requires qualified majority vote by law.²¹⁹

The voting right at the shareholders' meeting is proportionate to the paid in capital as expressed in the share's nominal amount (*i.e.*, face value). As a general rule the voting procedure of the shareholders' meeting is regulated in the articles of incorporation.²²⁰ Unless, the articles of incorporation do not provide differently, voting for the election of the management body and the supervisory board are secret. However, even if the articles of incorporation provides for public voting, shareholders owing at least ten percent of shares may request secret voting.²²¹

A shareholder is liable for damages suffered by the company as the consequence of his voting, if in voting he pays regards to his own business interest and votes contrary to the interests of the joint-stock company a shareholder of which he is, unless he proves that due to the voting of the majority of the assembly the same result

²¹⁸ However, the articles of incorporation may require greater majority. *Id.* art. 393 (1).

²¹⁹ *Id.* art. 393.

²²⁰ *Id.* art. 400.

²²¹ *Id.*

would have followed regardless of his vote.²²² As a general rule, decisions are taken by simple majority.²²³

3.5.2. Management and control

According to the law, the management of a joint-stock company can be either based on a one-tier system (*i.e.*, board of management – a single body) or on a two-tier system (management board or manager and supervisory board).²²⁴ Once introduced by the articles of incorporation, these systems might be changed only with the amendment of the articles of incorporation of the company.²²⁵ The shareholders' meeting elects with majority votes the members of the board of management and of the supervisory board.²²⁶

3.5.2.1. One-tier system

In one-tier system the only managing body is the board of management that might consist of three to eleven members elected by the shareholders' meeting for maximum four years. Their term in office is renewable.²²⁷

²²² *Id.* art. 399. The same applies in the case where the shareholder votes on matters related to the benefit of a third party, who has and is aware of a business interest contrary to the interest of the joint-stock company, under the same conditions.

²²³ *Id.* art. 394. A simple majority is majority of votes of shareholders either personally present or represented. However, the articles of incorporation may provide for qualified majority, in general, or for some decisions only.

²²⁴ *Id.* art. 342 (1).

²²⁵ *Id.* art. 342 (2).

²²⁶ *Id.* art. 344 (1).

²²⁷ *Id.* art. 345 (1), 367 (1) (2) and 370. However, the articles of incorporation might stipulate a maximum period of 6 years. *Id.* art. 345 (1).

The resolution on the election enters into force on the day of adoption.²²⁸

The board of management appoints one or more executive members according to the procedure determined in the articles of incorporation.²²⁹ Executive members manage²³⁰ the everyday business of the company; they are authorized to undertake all matters related to the everyday management, and to carry out the resolutions of the board of management. They execute managerial functions and represent the company towards third persons.²³¹ The law does not regulate whether the non-executive directors have any other duties besides participating in the work of the board of management. Though, most presumably nothing prevents the company to regulate in detail all possible issues related to these board members in the internal acts of the company and in the contracts concluded with them. No empirical data is available yet on how are these matters solved by Macedonian businesses in practice.

3.5.2.2. Two-tier system

In this case the company has both a management board and a supervisory board.

²²⁸ The resolution has to be entered into the company register. *Id.* art. 344 (1).

²²⁹ *Id.* art. 368.

²³⁰ Following the election, "the non-executive members of the board of management shall negotiate the contract with an executive member of the board of management, and the president of the board of management shall sign it, while the contract between the member of the management board or the manager and the company shall be negotiated by the supervisory board, and it shall be signed by the president of the supervisory board." *Id.* art. 350.

²³¹ *Id.* art. 371 (1) (2).

The management board might consist of three to eleven members appointed by the supervisory board.²³² Supervisory board members are not eligible for this position.²³³ The management board has the authority to manage the everyday business of the company and to undertake all matters related to the management.²³⁴ The members of the management board represent the company jointly towards third parties.²³⁵ With the approval of the supervisory board, the management board might appoint some of its members to represent the company, however, in such a case the non-appointed members may not represent the company,²³⁶ though, any limitation on the representation of the company by the members of the management board is void towards third parties.²³⁷

The members of the board of management are jointly and severally liable to the company if they violate their obligations toward the company, provided they have failed to operate and act with "the due diligence of a diligent and conscientious businessman."²³⁸ However, those members of the board of management who acted on the basis of a resolution adopted by the shareholders' meeting and requested to be noted on the records that the resolution is contrary to the law, and those members of the management board who opposed the resolution (to be recorded in the minutes of the meeting of the board of management) are not liable.²³⁹ Regarding liability of non-

²³² *Id.* art. 374. One single manager might be elected instead of a board if the registered capital of the company is under EUR 150,000. See *id.* art. 374 (2).

²³³ Law on Commercial Entities art. 374 (5).

²³⁴ *Id.* art. 375 (1).

²³⁵ *Id.* art. 377 (1).

²³⁶ *Id.* art. 377 (2) (3).

²³⁷ *Id.* art. 377 (4).

²³⁸ *Id.* art. 362 (1).

²³⁹ *Id.*

executive members of the board of management, or the members of the supervisory board, they are jointly and severally liable with the executive members of the board of management or the members of the management board for the damage caused to the company, if they, when giving prior consent, did not act with the care of a diligent and conscientious businessman.²⁴⁰

The supervisory board is elected by the shareholders' meeting and it may have three to eleven members.²⁴¹ Its task is to supervise the management of the company, that is to say, the manager or the board of management. It has the right to inspect the books and documents and the property (cash, securities, goods) of the company.²⁴²

3.6. Partnership limited by shares

A partnership limited by shares is a commercial enterprise, founded by one or more general partners and by limited partners having the status of shareholders. The registered capital of this commercial enterprise type is divided into shares. General partners are jointly and severally liable for the liabilities of the company with all their assets,²⁴³ whereas limited partners are liable up to the amount of their subscriptions only and are not liable for the liabilities of the company.²⁴⁴ The number of limited partners may not be under three.²⁴⁵

The law's provisions pertinent to limited partnership are also applicable to partnership limited by shares concerning the legal relations of the general partners among themselves, *vis-à-vis* the limited partners-

²⁴⁰ *Id.* art. 362 (5).

²⁴¹ *Id.* art. 378.

²⁴² *Id.* art. 380 (1) (2).

²⁴³ Contributions of general partners may not be less than 10% of the registered capital. *Id.* art. 463 (3).

²⁴⁴ *Id.* art. 461 (1).

²⁴⁵ *Id.* art. 461 (2).

stockholders and third parties, as well as concerning the issues of management and representation.²⁴⁶ In the absence of explicit provisions to the contrary, the provisions of the law pertaining to joint-stock companies regulate other issues.²⁴⁷ This form of company is established by agreement signed by all the parties, both limited and unlimited partners.²⁴⁸ Regarding the management, general partners manage the partnership.²⁴⁹ The law prescribes the election of a supervisory board that is composed of at least three shareholders.²⁵⁰

3.7. Economic interest group

The Law on Commercial Entities also introduced the institution of the so-called 'economic interest group' due to the influence of the European Union law which is intended to promote cross-border cooperation among small and medium size enterprises. The provisions of the company law related to this institution are based on the EU Regulation on European Economic Interest Grouping.²⁵¹

According to Macedonian law, the economic interest group is established by two or more natural or legal persons in order to facilitate and promote the performance of economic activities which constitute the subject of their operations, as well as to increase or improve the results thereof. Such a group may be established either for

²⁴⁶ *Id.* art. 461 (3).

²⁴⁷ *Id.* art. 461 (4).

²⁴⁸ *Id.* art. 462.

²⁴⁹ *Id.* art. 466 (1).

²⁵⁰ *Id.* art. 467.

²⁵¹ See Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG). Source: Europa info page (visited on Feb. 22, 2005) <<http://europa.eu.int/scadplus/leg/en/lvb/l26015.htm>>.

limited or unlimited period of time.²⁵² The law contains a prohibition according to which an economic interest group may not become member of another economic interest group.²⁵³ The group has to be entered into the company register, and with the entry it acquires legal personality.²⁵⁴ There is no minimal capital required to establish such a group.

According to the law, profit generated by the economic interest group is not considered to be the profit of the group, and it is distributed among the members of the group in accordance to the provisions of the founding agreement.²⁵⁵ From this provision it follows that each member of the group pays taxes separately on the income received from the group. The highest decision making body of the group is the meeting of the members of the group.²⁵⁶ This body adopts the founding document, in which the decision-making procedure, the condition of the appointment of the managers and the manner of management are regulated.²⁵⁷ The members have joint and several liability with their entire property for the obligations of the economic interest group.²⁵⁸

The group is represented by its managers.²⁵⁹ All in all, the part of the company law regulating economic interest groups is very permissive; meaning that the majority of the issues related to the functioning of the group may be

²⁵² Law on Commercial Entities art. 553 (1) (Macedonia).

²⁵³ *Id.* art. 553 (3).

²⁵⁴ *Id.* art. 556.

²⁵⁵ However, if there is no such agreement, the profit is distributed among the members equally. *Id.* art. 555 (1) (2).

²⁵⁶ The meeting might agree on practically any kind of decision making; however, if there is no agreement, the law requires anonymous decision-making. *Id.* art. 561 (4).

²⁵⁷ *Id.* arts. 558 (3) and 561 (1).

²⁵⁸ *Id.* art. 557.

²⁵⁹ The authorization of managers is determined in the founding document of the group by the members. *Id.* art. 563.

regulated in the founding document.²⁶⁰ Even more, the laconic language of the law on this topic cannot lead elsewhere but to the conclusion that, indeed, most of the issues necessary for the life of these peculiar entities are left to their internal acts.

The economic interest group is supervised by its members in the manner agreed upon in the founding document.²⁶¹

3.8. Related companies

The Law on Commercial Entities regulates the so-called 'related companies.' Related companies are defined by the law as "legally independent companies that are affiliated and have established mutual relationship among each other."²⁶² There are three forms of related companies. In the first form a company has participation,²⁶³ significant participation²⁶⁴ or majority participation,²⁶⁵ majority right in decision making, or shared participation, in another company. The other two forms of related companies are the controlled and the companies that operate jointly.²⁶⁶ The law gives definition of the above mentioned terms.

Participation of one company in another one is when one company acquires shares of another company that represent at least 10%, but not more than 20% of the registered capital of the target company. *Significant participation* of one company in another one exists when one company acquires shares of another company that represent more than 20%, but not more than 50% of the registered capital of the target company, or if the company

²⁶⁰ Even so, members of the group have joint and several liability for the liabilities of the whole group. *Id.* art. 557 (1).

²⁶¹ *Id.* art. 564.

²⁶² *Id.* art. 491.

²⁶³ *Id.* art. 492.

²⁶⁴ *Id.* art. 493.

²⁶⁵ *Id.* art. 494 (1).

²⁶⁶ *Id.* art. 491.

is able to exercise more than 20% but less than 50% of all votes at the members' meeting (LLC) or shareholders' meeting (joint-stock company). *Majority participation* of one company in another one is the acquisition of shares of another company that represent more than 50% of the registered capital of the other company, or if the company is able to exercise more than 50% of all votes at the members' meeting (LLC) or shareholders' meeting (joint-stock company).

Controlled company is defined as a legally independent company over which another company, the controlling one, has direct or indirect control.²⁶⁷ The law obliges the controlled company to alienate any shares it had in the controlling company before it became controlled company. The company has five years to do this.²⁶⁸

Another separate category of related companies is the so-called "companies acting jointly." Such a relationship arises when separate companies for the purpose of having joint policy towards a certain target company agree on acquiring or assigning voting rights.²⁶⁹ The law requires a company that acquires shares in another company that

²⁶⁷ *Id.* art. 495 (1) (2). The law also defines when does a company exercise a controlling influence. Controlling influence exists if the company: "(1) holds a part or shares directly or indirectly, as part of the registered capital which provides the company with majority votes at the general meeting of shareholders, or members meeting; (2) disposes with majority votes in another company based on an agreement concluded with the other members of the LLC or shareholders of the joint-stock company; or (3) effectively decides which and what kind of resolutions will be adopted by the meeting of shareholders or members meeting, using the votes it possesses." It also states that "[i]t shall be deemed that a company exercises controlling influence over another company if that company holds, directly or indirectly, number of votes greater than 40% of the total number of votes that can be cast at the members' meeting or shareholders' meeting." *Id.* art. 496 (1) (2).

²⁶⁸ *Id.* art. 498 (1).

²⁶⁹ *Id.* art. 499 (1).

represents more than 10% of the registered capital of the other one to inform in writing the other one with the day of stepping over this threshold.²⁷⁰

In general, the law does not allow direct control of the controlled company by the controlling company (*i.e.*, the CEO of the controlling company cannot give orders directly to the CEO of the controlled company). The only exemption is – similarly to the German solution in the field of “*Konzernrecht*” – when the controlling company assumes the obligation to compensate for any damages caused to the controlled company.²⁷¹

Besides this, there is a general liability of the controlling company, according to which the controlling company is liable for damages caused to the controlled company if it induces the controlled company to undertake certain legal acts, or to fail to undertake such acts by which damage is caused either to the controlled company itself or to third parties. In such a case the controlling company is jointly and severally liable with the controlled company towards third parties.²⁷² The controlling company has to prepare and publish consolidated financial statements, that consists of consolidated balance sheet and consolidated profit and loss statement each year.²⁷³

3.9. Accession and merger

Accession and merger of companies are regulated in the Law on Commercial Entities. According to the law ‘*accession*’ is the transfer of one or more companies’ assets and liabilities, without the procedure of liquidation, to another company (acquiring company) in exchange for parts (of LLC) or shares (of a joint-stock corporation) of

²⁷⁰ *Id.* art. 500 (1).

²⁷¹ *Id.* art. 501.

²⁷² *Id.* art. 503.

²⁷³ *Id.* art. 504 (1) and 505 (1). On the same day when it has to submit its financial reports. See *infra* section 7.2.

the acquiring company.²⁷⁴ 'Merger' is the transfer of all the assets and liabilities of one or more companies to a new company (without liquidation procedure) in exchange for parts (of LLC) or shares (of a joint-stock company) of the other company.²⁷⁵

Yet the distinguishing feature of a 'merger' is that a completely new entity (or entities) will sprang up as the outcome of the 'merger' as opposed to 'accession' where one of the entities survives the fusion. For accession or merger resolution by the members' or shareholders' meeting is required, in accordance with the provisions on amending the articles of incorporation.²⁷⁶

The company is obliged to buy the shares of shareholders (in a joint-stock company) or members (in a LLC) at the price determined by the resolution for accession or merger.²⁷⁷ However, if the member or shareholder is not satisfied with the so determined price, he has the right to request the court within thirty days from the refusal of the offer²⁷⁸ to determine the value of his shares.²⁷⁹

3.10. Prohibition of competition

The prohibition of competition applies to persons such as general partners in partnership²⁸⁰ and to all members of

²⁷⁴ *Id.* art. 517 (1).

²⁷⁵ *Id.* art. 517 (2).

²⁷⁶ *Id.*

²⁷⁷ *Id.* art. 535 (1).

²⁷⁸ The translation of the law uses wording "refusal of the offer." However, we are of the opinion that the thirty days should be counted from receiving the offer by the shareholder.

²⁷⁹ *Id.* art. 535 (2).

²⁸⁰ "A partner of a general partnership shall not undertake activities within the scope of the general partnership activities, become a partner with personal liability, or become a member of a body or an employee of a company which is or may be a competitor to the general partnership, unless the other partners agreed to it. However, he may engage in such activities if, at the time the

the management in companies.²⁸¹ In case of failure to adhere to the rules related to the prohibition of competition, the enterprise is entitled to claim indemnification or, alternatively, transfer of gains stemming from the transaction concluded in contravention of these rules.²⁸² The enterprise's claims based on prohibition of competition can be enforced within a subjective deadline (*i.e.*, starting from the moment the company has been informed on the acts) of three months, but not later than the so-called objective deadline of five

partner joined the general partnership, the other partners knew that the partner was undertaking such activities and it was not specifically agreed that the partner would cease such activities." Law on Commercial Entities art. 121.

²⁸¹ "Manager of a limited liability company may not do the following without the approval of the members' meeting: (1) conduct commercial activity on his behalf or on the behalf of third party, which is included in the scope of operations of the company; (2) be a member with unlimited liability in another company having the same or similar scope of operations as the concerned company; and (3) be a member of a management body or a supervisory body in another company performing same or similar scope of operations as the concerned company; and (4) perform within the premises of the concerned company any activity on his behalf or on behalf of a third party." *Id.* art. 238. "The members of the board of management or the management board, without approval by the board of management or the supervisory board, may not: (1) perform matters within the scope of operations of the company, for their own account or for the account of a third party; (2) perform any, paid or unpaid, activity or action in another company having the same or similar business activities, whether for his account or for the account of a third party; (3) be a member of a management body or supervisory board, or controller in another company having the same or similar business activities as the company; and (4) perform activities in the premises of the company for his own account or for the account of a third party." *Id.* art. 348.

²⁸² *Id.* art. 348.

years.²⁸³ In the case of limited liability company the objective deadline is three years.²⁸⁴

3.11. Winding up and liquidation

Winding up and liquidation of a company is only possible if there is no bankruptcy procedure initiated against the company. The function of these proceedings is to allow leaving the market in case the company does not want to continue with its activities as provided by the provisions of company law and the articles of incorporation. For the liquidation of the company a decision²⁸⁵ is necessary on the termination of the company.²⁸⁶ While in the case of partnerships the liquidation is carried out by general partners, in the case of limited liability companies and joint-stock companies it is carried out by the manager or members of the management body.²⁸⁷

If the partners or management – irrespective that they have passed a winding up decision – fail to undertake the liquidation, the courts are empowered to appoint a liquidator to carry out the liquidation.²⁸⁸ The liquidator has the rights and responsibilities of the managing body,²⁸⁹ furthermore, he is obliged to complete the transactions in progress, to collect the claims of the

²⁸³ *Id.* art. 348.

²⁸⁴ *Id.* art. 238 (5).

²⁸⁵ General partnership – resolution adopted by all of the partners (*Id.* art. 140); limited partnership – resolution by all of the partners (*Id.* art. 163); limited liability company resolution of the members (*Id.* art. 265); joint-stock company by resolution of the shareholders' meeting with majority votes which may not be less than two-thirds of the represented voting shares, unless the articles of incorporation requires a higher majority or stipulates additional conditions for adoption of the resolution (*Id.* art. 452).

²⁸⁶ *Id.* art. 538.

²⁸⁷ *Id.* art. 539 (1) (2).

²⁸⁸ *Id.* art. 540 (1).

²⁸⁹ The liquidator also represents the company. *Id.* art. 543 (1).

company, to sell the assets of the enterprise and at the end of the proceeding to settle liabilities towards the creditors.²⁹⁰

The liquidator's name has to be entered into the company register, following what the liquidator shall announce twice the winding up of the company in the Official Gazette of Macedonia and in, at least, one daily newspaper during the period of fifteen days following his entry to the register but within thirty days.²⁹¹ Creditors have sixty days to report their claims to the liquidator.²⁹² The assets that remain following the satisfaction of creditors' claims are distributed among the members, that is to say shareholders of the company, not earlier than six months after the last announcement of the winding up.²⁹³ The last duty of the liquidator is to submit an application for deletion of the company from the company register.²⁹⁴

3.12. Conclusion

The Law on Commercial Entities of 2004 represents a modern, European standard company law. It replaced the Company Law of 1986, because there was a need to adjust the legislation to the development of international business practices (among others such developments as shares in electronic form and simplification of the company registration procedure). The underlying principle of all changes to the law has been the creation of a more efficient organization of commercial enterprises.

²⁹⁰ *Id.* art. 542.

²⁹¹ *Id.* art. 544.

²⁹² Known creditors have to be notified individually. *Id.* art. 544.

²⁹³ The general rule is to distribute the assets in proportion to the nominal value of the shares, unless otherwise provided in the articles of incorporation, or if there are shares that secure some preference in the case of distribution of remaining assets. *Id.* art. 546.

²⁹⁴ *Id.* art. 552.

Yet the main aim was to bring the law more in line with contemporary international business practices.

In addition to that Macedonia's commitment to harmonize its law with that of the EU and eventually to accede to the Union is also an important motivation driving the changes. This endeavor encompasses also a willingness to closely follow and transplant modern developments from the company laws of the EU member states in addition to the company law related parts of the *acquis communautaire*.

4. Legislative framework of concessions

The Law on Concessions defines concession as giving public property of interest to Macedonia based on approval for utilization to domestic or foreign legal or natural persons.²⁹⁵ The grantor of concessions is the government of Macedonia, acting on behalf of the state of Macedonia, who may grant a concession to any domestic or foreign legal entity or natural person under the terms and conditions set by the Law on Concessions.²⁹⁶

Concession is acquired by means of public tender or immediate bid.²⁹⁷ Bids (related both to public tender and immediate bid) have to contain data on the bidder or tenderer, description of the public property in question, description of the projected concession activity and the purpose, the period, and conditions of property utilization, together with the compensation to be offered for the property utilization.²⁹⁸

Upon conclusion of the public tender or upon consideration of the immediate bid, the government and

²⁹⁵ Закон за концесии [Law on Concessions] art. 1 and 2 published in Official Gazette of the Republic of Macedonia, No.42/93, 25/02.

²⁹⁶ *Id.* arts. 2 and 4.

²⁹⁷ *Id.* art. 10.

²⁹⁸ *Id.* art. 13.

the concessionaire shall conclude a concession agreement in writing.²⁹⁹ The concession agreement regulates the relations between the government and the concessionaire in respect of which property of public interest shall be given for utilization. The agreement is to regulate, furthermore, (1) conditions of utilization, (2) duties of the concessionaire, (3) starting date and the duration of the concession, (4) payment for the concession, (5) the area of concessionaire's activities, (6) liability for breach of the concession conditions, (7) principles on the coverage of eventual damages caused by completion or non-completion of the concession, (8) manner of acquiring of concession, (9) supervision of concession activity, (10) dispute resolution mechanism and (11) conditions for improvement and protection of the environment during the concession activity.³⁰⁰

Disputes arising in the course of implementation of the concession agreement are under the jurisdiction of the court designated in the concession agreement.³⁰¹ However, arbitration or other means of alternative dispute resolution are not excluded by the law. All concession agreements are subject to international legal protection by virtue of conclusion of international agreements on protection of investments.³⁰²

²⁹⁹ *Id.* arts. 15 and 17.

³⁰⁰ *Id.* arts. 3 and 16.

³⁰¹ *Id.* art. 19.

³⁰² *Id.* art. 20. Macedonia is member of the International Center for Settlement of Investment Disputes (ICSID) and the Multilateral Investment Guarantee Agency (MIGA). However, bilateral investment treaties (e.g., concluded with Germany on Sep. 10, 1996 or with Slovenia on June 5, 1996 see ICSID web page (visited Jan. 12, 2005) <<http://www.worldbank.org/icsid/treaties/macedonia.htm>>) also offer very important guarantees. Macedonia has assumed all bilateral investment protection treaty obligations of the former Yugoslavia that were in force at the time of the declaration of independence. See ICSID Info page (visited Nov. 20, 2004) <<http://www.worldbank.org/icsid/constate/c-states-en>.

5. Free economic zones

A free economic zone is a delimited area within the territory of Macedonia, with a status of legal entity, where commercial activities are carried out under certain customs and tax benefits.³⁰³ Legal entities wanting to form a free economic zone (applicants) must submit a written application to the Head Office for Free Economic Zones instituted by the Government of Macedonia so as to facilitate the formation, development, coordination and supervision of the free economic zone operations.³⁰⁴ The application has to contain data on: the name and domicile of the applicant; the activities to be carried out in the free zone; the period for how long the free economic zone will be established; construction and technical-technological conditions, size, management, and operation of the free zone; and lastly, the way custom operations will be arranged within the free economic zone.³⁰⁵

htm> and MIGA Info page (visited Nov. 20, 2004) <<http://www.miga.org/screens/about/members/members.htm>>.

³⁰³ Law on Free Economic Zones art. 2, published in Official Gazette of the Republic of Macedonia, No. 42/93, 25/02, 56/99.

³⁰⁴ *Id.* art. 5. The Head Office is managed by a managing board, consisting of seven members appointed by the government, representing the Ministry of Development, Ministry of Finance, Ministry of Economy, Ministry of Urban Planning and Construction, Ministry of Trade, Ministry of Labor and Social Welfare and Ministry of Environment. *Id.* art. 8.

³⁰⁵ Law on Free Economic Zones art. 15. Enclosed to the request has to be the act on the formation of the free zone, a feasibility study (or business plan) and technical-technological environmental studies. Also a proof has to be presented that (1) spatial, energetic and technical conditions will be provided; (2) planned production of goods and provision of services will be fulfilled, (3) not less than the percentage set forth by the Law on Concessions (*see infra*) will be exported from the free zone; (4) the national employment rate by the activities of the zone will be increased; (5) goods that may endanger the environment will not be stored; (6) the founders of the free zone are providing the required capital for

Then a two-step procedure follows. The Head Office first pre-approves the free economic zone formation upon finding that all the above-prescribed details have been met. Following this, the government,³⁰⁶ upon the Head Office's green light and re-examination of the existence of the required conditions and of a general economic interest, gives the assent to the free economic zone formation to the applicant. The applicant henceforth acquires the status of a founder.³⁰⁷ In addition to the founder, the free economic zone may be used – on the basis of a contract concluded with its founder – by other legal entities or natural persons (users) for carrying out activities registered for free zone business activities.³⁰⁸

The users of the free economic zone enjoy tax exemptions and benefits³⁰⁹ if they export at least 51% of the value of

operating the free zone; and (7) in the free zone, when economically justified, Macedonian citizens will be employed and goods and services will be purchased from Macedonian suppliers. *Id.* arts. 15 and 3.

³⁰⁶ The law is not clear whether the competent ministry or the cabinet of ministers itself gives the final approval.

³⁰⁷ Law on Free Economic Zones art. 16.

³⁰⁸ *Id.* art. 23.

³⁰⁹ These exemptions and benefits are released from: "(1) income tax related to trade of goods within the free zone (except for the trade intended for the end users); (2) income tax for products imported in the free zone for production intended for export, as well as for carrying out of other activities allowed within the free zone; (3) income tax for services carried out in the free zone, directly connected with the export of goods and services; (4) income tax related to profit for a period of ten years as of the day the activity has started within the free zone; (5) income tax related to property for a period of ten years as of the day the activity has started within the free zone; (6) all taxes related to transfer of property and rights between the founders and the users of the free zone." *See id.* art. 26. The law also provides for other benefits when it releases the user of the free zone from payment of reimbursements, taxes and other fees related to the utilization of construction land, connection with sewage system, water, heat, gas and electric supplies. *See id.* art. 27.

the goods produced or brought into and services rendered in the free economic zone in the course of the first year of their business performance. They are eligible for tax benefits if they (1) export 62% of the value of the produced goods and services rendered during the second year and (2) after that 70% of the value of the produced goods and provided services in the subsequent years of business performance.³¹⁰

Another precondition is that the business activity of the firm in the free economic zone has to be a new activity and not merely a relocation of existent activities from other regions of Macedonia to the free economic zone. Furthermore, the users must not have outstanding tax or customs duties, nor can there be against them misdemeanor or criminal proceedings pending related to any of the commercial activities practiced by them. Finally, the users of the free economic zone do not qualify for tax exemptions and benefits if bankruptcy proceedings have been initiated against them.³¹¹

The land on that the free zone is built upon may be leased to an investor for a period of fifty years, with a possibility of extension for another twenty-five years (*i.e.*, maximally seventy-five years). The user of the free economic zone may sublease the real estate within the free zone provided the founder consents.³¹²

The business in the free economic zone may encompass activities connected with production of goods and provision of services for export, banking and other financial services, insurance and re-insurance, as well as other commercial activities, with the exception of activities related to textile industry. The origin and the quality of raw materials, semi-final and final goods have

³¹⁰ See *id.* art. 25.

³¹¹ See *id.* art. 25.

³¹² See *id.* art. 27. This deserves particular emphasis because sublease in case of real estate in Macedonia is generally an exception.

to be determinable and controllable. The users are obliged to insure the principal assets against operating risks.

The law, however, prohibits certain kinds of activities in the free economic zone, outlined in eight groups: (1) activities related to commerce of crumbled, adulterated goods, infected or expired, waste materials polluting the environment or goods that are incongruous for human or animal consumption; (2) activities with radioactive materials;³¹³ (3) drugs, chemical and biological materials and their derivatives;³¹⁴ (4) armament, ammunitions and explosives;³¹⁵ (5) goods or services with origin from countries and companies under embargo or economic blockades; (6) goods or services the marketing or rendering of which is against the public interest, security and defense; (7) marketing of goods or rendering of services in defiance of national law and ratified international agreements on intellectual and industrial property protection; and (8) activities the practicing of which would lead to abuse or disregard of proper approvals, governmental and court decisions, licenses, rights and concessions.³¹⁶ Storage,³¹⁷ wholesale and retail sale of goods within the free zone can be permitted, though such services can be provided only to other free zone users for their own in-zone usage and for servicing of international transport vehicles and their crew temporarily residing in the free economic zone.³¹⁸ These activities along with the trade among free economic

³¹³ Except those required for industry, medical and scientific research, upon official approval.

³¹⁴ Except those used by the industry, intended for processing, medical and pharmaceutical purposes, upon official certificates.

³¹⁵ Except industrial explosives.

³¹⁶ Law on Free Economic Zones art. 29.

³¹⁷ Goods coming into the free zone may be stored in the free zone for a period up to 5 years. Law on Free Economic Zones art. 32.

³¹⁸ Law on Free Economic Zones art. 30.

zones, import in the free economic zone,³¹⁹ and export out of the country are also exempted from customs and taxes.³²⁰

6. Privatization

In Macedonia privatization has already begun in 1989 when the country was still part of the former Yugoslavia.³²¹ The privatization process has accelerated in 1993 with the adoption of the Law on Transformation of Enterprises with Social Capital.³²² Today, the process of privatization of entities in social ownership³²³ is almost finished.³²⁴

The privatization scheme provides for the following basic principles. First, 30% of the appraised value of the enterprise, in form of common shares, is offered to the employees, under privileged buying conditions. Then, 15% of the appraised value of the enterprise in form of

³¹⁹ From abroad and from other parts of Macedonia.

³²⁰ Law on Free Economic Zones art. 32 (Macedonia).

³²¹ See Investing in Macedonia, TIR Info Page (visited Oct. 19, 2004) <<http://www.tir.com.mk/afr.html>>.

³²² Law on Transformation of Enterprises with Social Capital published in Official Gazette of the Republic of Macedonia, No. 38/93, 48/93; See also Law on Transformation of Enterprises and Cooperatives with Social Capital Using Agricultural Land, published in Official Gazette of the Republic of Macedonia, No. 19/96.

³²³ Socially owned capital is a *sui generis* type of ownership, where the ownership is considered to belong to the whole society and the company is managed by the workers. The idea of socially owned capital is rooted in the Marxist idea of self-management of the workers, where capital (production) goods belong to the workers. For more on the issue of 'socially owned capital' see STEFAN MESSMANN, DIE RECHTLICHE STELLUNG AUSLANDISCHER DIREKTINVESTITIONEN 137-170 (1978).

³²⁴ Nowadays, in the so-called post-privatization phase, the emphasis is on the restructuring of the economy in order to increase its efficiency.

common shares are issued free of charge to the State Pension Fund. On the basis of its autonomous decision, the Fund is entitled to sell these shares. Finally, 55% of the appraised value of the enterprise, in form of common shares, is free for sale, under the same conditions both for domestic and foreign investors. Shares not sold under the above-mentioned privatization procedure are offered by the Privatization Agency for sale on the Macedonian Stock Exchange.³²⁵

The Privatization Agency of the Republic of Macedonia was established in 1993.³²⁶ This Agency is a governmental institution controlled by a board appointed by the government.³²⁷ The Agency has a comprehensive database of Macedonian enterprises included in the privatization process, and provides information on the process itself as well as on the possibilities for investment via privatization.³²⁸ The main activity of the Agency within the privatization process is the sale of the shares it holds in companies undergoing privatization, either through the Macedonian Stock Exchange or through public tenders.³²⁹ It maintains a complete registry of the state-owned and socially-owned capital, and is authorized to sell and combine this capital into larger stakes, that are more attractive to the investors.³³⁰ However, the final

³²⁵ See TIR Info Page (visited Oct. 19, 2004) <<http://www.tir.com.mk/afr.html>>.

³²⁶ See Brochure of the Privatization Agency of the Republic of Macedonia (visited Oct. 30, 2004) <<http://www.mpa.org.mk/files/mpa.pdf>>.

³²⁷ See *id.*

³²⁸ See Brochure of the Privatization Agency of the Republic of Macedonia (visited Oct. 30, 2004) <<http://www.mpa.org.mk/files/mpa.pdf>>. See also Law on Privatization of State Capital of Enterprises art. 5.

³²⁹ See Brochure of the Privatization Agency of the Republic of Macedonia (visited Oct. 30, 2004) <<http://www.mpa.org.mk/files/mpa.pdf>>.

³³⁰ *Id.*

decisions regarding the privatization of enterprises are made by the Government Commission for Privatization, which consists of nine members and is headed by the Minister of Economy.³³¹ The proceeds from privatization are transferred to a special account of the budget of Macedonia. During the period between 1995 and 2002, the privatized property went in forty cases to foreign investors.³³²

7. Investment framework rules

7.1. Taxation

7.1.1. Profit tax (corporate income tax)

Corporate income tax is payable for profits incurred by legal entities in the course of their activities. Taxpayers are all legal entities residents³³³ of Macedonia,³³⁴ which perform a registered activity³³⁵ realizing profit therefrom in the country and abroad,³³⁶ or non-resident legal entity, performing an activity on the territory of Macedonia, only for profit realized in Macedonia.³³⁷ The tax base is the profit³³⁸ as determined and declared in the tax financial

³³¹ See also Law on Privatization of State Capital of Enterprises art. 4, published in Official Gazette of the Republic of Macedonia, No. 37/96. The law can be found at <http://www.finance.gov.mk/gb/laws/other_laws/state_ow.pdf>.

³³² *Id.*

³³³ Registered in Macedonia.

³³⁴ Herein, "resident" refers to any legal entity established or having seat on the territory of Macedonia. *Закон за данок на добивка* [Law on Profit Tax] art. 4, published in Official Gazette of the Republic of Macedonia, No. 80/93, 33/95, 43/95, 71/96, 5/97, 28/98, 11/01, 2/02, 44/02.

³³⁵ Otherwise sanctioned.

³³⁶ Law on Profit Tax art. 4.

³³⁷ *Id.* art. 5.

statement.³³⁹ The corporate income tax rate is 15% of the tax base.³⁴⁰

Taxpayer enjoys up to 25% tax base reduction for profit reinvestments in expansion of taxpayer's activities in Macedonia,³⁴¹ or up to 50% for profit reinvestments in economically underdeveloped or specific³⁴² regions of Macedonia.³⁴³ The same tax base reduction of 50% applies to "taxpayer who undertakes activities for the first time"³⁴⁴ for the first profitable year of his activity,³⁴⁵ or to companies the shares of which are quoted on official stock exchanges, for the first three years of their activity.³⁴⁶ The tax base is also reduced for the amount invested into environmental protection.³⁴⁷ Taxpayers performing in the free economic zones are entitled to complete corporate income tax exemption for a period of ten years, counted as of the commencement of business activities.³⁴⁸

³³⁸ Herein, "profit" stands for the difference between the taxpayer's gross income and expenditure, as determined in accordance with the accounting regulations and standards, with exception of incomes and expenditures for which the law envisages different modes of determination. *Id.* art. 8.

³³⁹ Law on Profit Tax art. 8.

³⁴⁰ *Id.* art. 28.

³⁴¹ *Id.* art. 31. This tax base reduction, however, does not encompass profit reinvestments in cars, furniture, carpets, or decorative office equipment, such as, for example, applied arts items.

³⁴² Mountainous areas, border zones and backward regions.

³⁴³ Law on Profit Tax art. 32.

³⁴⁴ *Id.* art. 36.

³⁴⁵ Law on Profit Tax art. 36. Taxpayer, whose status has undergone changes, such as merger, acquisition, change of ownership, etc., is not considered as newly established, that is, as "taxpayer that undertakes activities for the first time."

³⁴⁶ Law on Profit Tax art. 36 (a).

³⁴⁷ *Id.* art. 35.

³⁴⁸ *Id.* art. 32 (a). This exemption operates in the framework of the Law on Free Economic Zones.

With a view to avoiding double taxation, the law envisages tax relief for the amount of corporate income tax paid abroad up to the tax amount that the resident taxpayer would have been liable to, had the income been generated in Macedonia.³⁴⁹

Taxpayers pay corporate income tax in the course of the calendar year, in advance monthly installments, by the fifteenth day of the month for the month before.³⁵⁰ The due remainder is to be paid within thirty days after the deadline pertaining to the submission of annual tax declaration to tax authorities. Thereafter, in case of an excessive aggregate tax payment, the taxpayer is entitled to due refund.³⁵¹

7.1.2. Personal income tax

Personal income tax stretches across proceeds obtained in the form of wages, salaries, and capital gains as well as revenues stemming from agriculture, independent activity, or from exploitation of property, property rights, copyrights, industrial property rights, and premium games on chance, regardless of whether they have been realized in or out of the country,³⁵² in cash, in kind, or by other means.³⁵³

The most recent version of the Law on Personal Income Tax enumerates twenty-three non-taxable incomes, indexed as miscellaneous awards, allowances, compensations, certain salaries, severance payments, interests, and stipends.³⁵⁴ Beneficiary of these non-taxable

³⁴⁹ *Id.* art. 37.

³⁵⁰ *Id.* art. 40.

³⁵¹ *Id.* art. 41.

³⁵² Law on Personal Income Tax art. 3 (1), published in Official Gazette of Republic of Macedonia, No. 80/93, 3/94, 70/94, 71/96, 28/97, 8/01, 50/01, 52/01, 02/02, 44/02.

³⁵³ *Id.* art. 3 (2).

³⁵⁴ *Id.* art. 6.

incomes is any natural person – a resident of Macedonia – who realizes income throughout the fiscal year.

For the purposes of the law, a resident is any natural person with a permanent³⁵⁵ residence in Macedonia.³⁵⁶ The personal income tax bases are the mentioned proceeds and revenues in gross, less the mandatory contributions for social security,³⁵⁷ the twenty-three personal exemptions and public duties paid therefrom.³⁵⁸ Tax rates are uniform and progressive. They range from 15% at annual tax base of incomes up to EUR 580, to EUR 870 fix plus a flexible component of 18% at annual tax base over EUR 5,800.³⁵⁹ With a view to avoiding double taxation, the law envisages tax relief for the amount of personal income tax paid abroad up to the tax amount that the taxpayer would have been liable to, had the income been generated in Macedonia.³⁶⁰

7.1.3. Value added tax

Taxpayer of value added tax (hereinafter: VAT)³⁶¹ is a legal entity or the sole proprietor who independently carries out a commercial activity on the territory of Macedonia, irrespective of the duration as well as the

³⁵⁵ Permanent residence contemplates dwelling on the territory of Macedonia with or without interruptions for one hundred and eighty-three or more days within the calendar year, or having an intention to do so within a twelve-month period. *Id.* art. 7 (3).

³⁵⁶ Law on Personal Income Tax art. 7 (2).

³⁵⁷ Such as pension and disability insurance (20%), health insurance (8,6%), and employment (1,5%) (total 30,1%), with an exception of contributions based on agricultural cadastral income.

³⁵⁸ Law on Personal Income Tax art. 10 (1).

³⁵⁹ *Id.* art. 12.

³⁶⁰ *Id.* art. 13.

³⁶¹ Law on Value Added Tax art. 1 (1) (2), published in Official Gazette of the Republic of Macedonia, No. 44/99, 59/99, 86/99, 11/00, 8/01.

aims and results thereof.³⁶² Yet only legal entities or sole proprietors whose realized or projected total turnover exceeds EUR 21,000 are subject to this type of tax.³⁶³ Resident legal entities or sole proprietors, with realized turnover below the aforementioned limit are not obliged to register. However, they have the possibility to register voluntarily, thereby acquiring the right to separately declare VAT in invoices, and the right to VAT credit deduction.³⁶⁴ Once registered on voluntary basis, taxpayers remain registered at least for five calendar years, regardless of their total turnover.³⁶⁵

There are two different VAT bases depending on the stage that the VAT subject is in. In the stage of nationwide turnover, the VAT base is the gross revenue received – or expected – less VAT.³⁶⁶ In the stage of import, the VAT base is the value of the imported goods, determined on the basis of customs tariffs. In absence of customs tariffs, the value of the imported goods is determined on the basis of consideration paid or reasonably expected to have been paid. Lastly, if such a basis is unavailable or unrealistically declared then the customs authorities determine the imported goods' value.³⁶⁷

There are two tax rates upon which VAT is computed: an 18% general and a 5% privileged tax rate.³⁶⁸ The privileged tax rate applies only to the turnover and import of food products, public supply-system drinking water, and publications.

³⁶² *Id.* art. 9(1).

³⁶³ *Id.* art. 51(1). Supposedly the reason for prescribing such margin has to do with economic rationality regarding administration costs.

³⁶⁴ *Id.* art. 51(3).

³⁶⁵ *Id.* art. 51(7).

³⁶⁶ *Id.* art. 16(1).

³⁶⁷ *Id.* art. 21(1).

³⁶⁸ *Id.* arts. 28, 29, and 30.

Taxpayers registered for VAT pay the VAT in form of provisional advance payments (they regularly transfer to the tax authorities certain amount previously determined by the authority on the base of the previous year's turnover, and at the end of the year get square with the tax authority)³⁶⁹ in the course of the tax period that can be a month or quarter of a calendar year, depending on the turnover's breadth.³⁷⁰ First, the taxpayer brings forth a periodic advance-payment tax application by the fifteenth day of the month for the preceded tax period, in which the taxpayer himself estimates the tax. Then, by the end of February, the taxpayer submits an annual tax application for the previous calendar year, thereby clearing away the due remainder³⁷¹ or claiming reimbursement for the excessive aggregate tax payment.³⁷² The tax applications are submitted to the tax authorities that the taxpayers are registered with.³⁷³

The VAT exemptions are divided into three groups. The first group relates to in-the-country VAT exemption without a right to tax credit deduction, and covers the turnover and rental of residential real estate;³⁷⁴ turnover of banking, financial, postal, insurance and re-insurance services; social welfare and health care; as well as education, youth protection, international transportation and funeral services.³⁷⁵

³⁶⁹ *Id.* art. 39 (1).

³⁷⁰ It is on quarterly basis if the previous year's balance or the pending year's estimations indicate that the total turnover will not exceed EUR 400,000. Law on Value Added Tax art. 39 (3).

³⁷¹ Law on Value Added Tax art. 39 (1).

³⁷² *Id.* art. 45(1).

³⁷³ *Id.* art. 45(5).

³⁷⁴ With the exception of the first turnover.

³⁷⁵ Also: supply of postal and tax stamps, supply by institutions in the field of culture for creating, publishing and protection of cultural and artistic works, as well as supply for botanical gardens, animal parks, archives and record keeping centers, services by

The second group relates to *in-the-country* VAT exemption with the right to tax credit deduction, and covers turnover of goods transported or shipped into free economic zones, customs zones, customs warehouses or abroad by the taxpayer and turnover of import, export and transit services.³⁷⁶

The third group relates to VAT exemption upon import, and covers (1) the turnover of goods exempted from VAT in accordance with the law or encompassed by the regime of transit goods, temporarily imported goods and goods for re-export; (2) goods imported by foreign diplomatic or consular missions for their official and personal needs or by international organizations and their personnel on the basis of international agreements; (3) sample-goods on fairs and trade exhibitions, afterwards dispatched back (out of the country); (4) foreign donor's gifts to public institutions or non-governmental organization; (5) gifts to public scientific institutions; (6) personal deeds of scientists and artists; (7) as well as competition awards won abroad. Also (8) oils and lubricants in tanks that have been put into motor vehicles in the factory, (9) court or archive evidence, (10) tourist and information material used for presentation of foreign tourist offers, (11) goods brought by passengers as their personal luggage or low value commodities when entering the country, and (12)

broadcasting and television stations, except commercial activities, transportation services of ill and injured persons with vehicles specially designed for that purpose, supply of human blood, mother's milk and human organs, cells and tissues, and games of chance and lotteries. Law on Value Added Tax art. 23.

³⁷⁶ International transport of goods for import or export; turnover of gold and other precious metals on behalf of the central banks; services performed by proxy on behalf and for the account of others; international air transport of passengers (valid only for airway companies with a seat abroad, and only in case of reciprocity). Law on Value Added Tax art. 24.

goods required for realization of projects financed with funds from foreign donors for project realization.³⁷⁷

7.1.4. Excise duties

Excise duties are part of the system of indirect taxation, and as such are complementary to value added tax. Excise duties represent a specific set of taxes concerning the turnover of only certain categories of goods expressly enumerated in the Law on Excise Duties:³⁷⁸ fuel,³⁷⁹ alcohol and alcoholic beverages,³⁸⁰ and tobacco merchandise.³⁸¹ Taxpayer is the importer or the manufacturer of goods subject to excise duties.³⁸² In general, the excise duty base represents the product retail value. The excise duty rates range from 5% to 33% for certain mineral oils and domestic tobacco products or from EUR 4.8 up to EUR 21.78 in absolute amounts per kilogram, liter or percentage/volume for alcohol beverages, import tobacco and some mineral oils.

Diplomatic and consular missions enjoy excise duty exemptions on the basis of reciprocity, whereas

³⁷⁷ Law on Value Added Tax art. 27.

³⁷⁸ Law on Excise Duties art. 1, published in the Official Gazette of the Republic of Macedonia, No. 2/01, 52/01, 45/02.

³⁷⁹ *Id.* art. 27. The law employs the term "mineral oils."

³⁸⁰ *Id.* art. 35.

³⁸¹ *Id.* art. 41.

³⁸² In the case of alcoholic beverages and tobacco merchandise, their importers or manufacturers purchase control tags from tax authorities, which leads to payment of the excise duties and labeling the alcoholic beverages and tobacco merchandise with the control tags for paid excise duties. Law on Excise Duties arts. 37 and 44. In case these products do not have such tags, they are accounted for as products with unpaid excise duties and are confiscated by the tax authorities. The mineral oils are considered labeled upon presentation of a certificate issued by foreign tax or customs authority, producer or authorized marker, confirming the mineral oils chemical compound and marking abroad. Law on Excise Duties art. 30 (2).

international organizations on the basis of international agreements or contracts. NATO troops and personnel enjoy this privilege on the basis of specific agreements concluded with the Macedonian government, namely agreements regulating 'postal exchange' and military canteen procurement,³⁸³ the latter allowing excise duty free supply of goods to the troops under this separate regime for their own consumption.³⁸⁴ Further excise duty exemptions cover excise goods imported or produced for various test analyses and scientific purposes, goods destroyed in the course of tax authority inspection, tourists' non-mercantile property as well as mineral oils in border-crossing-vehicles' standard reservoirs, unintended for further sales.³⁸⁵

7.1.5. Property tax

The Law on Property Tax introduces and regulates taxes on ownership, inheritance and gifts, as well as trade of real estate and associated rights.³⁸⁶ Property tax is levied on ownership of real estate and other types of immovable such as: non-arable land, residential and recreational buildings or apartments, administrative buildings, business premises, garages, as well as movables such as motor vehicles over 1800 cubic centimeters engine volume, buses, freight motor vehicles and trailers, tractors, combines, vessels and aircraft.³⁸⁷

³⁸³ Military trading establishment engaged in the welfare and leisure requirements of the troops; a functional equivalent to duty-free shop.

³⁸⁴ Law on Excise Duties art. 24.

³⁸⁵ *Id.* art. 25.

³⁸⁶ Law on Property Tax art. 1, published in Official Gazette of Republic of Macedonia, No.80/93, 3/94, 71/96, 54/00.

³⁸⁷ *Id.* art. 2.

According to the law the taxpayer is the property owner.³⁸⁸ The tax base is the market value of the real estate or another immovable.³⁸⁹ The tax rate is proportional and amounts to 0.1%.³⁹⁰ There are sixteen instances of tax exemptions³⁹¹ and one case of 50% tax rate reduction aimed at buildings and apartments utilized by the owner and his family for their own residential purposes.³⁹² Property tax is also charged on inheritance and gifts of immovables as well as on usufruct and utilization rights on real estates that the inheritors inherit or recipients of gifts get, on the basis of the Law on Inheritance and Gift Contracts.

The property tax on inheritance and gifts also covers cash, money claims, securities and other movables, if the inheritance or gift market value surpasses the average annual salary in Macedonia for the preceding year, as indicated by the Republic Bureau of Statistics.³⁹³ The taxpayer is the inheritor or the gift recipient.³⁹⁴ The tax base is the market value of the inheritance or the gift at the moment of tax liability inception, less the debts and/or expenses encumbering the object of taxation.³⁹⁵ The tax rate

³⁸⁸ *Id.* art. 3.

³⁸⁹ *Id.* art. 4.

³⁹⁰ *Id.* art. 5.

³⁹¹ For example, real estates owned by the state; most of the immovable possessions used for educational, cultural, scientific, social, health, humanitarian and sport purposes; non-commercial property of religious communities; commercial buildings in agriculture; premises where the taxpayer carries out business performance, with the exception of administrative buildings and real estates in property of foreign diplomatic and consular missions and of international organizations and based on reciprocity. Law on Property Tax art. 6.

³⁹² Law on Property Tax art. 7.

³⁹³ *Id.* art. 9.

³⁹⁴ *Id.* art. 10.

³⁹⁵ *Id.* art. 11.

is proportionate and varies according to the hereditary succession. It is 3% for the second hereditary row, and 5% for the third hereditary row and beyond, including unrelated legatees.³⁹⁶ Inheritors or gift recipients of the first hereditary row as well as governmental and a number of societal institutions – as inheritors – are exempted from tax liability, while the tax exemptions apply to the second hereditary row under certain conditions.³⁹⁷

In addition, a property tax is levied on transfers of real estate ownership and incidental rights.³⁹⁸ Taxpayer is the vendor of the real estate or rights. In cases of the exchange of real estates, the taxpayer is the owner offering real estate of higher value or each owner separately – in cases of transfer of an ideal portion of a real estate.³⁹⁹

The tax base is the market value of the real estate at the moment of the arising of the tax liability. In case of exchange of real estates, the tax base is the difference between the market values of the estates being exchanged. In case of transfer of an ideal real estate portion, the tax base is the particular market value of such portion. The tax base at sale of real estate under bankruptcy or execution proceedings is the obtained sales price.⁴⁰⁰ The tax rate is proportional and amounts to 3%.⁴⁰¹

The Law envisages seven exemptions from tax liability, including the first sale of residential buildings and apartments within five years upon construction and VAT computation.⁴⁰² The public revenue authorities in charge

³⁹⁶ *Id.* art. 14.

³⁹⁷ *Id.* arts. 15 and 17.

³⁹⁸ *Id.* arts. 18 and 19.

³⁹⁹ *Id.* art. 20.

⁴⁰⁰ *Id.* art. 21.

⁴⁰¹ *Id.* art. 23.

⁴⁰² *Id.* art. 26.

in the region where the property is located or registered carry out the collection of the property tax.⁴⁰³

7.1.6. Local taxes

Communal tax is a utility fee paid for exploitation of certain rights, objects and services of public nature located in and owned by the municipality, by and on the part of legal entities and natural persons in the course of their activities.⁴⁰⁴ The law outlines eleven such instances, the most important being public place exposition of advertisements and goods, public place utilization for private purposes,⁴⁰⁵ commercial activities on public places, as well as public lighting use and maintenance.⁴⁰⁶

The taxpayer is a legal entity or a natural person utilizing the enumerated rights, goods and services of public nature.⁴⁰⁷ The communal tax is payable either in annual amounts or in proportion to the time of utilization, depending on the kind of different rights, objects and services, within thirty days of its computation by the public revenue authorities⁴⁰⁸ in accordance with a communal tax tariff.⁴⁰⁹ The tax collection and the produced revenue thereof are on behalf, for the account of and at disposal of the local self-governance unit, that is, the municipality on whose territory the tax collection takes place.⁴¹⁰

⁴⁰³ *Id.* art. 28.

⁴⁰⁴ Law on Municipal Tax art. 1. The text of the law is available at: (visited Oct. 30, 2004) <<http://www.finance.gov.mk/gb/laws>>.

⁴⁰⁵ Such as encampment and parking.

⁴⁰⁶ Law on Municipal Tax art. 3.

⁴⁰⁷ *Id.* art. 4.

⁴⁰⁸ *Id.* art. 10.

⁴⁰⁹ *Id.* art. 19.

⁴¹⁰ *Id.* art. 17.

7.2. Accounting and auditing

All commercial enterprises in Macedonia are obliged to compile and keep business records and accounting reports in accordance with the law as well as the generally accepted accounting principles, standards and practices.⁴¹¹ For accounting purposes, commercial entities are assorted in four categories: micro-size, small, medium-size and large; depending upon the number of employees and the income earned, as showed in the two last annual profit and loss account, or in the one on the results of the first year of business activities.⁴¹²

A micro-size commercial entity is one that meets the first criterion and at least one of the following criteria: (1) the average number of employees, based on working hours, is up to ten employees on annual average, and (2) the gross annual income earned from any source not to exceed EUR 500,000 in *denar* equivalent, or (3) not more than 80% of the gross income of the commercial entity to be generated from one client/consumer, or (4) if the company is owned by not more than two natural persons.⁴¹³

Small commercial entity is the one that meets the first criteria, and at least one of the other two enumerated by the law: (1) the annual average number of employees, based on working hours, is up to 50 employees, and (2) the annual income is less than EUR 2,000,000 in *denar* equivalent, and the total turnover is less than EUR 2,000,000 in *denar* equivalent, or (3) the average value (at

⁴¹¹ Accounting standards applicable in Macedonia are the international accounting standards as determined by the International Accounting Standards Committee (IASC) and the established accounting standards as determined by the Macedonian Accounting Standards Committee. See Law on Commercial Entities art. 469. See also Law on Accountancy, published in the Official Gazette of the Republic of Macedonia, No. 42/93, 48/93, 6/95, 248/95, 271/95, 304/95 in 3/96, 32/98, 39/99 and 70/01.

⁴¹² Law on Accountancy art. 470 (1).

⁴¹³ *Id.* art. 470 (4).

the beginning and at the end of the accounting year) of the total assets is less than EUR 2,000,000 in *denar* equivalent.⁴¹⁴

Medium size commercial entity is a commercial entity that, in each of the last two accounting years, or in the first year of operations, has met the first criterion and at least one of the second and third of the following criteria: (1) the average number of employees, based on working hours, is up to 250 employees, and (2) the annual income is less than EUR 10,000,000 in *denar* equivalent; or (3) the average value (at the beginning and at the end of the accounting year) of the total assets is less than EUR 11,000,000 in Denar equivalent.⁴¹⁵

All other commercial entities that do not fall under the above qualification are considered large commercial entities.⁴¹⁶ The National Bank of Macedonia, insurance companies, financial institutions and all commercial enterprises compiling consolidated accounting statements are classified as large commercial enterprises.⁴¹⁷

The law prescribes that all business records should be maintained in such a manner as to provide a general review regarding the enterprises business performance as well as its financial condition.⁴¹⁸ The business records are maintained in line with the system of double-entry bookkeeping.⁴¹⁹ At the end of the business year⁴²⁰ each commercial entity has to prepare annual financial

⁴¹⁴ *Id.* art. 470 (5).

⁴¹⁵ *Id.* art. 470 (6).

⁴¹⁶ *Id.* art. 470 (7).

⁴¹⁷ *Id.* art. 470 (10).

⁴¹⁸ *Id.* art. 471 (1).

⁴¹⁹ *Id.* art. 471 (3).

⁴²⁰ The business year is the calendar year. *Id.* art. 476 (3). The deadline for preparing financial statements may not be longer than two months after the expiration of the business year. *Id.* art. 477 (1).

statements.⁴²¹ Annual financial statements have to be signed by the executive members of the board of management, or the executive manager appointed by the managing board⁴²² and submitted to the competent organs of the company and to the company register as well.⁴²³

The Macedonian law sets up an additional requirement: commercial entities are obliged to submit with the financial statements also a report on their operation. Such reports are put into the company's file, and they become available for public insight.⁴²⁴ The annual financial statements and business reports of large and medium-sized joint-stock companies, enterprises whose securities are quoted on the stock exchange, and large and medium size enterprises registered as limited liability companies

⁴²¹ *Id.* art. 476 (1).

⁴²² If there is no such a manager, the chairman of the management board has to sign. *Id.* art. 476 (6).

⁴²³ *Id.* arts. 477 (4) and 482.

⁴²⁴ *Id.* art. 477 (6). Such report has to contain: "main factors and circumstances which had influence on the operations, including any changes in the environment in which the company operates, the response of the company to such changes and their impact, the investment policy for maintenance and support of the success of the operations of the company, including the dividend policy, sources of the company's assets, policy of the long term debt in relation to the registered capital and policy of risk management, major transactions and interested party transactions, as well as the assets of the company not covered in the balance sheet according to the international accounting standards, tendencies of the future development of the company and its business venture, research and development activities, as well as information on acquisition of own shares or parts. The annual report of the company shall disclose the earnings of each executive member of the board of management and member of the management board (salary, allowances, bonuses, insurance and other rights) or the fees for the non-executive members of the board of management and members of the supervisory board." *Id.* art. 384 (7).

are subject to auditing at least a month prior to the shareholders' meeting.⁴²⁵

A licensed auditor company⁴²⁶ appointed by the company's assembly carries out the auditing,⁴²⁷ and prepares a written report on the results of auditing. The auditing report is submitted to the management body, which is obliged to forward it to the supervisory board (or to the controller).⁴²⁸ Annual financial statements are public (after they are submitted to the company register).⁴²⁹

The Law on Commercial Entities requires companies to have a mandatory general reserve fund financed from the net profit of the company.⁴³⁰ Each year (when there is profit) a certain percentage of the company's profit has to be separated into the fund. The percentage is determined in the articles of incorporation, however, according to the law it may not be less than 15% of the profit.⁴³¹ It has to be accumulated until the reserve reaches one fifth of the registered capital of the company.⁴³²

7.3. Competition

7.3.1. Antitrust

The Constitution of Macedonia elevates the freedom of market and entrepreneurship to the level of fundamental

⁴²⁵ Law on Commercial Entities art. 478.

⁴²⁶ The audit company has to be registered with the company register for performing such activity. Audit Law, published in the Official Gazette of the Republic of Macedonia No. 65/97, 27/00 and 31/01.

⁴²⁷ *Id.* art. 479 (2). A licensed auditor is a person that performs public services, in conformity with the definitions of the International Federation of Accountants (IFAC).

⁴²⁸ *Id.* art. 480 (1).

⁴²⁹ *Id.* art. 482 (3).

⁴³⁰ *Id.* art. 485 (1).

⁴³¹ *Id.*

⁴³² *Id.*

value.⁴³³ This concretely means that this freedom denotes a positive right, that is, the state's duty to undertake actions to deter and sanction various forms of anti-competitive behavior and activities on the market.⁴³⁴ The Law on Prevention of Competition Limitation⁴³⁵ guarantees the protection of free competition where it is impaired by agreements that, by aim or effect, may lead to creation of a dominant position or to strengthening of the existing dominant position.

According to the law agreements having any of the following features are voidable:⁴³⁶ (1) have apparent detrimental impact on production – or market-conditions;⁴³⁷ (2) hinder, limit or render difficult the commencement of any commercial activity; (3) subject the market participants to unjustified differential or discriminatory treatment;⁴³⁸ (4) limit the freedom of any of the contractual parties to freely negotiate or determine prices;⁴³⁹ and (5) limit the licensee's freedom of commercial activity in a way that goes beyond the scope of the licensed right.⁴⁴⁰

A commercial enterprise is considered having a dominant position on the market if it does not have competitors or is not exposed to serious competition or compared to its

⁴³³ Constitution art. 8.

⁴³⁴ *Id.* art. 55.

⁴³⁵ Law on Prevention of Competition Limitation – the text of the law can be found at: (visited Oct. 30, 2004) <http://www.finance.gov.mk/gb/laws/other_laws/law_against_unfair_competition.pdf>.

⁴³⁶ According to the law such contracts have to be registered with the Monopoly Agency that decides on the lawfulness of the contract. *Id.* art. 25.

⁴³⁷ *Id.* art. 1.

⁴³⁸ *Id.* art. 5.

⁴³⁹ *Id.* art. 18.

⁴⁴⁰ *Id.* art. 23.

competitors, it has a leading, dominant or superior⁴⁴¹ position on the market.⁴⁴² The enterprise has a dominant position on the market of certain products or services if it participates therein with at least one third of its sales and its sales exceeds EUR 2.5 million in the last business year.⁴⁴³ A grouping of up to three enterprises – however, there is no explanation why exactly three – is deemed having the same dominant position each on the market of certain products or services if (1) the grouping takes part thereon with at least 50%, (2) if there is no meaningful competition-in-fact within the grouping itself⁴⁴⁴ and (3) if the grouping's sales exceeds EUR 1 million.⁴⁴⁵ As opposed to that, where the grouping consists of joint participation of up to five enterprises, it is deemed having a dominant position if it controls two-third of the relevant market.⁴⁴⁶

A merger is subject to antitrust control only where it is expected that it will lead to creation of a dominant market position or to strengthening of an already existing dominant market position.⁴⁴⁷ There are several instances where it is assumed that a merger leads to creation of a

⁴⁴¹ The law appeals on taking especially the ensuing factors into consideration when determining whether an enterprise has a superior position on the market: the enterprise's market share, its financial power, access to the market, correlation to other enterprises, obstacles disabling or limiting the access of other enterprises to the relevant markets, capability to adjust the demand and supply. Law on Prevention of Competition Limitation art. 25 (2).

⁴⁴² Law on Prevention of Competition Limitation art. 25 (1).

⁴⁴³ *Id.* art. 25 (4).

⁴⁴⁴ However, it is not clear who decides what is a "competition-in-fact".

⁴⁴⁵ *Id.* arts. 25 (3) (5) (6).

⁴⁴⁶ The cartel authority, as measure, may order the entity to (1) stop the abuse, (2) change the signed contracts or relevant decisions or (3) declare void signed contracts and decisions. *Id.* art. 83 (3).

⁴⁴⁷ *Id.* art. 28.

dominant position on the market or to strengthening of already existing dominant market position.

The first instance is where an enterprise having sales of at least EUR 25 million merges with another enterprise that actively operates on the market where the merging enterprises together participate with at least 5%. The second instance is where an enterprise having sales of at least EUR 25 million merges with another enterprise that dominates the market with sales of at least EUR 15 million.

The same assumption holds where the merging enterprises' aggregate sales in the previous year were at least half a billion EUR, and if at least two of the merging enterprises have had individual sales of at least 10 million EUR.⁴⁴⁸ However, this assumption is rebuttable in any case, upon substantiation that the merger leads to improvement of competition and that the effects of such an improvement outweigh the detriments caused by the acquisition of a dominant market position.⁴⁴⁹ The burden of proof is always on the enterprises that participate in the merger.

The enforcement of the Law on Prevention of Competition Limitation is in the competence of the Monopoly Agency. The Monopoly Agency is comprised of a director and two departments. The departments are entrusted with the tasks of conducting competition-related administrative proceedings, with rendering respective decisions,⁴⁵⁰ and monitoring and analyzing of market conditions and affairs.⁴⁵¹ In addition, there exists the Anti-Monopoly Committee. It is in charge of assessing the market conditions and trends and of monitoring the

⁴⁴⁸ *Id.* art. 27.

⁴⁴⁹ *Id.* art. 28.

⁴⁵⁰ See *supra* note 446.

⁴⁵¹ Monopoly Authority of the Republic of Macedonia (visited Oct. 28, 2004) <<http://www.mon.upr.gov.mk/struktura-ang.htm>>.

development of business concentrations from economic policy perspective. The Monopoly Committee is comprised of five members, appointed by the government from among professors, scientists and eminent businessmen. However, it is only an expert-advisory body.

7.3.2. Unfair competition

Any commercial practice contrary to good business customs and principles of conscience and honesty is seen as an act of unfair competition. Persons performing such a practice may be ordered to put an end to it and found liable for the damage caused thereby.⁴⁵² According to the Law especially the following acts would qualify as such: giving bribes,⁴⁵³ pyramidal structures of sales,⁴⁵⁴ false announcements,⁴⁵⁵ unauthorized usage of technical documentation,⁴⁵⁶ and disdain of the market participants or the goals of competition.⁴⁵⁷

⁴⁵² *Закон против ограничувањата на конкуренцијата* [Law against Unfair Competition] art. 1, published in the Official Gazette of Republic of Macedonia, No. 80/99.

⁴⁵³ *Id.* art. 13.

⁴⁵⁴ The law employs the term "system of avalanche," defined as a sale system where a person attempts to directly or indirectly encourage non-merchants to purchase products, services or rights by promising them special benefits and priorities if they themselves encourage other non-merchants to purchase the products, services or rights, which in turn gain the same benefits and priorities for further maintenance of the same method of finding customers. *Id.* art. 14.

⁴⁵⁵ *Id.* arts. 3 and 15. For example, false announcements regarding the product's nature and origin, production means, pricing, price-lists, stocking, the supplier's name, achievement or possession of certain awards or appraisals, motive and reason of sales and quantity of available inventories for the purpose of competition. *Id.* art. 3 and 15.

⁴⁵⁶ *Id.* art. 16.

⁴⁵⁷ *Id.* arts. 11 and 17.

Any customer has an irrevocable right to rescind a contract entered into under impression of statements uttered with a view to disdaining the market participants or the goals of competition within a period of six months as of the date of signing, provided that these statements are false, with the intention of misleading or deceiving the public, containing data of relevance to the customer and substantial for concluding the contract.⁴⁵⁸ The concerned parties may seek injunctions or claim damages by means of a lawsuit in an adversarial procedure⁴⁵⁹ within a subjective deadline⁴⁶⁰ of three years and an objective deadline⁴⁶¹ of five years.⁴⁶² Foreign commercial enterprises enjoy the same protection in case of reciprocity.⁴⁶³

7.4. Intellectual property protection

7.4.1. Intellectual property

Macedonia is party to the following conventions and treaties in the realm of Intellectual Property law: the Convention of the World Intellectual Property Organization (WIPO); the Paris Convention for the Protection of Industrial Property; the Madrid Agreement Concerning the International Registration of Trade Marks; the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; the Locarno Agreement

⁴⁵⁸ *Id.* art. 21. This kind of contract rescinding does not impair the customer's claims for damages.

⁴⁵⁹ *Id.* art. 18.

⁴⁶⁰ The aggrieved party has three years to bring a suit from the time he learns about violation of his rights.

⁴⁶¹ The claimant has three years to bring a suit from the time he learns about violation of his rights, however, he loses his rights in any case if five years elapse.

⁴⁶² *Id.* art. 19.

⁴⁶³ *Id.* art. 24.

or immoral, or contain (inter) national symbols or images of persons without a proper approval.⁴⁷⁶ The scope of model or design protection is 10 years as of the application filing date.⁴⁷⁷

Trademarks (service marks) protect signs suitable⁴⁷⁸ and available⁴⁷⁹ for differentiation of alike or similar goods or services in commerce. Marks, stamps and punches⁴⁸⁰ are not deemed trademarks (service marks).⁴⁸¹ Illegal, immoral, unsuitable and unoriginal trademarks, or service marks, disqualify for trademark (service mark) protection.⁴⁸² The reach of trademark (service mark) protection is 10 years as of the application filing date. The number of potential renewals is unlimited,⁴⁸³ if the trademark holder actively makes use of it.⁴⁸⁴

The appellation of origin protects the geographic name of the product whose distinctiveness is to a great extent due to the region of production, if such distinctiveness is the consequence of a unique climate or soil, or due to the traditional means of production or cultivation. The appellation of origin also protects a product's name if that has been converted into a commonly acknowledged

⁴⁷⁶ *Id.* art. 20.

⁴⁷⁷ *Id.* art. 40.

⁴⁷⁸ Such as "picture, drawing, word, expression, vignette, code, combination of these signs and combination of colors." *Id.* art. 22.

⁴⁷⁹ Prior to trademark use, it is imperative to verify the trademark's availability. A trademark is deemed available so long as it has not been already registered. All trademark applications and registrations in Macedonia are entered into the IPPO database. Thereupon, the IPPO issues information to the interested person as to whether a particular trademark has already been registered on the territory of Macedonia.

⁴⁸⁰ Punch is an official sign for precious metals and measures.

⁴⁸¹ Law on Industrial Property art. 21.

⁴⁸² *Id.* art. 23.

⁴⁸³ *Id.* art. 40.

⁴⁸⁴ *Id.* art. 37.

indicator of the product's origin through long established usage.⁴⁸⁵ The appellation of origin is used for marking of natural, agricultural, industrial and craft products, and handicrafts. The appellation of origin protection is not limited by time.⁴⁸⁶

7.4.3. Copyright

The Law on Copyright and Related Rights⁴⁸⁷ regulates the rights of authors to their works (copyright), and the right of performers, producers, broadcasting⁴⁸⁸ organizations and publishers to their performances (related rights).⁴⁸⁹

Copyrights belong to authors on the basis of their work creation, regardless of whether the work itself has been disclosed or not.⁴⁹⁰ Copyright works are individual intellectual creations, regardless of their kind, way and form of expression.⁴⁹¹ The copyright works' titles, sections,⁴⁹² modifications,⁴⁹³ and collections thereof⁴⁹⁴

⁴⁸⁵ *Id.* art. 28.

⁴⁸⁶ *Id.* art. 40.

⁴⁸⁷ *Закон за авторското право и сродните права* [Law on Copyright and Related Rights], published in Official Gazette of the Republic of Macedonia, No. 47/96, 3/98. The English version available at: (visited Nov. 20, 2004) <<http://www.mlrc.org.mk/law/1023.htm>>, hereinafter: Copyright Law.

⁴⁸⁸ "Broadcasting" means disclosure of copyright works via radio and television program signals, wireless, including satellite in coded or non-coded forms or by wire, including cable or microwave systems. Broadcasting also covers transmission via television program signals on demand. Copyright Law art. 2.

⁴⁸⁹ Copyright Law art. 1.

⁴⁹⁰ *Id.* art. 13.

⁴⁹¹ The law explicitly enumerates written, spoken, musical, dramatic, choreographic, photographic, audiovisual, architectural, and cartographic works, computer programs, as well as fine and applied arts. Copyright Law art. 3.

⁴⁹² Copyright Law art. 4.

⁴⁹³ *Id.* art. 6.

⁴⁹⁴ *Id.* art. 7.

that are individual intellectual creations by themselves enjoy the same protection as the copyrighted works. However, ideas, concepts, discoveries, official governmental texts and their translations are not deemed copyright works.⁴⁹⁵

'Author' is a natural person who has created the copyright work⁴⁹⁶ or whose name, pseudonym or insignia appears thereon, under rebuttable presumption.⁴⁹⁷ In case the copyright work represents creation of a joint endeavor, its co-authors are entitled to indivisible single copyright thereto.⁴⁹⁸

Copyrights are integral parts of and are inseparable from the copyrighted works. Copyrights encompass moral, economic and other rights of the author.⁴⁹⁹ Moral rights shield the author with regard to his personal and intellectual relation to the work,⁵⁰⁰ whereas the economic rights guard his proprietary interests.⁵⁰¹ The "other rights" category encompasses among others the right to access to and delivery of the original⁵⁰² and the right to resale royalty.⁵⁰³ Copyrights do not extend to the educational use of copyrighted works,⁵⁰⁴ access to information of general significance,⁵⁰⁵ private reproductions⁵⁰⁶ and quotations.⁵⁰⁷

⁴⁹⁵ *Id.* art. 5.

⁴⁹⁶ *Id.* art. 9.

⁴⁹⁷ *Id.* art. 10.

⁴⁹⁸ *Id.* art. 11.

⁴⁹⁹ *Id.* art. 14.

⁵⁰⁰ *Id.* art. 15.

⁵⁰¹ *Id.* art. 18.

⁵⁰² *Id.* art. 20.

⁵⁰³ 'Resale royalty' is remuneration in the amount of 3% of the retail price of every subsequent resale. Copyright Law art. 21.

⁵⁰⁴ Immediate curriculum and humanitarian manifestations. Copyright Law art. 33.

⁵⁰⁵ Reports on daily events, public speeches, daily news and press. Copyright Law art. 32.

Copyright subsists for the author's lifetime with an extension of seventy years after his death.⁵⁰⁸ However, its components, with the exception of moral rights, can be transferred by means of a legal transaction executed in written form. In case such a legal transaction contains ambiguous stipulations, they are interpreted in favor of the author.⁵⁰⁹ Foreign authors and bearers of copyright related rights enjoy copyright protection if and as foreseen in international agreements or on the basis of factual reciprocity.⁵¹⁰

7.5. Dispute settlement mechanisms

Macedonian law makes a distinction between settlement of national disputes and settlement of international disputes. National sources of law on dispute settlement consist of the Law on Civil Procedure,⁵¹¹ the Law on Dispute Settlement with Regard to the Laws and Regulations of other Countries in Certain Relations,⁵¹² and the Law on Commercial Entities. International sources include bilateral and multilateral agreements that

⁵⁰⁶ Made in not more than three copies, for exclusive private use by a natural person or for internal use by public institutions made of their own copy. Copyright Law art. 34.

⁵⁰⁷ Copyright Law art. 31.

⁵⁰⁸ *Id.* art. 44. Where the copyright work represents creation of a joint endeavor, the copyright extension is tallied up as of the death of the last surviving co-author. *Id.* art. 45.

⁵⁰⁹ *Id.* art. 57.

⁵¹⁰ *Id.* art. 171.

⁵¹¹ The Law on Civil Procedure published in the Official Gazette of SFR Yugoslavia, No. 4/77.

⁵¹² The Law on Dispute Settlement with Regard to the Laws and Regulations of other Countries in Certain Relations Published in the Official Gazette of SFR Yugoslavia, No. 43/82.

Macedonia is party to, either by the act of ratification or on the basis of succession of the former SFRY.⁵¹³

Of interest to our analysis is that Macedonia has signed the Convention on Multilateral Investment Guarantees Agency (MIGA) and is party to the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards as well as the Geneva Convention on Execution of Foreign Arbitral Awards. Furthermore, Macedonia is party to the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States and the European Convention on International Commercial Arbitration.⁵¹⁴ Macedonia completely acknowledges the principles and regulations of the International Center for the Settlement of Investment Disputes, Washington D.C., and adheres thereto in every respect.⁵¹⁵ By virtue of Macedonian law, ratified international agreements prevail over national legislation.⁵¹⁶

Parties engaged in international dispute may resolve it either by domestic or foreign arbitration. The domestic arbitration tribunal – Foreign Trade Tribunal of Arbitration – is appended to the Chamber of Commerce of Macedonia.⁵¹⁷ Macedonia accepts binding international

⁵¹³ The Constitutional Law that gives effect to the Constitution also deals with the issue of validity of legal acts of the former federation in the light of succession.

⁵¹⁴ See Privatization Agency of the Republic of Macedonia, Dispute resolution mechanisms (visited Oct. 20, 2004) <<http://www.mpa.org.mk/guide/disputes.asp>>.

⁵¹⁵ See International Center for the Settlement of Investment Disputes (visited Apr. 28, 2004) <<http://199.88.185.106/EEBIC/COUNTRYR/fyrm/ccg2000/7.htm>>.

⁵¹⁶ "International agreements ratified in accordance with the constitution are part of the internal legal order and cannot be changed by law." Constitution art. 118.

⁵¹⁷ Rules of the Foreign Trade Court of Arbitration attached to the Chamber of Commerce of Macedonia are available at:

arbitration on investment disputes. Arbitration friendliness is shown by the fact that it has over forty foreign arbiters on the country's arbitration list available with the above mentioned Chamber of Commerce. The mentioned arbitration tribunal endeavors to be as business friendly as possible and that approach is reflected, among others, on the applicable law, which is as a rule the one agreed upon by the parties.

8. Other laws of interest to foreign investors

8.1. Bankruptcy law

In line with modern bankruptcy law developments, the central aim of Macedonian Bankruptcy Law is either to pay the debtor-company's (the bankrupt company) creditors by means of liquidation of the debtor's property and subsequent distribution of the proceeds to the creditors (*liquidation*) or to sanction a forced settlement agreement of the established claims, as part of a plan directed towards maintaining the debtor's business venture (essentially equivalent to the U.S. *reorganization*) at the choice of the creditors.⁵¹⁸

Bankruptcy proceedings may be opened over the property of a debtor – legal entity, natural person, deceased person, joint property of spouses, or community based on economic interest.⁵¹⁹ The preconditions for opening any of the bankruptcy proceedings are the debtor's insolvency,⁵²⁰ or prospective insolvency⁵²¹ or over-

<<http://www.mchamber.org.mk/arbitration.htm>>. There is no standard clause.

⁵¹⁸ Закон за стечај [Bankruptcy Law] art. 2. The Law on Bankruptcy has been published in Official Gazette of Republic of Macedonia, No. 55/97, 53/00. Hereinafter: Bankruptcy Law. Available at: <<http://www.finance.gov.mk/gb/laws/bankrupt.pdf>>.

⁵¹⁹ Bankruptcy Law art. 3.

⁵²⁰ The debtor is deemed insolvent if he is unable to settle his due monetary obligations within 60 days after they become due (upon their maturity). Bankruptcy Law art. 4 (3).

Establishing an International Classification for Industrial Designs; the Patent Cooperation Treaty (PCT); the Hague Agreement Concerning the International Deposit of Industrial Designs; the Agreement on Co-operation in the Field of Patents between European Patent Organization (EPO) and Government of the Republic of Macedonia; the Strasbourg Agreement Concerning the International Patent Classification and the Budapest Treaty of the International Registration of the Deposit of Microorganisms for the Purpose of Patent Procedure and Regulations.⁴⁶⁴

On national level, the intellectual property is regulated by the Law on Industrial Property;⁴⁶⁵ the Law on Copyright and Related Rights, the Law on Protection of Topographies of Integrated Circuits, the Law on Administrative Fees; the Tariff of Particular Costs for the Procedure and Costs for Informative Services; Regulations on Patent, Industrial Design, Trademark, and Origin Appellation Recognition and the Law on General Administrative Procedure.

7.4.2. Industrial property

The Law on Industrial Property regulates the acquisition and protection of patents, models, samples, trademarks, service marks and origin appellations.⁴⁶⁶ Patents protect technically feasible and industrially applicable original inventions, such as new technical solutions.⁴⁶⁷ The invention is deemed original if it had not existed in the

⁴⁶⁴ See IPPO info page (visited Nov. 2, 2004) <<http://www.ippo.gov.mk/eng/zakoni.html>>.

⁴⁶⁵ Law on Industrial Property, published in the Official Gazette of the Republic of Macedonia, No. 42/93.

⁴⁶⁶ Law on Industrial Property art. 1, published in the Official Gazette of the Republic of Macedonia, No. 42/93.

⁴⁶⁷ *Id.* art. 13.

technical domain prior to the patent application.⁴⁶⁸ However, scientific discoveries and theories, aesthetic creations, computer programs, mathematical and other intellectual methods are not deemed inventions under the Law on Industrial Property.⁴⁶⁹ Invention appendages or enhancements are subject to protection by supplementary patents.⁴⁷⁰ Patents do not protect illegal or immoral inventions.⁴⁷¹

Patent protection can be obtained by patent application to the Industrial Property Protection Office (IPPO) of Macedonia, or by international patent application on the basis of the Patent Cooperation Treaty to the WIPO, or by European patent application on the basis of the Extension of European Patent to the European Patent Organization.⁴⁷² Once patent has been granted, the patent holder has the exclusive right to use and exploit the patented invention commercially⁴⁷³ as well as to convey his rights, completely or in part, to third persons by means of a license. Foreign inventors can obtain patents through engaging a local legal representative. The scope of patent protection is 20 years as of the application filing date.⁴⁷⁴

'Models' protect new outward appearance and other new discernible forms of industrial products and handicrafts or their components, whereas designs protect new drawings. However, photographic and cartographic works, technical plans and sketches are ineligible for model or design protection⁴⁷⁵ as well as forms and drawings that are illegal

⁴⁶⁸ *Id.* art. 14.

⁴⁶⁹ *Id.* art. 13.

⁴⁷⁰ *Id.* art. 17.

⁴⁷¹ *Id.* art. 16.

⁴⁷² See Industrial Property Protection Office of Macedonia (visited Oct. 15, 2004) <<http://www.ippo.gov.mk/eng/patenti.html>>.

⁴⁷³ Law on Industrial Property art. 35.

⁴⁷⁴ *Id.* art. 40.

⁴⁷⁵ *Id.* art. 18.

Bankruptcy creditors are those creditors of the debtor that have a proprietary or other claim against the debtor on the day of opening of the bankruptcy proceeding.⁵³⁸ Creditors are categorized into three groups: creditors with a title over an asset or assets belonging to the property making the bankruptcy estate,⁵³⁹ creditors with a right to separate satisfaction,⁵⁴⁰ and general (unsecured) creditors of the bankruptcy estate.⁵⁴¹ In principle, payment will be made in the above-mentioned order. Creditors of a lower payment order may be settled only after the creditors of the higher payment order have been completely satisfied. Creditors of the same payment order (class) are settled in proportion to the size of their claims.⁵⁴² The expenses⁵⁴³ of the bankruptcy proceeding and other obligations⁵⁴⁴ of

⁵³⁸ *Id.* art. 71.

⁵³⁹ *Id.* arts. 80-81; The bankruptcy estate includes the complete property of the debtor on the day of the opening of the bankruptcy proceeding, as well as the property that he gains in the course of the bankruptcy proceeding. *Id.* art. 68 (1).

⁵⁴⁰ *Id.* arts. 82-85. Those are the creditors that have the right of pledge or settlement over certain object, or are in possession of rights registered in public books.

⁵⁴¹ *Id.* arts. 86-88.

⁵⁴² *Id.* art. 72. Note that what is generally known as "secured creditor" would fall out of the actual "creditors" framework under the law. Secured creditors under the law have a special status, different from the one law talks about when it refers to creditors.

⁵⁴³ Court expenses with regard to the bankruptcy proceeding; rewards and reimbursement of the expenses of the bankruptcy trustee, and of the members of the board of creditors; other expenses prescribed by law. Bankruptcy Law art. 87.

⁵⁴⁴ Obligations incurred by the bankruptcy trustee or by the management, conversion into cash and division of the bankruptcy estate that are not included to expenses; claims of attorneys for the provided services regarding protection and execution of the debtor's rights comprising the bankruptcy estate, for the last six months prior to the opening of the bankruptcy proceeding; bilateral contracts onerous to the bankruptcy estate; obligations incurred on the basis of unjust enrichment of the estate or unfounded acquisition. Bankruptcy Law art. 88.

the bankruptcy estate are settled from the bankruptcy estate. The remaining obligations of the bankruptcy estate are settled proportionately to their amount.⁵⁴⁵ Secured creditors have advantage over other creditors in form of separate satisfaction.⁵⁴⁶

In bankruptcy proceeding the competent court is the district court of the seat of the debtor.⁵⁴⁷ Creditors submit their claims in writing to the bankruptcy trustee and must state the legal basis, the amount, the name and the address of the creditor, creditor's account number(s) and proofs of their claims.⁵⁴⁸ A claim is considered established if it is not disputed by the bankruptcy trustee or by another bankruptcy creditor.⁵⁴⁹ The creditor whose claim has been disputed may initiate a court proceeding against the disputing party.⁵⁵⁰ Once claims have been established, a hearing takes place to which all creditors are summoned. At this hearing, the bankruptcy trustee submits a report on the financial situation of the debtor, as well as any proposal for debtor's rehabilitation.⁵⁵¹

⁵⁴⁵ Bankruptcy Law art. 86.

⁵⁴⁶ According to the law "creditors who have the right to pledge or right to settlement over some object, or rights that are registered in the public books have the right to a separate settlement of that object or right in compliance with the provisions of the Law on Execution Proceedings." *Id.* art. 82 "[C]reditors who have the right to pledge over some object of the bankruptcy estate which is not registered in the public books, have the right to a separate settlement of their claim, of interest and of expenses from the value of the pledged object." *Id.* art. 83 (1).

⁵⁴⁷ *Id.* art. 5.

⁵⁴⁸ *Id.* art. 185; Creditors of a lower rank submit their claims in writing only after the bankruptcy council specifically requests them to do so.

⁵⁴⁹ Bankruptcy Law art. 189 (1).

⁵⁵⁰ *Id.* art. 190.

⁵⁵¹ *Id.* art. 167.

In case a decision is reached in favor of liquidation,⁵⁵² employment contracts of all employees of the debtor will be terminated with the decision of the trustee⁵⁵³ and a public auction initiated to dispose of the debtor's property.⁵⁵⁴ The proceeds incurred by public auction are distributed among the creditors.⁵⁵⁵ The final distribution of the proceeds is carried out subsequent to liquidation of the bankruptcy estate.⁵⁵⁶ Right thereafter, the bankruptcy council shall decide to close the bankruptcy proceedings.⁵⁵⁷ The legal effect of the closure of bankruptcy proceedings against a debtor-legal entity is the cessation of the debtor's existence by deletion from the trade register.⁵⁵⁸

According to the European Restructuring and Insolvency Guide (2002/2003),⁵⁵⁹ Macedonia has "adequate and reasonably effective" bankruptcy law.⁵⁶⁰

8.2. Product liability

Product liability is an integral part of the Law on Consumer Protection,⁵⁶¹ where it comes about as a

⁵⁵² *Id.* art. 168(1).

⁵⁵³ *Id.* art. 122.

⁵⁵⁴ *Id.* art. 170.

⁵⁵⁵ *Id.* arts. 181 and 198.

⁵⁵⁶ *Id.* art. 207.

⁵⁵⁷ *Id.* art. 211.

⁵⁵⁸ *Id.* art. 2 (2).

⁵⁵⁹ See Anita Ramasastry, EBRD Legal Indicator Survey: Assessing Insolvency Laws after ten Years of Transition (in: The European Restructuring and Insolvency Guide 2002-2003). Source: The European Restructuring and Insolvency Guide 2002/2003 (visited Jan. 20, 2005) <<http://www.europeanrestructuring.com/chapters/pdfs/EBRD.pdf>>.

⁵⁶⁰ Meaning that proceedings are "often concluded in timely fashion" and "legal personnel fulfil their duties effectively." See *Id.*

separate chapter. This is also an area of law, which does not really have a past: it was unknown in the socialist era.⁵⁶² This is true irrespective that contract-based warranty law and general negligence-based tort law has been part of the Law on Obligations of 1978 and theoretically they could have been made use of in dealing with product liability disputes.

In the very beginning, the Law on Consumer Protection makes an effort to define the main terms. Accordingly, 'consumer' stands for any natural person that purchases goods or makes use of services for content of his own personal needs or the needs of his household. 'Vendor' is any natural person or legal entity that puts goods up for sale or provides services to consumer in the course of his business performance. 'Producer' is any natural person or legal entity engaged into production of final goods or components thereof or any other person that, by appending his name and trademark to the goods, appears as producer. 'Importer' of goods is deemed producer as well. Finally, 'distributor' is defined as any natural person or legal entity participating in the supply chain, whose activity does not affect the safety properties of the goods.⁵⁶³ The producer⁵⁶⁴ is liable for any damage caused as a consequence of a defect in his product.⁵⁶⁵ Even the distributor or the seller of the product that caused damage is deemed to be a producer where the actual producer cannot be identified, save the distributor or the seller

⁵⁶¹ *Закон за заштита на потрошувачите* [Law on Consumer Protection], published in the Official Gazette of the Republic of Macedonia, No. 63/00.

⁵⁶² 'Warranty' system existed in the legal system of the former Yugoslavia, under the Law on Obligations of 1978.

⁵⁶³ Law on Consumer Protection art. 2.

⁵⁶⁴ According to the law, importer is deemed to be the producer, and has the same liability. *Id.* art. 58 (2).

⁵⁶⁵ *Id.* art. 58(1), (2).

indebtedness.⁵²² In principle, bankruptcy proceedings are summary proceedings, however, in reality – unless the bankrupt company had existed solely on a paper without meaningful business activities – these proceedings tend to be time consuming.⁵²³

Bodies playing a role in bankruptcy proceedings are the bankruptcy council,⁵²⁴ the bankruptcy judge, the bankruptcy trustee,⁵²⁵ the board of creditors and the assembly of creditors.⁵²⁶

Bankruptcy proceedings are opened upon proposal filed by a creditor⁵²⁷ or the debtor (voluntary bankruptcy),⁵²⁸ not later than thirty days after the materialization of the reasons therefore.⁵²⁹ The party initiating the opening of the bankruptcy proceeding has to advance a certain amount (determined by the bankruptcy council) for the costs of the bankruptcy proceeding.⁵³⁰ The bankruptcy

⁵²¹ The debtor is deemed facing a prospective insolvency in case the debtor himself establishes his likely inability to settle his monetary obligations when due. Bankruptcy Law art. 4 (4).

⁵²² The debtor is deemed over-indebted when his liabilities exceed his assets. Bankruptcy Law art. 4 (5).

⁵²³ Bankruptcy Law art. 7 (2).

⁵²⁴ A bankruptcy council consists of three judges. Among others this body decides upon opening of the bankruptcy proceeding, appoints bankruptcy trustees and approves payments to creditors. It has the power to amend the decision of a bankruptcy judge or a trustee as well. See Bankruptcy Law art. 16 and 17.

⁵²⁵ The bankruptcy trustee represents the debtor. Bankruptcy Law art. 25 (3). Articles regulating the legal status of the bankruptcy trustee: art. 20-32.

⁵²⁶ Bankruptcy Law art. 15.

⁵²⁷ A creditor is qualified to file a proposal for opening of bankruptcy proceedings if he shows probable claim (however, it is not defined by the law what should be understood by this). Bankruptcy Law art. 46 (2).

⁵²⁸ Bankruptcy Law art. 46 (1).

⁵²⁹ *Id.* art. 46 (8).

⁵³⁰ *Id.* art. 48.

council decides on the opening of the so-called preliminary proceeding to determine whether there are grounds for the opening of a bankruptcy proceeding.⁵³¹ However, in case the bankruptcy debtor has himself asked for the opening of the bankruptcy proceedings, the proceedings can be opened without carrying out such preliminary proceeding.⁵³²

Once the bankruptcy proceedings have begun, the bankruptcy trustee⁵³³ takes over the debtor's right to manage and dispose of the bankruptcy estate.⁵³⁴ With the opening of the proceedings the creditors are estopped from enforcing their claims.⁵³⁵ Moreover, creditors are prevented from requesting the enforcement of security interests against the debtor or executing on the collateral.⁵³⁶ Otherwise, as the first step, it is the duty of the debtor to provide all the necessary information to the court and to the trustee in bankruptcy.⁵³⁷

⁵³¹ *Id.* art. 49.

⁵³² *Id.* art. 63.

⁵³³ Any natural person might be appointed for bankruptcy trustee who possesses the "necessary expertise and business experience, for whose impartiality and independence there is no doubt," who has a university degree and at least five years of experience, and who is a registered merchant. Bankruptcy Law art. 20. Courts maintain lists of potential bankruptcy trustees. The trustee is appointed by the bankruptcy council. *Id.* art. 22. The bankruptcy trustee represents the debtor, and manages the legal entity during the bankruptcy proceeding, it has the same rights and obligations as the organs of the debtor legal entity. *Id.* art. 25. The work of the bankruptcy trustee is supervised by the bankruptcy judge and by the bankruptcy council. *Id.* art. 27.

⁵³⁴ Bankruptcy Law art. 96.

⁵³⁵ *Id.* art. 97.

⁵³⁶ *Id.* art. 99 and 100.

⁵³⁷ *Id.* art. 107; In case of refusal to do so, the debtor may be forcibly summoned to court or taken into custody as a security measure. *Id.* art. 108.

(company established under the Macedonian law having a license from the Ministry of Finance for financial leasing activity),⁵⁷⁷ the lessee can be either legal or natural person.⁵⁷⁸ The leasing contract has to be notarized,⁵⁷⁹ and in case of financial leasing, the lessor has to register the object of the contract with a special registry.⁵⁸⁰ The lessee bears all the risks related to the object of the lease and related insurance costs,⁵⁸¹ and is also obliged to maintain the object, unless otherwise stipulated by the parties.⁵⁸²

Another important aspect of leasing contract is related to taxes. The amortization period of the object, which is at the same time the object of the leasing contract, shall not be less than 20% per annum from the depreciation period defined by special financial regulations. The maximum period of depreciation cannot exceed 2 years.⁵⁸³ During the financial leasing the calculated depreciation of the object is recognized as expenditure in the tax declaration of the lessor, and not in that of the lessee.⁵⁸⁴

8.4. Securities law

The Securities Law⁵⁸⁵ – which is also the product of the transitory period as no such law had existed prior to 1990 in Macedonia – defines securities as “an instrument,

⁵⁷⁷ *Id.* art. 4.

⁵⁷⁸ *Id.* art. 3.

⁵⁷⁹ *Id.* art. 5.

⁵⁸⁰ *Id.* art. 12.

⁵⁸¹ *Id.* art. 13.

⁵⁸² *Id.* art. 9.

⁵⁸³ *Id.* art. 15.

⁵⁸⁴ *Id.*

⁵⁸⁵ Securities Law, published in the Official Gazette of Republic of Macedonia, No. 63/00, 103/00, 34/01, 4/02, 37/02, 31/03. The English version of the law can be found at: Ministry of Finance info page (visited Jan. 20, 2005) <<http://www.finance.gov.mk/gb/index.html>>.

contracting relationship/contract⁵⁸⁶ or a contractual relationship the aim of which is making profits on the basis of entrepreneurial and managerial efforts of others, including but not limited to shares,⁵⁸⁷ bonds,⁵⁸⁸ treasury bills, commercial notes,⁵⁸⁹ government notes,⁵⁹⁰ certificates of deposit⁵⁹¹ and other financial instruments considered as investments according to the Securities Commission.”⁵⁹²

The law has established the Central Depository of Securities where securities are issued, transferred and maintained as electronic records.⁵⁹³ Practically, any legal person, including municipalities, the Republic of Macedonia or the National Bank of Macedonia, is entitled

⁵⁸⁶ However, it is not clear what contracting relationship/contract is, and whether there is any difference as to contractual relationship. The Macedonian language version of the law is of little help in this respect.

⁵⁸⁷ “A share is an equity security evidencing ownership of an ideal part of the registered capital of a joint stock company.” Securities Law art. 15.

⁵⁸⁸ “A bond is a long term debt security binding the issuer to pay the owner of the bond, on a determined date, the nominal value of the bond and the interest, whether in one or in more installments.” *Id.* art. 22.

⁵⁸⁹ “Treasury and commercial notes are securities binding the issuer to pay the note holders the par value of such securities and the appropriate interest, within the period of maturity.” *Id.* art. 30.

⁵⁹⁰ “A government note is a short-term security issued for the purpose of raising funds in order to bridge time discrepancies between the inflow of income and covering expenditures of the budget of the Republic of Macedonia.” *Id.* art. 32.

⁵⁹¹ “A certificate of deposit is a security binding the issuer to pay the amount of deposit and interest to the certificate holder, within a determined period of time.” *Id.* art. 26.

⁵⁹² *Id.* art. 2 (1).

⁵⁹³ *Id.* art. 2 (3) (4). See also Central Securities Depository info page (visited Jan. 25, 2005) <<http://www.cdhv.org.mk/English/home.htm>>.

to issue securities.⁵⁹⁴ Securities can be of two types: representing ownership or debt.⁵⁹⁵ The law does not allow the issuance of securities without nominal value (face value).⁵⁹⁶ For the issuance of securities offered publicly, the approval of the Securities Commission is required.⁵⁹⁷

The Securities Law also establishes and regulates the Macedonian money and short-term securities market⁵⁹⁸ and the operation of the Macedonian Stock Exchange (for trading in long-term securities).⁵⁹⁹ Money and short-term securities market can be founded only by banks and other financial institutions organized in the form of a joint-stock company with a minimal registered capital of EUR 75,000 (equivalent in Macedonian *denars*).⁶⁰⁰ The Stock Exchange is also established in form of joint-stock company, and its shareholders can only be banks and brokerage houses registered in Macedonia.⁶⁰¹ There are 69 listed companies at the Macedonian Stock Exchange at the moment.⁶⁰²

8.5. Data in electronic form and electronic signature law

Several steps have been undertaken to help the expansion of the electronic commerce (hereinafter: E-commerce). The Law on Data in Electronic Form and Electronic

⁵⁹⁴ *Id.* art. 3.

⁵⁹⁵ *Id.* art. 4.

⁵⁹⁶ *Id.* art. 6 (1) (4).

⁵⁹⁷ *Id.* art. 37. See also Securities and Exchange Commission (visited Jan. 22, 2005) <<http://www.sec.gov.mk/e/history.htm>>.

⁵⁹⁸ *Id.* arts. 57-67.

⁵⁹⁹ *Id.* art. 68. See also Macedonian Stock Exchange (visited Jan. 25, 2005) <<http://www.mse.org.mk/index-e.asp>>.

⁶⁰⁰ *Id.* arts. 59 and 60.

⁶⁰¹ *Id.* arts. 68 and 87.

⁶⁰² See Macedonian Stock Exchange info page (visited Jan. 25, 2005) <<http://www.mse.org.mk/index-e.asp>>.

Signatures is in force since 2001. In addition, all the other relevant laws and implementation regulations have been amended to allow and bolster the use of electronic signatures. The first public certification authority is about to be established. Furthermore, almost every larger bank offers or is in the process of launching E-banking.

In line with these endeavors, the National Payment Card Organization has been founded.⁶⁰³ Its purpose is issuance of domestic payments cards and processing of all payment cards on the Macedonian market.⁶⁰⁴ Macedonian laws and regulations strive to follow international standards in this domain, including basic definitions applicable in this area. Thus, data in electronic form is data contrived and stored by means of electronic devices. Electronic signature, on the other hand, is a compilation of data in electronic form, encompassed in, or logically associated with, other data in electronic form intended for establishment of data authenticity as well as for confirmation of the signatory's identity. The electronic signature is deemed valid if it is "exclusively linked to the signatory,"⁶⁰⁵ created by data⁶⁰⁶

⁶⁰³ The Government of Macedonia established the National Payment Card with a decision adopted on July 24, 2001. It is in form of joint-stock company. This company is 100% government owned for the time being, but planned to be privatized by the commercial banks in Macedonia, some interested international institutions as well as similar processing centers that will meet the conditions set by the Government of Macedonia. See Privatization Agency of the Republic of Macedonia (visited Oct. 25, 2004) <<http://www.mpa.org.mk/guide/infrastructure.asp>>.

⁶⁰⁴ See Privatization Agency of Macedonia (visited Oct. 25, 2004) <<http://www.mpa.org.mk/guide/infrastructure.asp>>; The law uses the term "payment card," and most of the literature on the issue has accepted the law's terminology. It would stand for a generic term, embracing both credit and debit cards. Law on Data in Electronic Form and Electronic Signature, published in the Official Gazette of Republic of Macedonia, No. 34/01.

⁶⁰⁵ Law on Data in Electronic Form and Electronic Signature art. 2.

⁶⁰⁶ Discrete data, such as codes or cryptographic keys. *Id.* art. 2.

informs the aggrieved consumer of the producer's identity in a reasonable time.⁵⁶⁶

The product may contain legal and material defects.⁵⁶⁷ As regards the legal defects, the Law on Obligations controls the liability issue.⁵⁶⁸ Contrary to that, a material defect is defined – in the consumer protection law – as an instance where the product is not complete in terms of quality or quantity and it is not as safe as one would reasonably expect to be endowed with, based upon product presentation, reasonable usage, and according to the conditions that had existed at the time of making the product available on the market.⁵⁶⁹ The burden of proof as to the defect of product, the damage caused and the causal link between the defect and the damage is placed on the consumer.⁵⁷⁰ This means that traditional negligence-based tort liability rules apply and not strict tort liability.⁵⁷¹

The producer may free himself from liability for the damages or injuries caused by a defective product, if he succeeds to prove one of the following: (1) that he has not placed the product on the market; (2) that the defect did not exist at the time of making the product available on the market or that the defect emerged later on; (3) that the product has been produced neither for sale nor for any commercial purpose whatsoever; (4) that the product has not been produced and distributed as part of producer's regular business activity. Or lastly, (5) that the level of scientific and technical knowledge at the time of making

⁵⁶⁶ *Id.* art. 58(3).

⁵⁶⁷ *Id.* art. 59 (1).

⁵⁶⁸ *Id.* art. 59 (2).

⁵⁶⁹ *Id.* art. 59 (3).

⁵⁷⁰ *Id.* art. 70(1).

⁵⁷¹ For liability rules, see Law on Obligations – the text of the law is available at (visited Oct. 30, 2004) <http://www.finance.gov.mk/gb/laws/other_laws/law_on_obligations.pdf>.

the product available on the market did not permit detection and disclosure of defects.

The law also regulates instances in which a defect may occur on such a final product into which its producer builds in components produced by another producers. In this case, the producer will free himself from liability for the defect if he succeeds to prove that the defect of the final product is due to the design or defects of the components or due to the specifications or instructions given by the producer of the components.⁵⁷² In sum, this is one of those fields of law where taking over of the EU *acquis* will bring in meaningful novelties, in particular strict tort liability as a fundamental cogwheel of product liability protection.

8.3. Law on leasing

According to the Law on Leasing⁵⁷³ – in which ‘leasing’ as a *sui generis* and novel contract type has become regulated for the first time in Macedonia in 2002 – the object of leasing can be both movables and immovables.⁵⁷⁴ Leasing is an activity where the object of the leasing is used for an agreed period of time in exchange for paying a fee.⁵⁷⁵

Under the law both, financial and operational leasing is possible.⁵⁷⁶ Whereas the lessor can be only legal entity

⁵⁷² *Id.* art. 71.

⁵⁷³ The Law on Leasing, published in the Official Gazette of Republic of Macedonia, No. 4/02, 49/03.

⁵⁷⁴ *Id.* art. 1.

⁵⁷⁵ *Id.* art. 2.

⁵⁷⁶ The law defines financial leasing as “leasing that transfers all risks and benefits arising from the ownership over any object, movable or immovable, whereby after the expiry of certain time period the ownership may, but does not have to, be re-transferred.” *Id.* art. 2. All other variants of contracts called ‘leasing’ and not covered by this definition qualify as operational leasing.

rapidly.⁶¹⁷ While written guarantees – like laws, international agreements – are important, they are not enough. What makes these guarantees really valuable is their long practice and correct application.⁶¹⁸ Thus, a second necessary step towards the development of a well-functioning market economy oriented legal system is the establishment of a broad set of supporting institutions; because even well designed laws may lie dormant without institutional support.⁶¹⁹ Thus, Macedonia sorely needs reforms in the field of executive and judiciary branch. Corruption is undoubtedly a separate but non-negligible problem.⁶²⁰

Despite all the problems, however, one should not disregard that Macedonia has good potentials thanks to its geographic situation, natural resources and – for the region – relatively competitive work force. At the same time it has shown signs that it is willing and committed to push through reforms and to fight corruption.

Appendix I – List of abbreviations

- AD – “*Akcionersko Drushtvo*” [Joint-stock company]
 DMPNE – Democratic Party for Macedonian National Unity
 DOO – “*Drushtvo so Ogranichena Odgovornost*” [Limited liability company]
 DUJ – Democratic Union for Integration
 FPRY – Federal People’s Republic of Yugoslavia

⁶¹⁷ *Id.*

⁶¹⁸ *Id.*

⁶¹⁹ *Id.*

⁶²⁰ Macedonia’s corruption perception index (CPI) score is 2.7 (Finland has 9.7, Haiti 1.5) See TI 2004 Corruption Perceptions Index (visited Dec. 10, 2004) <http://www.transparency.org/pressreleases_archive/2004/2004.10.20.cpi.en.html>.

JTD	– “ <i>Javno Trgovsko Drushtvo</i> ”	[General partnership]
KD	– “ <i>Komanditno Drushtvo</i> ”	[Limited Partnership]
KDA	– “ <i>Komanditno Drushtvo so Akcii</i> ”	[Limited Partnership by shares]
LDP	– Liberal Democratic Party	
LP	– Liberal Party	
SDSM	– Social Democratic Union of Macedonia	
SFRY	– Socialist Federal Republic of Yugoslavia	
VMRO	– Internal Macedonian Revolutionary Organization	

Appendix II – List of laws and regulations

Constitution of the Republic of Macedonia, published in Official Gazette of the Republic of Macedonia, No. 52/91⁶²¹

Law on Civil Procedure, published in the Official Gazette of SFR Yugoslavia, No. 4/77

Law on Dispute Settlement with Regard to the Laws and Regulations of Other Countries in Certain Relations, published in the Official Gazette of SFR Yugoslavia, No. 43/82

Law on Transformation of Enterprises with Social Capital, published in Official Gazette of the Republic of Macedonia, No. 38/93, 48/93

Law on Concessions [“Закон за концесии”] published in Official Gazette of the Republic of Macedonia, No. 42/93, 25/02

⁶²¹ The first number designates the number of the Official Gazette, and the second stands for the year of issuance.

- Law on Accountancy*, published in the Official Gazette of the Republic of Macedonia, No. 42/93, 48/93, 6/95, 248/95, 271/95, 304/95 in 3/96, 32/98, 39/99 and 70/2001
- Law on Free Economic Zones*, published in Official Gazette of the Republic of Macedonia, No. 42/93, 25/02
- Law on Industrial Property*, published in the Official Gazette of the Republic of Macedonia, No. 42/93
- Law on Profit Tax* ["Закон за данок на добивка"], published in Official Gazette of the Republic of Macedonia, No. 80/93, 33/95, 43/95, 71/96, 5/97, 28/98, 11/01, 2/02, 44/02
- Law on Property Tax*, published in Official Gazette of Republic of Macedonia, No. 80/93, 3/94, 71/96, 54/00.
- Law on Expropriation*, published in the Official Gazette of the Republic of Macedonia, No. 33/95, 20/98, 40/99
- Law on Privatization of State Capital of Enterprises*, published in Official Gazette of the Republic of Macedonia, No. 37/96
- Audit Law*, published in the Official Gazette of the Republic of Macedonia No. 65/97, 27/00 and 31/01
- Law on Copyright and Related Rights* ["Закон за авторското право и сродните права"], published in Official Gazette of the Republic of Macedonia, No. 47/96 and 3/98
- Law on Bankruptcy* ["Закон за стечај"], published in Official Gazette of Republic of Macedonia, No. 55/97, 53/00
- Law of Radio Broadcasting*, published in the Official Gazette of the Republic of Macedonia, No. 20/98
- Law on Agricultural Land*, published in the Official Gazette of the Republic of Macedonia No. 25/98, 18/99
- Law on Value Added Tax*, published in Official Gazette of the Republic of Macedonia, No. 44/99, 59/99, 86/99, 11/00, 8/01

Law against Unfair Competition ["Закон против ограничувањата на конкуренцијата"], published in the Official Gazette of Republic of Macedonia, No. 80/99

Law on Banks ["Закон за банките"], published in the Official Gazette of the Republic of Macedonia No. 63/00

Law on Consumer Protection ["Закон за заштита на потрошувачите"], published in the Official Gazette of the Republic of Macedonia, No. 63/00

Law on Securities ["Закон за хартии од вредност"], published in Official Gazette of Republic of Macedonia, No. 63/00, 103/00, 34/01, 4/02, 37/02, 31/03, 85/03

Law on Excise Duties, published in the Official Gazette of the Republic of Macedonia, No. 2/01, 52/01, 45/02

Law on Data in Electronic Form and Electronic Signature, published in the Official Gazette of Republic of Macedonia, No. 34/01

Law on Leasing, published in the Official Gazette of Republic of Macedonia, No. 4/02, 49/03.

Law on Commercial Entities, published in Official Gazette of the Republic of Macedonia, No. 28/04

Regulation for Representing of Foreign Entities in the Republic of Macedonia in the Field of Foreign Trade Operations, published in the Official Gazette of Republic of Macedonia, No. 78/93, 40/96, 53/96

Decision for the Conditions for Opening and Functioning of the Representative Offices of the Foreign Entities in Republic of Macedonia, published in the Official Gazette of the Republic of Macedonia, No. 25/95, 54/98

Law on Municipal Tax – the text of the law is available at: (visited Oct. 30, 2004) <<http://www.finance.gov.mk/gb/laws>>

Law on Prevention of Competition Limitation – the text of the law is available at: (visited Oct. 30, 2004) <<http://www.finance.gov.mk/gb/laws>>

Law on Obligations [“Закон за облигационите односи”], – the text of the law is available at: (visited Oct. 30, 2004) <http://www.finance.gov.mk/gb/laws/other_laws/law_on_obligations.pdf>

Appendix III – List of double taxation avoidance treaties

Macedonia has concluded double taxation avoidance treaties with the following countries: Denmark, Italy, France, Hungary, Finland, Egypt, Czech Republic, Bulgaria, China, Netherlands, Sweden, Albania, Poland, Switzerland, Slovenia, Russian Federation, Romania, Ukraine, Serbia and Montenegro.⁶²²

Appendix IV – Selected bibliography

- Acevska, Ljubica, *The Republic of Macedonia: An Atypical Balkan Country*, 20 *Fordham Int'l L.J.* 1521 (1997).
- Brashear, Lydia, *A Year in the Balkans: Macedonia and the Rule of Law* 24 *WTR Hum. Rts.* 18 (1997).
- Daskalovski, Zhidas, *Elite Transformation and Democratic Transition in Macedonia and Slovenia*, *BALKANOLOGIE*, Sept. 1999, at 1.
- Koevski, Goran, *Privatisation in the Former Yugoslav Republic of Macedonia: issues, progress and prospects*, in *Economics No. 10*, Department of Economics Series at Heriot Watt University, Edinburgh, (1995).

⁶²² There is no data on their status. Source: Ministry of Finance of the Republic of Macedonia (visited Jan. 11, 2005) <<http://www.finance.gov.mk/gb/index.html>>.

- Koevski, Goran, *Macedonia, a less pessimistic view*, Privatisation International, Privatisation Yearbook – London (1996).
- Koevski, Goran, *The National Treatment of the Foreign Investors in the Republic of Macedonia – advantage or legal constraint*, Pravnik No. 94, February 2000 (in Macedonian).
- Koevski, Goran, *The Notion and the Legal Nature of the Distributorship Agreement*”, Business law – Journal of Law Theory and Practice No. 2, November 2000 (in Macedonian).
- Koevski, Goran, Goran Koevski, *Compilation of International Documents on Company Law, With Special Reference to The Corporate Governance Issues*, published by St. Cyril and Methodius University Skopje, Faculty of Law, May 2001 (in Macedonian).
- Kis, Janos, *Between Reform and Revolution*, 1 EAST EUROPEAN POLITICS AND SOCIETIES 323 (1998).
- Auswärtiges Amt (visited Oct. 10, 2004) <http://www.auswaertiges-amt.de/www/en/laenderinfos/laender/laender_ausgabe_html?type_id=9&land_id=110>.
- Macedonians Defeat Bid to Block Rights for Albanian Minority*, The Washington Post (visited Jan. 14, 2005) <<http://www.washingtonpost.com/wp-dyn/articles/A32730-2004Nov7.html>>.
- Anita Ramasastry, *EBRD Legal Indicator Survey: assessing insolvency laws after ten years of transition* (in The European Restructuring and Insolvency Guide 2002-2003). Source: The European Restructuring and Insolvency Guide 2002/2003 (visited Jan. 20, 2005) <<http://www.europeanrestructuring.com/chapters/pdfs/EBRD.pdf>>.
- Simon, Zoltan & Monsaingeon, Flora, *Macedonia Since Independence: (De) Constructing a Multiethnic State*

and tools⁶⁰⁷ generally accepted as means of devising electronic signature,⁶⁰⁸ provided they are under complete control of the signatory. Further, the electronic signature has to provide easy and positive authentication of the signatory.⁶⁰⁹ And finally, it has to be associated with certain referent data, in a manner that enables easy determination of any modification of, or in the referent data itself.⁶¹⁰

Data in electronic form cannot be rejected or accepted as evidence only because it is presented in electronic form.⁶¹¹ Likewise, the electronic signature cannot be disputed or rejected as evidence only because it is in electronic form, or because it has not been certified by an accredited issuer or by anybody else, or because it has not been created by data and tools generally accepted as means of creating electronic signatures.⁶¹² Consequently, both the data in electronic form and the electronic signatures have a relative and conditional evidentiary value, whose concrete weight depends on additional factors that vary from context to context. It is up to the court to ascertain those factors in a concrete case. However, electronic signatures are equal to personal signatures. They are inadequate only in cases where personal signature is explicitly required.⁶¹³

⁶⁰⁷ Configured software or hardware designed for devising an electronic signature. *Id.* art. 2.

⁶⁰⁸ The tools generally accepted as means of devising electronic signature should be rendering the electronic signature data distinctive, safe and credible, impossible to be obtained by other reasonable means and in due time, protected from forgery and unauthorized access. Besides, these tools should not be modifying the data or preventing the signatory from seeing it. Law on Data in Electronic Form and Electronic Signature art. 2 and 35.

⁶⁰⁹ Law on Data in Electronic Form and Electronic Signature art. 2.

⁶¹⁰ *Id.* art. 2.

⁶¹¹ *Id.* art. 4.

⁶¹² *Id.* art. 12.

⁶¹³ *Id.* art. 13.

Apart from the above legal rules on the evidentiary value of these categories, legal entities and natural persons are free to mold their relations with regard to the data in electronic form and electronic signatures, as they deem proper.⁶¹⁴

9. Conclusion

Macedonia, having an emerging economy, needs capital and new technology to keep up with international industrial development. However, with the outbreak of the conflicts in the region, foreign and even domestic investors recoiled from investing in Macedonia.

If Macedonia wants to profit from globalization, it has to build up a business friendly legal framework that would allow for unrestricted inflow and unhindered functioning of foreign capital.

Macedonia has recognized that inadequate legal regime can deter foreign investment (for example by distorting factor prices, increasing transaction costs, and increasing the risks born by foreign investors) and therefore during the last few years it began a comprehensive legal reform based on western European and US models.⁶¹⁵ These new rules might be encouraging signals for potential investors because they show the willingness of the government and its strong commitment in its effort to create a working market economy.⁶¹⁶

Special rules for foreign investors can also provide special incentives for foreign investors and provide a limited sphere in which legal development can proceed more

⁶¹⁴ *Id.* art. 3 (predominant interpretation).

⁶¹⁵ See Cheryl W. Gray, *Reforming Legal Systems in Developing and Transition Countries*, Info page of the Worldbank (visited Feb. 4, 2000)

<<http://www.worldbank.org/fandd/english/0997/articles/0140997.htm>>.

⁶¹⁶ *Id.*

- (visited Jan. 14, 2005) <http://www.columbia.edu/itc/sipa/U6868x01/Macedonia_Paper.htm>.
- SoutheastEurope Online (visited Feb. 24, 2005) <<http://www.southeasturope.org/>>.
- The World Factbook 2004 (visited Oct. 19, 2004) <<http://www.cia.gov/cia/publications/factbook/print/mk.html>>.

Appendix V – Useful addresses and contacts

American Chamber of Commerce in Macedonia

www.amcham.com.mk

Archives of Macedonia

www.arhiv.gov.mk

Assembly of the Republic of Macedonia

www.assembly.gov.mk

Central Securities Depository

www.cdhv.org.mk

Customs Administration

www.customs.gov.mk

Economic Chamber of Macedonia

www.mchamber.org.mk

European Union Office

ecoffice@ecoffice.org.mk

Government of the Republic of Macedonia

www.gov.mk

Industrial Property Protection Office

www.ippo.gov.mk

Information Agency

www.sinf.gov.mk

Macedonian Academy of Sciences and Arts

www.manu.edu.mk

Macedonian Bar Association

www.mba.org.mk

Macedonian Business Catalogue

www.unet.com.mk/mbc

Macedonian Business Lawyers Association

www.mbla.org.mk

Macedonian Business Resource Center

www.mbrc.com.mk

Macedonian Information Agency

www.mia.com.mk

Macedonian Judges Association

www.mja.org.mk

Macedonian Legal Resource Center

www.mlrc.org.mk

Macedonian Privatization Agency

www.mpa.org.mk

Macedonian Stock Exchange

www.mse.org.mk

Ministry of Economy

www.economy.gov.mk

Ministry of Finance

www.finance.gov.mk

Ministry of Foreign Affairs

www.mnr.gov.mk

**National Agency for the Development of Small-and
Medium-sized Companies in Macedonia**

www.nepa.org.mk

National Bank of the Republic of Macedonia

www.nbrm.gov.mk

National Institute of Statistics

www.stat.gov.mk

Official Site of the Capital of Macedonia – Skopje

www.skopje.gov.mk

OSCE

oscemsk@unet.com.mk

Securities and Exchange Commission

www.sec.gov.mk

Skopje Fair

www.skopjefair.com.mk

UNDP

registry.mk@undp.org