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# Investment in Macedonia

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KPMG in Macedonia



АЕРОДРОМ

# Investment in Macedonia

Edition 2013



# Preface



Investment in Macedonia is one of a series of booklets published by KPMG to provide information to those considering investing or doing business internationally.

Every care has been taken to ensure that the information presented in this publication is correct and reflects the situation as of February 2013 unless otherwise stated. Its purpose is to provide general guidelines on investment and business in Macedonia. As the economic situation is undergoing rapid change, further advice should be sought before making any specific decisions.

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## Chapter 1

# General Information



### Geography and climate

Macedonia, the land of myths and legends, lakes, valleys and mountains, sunshine and grapes, wine, dance and song, is situated in the central part of the Balkan peninsula. It is a landlocked country, bordered on the north by Serbia and Kosovo, on the east by Bulgaria, on the south by Greece, and on the west by Albania. The Vardar River, which originates in the north-western part of the Republic and bisects it, is the longest river. It flows into Greece and drains into the Aegean Sea. Macedonia is strategically located along key land routes from Europe to the Middle East and Asia.

The country's total area is 25,713 square kilometers. Macedonia consists mostly of highlands and mountains. Its terrain is punctuated alternately by deep valleys and rugged mountains and hills. The entire territory of Macedonia is a transitional region between the Mediterranean and continental climates. Along the valleys of the Vardar and Strumica rivers the climate is temperate Mediterranean. The interior has a moderate continental climate with warm and dry summers and cold and wet winters.

### Population and language

According to the latest statistics, in 2010 Macedonia's population was approximately 2.05 million. The capital, Skopje, is by far the largest urban center with approximately 600,000 inhabitants.

Ethnic Macedonians represent 66% of the population. Albanians make up 25%. Minority groups include Turks 4%, Serbs 2%, Roma 2% and others 1%.

Nearly 66% of the Macedonian population is Eastern Orthodox Christian. Another 33% of the population practice Islam, and 1% other religions.

The country's official language is Macedonian. Secondary languages closely correspond to ethnic background. English is used frequently in business.

## Infrastructure

### Roads and railways

The Republic of Macedonia is well situated as a transport hub. Most of the roads connecting the larger cities are of good quality, especially the transit routes that are mostly highways. The most important of these is the well-known E-5 highway, which follows the Morava and Vardar valleys and leads on to the Aegean and the Near East. The same route is followed by an international railway line. The road network in Macedonia continues to be modernized in order to satisfy transport needs. Most tourist amenities are connected by modern roads. Petrol stations are usually open round the clock and are available along such roads and at border crossings.

Recently, the construction of the important so called East-West Road starting from Istanbul (Turkey), going through Bulgaria and Macedonia and finishing in Albania is under development. This road, together with the adjoining railway line, will enable better and faster transit between Europe and Asia Minor.

The Government announced major infrastructure projects for construction of new roads along the two Pan-European Transport Corridors VIII and X. Three border crossings are available when traveling from Bulgaria: Deve Bair, on the Sofia-Skopje route, between Kyustendil and Kriva Palanka, 13 km from the latter; Obel, on the Blagoevgrad-Shtip route, 10 km from Delchevo; and Novo Selo, on the route Petrich-Strumica-Shtip in the valley of the river Strumica, 32 km from Strumica.

Three border check points are available when traveling from Greece: Medzitlija (region of Pelagonija), 14 km from Bitola, Bogorodica, 4 km from Gevgelija in the valley of the river Vardar, and Dojran next to Lake Dojran. The first two are used for road and railway traffic.

The official border crossings connecting Albania and Macedonia are Cafasan, on the Tirana-Struga-Ohrid route, 13 km from Struga, and Saint Naum, on the Pogradec-Ohrid route, 29 km from Ohrid.

One border check point is available when traveling to Serbia and one to Kosovo: Tabanovce, near Kumanovo, on the route Skopje-Nish-Belgrade and Blace on the route Skopje-Prishtina.

Macedonia has an electrified rail network conveniently connected to several cities. It includes about 925 km of railway lines.

### Airports

The Republic of Macedonia has two international airports – at Skopje and Ohrid – which can accommodate all types of modern aircraft, except inter-continental flights. Recently the Turkish company TAV took over the management of both airports for the next 20 years.

A number of local and foreign carriers (Austrian Airlines, Turkish Airlines, JAT, Adria Airways, Croatia Airlines, WizzAir, FlyDubai, Pegasus Airlines) offer direct and indirect flights from Skopje airport to major European cities.

During 2011, TAV Airports, the entity that manages the Skopje and Ohrid airports, expanded Skopje Airport with a new 40,000 square meter terminal building to accommodate six passenger bridges and the runway and increased the cargo and car park capacities. A 40,000 ton capacity cargo hangar, 300 vehicle car park, 23 check-in counters and 500 meter expansion to the runway were also amongst the works completed.

Ohrid St. Paul the Apostle Airport is a small tourist facility, providing space for eight commercial aviation aircraft and five general aviation aircraft. Currently, the passenger terminal and other airport capacities service about 60,000 passengers and 1,000 aircraft annually. The main purpose of this airport is tourism development in the Ohrid area and to serve as an alternative to the Skopje Alexander the Great Airport.

## Communications

### Fixed-line communications

The telephone system is modern and digitalized. The major provider of fixed-line communications is Makedonski Telekom owned through Matav by Deutsche Telekom. Other fixed-line operators include ONE (part of Telekom Slovenia Group), Neotel, Telecabel and Blizoo. The digitalized telephone service is available in most rural areas. Direct international dialing is available everywhere.

### Mobile communications

Three mobile telephone operators currently provide services in Macedonia: T-Mobile (part of Deutsche Telekom Group) with more than 1 million users, VIP Operator (part of Telekom Austria Group) and ONE (part of Telekom Slovenije).

### Internet

The largest internet provider in Macedonia is Makedonski Telekom, offering wireless, dial-up, ISDN, ADSL and optic internet connections. This is a vibrant market populated by numerous internet service providers (ISPs), whose rates and service quality vary widely. Macedonia has various firms licensed to operate data-transfer services, among which ONE, Telecabel and Blizoo are the biggest players.

### Electronic payment methods

Credit card use has gained in popularity and the majority of consumer retailers offer this service. Local banks offer online banking services, debit card services, and various forms of electronic payment for utility and telephone charges.

## Currency

The official currency in Macedonia is the Macedonian denar (MKD). The denar is circulated in notes of MKD 10, MKD 50, MKD 100, MKD 500, MKD 1,000 and MKD 5,000, and coins of MKD 1, MKD 2, MKD 5, MKD 10 and MKD 50.

Exchange rates with other currencies are quoted daily by the Macedonian National Bank for statistical and accounting purposes.

## Labor force

According to the data of the State Statistical Office, in the third quarter of 2012, the labor force in the Republic of Macedonia numbered 940,657 persons, of whom 652,498 or 69.4% were employed, while 288,159 or 30.6% were unemployed. The unemployment rate remains high, although the overall trend over recent years has been steadily downward. Reducing unemployment levels in various sectors and geographic locations remains one of the country's economic challenges in 2013.

While the Macedonian labor force is generally highly skilled and well educated, wages in the country are significantly lower than those in Western Europe, creating significant upside potential for labor-intensive investments.

The average monthly gross salary paid per employee in December 2012 was MKD 31,466 (approximately EUR 500), while the average monthly net salary paid per employee in December 2012 was MKD 21,469 (approximately EUR 340).

## Political system

Macedonia is a republic. It held its first multiparty elections in 1991 and its current Constitution was adopted on 17 November 1991. The national legislative body – a unicameral Parliament – is comprised of 120 members elected by popular vote who serve a four-year term. The President is the Head of State and Commander-in-Chief of the army. The President is elected by popular vote and serves a five-year term. The current President is Mr Gjorge Ivanov and his term of office began in May 2009.

Executive power rests with the Government. It is headed by a Prime Minister, who is appointed by the parliamentary majority. The Government is comprised of 15 ministries. The current Prime Minister is Mr Nikola Gruevski.

Macedonia has 84 municipalities headed by mayors elected every four years. Municipal Councils, the local legislative bodies, determine the mayors' executive functions.

The most recent parliamentary elections were held in June 2011.

## **Macedonia and the European Union**

The EU integration of the Republic of Macedonia is the most important goal of the Government. The achievement of candidate status for EU membership has provided a strong incentive for furthering the realization of the goals, directions and priorities set by the Macedonian Government as part of its National Development Plan 2008-2012, continuing with reforms towards overall fulfillment of the terms for membership in the EU, establishing an efficient negotiation structure, building negotiation positions and setting a negotiation date.

## **Macedonia and NATO**

NATO integration is also an important goal of the Government, as part of the so-called Adriatic Group. At the April 2008 Bucharest Summit, the NATO Allies recognized the hard work and commitment demonstrated by Macedonia to NATO values and the Alliance operations. During the Summit, it was agreed that an invitation will be extended to Macedonia as soon as a mutually acceptable solution to the issue over the country's name is reached with Greece. The negotiations between Macedonia and Greece on the name issue are currently ongoing and have been intensified.

## **Economy**

The Macedonian economy increased slightly during 2012, with a rise of real GDP annual growth rate of 3.1%. This moderate increase is expected to remain in 2013 when growth is forecast at 2.2%.

Annual inflation averaged 3.3% in 2012 in contrast to 3.9% in 2011.

According to state authorities, gross foreign direct investments in the country for 2012 were around EUR 105 million.

Over recent years, global brands such as Johnson Controls, EVN, Societe Generale, Mobilkom Austria, Lukoil, Johnson Matthey, Vienna Insurance Group, T-Home, TAV Telekom Slovenije, Solway, Steiermarkische Bank und Sparkassen AG, IBC Israel, Gazit Globe Israel, Porsche, Kromberg & Schubert, Dräxlmaier, Van Hool and Uniqa have set up operations in Macedonia.

Driven by the favorable economic conditions, the overall demand for goods and services continued to increase throughout 2012 and was mostly satisfied by imports. Together with the rising international prices of key raw materials, electricity and food, this contributed to an overall increase in the trade balance deficit.

The table below lists some key Macedonian macroeconomic indicators:

Indicator	2006	2007	2008	2009	2010	2011	2012*
<b>Real sector</b>							
GDP (USD million)	6,561	8,162	9,835	9,319	9,344	10,469	11,020
Annual real GDP growth (%)	5.0	6.1	5.0	(0.9)	2.9	3.1	2.4
Inflation (av.) (%)	3.2	2.3	8.3	(0.8)	1.6	3.9	3.3
Unemployment rate (%)	36	34.9	33.8	32.2	32.0	31.4	30.6
<b>Foreign sector</b>							
Trade balance, FOB (EUR million)	(1,001)	(1,181)	(1,763)	(1,560)	(1,448)	(1,682)	(1,763)
Export, FOB (EUR million)	1,914	2,472	2,693	1,933	2,530	3,179	3,370
Import, FOB (EUR million)	2,915	3,653	4,455	3,492	3,978	4,861	5,133
Gross direct investments (EUR million)	345	506	400	145	160	337	105
Direct investments (%) (GDP)	6.6	8.5	6.0	2.2	2.3	4.5	2.0

Source: Ministry of Finance, State Statistical Office, National Bank of the Republic of Macedonia

\* Projections for certain items

### Trade agreements

Framework agreements liberalizing foreign trade between Macedonia, the European Union, European Free Trade Association (EFTA) and Central European Free Trade Agreement (CEFTA) countries, as well as Turkey and Ukraine have expanded the market exposure of domestic manufacturers. Macedonia's major trade agreements are as follows:

#### WTO

Macedonia has been a member of the World Trade Organization since 4 April 2003.

#### European Union

In April 2001, Macedonia and the European Community and its Member States became signatories to the European Stabilization and Association Agreement effective from 1 April

2004 and the Interim Agreement on Trade and Trade Related Matters covering various trade components effective from 1 June 2001. In accordance with the Stabilization and Association Agreement, customs duties on industrial goods between Macedonia and the EU countries are in the process of being phased out. Currently, there is a wide asymmetric liberalization of EU imports of industrial goods of Macedonian origin which are duty-free. Relief for agricultural produce is also provided.

In March 2004, Macedonia submitted an official application for European Union membership.

Having acquired EU membership candidate status in December 2005, the Republic of Macedonia embarked upon the key stage of European integration.

### *EFTA*

According to an Agreement signed on 19 June 2000 which entered into force on 1 May 2002, trade with EFTA countries (Switzerland, Norway, Iceland and Liechtenstein) enjoys preferential terms and conditions.

### *CEFTA*

Macedonia became a CEFTA member in 2006. The trade component of this agreement came into force on 26 July 2007. In accordance with CEFTA, Macedonia began liberalizing trade in industrial and agricultural goods with CEFTA member countries: Albania, Bosnia and Herzegovina, Croatia, Moldova, Montenegro, Kosovo and Serbia.

### *Bilateral Free Trade Agreements*

Macedonia has signed and ratified such agreements with Turkey and Ukraine.

### *Technological industrial development zones (TIDZ)*

Currently, there are four working technological industrial development zones in Macedonia, two in Bunardzik close to Skopje, and one each in Stip and Tetovo. In the TIDZ Skopje 1 near Bunardzik, factories have been built by several investors including Johnson Controls and Johnson Matthey. There are ongoing activities for construction of factories from several foreign investors such as Van Hool, Protek Group and Samvardhana Motherson Group. The construction of a second factory by Johnson Controls in Macedonia located in the TIDZ Stip is being finalized. Seven other TIDZs intended for economic development are in the advanced planning and construction phase.

### *Foreign investment*

According to state authorities, gross foreign direct investment in the country for 2012 was around EUR 105 million compared to EUR 337 million in 2011 and EUR 160 million in 2010.

## Chapter 2

# Opportunities for International Investors



### Protection and promotion of foreign investments

#### National treatment and most favored nation status

The Macedonian Constitution stipulates that foreign persons (legal entities, individuals or civil partnerships registered in a foreign country) should enjoy equal rights with local persons when conducting economic activities in the Republic of Macedonia except where otherwise provided by the law (“national treatment”). This principle covers the entire range of economic and legal forms used for business activity.

According to the Trading Company Law, foreign companies and foreign sole proprietors shall operate according to the terms and conditions stipulated by law and shall be given equal treatment in their operations with domestic individuals and legal entities on the territory of the Republic of Macedonia, unless otherwise stipulated by an international agreement and/or by law regulating special types of foreign companies and foreign sole proprietors with a specific scope of operations.

If a bilateral treaty signed and ratified by the Republic of Macedonia provides for more favorable investment terms and conditions for international investors, the citizens or legal entities of the respective contracting country will enjoy preferential investor treatment (“most favored nation status”).

#### Protection of investments

The Republic of Macedonia is a party to 37 Bilateral Agreements for Mutual Protection and Encouragement of Foreign Investment. The country is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

### Incentives to investors

The Republic of Macedonia has a flat tax rate of 10% for corporate and personal income tax purposes. Macedonia has a unique tax system, whereby corporate profits are only taxed at the point of their distribution, i.e. no tax is due on undistributed profits. Regardless of the taxation of profit distributions, tax is due at the end of each year, on expenses which are considered non-deductible for tax purposes and understated revenues (for more details, please refer to Section *Profit tax*).

The Law on Technological Industrial Development Zones provides for a special tax treatment for any investor who invests in the appointed zones. Generally, these incentives include:

- Ten-year tax holiday from profit tax for entities performing its business activities in the zones
- Certain exemption from VAT for trade made within the zone and for imports in the zones
- Tax holiday from personal income tax on salaries to all workers employed at entities carrying out business activities in the zones for a period of 10 years from the month in which the first salary is paid.

Besides the tax incentives, this law also provides for certain customs exemptions, exemption from fees for preparation of the construction site, free connection to the water, sewerage, heating, gas and power supply networks, and other incentives.

### Forms of foreign investments

The Law on Foreign Exchange Operations defines direct investments as investments by an investor with the aim of establishing lasting economic links and/or realizing a right to manage a trade company or other legal entity in which the investor has invested. The law lists the following types of direct investments:

- Creation of a trade company or extending the equity of trade company in full ownership of the investor, establishing branches, or the acquisition of full ownership of the existing company
- Participation in a new or already existing trade company if the investor holds or acquires more than 10% of the participation in the equity of the trade company, i.e. more than 10% of the voting rights
- Long-term loan with a maturity period of five years or more, when it is a matter of a loan from the investor and it is intended for a trade company in his full ownership
- Long-term loan with a maturity period of five years or more, when it is a matter of a loan intended for establishing lasting economic links and if such loan has been granted between economically associated entities.

## **Profit and capital repatriation**

According to the Law on Foreign Exchange Operations, foreign investors can freely transfer profit, proceeds from disposal and sale of ownership shares in direct investments and the remainder of a liquidated investment, provided that they have registered their direct investments according to this Law and have paid all legal obligations relating to taxes and contributions in the Republic of Macedonia.

## **Establishment of new business entities or acquisition of shares in existing entities**

Macedonian laws provide that foreign entities and/or foreign individuals may establish entities with foreign participation and can acquire shares in existing local entities. Such companies should take the form of entities as outlined in the Trading Company Law. There is no limitation on the share participation of foreign legal entities and individuals, unless otherwise provided for by another law for specific types of businesses.

Generally, no prior permission from governmental institutions is required for the establishment of an entity of the above types, except for cases involving banking or insurance activities, investment funds, etc.

## **Branches**

A foreign company has the right to establish branch offices as its own organizational units or in any other manner to carry out operations and assume liabilities and exercise its rights before the bodies and institutions of the Republic of Macedonia, under the terms and conditions set out by the law.

A foreign company or a foreign sole proprietor should be obliged to register the establishment of its branch office in the Commercial Register, based on reciprocity.

The branch office of the foreign company and the foreign sole proprietor should disclose each year in the Commercial Register or other appropriate register, the annual accounts, the audit report and the notes pertaining to recorded data in the register which were changed, pursuant to administration, or bankruptcy reorganization proceedings or other notes which are relevant to the financial situation of the foreign company or the foreign sole proprietor.

The foreign company or the foreign sole proprietor is liable, up to its entire assets, for the liabilities incurred during the operation of the branch office.

Where a foreign company, or foreign sole proprietor that has established a branch office has been registered in the state where it has its registered office for less than two years as of the date of the submitted request for the establishment of the branch office, the founders of the foreign company, or the foreign sole proprietor shall be jointly and severally liable for liabilities that arise from the operations of the branch office, in addition to the liability referred to in the paragraph above, for a period of two years as of the date of its registration.

## Representative offices

A foreign company entitled to carry out commercial activities pursuant to its national legislation may establish a commercial representative office in the Republic of Macedonia. A representative office is not a legal entity and shall not carry out commercial activities.

The manner, registration procedure and the body authorized to register the entry of representative offices is prescribed by the Government of the Republic of Macedonia.

## Capital markets

The emergence of capital markets in Macedonia is a direct result of the structural, economic and social changes in the country since 1989. The legislation is comprised of numerous laws and regulations, the most important of which are the Trading Company Law, the Securities Law, the Law on Takeover of Joint Stock Companies and the Investment Funds Law.

### Macedonian stock exchange

The Macedonian Stock Exchange ("MSE") was established in September 1995, as the first organized stock exchange in the history of the Republic of Macedonia. On 28 March 1996, the commencement of trading operations created a central market place for securities trading.

The MSE is organized as a joint-stock company. The major shareholders comprise banks and stockbroker companies. The main bodies of the MSE are the Shareholders' Assembly and the Board of Directors, consisting of eight members (four non-executive members, three independent members and one executive member who is also the Chief Executive Officer of the MSE).

### Market supervision

The Macedonian Securities and Exchange Commission ("MSEC") is responsible for stock market supervision. The Commission is an autonomous and independent organization with the status of a legal entity which regulates and supervises all participants in transactions with securities on the boundaries of the Republic of Macedonia.

The MSEC has public authorizations established by the Securities Law, the Investment Funds Law and the Law on Takeover of Joint Stock Companies. It is responsible, within its legal powers and authorizations, for the legal and efficient functioning of the securities market, as well as the protection of investors' rights.

### Trading procedures

MSE members may fulfill orders for buying and selling listed securities, i.e. securities that are accepted for trading on the MSE markets only via the BEST (Bourse Electronic System of Trading) system.

In order to protect investors, the Board of Directors of the MSE may introduce certain limits on price fluctuations.

## Banking and finance

The commercial activities of banks and financial institutions are regulated by the Banking Law.

The provisions of the Banking Law lay out three possibilities for a bank to carry out banking activities in the Republic of Macedonia:

- Bank which was granted a founding and operating license by the Governor of the National Bank of the Republic of Macedonia
- Foreign bank which was granted a license for opening and operating a branch by the Governor of the National Bank of the Republic of Macedonia and
- Branch of a bank from a European Union Member State (Note: this provision shall be applied starting from the day the Republic of Macedonia becomes a full member of the European Union, when bank branches from EU Member States shall be subject to the provisions for foreign bank branches).

### Branch of a foreign bank

A foreign bank may open a branch in the Republic of Macedonia after obtaining a license for opening and operating a branch from the Governor of the National Bank of the Republic of Macedonia.

A branch of a foreign bank shall bear funds of at least 20% of residents' collected deposits in the Republic of Macedonia.

The funds of the branch may be used for repayment of foreign banks' liabilities incurred outside the country, only after settling the liabilities arising from the operations of the branch in the Republic of Macedonia.

### Branch assets

A foreign bank branch shall hold monetary assets of at least MKD 120 million (approximately EUR 2 million).

Funds must be paid in by the foreign bank to a special account of the National Bank prior to the issuance of the license for opening and operating the branch. Once the branch is registered in the Commercial Register, the funds shall be transferred to one or more deposit accounts of the branch at banks incorporated and domiciled in the Republic of Macedonia.

The foreign bank shall keep the deposit stated above at the level of at least 5% of the total deposits of the branch in the Republic of Macedonia, but not below MKD 120 million,

whichever is higher. The total deposits shall not include the deposits of the foreign bank that opened the branch.

The MKD 120 million deposit shall be treated as a branch's own funds and shall not be subject to encumbrance and interest calculation by the foreign bank that opened the branch.

## **International private law**

### **International Private Law Code**

The rules of the International Private Law Code ("IPLC") regulate terms and conditions concerning the choice of applicable law in private legal relations, which have an international element as well as the recognition and enforcement of foreign court decisions in Macedonia.

### **Competence of Macedonian courts and other authorities**

The international competence of Macedonian courts and other authorities is exclusive only if it is explicitly provided for. For example, lawsuits and claims concerning real estate property and property rights in Macedonia are within the exclusive power of Macedonian courts.

Macedonian courts also have exclusive competence on lawsuits concerning:

- Legal status of legal entities registered in the Republic of Macedonia
- Validity of a registration in public registers
- Registration and validity of industrial ownership rights if the application has been submitted in the Republic of Macedonia
- Approval and execution of enforcement on the territory of the Republic of Macedonia.

### **Applicable law**

Legal entities and branches of foreign companies are regulated by the law of the state in which they are registered. Therefore, legal entities and branches of foreign companies registered in Macedonia shall be subject to Macedonian law.

Since ownership rights upon movable and immovable properties are regulated by the law of the state in whose territory they are located, Macedonian law shall be applicable to properties located within Macedonia.

Contracts are regulated under the law chosen by the parties, unless otherwise provided for in the IPLC or an international treaty.

Unfair competition and the restriction of competition are regulated by the law of the state in whose territory the interests of competitors or consumers are damaged or may be damaged.

## Recognition and enforcement of foreign awards in Macedonia

Decisions and other acts of foreign courts and authorities can take legal effect in Macedonia through their recognition and/or enforcement subject to the terms and conditions of the IPLC and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Decisions under the IPLC and other acts of foreign courts and authorities can be recognized and enforced if the foreign court or authority is competent according to Macedonian law to issue an act subject to enforcement, and its recognition and enforcement does not contradict public policy in Macedonia.

The New York Convention, to which Macedonia is a party, provides rules for enforcement of foreign arbitration awards in contracting states.

## Procedure for enforcement of foreign court decisions and arbitration awards

The procedure for enforcement of a foreign court decision starts upon the filing of a respective request before a Macedonian court. Attached to the request should be an original or a copy of the foreign act verified by the court which has issued it and a certificate of the foreign court that the decision has entered into force. These documents must be translated into Macedonian by a sworn court translator.

The local court examines whether all preconditions for recognition and enforcement of the foreign act are fulfilled. However, the Macedonian court does not review the case and the respective decision in essence.



## Chapter 3

# Company Law



The Trading Company Law governs the formation, operation, transformation and termination of companies in the Republic of Macedonia.

There are five forms of business association in Macedonia under the Trading Company Law:

- General partnership (Javno Trgovsko Drushtvo – JTD)
- Limited partnership (Komanditno Drushtvo – KD)
- Limited liability company (Drushtvo so Ogranichena Odgovornost – DOO)
- Joint-stock company (Akcionersko Drushtvo – AD)
- Limited partnership with shares (Komanditno Drushtvo so Akcii – KDA)

All types of business associations are recognized as legal entities. The founders may participate in one or more companies provided that the law does not prohibit such participation. Irrespective of the nationality of its founders, each type of company is considered to be Macedonian.

The most appropriate forms of business association for foreign investors are the limited liability company (DOO) and the joint-stock company (AD).

### Rules applicable to all forms of business association

#### Articles of Association

The adoption of the Articles of Association is an initial step in the establishment of a company.

The Articles of Association must contain:

- Trade name, seat and address of the company

- Scope of the company's activities
- Management and representation of the company
- Identity of the partners/owners of the company (except for the AD)
- Type (cash or in-kind) and amount of partner contributions (for JTD and KD), and/or the amount of the company's capital (for DOO, AD and KDA) and
- Other matters as regulated by the Trading Company Law, which may differ for each form of company.

In cases when a partner or a shareholder intends to make an in-kind contribution, the Articles of Association must state the name of the contributor, the full description of the in-kind contribution, its monetary value, and the grounds for the contributor's rights.

In the case of a limited liability company, a joint-stock company or a company limited by shares, the in-kind contribution must be valued by an expert appointed by the relevant court. The conclusion of the expert should contain a full description of the in-kind contribution, the method of valuation, the resulting valuation and its consistency with the share of the capital or the number, the nominal and issuing value of the shares being subscribed for by the contributor. The monetary value of the in-kind contribution stated in the Articles of Association may not exceed the expert's valuation.

### Registration

A newly-established company comes into legal existence with its entry into the Commercial Register of the Republic of Macedonia. The application for registration must be filed by the appointed management body or an authorized member of the management body. The authorized person has an obligation to notify the Commercial Register within 15 days as of the date the requirements for filing the registration form in the Commercial Register have been met. If the authorized person fails to perform such duties, then the authorized person is subject to an administrative fine and is obligated to compensate any damage caused to the company.

### Pre-company status

Prior to registration with the Commercial Register of the Republic of Macedonia, the founders may reach an agreement on the actions that must be taken in preparation for incorporation. The founders' actions create rights and obligations for the persons who have undertaken the said actions. The latter are held liable jointly and severally for these obligations. Eventually, with the registration of the company, the newly established company automatically assumes these obligations.

### Registration of annual financial statements

All entities are obliged to present their annual accounts (officially prescribed forms for balance sheet, income statement and other supporting explanatory notes) to the Central

Register of the Republic of Macedonia as well as the income tax return to the Public Revenue Office. The filing deadline is the end of February of the following year.

The Law prescribes the conditions and cases in which limited liability and joint stock companies are also obligated to present their financial statements. For more details on the reporting requirements, please refer to Section *Financial reporting* below.

### Termination of business associations

There are several grounds for termination of a company:

- Expiration of the term of the company or other grounds/circumstances provided for in the Articles of Association
- Resolution by the shareholders/partners/members of the company adopted by all of the partners (for JTD and KD) with the qualified majority prescribed by the law or the Articles of Association (for DOO and AD)
- In case of bankruptcy of the company
- By absorption, merger or division of the company
- Upon a definitive court decision
- In other cases in accordance with the Law.

When one of the above occurs, the company undergoes liquidation proceedings unless a bankruptcy procedure has already been initiated. The company loses its legal status upon deletion from the Commercial Register.

### Transformation of business associations

Chapter 10 of the Trading Company Law regulates mergers, consolidation of two or more companies, divisions into two or more companies, the spin-off of certain operations into a new company, and transformations whereby the type of the company changes.

The applicable provisions specify and classify the types of business transformations, the procedure for execution of the transformation, and the rights and obligations of the companies and their partners/shareholders.

Prior to adopting a resolution authorizing a transformation, companies must draft a transformation plan or conclude a transformation agreement, depending on whether initially there is one or more participating company. The transformation agreement/plan with all enclosures thereto must be drawn up in the form of a notarized act. It should specify the terms and conditions of the intended transformation, as well as the obligations of the participating companies with regard to the transformation. The contents of the transformation agreement/plan should be in compliance with the mandatory requirements of the Trading Company Law.

The transformation agreement/plan must be reviewed by a registered auditor appointed collectively by the management bodies of each of the companies involved in the transformation.

The management bodies that concluded the agreement or the plan are required to adopt a report on the transformation. The report should contain a detailed economic and legal explanation of the terms and conditions of the transformation, as specified in the transformation agreement/plan.

The report and the transformation agreement/plan must be presented at the Commercial Register. The management bodies of the companies, no later than one month prior to the convening of the partners' meeting or the General Meeting, jointly publish a notification regarding the transformation in the Official Gazette of the Republic of Macedonia and in at least one daily newspaper.

The reviewed transformation agreement/plan must be approved by the members, the members' meeting or the General Meeting of shareholders of each of the companies involved in the transformation. The resolutions must be adopted by a qualified majority of three-fourths of the capital in the case of a DOO (Ltd), or by a majority vote which may not be lower than two-thirds of the voting shares represented at the General Meeting of an AD (JSC).

The transformation enters into force from the date of its registration into the Commercial Register.

### Insolvency

A company is considered insolvent when it is unable to meet its monetary obligations or in the case of over-indebtedness. The company's management body must file an application with the relevant court for the commencement of insolvency proceedings. Any creditor of the company may also file the application.

If there are grounds for an insolvency procedure, a receiver must be appointed by the court. Immediately upon appointment, the receiver represents and manages the current affairs of the company, collects its receivables and converts its assets into cash and subsequently distributes the cash to the company's creditors.

### Liquidation

The liquidation procedure, in contrast to insolvency, is voluntary and is initiated in the case of expiration of the term of the company as set out in its Articles of Association, or upon resolution of the partners/shareholders.

The liquidation of a JTD or KD is executed by all the shareholders/partners and the liquidation of the DOO and AD is executed by the members of the management body, respectively the manager, as liquidator(s). The liquidator shall announce the liquidation without any delay, in a time period not shorter than seven days nor longer than 15 days, following the inscription in the Commercial Register. The announcement shall be published

on the website of the Commercial Register of the Republic of Macedonia and shall notify the creditors to report their claims within 30 days as of the date of the announcement on the said website.

If the liquidator, after the expiry of the time period for submission of the claims, determines that there are no creditors, the liquidator is obliged within seven days to submit a request for deleting the company from the Commercial Register.

If the company has creditors, after the reimbursement of the creditors' claims, residual assets are distributed to the partners/shareholders. This should not be performed until a six-month period has elapsed from the date of the announcement of the notice to the creditors. When all liabilities of the company have been settled and the residual assets distributed, the liquidator applies for deletion of the company from the Commercial Register.

### Classification of commercial entities

In accordance with the Trading Company Law, commercial entities are classified as large, medium, small or micro-sized entities, depending on their number of employees, annual revenues and the average value of total assets as declared in the annual accounts for the last two accounting years.

The classification criteria are listed below:

Classification	Number of employees	Annual revenue (thousand EUR)	Total assets (thousand EUR)
Micro	up to 10	up to 50	
Small	up to 50	up to 2,000	OR up to 2,000
Medium	up to 250	up to 10,000	OR up to 11,000

All other entities are classified as large entities.

Depending on the classification of the entities as per the Trading Company Law, different reporting, filing and other regulatory requirements may apply to the entities.

### Statutory reserves

All entities are required to set up a statutory reserve. The statutory reserve is formed by appropriation from the net profit. The statutory reserve is calculated as a percentage, determined by the entity's statute, but should not be less than 5% until the level of statutory reserve reaches 10% of the capital. Until reaching the minimum required level, the statutory reserve may be used only for covering losses. Once the minimum level is reached, the statutory reserve may also be used to distribute dividends, but only if the amount of the dividends for the current business year has not reached the minimum for distribution.

## Limited liability company (DOO)

The DOO is a commercial company in which one or more individuals or legal entities each subscribe to the pre-determined core capital of the company with a contribution. The shareholders shall not be liable for the company's liabilities. A DOO is liable to its creditors only to the extent of its own assets.

This form of enterprise is convenient for small and medium-sized business activities, because of the advantages it offers over the other types of business associations:

- The minimum capital required is relatively low – EUR 5,000.
- Shareholders' personal assets are protected from business debt as they are not liable for the company's liabilities. By contrast, unlimited partnership partners are liable to creditors with their entire property.
- A DOO avoids the higher publicity requirements and the complex incorporation procedures applicable to an AD company.
- A DOO is administratively easier to manage than the procedures applicable for an AD company.

As a result of these advantages, the vast majority of foreign-owned companies operate in this legal form.

The Macedonian DOO resembles the German and Austrian "GmbH" (Gesellschaft mit beschränkter Haftung), the French "Sarl." and the English Private Company limited by Shares.

### Formation

A DOO can be formed by one or more persons. The Macedonian Trading Company Law provides that the maximum number of shareholders in a DOO shall not exceed 50. If the number of shareholders of the company exceeds 50, the shareholders or the bodies of the company shall undertake actions to adjust the number of members within one year as of the date when the number of members exceeded 50. In case the required actions for adjusting the number of shareholders have not been executed, the members or the bodies of the company shall undertake actions to transform the company into an AD or conduct a procedure for the liquidation of the company.

The specific formation rules applicable to DOO are the following:

- The total statutory capital must be subscribed on incorporation.
- The founders must appoint a manager(s) for the company. The manager does not necessarily have to be a DOO member, Macedonian citizen or resident of the country.
- The company has to be registered in the Commercial Register of the Republic of Macedonia. The information included in the Articles of Association regarding the amount of the capital, the members' interests, along with the names of the

manager(s), and their management and representation rights are published on the official website of the Commercial Register.

In the case of a DOOEL (solely-owned limited liability company) a Statement of Founding of the Company must be drawn up instead of Articles of Association.

## Capital

The minimum statutory capital of a DOO is EUR 5,000 expressed in MKD equivalent, calculated according to the average exchange rate published by the National Bank of the Republic of Macedonia applicable for the day of the payment. The amount of the statutory capital shall be expressed in a round number divisible by 100.

The capital of the company is divided into interests and the size of each shareholder's interest determines his or her rights and obligations concerning the company. The interests of shareholders in a DOO are not securities, but stakes.

## Management

A DOO is managed by the General Meeting of Shareholders and by the appointed manager(s).

Each DOO must hold at least one General Meeting of Shareholders each calendar year (called an "Annual General Meeting"). It is usually convened at the manager's discretion, but it can also be convened upon a written request of shareholders whose interests amount to at least one-tenth of the company's capital.

The General Meeting is the company's most superior management body. It is empowered to make key strategic and executive decisions regarding the company. The shareholders are authorized to decide on admission and expulsion of shareholders, appointment of manager(s), capital increase or decrease, adoption of the annual report and annual financial statements, distribution of profits, etc.

The day-to-day management of a DOO is conducted by at least one manager, who represents the DOO in dealings with third parties. The manager shall be personally liable without limitation towards the company and towards third parties for the activities conducted contrary to law and other regulations, as well as for failing to adhere to the company agreement. Only individual(s) may be appointed as manager(s) of the company.

The managers in a DOO may have written management contracts executed with the company. These must be signed by a person authorized by the General Meeting of Shareholders or, in the case of a DOOEL, by the sole owner of the capital. If the management contract is not concluded, then the manager is employed by virtue of standard employment contract.

In the case of a DOOEL, the sole owner of the capital manages and represents the company either personally, or through an appointed manager.

## Distribution of profits

Shareholders cannot claim their interest back while the company is in operation. They are only entitled to profits in proportion to their interest, unless otherwise agreed by the shareholders.

Payment of interest on a shareholder's profits is explicitly prohibited.

## Joint-stock company (AD)

A joint-stock company is a company whose capital is divided into shares. An AD's liabilities to its creditors are limited to the amount of its assets. Foreign investors prefer this type of business association when large amounts of capital need to be raised, particularly when public capital markets need to be tapped. The Macedonian AD resembles the French "Société Anonyme", the German and Austrian "AG" (Aktiengesellschaft) and is similar to the English Public Company limited by Shares.

## Formation

An AD can be founded in two ways: simultaneously or successively. An AD is incorporated by a Constituent Assembly whereby all persons, who have already subscribed shares into the capital of the new company, decide to constitute the company and adopt its Articles of Association. An AD may be formed by several legal entities and/or individuals and also by one individual or legal entity. In the case of a solely-owned joint-stock company, the sole owner decides on issues otherwise addressed by the Constituent Assembly.

The AD is registered at the Commercial Register of the Republic of Macedonia by filing its Articles of Association and other documents evidencing that:

- Its capital is fully subscribed
- The Board of Directors or, respectively, the Supervisory Board has been appointed and
- The remaining requirements of the law have been fulfilled (e.g. banks, insurance and investment companies must obtain the necessary licenses granted by the Macedonian authorities).

## Capital

### *General rules*

The statutory minimum capital of an AD differs according to whether the founding of the AD occurs simultaneously or successively. When a company is founded spontaneously without a public offering notice to subscribe for shares, the minimum nominal amount of the capital shall be EUR 25,000 in MKD equivalent value, according to the average exchange rate of the National Bank of the Republic of Macedonia. In cases when a company is founded by way of a public offering notice to subscribe for shares, the

minimum nominal amount of the capital shall be at least EUR 50,000 in MKD equivalent. A higher statutory minimum is required for banks, investment companies and insurance companies.

The capital of the company is divided into ordinary and preference shares. An ordinary share provides its holder with the right to vote, to receive a dividend and a specified share in the company's assets in the case of liquidation or insolvency of the company. Preference shares may provide the right to a dividend for an ex-ante determined pecuniary amount and/or a percentage of the nominal amount of the share, the pre-emptive right to a payment of a dividend or a specified share in the company's assets in the case of liquidation or insolvency of the company.

The shares in an AD can be traded on the stock exchange. If the company fulfils certain conditions under the Law on Securities and consequently is registered as a company with special reporting obligations, takeover of 25% of the voting shares by one entity/person should be performed in accordance with the Law on Takeover of Joint Stock Companies.

#### *Increase of capital*

A company's capital may be increased in one of the following ways:

- Via contributions
- By conditional increase of the statutory capital
- Via authorized capital and
- By company funds.

A resolution to increase the capital must be taken by the General Meeting of Shareholders. This resolution must be accompanied by a resolution to amend the Articles of Association of the company.

#### *Reduction of capital*

A company's capital may be reduced through either of the following:

- A reduction in the nominal value of shares, or
- Merging of one or more types of share, whereby the minimum nominal amount of the merged share may not be less than EUR 1
- Withdrawal of treasury and other shares, if the withdrawal results in a decrease of the registered capital.

A capital reduction requires shareholder approval. The registered capital shall not be decreased below the minimum nominal amount of the capital stipulated by the law. The registered capital of the company may be reduced to the statutory minimum with an amendment to the Articles of Association.

Notice of the resolution to decrease the capital shall be pre-registered in the Commercial Register of the Republic of Macedonia and this pre-registration should be published in the Official Gazette and in one daily newspaper. The company shall state in the announcement that it agrees to pay outstanding claims to each creditor who files a request and/or to provide such creditors with security for their respective claims. If, following the expiry of 90 days as of the date of publication of the announcement, no request for settling any claim is filed, it shall be deemed that all the creditors have consented to the resolution to decrease the capital.

Creditors, of whom the company is aware and whose claims exceed EUR 10,000 calculated in MKD equivalent, shall be individually notified in writing, at their place of residence or at their registered office as entered in the Commercial Register of the Republic of Macedonia.

### Internal Audit Unit (IAU) at AD

Based on provisions of the Trading Company Law, the Supervisory Board of an AD is obliged to organize an IAU as an independent unit within:

- AD classified as large entity
- AD listed on the stock exchange
- AD with special reporting obligations according to the Securities Law.

The IAU is an independent unit within the entity, which performs audits on the legality, regularity and effectiveness of the entity's operations.

The IAU should prepare a semi-annual and annual report and submit them to the Board of Directors (a one-tier system), or the Supervisory Board and the Management Board (two-tier system). The Supervisory Body within the AD is obliged to submit the IAU annual report to the General Meeting of Shareholders.

## Management

### *General rules*

The joint-stock company's governing bodies are the General Meeting of Shareholders and the Board of Directors (one-tier system), or the Supervisory Board and the Management Board (two-tier system). There are no requirements regarding the nationality or residence of the members of either board. A member of the Management Board shall not be a member of the Supervisory Board. The members of the Management Board and the Supervisory Board may be shareholders. In the event that Board members violate their obligations, they are held jointly liable to the company for any damage caused if they failed to operate and act with due care and diligence. In a solely-owned joint-stock company the owner is empowered to decide on all issues otherwise handled by the General Meeting of Shareholders.

The General Meeting of Shareholders consists of all shareholders entitled to vote. The first General Meeting of Shareholders must be held within 18 months of incorporation. Subsequently, a regular General Meeting of Shareholders must be held at least once a year. General Meetings of Shareholders are usually called by managers or by the Supervisory Board, or upon a request of shareholders representing no less than 10% of the company's capital.

The General Meeting of Shareholders may amend and supplement the Articles of Association, transform and dissolve the company, elect and recall members of the Board of Directors or the Supervisory Board, appoint and dismiss registered auditors, approve the annual financial statements as certified by the appointed registered auditor and resolve other matters which fall into its prerogatives by law or by virtue of the Articles of Association.

#### *Two-tier system*

The company's constituent Supervisory Board must be elected prior to the company's registration. Members of the Board are appointed by the General Meeting of Shareholders. When members of the Supervisory Board are elected, it shall be specified which members are elected as independent members of the Supervisory Board. The total number of Supervisory Board members may vary from 3 to 11.

The Supervisory Board does not effectively take part in the management of the company. Its primary function is to represent the company in its relations with the Management Board. The Supervisory Board appoints the members of the Management Board and exercises control over its activities and resolutions. The Management Board must report on the company's operations to the Supervisory Board at least once every three months, and following the expiry of the financial year they shall also submit annual accounts, annual financial statements and annual report of the company's operations.

The day-to-day management of an AD with a two-tier management system is carried out by the Management Board under the control of the Supervisory Board. The number of members of the Management Board may vary from 3 to 11. Subject to Supervisory Board approval, the Management Board may effectively delegate company representation to one or several of its members. The members of the Management Board may have management contracts with the company.

Certain resolutions of the Management Board require prior approval from the Supervisory Board. The termination or transfer of enterprises, an alteration of the company's business, long-term arrangements that may have a material impact on the company, or the termination of such arrangements fall within this category.

#### *One-tier system*

One-tier companies are managed and represented by a Board of Directors (BoD), which consists of a minimum of three and a maximum of 15 persons. The BoD shall, from among the elected members, appoint one or more executive members of the BoD (executive

members). A member of the BoD who is elected as an independent member of the BoD may not be elected as an executive member of the BoD. The number of executive members shall be lower than the number of non-executive members of the BoD (non-executive members).

The BoD delegates the actual management and representation of the company to one or more of its members who are subsequently designated as Executive Directors. They serve at the discretion of the BoD and can be replaced at any time. The executive members of the BoD of the AD may have a management contract with the company.

## Other forms of business association

### General partnership (JTD)

The general partnership is an entity formed by two or more legal entities or individuals who are jointly and severally liable to creditors for the company's liabilities with their entire property.

A general partnership shall be founded with a partnership agreement between the founders.

The Macedonian general partnership (in contrast to the German and Austrian general partnerships) is a separate corporate entity from its partners.

Each partner is entitled to take part in the managing of the partnership's business unless the Partnership Agreement has assigned this duty to one or several of the partners or to a third party.

### Limited partnership (KD)

Limited partnerships include general and limited partners. General partners are jointly and severally liable up to the full value of their assets for the liabilities of the limited partnership while limited partners shall be liable for the liabilities of the limited partnership only up to the amount of their subscribed contribution in the capital of the limited partnership. General partners must manage and represent the entity.

### Limited partnership with shares (KDA)

A limited partnership with shares means a company whose core capital is divided into shares. Limited partnerships with shares are formed by at least three limited partners whose liability is limited up to the amount of their subscribed contributions to the company's capital. There are also general partners which are jointly and severally liable for the liabilities of the company to the full value of their assets.

KDAs are managed by a General Meeting of Partners and have a Supervisory Board. The day-to-day management of the partnership is carried out by the general partners or they can entrust the management of the limited partnership by shares to one or more managers.

### Sole proprietor (TP)

A sole proprietor may be any capable individual who has permanent residence in the Republic of Macedonia. A sole proprietor shall be personally liable without limitation to the full value of their assets. A person may register only one trade name as a sole proprietor.

## The Commercial Register

The registration of legal entities is performed under an administrative procedure before the Commercial Register within the Central Register of the Republic of Macedonia. The registration authority is bound by short terms for processing applications and issuing resolutions. The information in the Commercial Register is publicly available, including via the Internet.

The court retains its competency regarding insolvency procedures but there is a statutory duty for announcing certain data on such procedures to the Central Register. The Central Register maintains a register for entities which are legally restricted to establish or manage commercial entities in the Republic of Macedonia.

## Chapter 4

# Real Estate

The major legislative acts governing real estate and real estate transactions in Macedonia are the Constitution of the Republic of Macedonia, the Law on Ownership and Other Property Rights, the Construction Law, the Law on Construction Land, the Law on Privatization and Lease of Construction Land on State Property, the Law on Real Estate Cadastre and the Law on Obligations.

### Types of real estate ownership

Ownership of real estate in Macedonia is public or private.

Public properties are properties of common interest, as well as those designated for public use and public functions, such as national roads, forests and parks, streets, squares, museums, schools.

Properties of common interest are state owned, and can be used by all legal entities and individuals. These properties are managed by the Republic of Macedonia through the authorized administrative department in question. They can be ceded to third parties through concession or long-term lease upon fulfillment of the conditions provided for in the law.

Properties of common interest cannot be subject to disposal (i.e. sale purchase, donation, in-kind contribution, exchange) and cannot be acquired on the basis of possession and expired prescription period.

Real estate in Macedonia can be owned by one or more individuals/entities. When it is owned by two or more individuals/entities, the ownership right can be established as co-ownership or joint ownership. The difference between these two types of ownership is that each owner's share in co-ownership is determined proportionally (ideal part) and in case of joint ownership each owner's share is definable, but it is not determined in advance.

Apartments, business premises, garages, and other specific elements of residential and business buildings which have two or more apartments, business premises and other specific parts, can be owned by different individuals and legal entities (“condominium ownership”). All individual titleholders have exclusive rights over the common parts of the buildings (facade, roof, stairs, hallways, elevators, etc.).

## **Evidence of title**

The ownership title and limited property rights to real estate property in Macedonia are evidenced by ownership title documents (usually in the form of a notary deed). The law requires that title documents be registered in the Real Estate Cadastre Agency of the Republic of Macedonia. By virtue of this registration, the acquisition of the ownership title or limited property rights becomes effective with regard to third parties.

## **Acquisition of real estate**

The real estate market in Macedonia has been fairly dynamic as of late. Investments in real estate are taking place across all real estate sector segments: residential, office, industrial, retail, casinos, mixed-use developments and special-use properties.

Foreign individuals and legal entities, residents of member states of the EU and the OECD can acquire an ownership right to buildings and premises within a building, as well as a right of ownership and right of long-term lease to construction land (from 10 to 99 years’ duration) on the territory of the Republic of Macedonia, under the same conditions as citizens.

Foreign individuals and legal entities, non-residents of member states of the EU and the OECD can acquire ownership rights to buildings and premises within a building, and rights of ownership and long-term lease of construction land (from 10 to 99 years’ duration) on the territory of the Republic of Macedonia, under reciprocity conditions.

In Macedonia, foreign individuals or legal entities cannot directly acquire a right of ownership to agricultural land.

## **Title documents**

The general rule under Macedonian law is that transactions involving real estate (e.g. purchase, exchange, etc.) should be executed with a notary deed before a registered notary in the region where the real estate is located. For other real estate transactions, such as contribution in-kind, sale of a commercial enterprise containing real estate properties and voluntary distribution agreement, signature notarization is sufficient.

There are also special rules and procedures governing the acquisition of real estate arising from enforcement, insolvency and similar procedures.

## Statutory costs

The statutory costs for direct acquisition of real estate, such as the sale purchase and exchange are as follows:

- Sales tax – the tax base for the sales tax on real estate and right shall be the market value of the real estate and right at the moment the liability occurs. The rate ranges from 2 to 4%. The tax may be shared between the parties or be borne by just one of them.
- Fee for registration in the Real Estate Cadastre Agency of the Republic of Macedonia – according to the statutory tariff, the minimum is EUR 5 for each registration, but depends on various aspects. The fee may be shared between parties or borne by just one of them.
- Notary fee – according to the statutory Notary Tariff, not more than EUR 500 per transaction, but depends on various aspects. The fee may be shared between parties or borne by just one of them.

## Title review

Notaries public have no legal obligation to review a title's ownership history, i.e. to review the title rights of the predecessors of the current owner.

As a general legal rule, the ownership title of the current owner depends on the rights of his predecessor while the rights of the predecessor, in turn, depend on the ownership title of the predecessor of the predecessor. Thus, if one of the previous owners did not have a clean and indisputable ownership title, this will reflect on the current owners, i.e. a third rightful party can claim the property right against the current owner.

The possibility of third party property claims is precluded by the so-called prescription period. According to the effective legislation, after the expiration of the prescription period, the current owner of the property is considered the rightful owner, regardless of the rights of their predecessors. The prescription period is 10 years in case of lawful and bona fide possession, and the absolute prescription period is 20 years in case of bona fide possession.

In this regard, usually before purchasing real estate, the buyer undertakes a title review of the targeted real estate, including the title's history. The purpose of such a review is to verify that there is/are:

- Clean, valid and marketable ownership title held by the seller – the seller must be, and his predecessors should have been, the valid owner of the targeted real estate, in order to avoid any risk for rescinding or annulment of the transaction.
- No liens or encumbrances over the property – the buyer should be fully aware as to whether there are any registered liens and/or encumbrances over the targeted real estate, e.g. mortgages, easements, interlocutory injunctions, going-concern pledges,

limited property rights established in favor of third parties. A general principle in Macedonian law is that liens and encumbrances “follow the property”; i.e. registered liens and encumbrances can be enforced against the new owner.

- No other registered rights in favor of third parties – if there are registered rental or lease agreements over the targeted real estate, the buyer shall be bound by them until the expiration of their term.
- No court or restitution claims.
- No public debts of the seller, which could lead to a forcible sale of the real estate by the state authorities.

## Project development

After the acquisition of real estate, the owner can commence its development. According to the Macedonian legislation, an investor may be the owner of the land, individuals entitled to long-term lease of the construction land (from 10 to 99 years), the concessionaire and individuals/entities entitled to construction right on a legal basis (law, contract, etc.).

The main stages of development can be divided into:

- Regulation and planning stage
- Environmental impact assessment
- Permitting for construction works and
- Execution of construction works and their use.

### Regulation and planning

The construction must be in accordance with a Detailed Urban Plan (DUP), which is adopted by the municipality. The regulation and planning stage comprises the designing of a Basic Construction Project (BCP), which should be in accordance with the DUP and is the first precondition for commencing construction works.

The BCP provides guidelines for the technical parameters of construction, the location of the site on a land parcel and fulfillment of the basic conditions of the construction.

### Environmental impact assessments

Environmental impact assessments are required for real estate projects which are presumed to impact the environment, such as chemical factories, oil refinery, thermal power plant, agriculture, forestry and water supply facilities, industry facilities, etc.

### Permission for construction works

The next and main precondition for commencing construction works is obtaining a construction permit by the investor.

Chronologically, the process starts with the investor's application submitted to the municipality in which the construction should be executed. The law prescribes in detail the necessary documents and conditions that should be fulfilled in order for the respective permit to be obtained.

Construction permits for construction of local importance are issued by the mayor of a municipality and, for the construction of general importance for the country, by a state authorized institution.

### Execution of construction works and their use

The next development stage is the execution of construction works. The investor is obliged to carry out construction works, and complete a building within a period of 6 to 10 years from the date the construction work permit became effective, depending on the type of the construction work (i.e. building category).

During construction work, a number of standard-form acts and protocols must be compiled. The acts and protocols serve as evidence for the items that are recorded in them and they concern the commencement, execution and completion of the construction work. The participants in the development process who sign these acts and protocols are jointly responsible for the authenticity of the facts recorded in them.

Generally, the completion of construction works is certified by the issuance of a permit for use, or based on a technical review report prepared by a supervisor engineer if the constructed object falls in a specific category of construction. The permit for use is issued by an authorized body which has issued the permit for construction. In addition, the ownership of the structure should be recorded in the Real Estate Cadastre Agency of the Republic of Macedonia.

### Participants in the development process

During the various stages of the development process, the investor enters into relations with other participants, namely: the designer, compliance reviewer, contractor and the supervisory engineer (technical controller). The relations between the participants in the development process must be defined in a contract.

The **designer** of a construction is an individual with designer capacity who must be employed at a company registered in the Central Register of the Republic of Macedonia for performing designing activities. Both the designer and the company must have an appropriate design license. Designers are responsible for the preparation of the investment design. They also exercise control to ensure that construction works comply with the design (so-called "author's supervision") and are authorized to issue mandatory instructions to the contractor.

The **compliance reviewer** is an individual who has been licensed by the Chamber of Authorized Architects and Authorized Engineers to carry out evaluations to ensure that the construction work complies with the investment design. The compliance reviewer is responsible for the accuracy, quality and compliance of the design with the law, standards and norms for design and other technical.

The **contractor** is the legal entity registered with the Central Register of the Republic of Macedonia for undertaking construction works, for which it should possess license A and/or B issued by the Chamber of Authorized Architects and Authorized Engineers. The contractor is responsible for execution of the works in compliance with the approved design and permits, and the legal requirements applicable to such construction work.

The **supervisory engineer (technical controller)** is a civil engineer who manages the execution of the construction work on behalf of the contractor. If the construction work is executed by the investor himself, he is obliged to appoint a supervisory engineer, who must possess license A and/or B issued by the Chamber of Authorized Architects and Authorized Engineers.

## Chapter 5

# Accounting and Auditing

## Accounting

### Introduction

Changes in the Macedonian accounting legislation over the past few years have moved it closer to the International Financial Reporting Standards (IFRS).

On 29 December 2009, a new Rulebook for Accounting was published, which contains the 2009 bound volume of the IFRS, as adopted by the IASB. These IFRSs are applicable for annual periods beginning on or after 1 January 2010.

The Trading Company Law, the Banking Law, the Law on Insurance Supervision as well as certain other laws also contain regulations applicable to financial reporting requirements.

### Accounting records requirements

The Trading Company Law regulates the obligations and manners in which the accounting records of all companies (including financial institutions) will be kept including the following:

- The accounting records of business organizations are kept in accordance with the IFRS as adopted in the Republic of Macedonia.
- Accounting records are to be kept in the Macedonian language.
- Accounting records are to be kept using double entry bookkeeping.
- Bookkeeping is organized in a chronological order.
- Accounting records are to be closed on 31 December of each year.

There are standard charts of accounts for companies, banks, insurance companies and not-for-profit organizations.

## Financial reporting

### *Annual accounts*

All entities are required to prepare annual accounts as at 31 December of each year. The annual accounts consist of a balance sheet, profit and loss account and accompanying notes.

The annual accounts must be prepared in the prescribed format as published in the Official Gazette, in the Macedonian language and in MKD. The annual accounts should be signed by the authorized accountant who has prepared them, indicating the date of preparation and the register number of the accountant from the Institute of Certified Accountants.

### *Financial statements*

All large and medium-sized entities, entities required by law, banks, insurance companies, entities quoted on the stock exchange as well as entities whose financial statements are included in a consolidated financial statement must issue financial statements following the end of each financial year. Financial statements are the responsibility of management.

The financial statements consist of statements of financial position, comprehensive income, changes in equity and cash flows as well as notes, comprising summary of significant accounting policies and other explanatory information.

Notes should include additional information necessary to give a true and fair view of the financial position and the results of the business, including an explanation of the accounting policies applied.

The financial statements should be signed by the authorized accountant who has prepared them, indicating the date of preparation and the register number of the accountant from the Institute of Certified Accountants.

### *Consolidated financial statements*

Companies having a majority holding in subsidiaries must prepare consolidated financial statements. Consolidated financial statements should present a true and fair view of the group's transactions with third parties. To this end, all inter-company transactions and balances are eliminated.

Consolidated financial statements should comprise consolidated statements of financial position, comprehensive income, changes in equity and cash flows as well as notes, comprising a summary of significant accounting policies and other explanatory information. Management is responsible for the timely preparation of the consolidated financial statements and their content.

### *Filing requirements*

Annual accounts must be prepared and submitted to the Central Register of the Republic of Macedonia not later than the end of February the following year. The consolidated annual accounts must be submitted to the Central Register not later than 31 March of the following year.

Entities whose financial statements are subject to independent audit must submit their audited financial statements to the Central Register of the Republic of Macedonia within 30 days after their approval by the General Meeting of Shareholders of the legal entities, but not later than 30 June of the following year.

Furthermore, certain entities (e.g. banks, financial institutions, insurance companies, etc.) submit their financial statements to the Ministry of Finance or the National Bank of the Republic of Macedonia, while entities quoted on the Macedonian Stock Exchange submit financial statements to the Securities and Exchange Commission.

### Publication of financial statements

Banks, insurance companies and entities quoted on the Macedonian Stock Exchange must publish their financial statements in the Official Gazette of the Republic of Macedonia within 15 days following their approval by the General Meeting of Shareholders.

Banks and insurance companies should make public an auditor's report and annual financial statements including notes to the financial statements and publish a balance sheet, income statement, statement of changes in equity, a cash flows statement and an auditor's report on the annual financial statements, in at least one daily newspaper within 15 days following the adoption of the annual financial statements and the auditor's report by the General Meeting of Shareholders.

## Auditing

The Macedonian Trading Company Law requires that the financial statements of certain entities be audited by an independent auditor. The following commercial entities shall be subject to an audit:

- Large and medium-sized commercial entities registered as joint stock companies
- Quoted entities – listed on the Stock Exchange and
- Large and medium-sized commercial entities organized as limited liability companies.

Consolidated and stand alone financial statements which are part of consolidated financial statements are also subject to an independent audit.

The general rule is that an entity subject to audit must appoint an independent auditor. The appointment of auditors is normally done at a General Meeting of Shareholders at which the previous year's accounts are approved.

The audit practice is regulated by the Law on Audit requiring that the International Standards of Auditing (ISA) be applied.

The auditor should give an independent opinion on whether financial statements give a true and fair view of (or presents fairly in all material aspects) the financial position, the results of operations, the statement of cash flows and the statement of changes in equity of the entity in accordance with the applicable legislation.

## Chapter 6

# Taxation

### Profit tax

Corporate entities, including subsidiaries of foreign companies incorporated under Macedonian law, are considered Macedonian tax residents.

Upon registration in Macedonia, these legal entities are subject to tax on their profit realized from carrying out business activity in Macedonia, as well as abroad. The tax rate is flat and set at 10% of the tax base.

Non-resident companies are subject to tax on profits derived from carrying out business activities in Macedonia, if these are carried out through a permanent establishment of the foreign legal entity.

The tax year for profit tax purposes is the calendar year.

As of 1 January 2009, the Profit Tax Law (PTL) adopted significant changes, the most important of which is the change in the concept of taxation in Macedonia. Namely, along with other amendments, the government introduced a form of taxation which generally imposes profit tax on distributed profits. In accordance with this new model of taxation, tax is calculated and payable with a tax rate of 10% on two components, i.e.:

- (i) Tax on any dividend distribution or other forms of distribution from profits (tax is due upon distribution of dividend, or in the case of a branch of a foreign entity upon the expatriation of the profits). Dividends distributed to Macedonian resident legal entities are not subject to profit tax and
- (ii) Tax on non-deductable expenses and understated revenues, i.e. the tax base represents the expenses considered not recognized for tax purposes as well as understated revenues, less allowable tax credits (the tax is due at year-end, and is payable irrespective of the financial results of the taxpayer, i.e. regardless of whether the taxpayer is profit or loss making).

As noted in Section *Incentive measures and privileges* above, a ten-year tax holiday from profit tax is granted to entities performing their business activities in technological industrial development zones.

### *Branch vs. subsidiary*

Permanent establishments, including branches, are subject to tax on profits derived from their activities in the country. Effectively, there is no difference between the taxation of branches and subsidiaries with respect to business profits, i.e. tax is paid annually on non-deductible expenses and on profits at the moment of their expatriation.

The repatriation of after-tax profits generated by a branch is not subject to withholding tax.

### *Non-deductible expenses and understated revenues*

Some of the major taxable items include (the list is not exhaustive):

- Expenses not related to the taxpayer's business activities
- Payments for employment-related expenses, such as: food and transportation, business trip expenses, use of a private vehicle for business purposes, severance payments, retirement allowance etc. exceeding prescribed limits
- Monthly personal allowances for executive and non-executive directors whose amount exceeds 50% of the average monthly salary, as well as the total amount of the insurance premiums
- Voluntary pension contributions exceeding four average monthly salaries per employee on an annual basis
- Donations exceeding 5% and sponsorships exceeding 3% of total revenues
- Hidden distributions of profits which include providing goods or services at prices below arm's length to shareholders or parties related to them, including lower interest rates on loans granted, unjustified shortages, etc.
- Interest expenses on loans falling under the thin capitalization rules (refer below for more details)
- Withholding tax, borne as a cost by a Macedonian taxpayer
- 90% of entertainment expenses.

### *Write-off and impairment of receivables*

Write-off and impairment of receivables (except in the case of banks, saving houses or insurance companies) are generally not recognized for tax purposes, i.e. generally considered non-deductible expense and subject to 10% tax.

Write-off and impairment of receivables are tax deductible in case they are accrued as the result of a court decision or if the receivables are duly reported in the course of a bankruptcy or liquidation procedure.

The tax base for a certain period could be reduced for the amount of the collected receivables which were impaired in previous period(s) and accordingly included in the tax base for the respective year(s).

### *Transfer pricing*

Transactions between related parties are recognized for tax purposes at arm's length, i.e. should transactions deviate from the market level, the differences could lead to additional income being assessed or an expense being disallowed for tax purposes.

For the purpose of determining the market level, as per the PTL the comparative uncontrolled price method or the cost plus method could be used.

Taxpayers, on the request of the Public Revenue Office, are obliged to present satisfactory information and evidence to substantiate whether related party transactions have been performed at arm's length.

Furthermore, interest on loans granted between related parties (except for loans granted by banks or other financial institutions) is recognized for tax purposes at arm's length. In case the taxpayer cannot produce satisfactory evidence that the interest on related parties loans is on an arm's length basis, the interest income/expense from these loans will be determined for tax purposes by applying EURIBOR plus 1% (SKIBOR plus 1% for loans extended in MKD).

Penalty interest between related parties is not recognized for tax purposes (except penalty interest incurred with regard to a bank or other financial institutions).

The definition of related parties for tax purposes is the one as per the Trading Company Law.

### *Thin capitalization rules*

Interest on loans granted by direct shareholders holding at least 25% of a company's share capital ("qualifying shareholder") is considered non-deductible for profit tax purposes should the loan amount exceed threefold the amount of the equity attributable to that shareholder.

The same rule applies to loans granted by a third party, while guaranteed by a qualifying shareholder or granted in relation to a deposit provided by the qualifying shareholder to the third party.

The amount which is not recognized for tax purposes is the amount of interest on the part of a loan which exceeds threefold the amount of the equity attributable to the qualifying shareholder.

The thin capitalization rules do not apply to loan facilities granted by direct shareholders which are banks or other financial institutions, as well as loan facilities granted by direct

shareholders to newly established entities in the course of the first three years of their establishment.

#### Tax depreciation

The annual depreciation/amortization expense is recognized for tax purposes in accordance with the applicable accounting standards.

#### Tax losses

Tax losses in the conventional manner do not exist under the new concept of corporate taxation.

As per the current provisions of the Corporate Income Tax Law, “tax losses” arise in cases when the tax base consisting of expenses not recognized for tax purposes and understated revenues is lower than the amount of tax credits allowed for expenses which were taxed in previous years, i.e. expenses which were non-deductible in a previous period, and for which the conditions for their recognition for tax purposes have occurred.

Should this be the case, the “tax loss” can be carried forward for 5 years and offset with future tax bases consisted of expenses not recognized for tax purposes and understated revenues.

#### Capital gains and losses

There is no specific tax treatment for capital gains or losses, i.e. any such gains or losses will be included in the profit or loss for the year and taxed if such profits are distributed.

#### Withholding tax

Withholding tax (WHT) at a rate of 10% is to be withheld by the payer when certain types of income are paid by a Macedonian entity to foreign legal entities, provided that the income is not derived through a permanent establishment of the foreign legal entity in Macedonia.

The following types of income realized by foreign residents are generally subject to WHT:

- Dividends
- Interest
- Royalties
- Entertainment or sporting activities
- Management, consulting or financial services
- Research and development services
- Telecommunication services

- Insurance and re-insurance premiums
- Rental of real estate located in Macedonia.

If there is a Double Tax Treaty (DTT) existing between Macedonia and a foreign country where the recipient of income is considered a tax resident, the provisions of the DTT prevail over the Macedonian legislation, meaning that lower rates can be applied on the income if provided by a particular DTT. If not, the provisions of the PTL will apply.

For an overview of the withholding tax rates applicable under the DTTs, please see Appendix B.

The application of the DTT provisions with regard to particular income is subject to approval from the Macedonian tax authorities following a separate formal procedure.

### Tax paid abroad

Resident taxpayers have the right to credit tax paid abroad in accordance with the provisions of the respective DDTs up to the tax determined by applying the domestic tax rate of 10%.

### Grouping/Consolidated returns

As of 1 January 2009, the profit tax consolidation is no longer applicable.

## Value added tax

Generally, VAT is due on the supply of goods and services in the country sold/carried out from the taxpayer in the course of his economic activities. "Supply" refers to goods or services provided in exchange for consideration. However, certain transactions carried out for no consideration are also considered to be supplies, for example, private use of business assets.

The following transactions are generally subject to Macedonian VAT:

- Supplies of goods or services whose place of supply is in Macedonia and
- Import of goods into Macedonia.

### Tax regime and place of supply of goods

#### *Import*

The import of goods is subject to Macedonian VAT and is payable by the importer to the customs authorities. Upon importation of goods, VAT is calculated by the relevant customs authorities conducting the procedure for customs clearance.

### *Exports*

Goods exported from Macedonia, as well as services related to the export (e.g. international transportation) are zero rated (exempt from Macedonian VAT with the right to input VAT credit for purchases related to export), subject to specific documentation requirements.

### *Supply of goods with installation*

The place of supply of goods that are also installed by the supplier or by a third party on behalf of the supplier is the place where the goods are installed.

### *Supply of electricity, gas, heating and cooling*

The supply of electricity, gas, heating and cooling is deemed a supply of goods for Macedonian VAT purposes and the place of supply is considered to be the place where these types of goods are received.

### *Place of supply of services*

The general rule is that the place of supply of services is the place where the supplier of services has headquarters or a branch office, from where such services are physically supplied. When there is no such place, the place where the supplier of services has a permanent place of living or residence is considered the place of supply of the services.

A number of exceptions from the above general rule are listed in the Macedonian VAT law. These exceptions mainly relate to the following:

- The place of supply of services connected to real estate (e. g. renting out real estate, agency services related to real estate, valuation, construction, supervision of construction works) is the place where the real estate is situated.
- The place of supply is the place where the services are physically carried out for the following types of services:
  - artistic, sporting, educational, scientific and entertainment services
  - transport and associated services and
  - valuation and work on movable property.
- The place where transport services are supplied shall be the place where the transport takes place, having regard to distances covered.
- The place of supply of agency services in relation to services is the place of supply of the underlying service in connection to which the agency services were supplied.
- The place of supply of certain services is considered the place where the recipient of the services is established or has a fixed base for which the services were carried out. These services mainly include the following:

- advertising services
- banking and financial services, insurance and re-insurance services, with the exception of the hiring of safes
- obligations to refrain from pursuing or exercising, in whole or in part, an act or a right, or bear an action or a factual situation
- legal, economic and technical advice and consulting, in particular activities of public notaries, solicitors, auditors, tax consultants, accountants, engineers, as well as other like activities
- services for electronic data processing and provision of information, including know-how and expertise
- provision of personnel
- the hiring of movable tangible property with the exception of all forms of transport
- telecommunication services
- transfer and assignment of copyrights, patents, licenses, trade marks and other like rights and
- services of agents when they procure for their principal the services listed above.

## Registration for VAT purposes

### *Mandatory VAT registration*

VAT can be charged only by VAT registered persons. Mandatory VAT registration applies for all taxable persons carrying out independent business activity if their annual VAT taxable turnover for the last calendar year has exceeded MKD 2 million (approximately EUR 32,520).

Taxpayers whose VAT taxable turnover during the year exceeds the above threshold are obliged to make a VAT registration after the month in which the threshold is reached. VAT exempt supplies of goods and services (without the right to input VAT credit for related purchases) are not taken into consideration when VAT registration threshold is calculated.

### *Voluntary registration*

Any taxable person not meeting the requirements for mandatory VAT registration but carrying out an independent economic activity in the country has the right to register for VAT purposes on a voluntary basis at the beginning of each calendar year (or upon the starting of economic activity) without fulfilling the threshold requirements.

Starting from 1 January 2010, entities registered for an annual VAT period may request to be registered as monthly VAT payers, if they can provide evidence that in the calendar year they will have purchases, related to investment in equipment or real estate for the

purpose of commencing or extending their business activity in the Republic of Macedonia, exceeding MKD 100 million (without VAT) equivalent to approximately EUR 1,623,640.

The above excludes investments in automobiles, furniture, audiovisual equipment, home appliances, carpets, pieces of art or other investments for administrative purposes.

#### *VAT registration procedure*

In order to register for VAT (under the mandatory or voluntary procedures), the taxable person should file an application in the relevant territorial directorate of the Public Revenue Office. On the basis of the application, the Public Revenue Office will record the registration in the VAT taxpayers register and will issue a VAT Registration Document.

#### *Deregistration*

Generally, a VAT registered person remains registered for VAT purposes for a period of at least five calendar years, regardless of the amount of the total supplies performed by the taxpayer. In specific circumstances, a taxpayer may be deregistered for VAT purposes before the expiry of the five-year period based on a decision issued by the relevant tax authorities.

VAT registered persons can apply for deregistration if the total amount of the VAT taxable turnover of the registered person in the fifth calendar year does not exceed the registration threshold.

Furthermore, the tax authorities are entitled to deregister a VAT registered person if certain conditions stated in the VAT Law are met.

#### *VAT grouping/VAT consolidation*

Two or more VAT registered persons can apply for VAT grouping (VAT registration as a single VAT taxpayer), if so decided by them due to ownership, organizational or management relations.

#### *VAT period*

Generally, under the Macedonian VAT law, the VAT period is the calendar month. The VAT period may be the calendar quarter if the total turnover of the VAT registered person does not exceed MKD 25 million (approximately EUR 405,910). The VAT period for persons registered for VAT purposes following the voluntary VAT registration procedure is the calendar year.

The deadline for submitting VAT returns is the 25th day of the month following the relevant tax period.

## VAT rates

### *Standard rate*

The standard VAT rate that applies to most VAT taxable supplies is 18%.

### *Reduced rate*

A reduced VAT rate of 5% applies mainly to supply of the following goods and services:

- Food products for human consumption
- Agricultural equipment and mechanization, seeds and planting materials for production of agricultural crops, fertilizers and materials for plant protection
- Drinking water provided from public systems
- Publications, except for publications mostly related to advertising and publications with pornographic content
- Pharmaceuticals and medical devices
- Machines and software for automatic processing of data and their units (computers)
- Solar heating systems and their components
- Transportation of passengers and their luggage
- Medical equipment and other devices for the purpose to facilitate or treat a disability for the personal use of disabled persons
- Communal and waste disposal services
- Hotel accommodation services
- Supply of new apartments for residential purposes sold within five years after they are constructed (subject to reduced VAT rate until 1 January 2016).

A reduced VAT rate of 5% applies to goods and services which are listed in a government decision.

### VAT reverse charge mechanism

Macedonian taxable persons (regardless of whether they are VAT registered in Macedonia or not), acquiring goods or receiving services from foreign resident taxable persons with no fixed establishment on the territory of Macedonia, are obliged to apply the VAT reverse charge mechanism and charge Macedonian VAT on the VAT base of the respective supply.

The obligation of the Macedonian recipient is to calculate the VAT due on the respective supply, to submit a VAT return and pay the VAT due. The VAT charged under the reverse charge mechanism may be used as an input VAT credit following the general provisions of the VAT law (see Section *Recovery of input VAT* below).

## Exemptions

### *Exempt supplies with no right to input VAT credit for related purchases*

Exempt supplies with no right to input VAT credit for the purchases related to them mainly include the following:

- Supplies and renting of buildings and apartments used for dwelling purposes with the exception of their first sale if performed within five years from their completion
- Health care
- Supplies of human organs, blood and milk
- Insurance and re-insurance services as well as services related to insurance and re-insurance performed by insurance brokers and agents
- Banking and financial services with certain exemptions
- Welfare and social security services
- Education, sports and physical education
- Supplies related to culture
- Non-profit activities involving nature
- Gambling
- Public postal services and sale of postage stamps
- Services supplied by radio and television bodies, except for commercial activities
- International transport of passengers
- Supply of goods or services for which no input VAT credit was used under the provisions of the VAT law.

### *Exempt supplies with right to input VAT credit for related purchases (zero-rated supplies)*

There are certain supplies whose place of supply is on the territory of Macedonia for which no VAT is charged, but a VAT registered person is granted the right to use the input VAT charged on purchases related to the performance of such supplies. These mainly include the following:

- Export of goods
- Goods supplied in free trade zones, except for supplies to end users
- Particular services related to export, import or transit of goods
- Supply of services consisting of work on movable property acquired or imported for the purpose of undergoing such work within the territory of Macedonia, and dispatched or transported out of Macedonia by the person providing the services, or by the foreign customer, or on behalf of either of them

- Supply of gold and other precious metals to Central Banks
- Supply, modification, repair, maintenance, chartering and hiring of aircraft used by companies involved in international commercial transport, and supply, hiring, repair and maintenance of equipment incorporated or used therein
- Supply of goods for the direct needs of aircraft referred to in the preceding point
- International air transport of passengers, if certain conditions are met
- Services supplied by intermediaries acting in the name and on account of another person, where they relate to supplies referred to above in this section.

Supplies of services whose place of supply is outside Macedonia, if considered VAT taxable when supplied within the territory of the country, are also VAT exempt supplies bearing the right for the supplier to utilize the input VAT for purchases related to their performance.

### Recovery of input VAT

A Macedonian VAT registered person is entitled to recover input VAT in respect of taxable supplies from another VAT registered person or in respect of imported goods, if they are used for the purposes of business activities. The input VAT credit claimed by a VAT registered person should be supported by an invoice or customs declaration where the VAT charged on import is separately shown, and these documents are recorded in the accounting documentation of the taxable person.

Generally, a VAT registered person is not entitled to recover input VAT on:

- Purchases used for the performance of VAT exempt supplies such as financial services, insurance, renting of real estate for dwelling purposes, education, health care services, etc. (see Section *Exempt supplies with no right to input VAT credit for the related purchases* above)
- Purchases of passenger cars (except for cars equipped for special purposes), motorcycles, aircraft, etc.; purchases of fuel, spare parts and services related to the repair and maintenance of such means of transport; renting such means of transport (excluding the acquisition of passenger cars or means of transport for certain predefined purposes such as resale, leasing and taxi/courier service)
- Purchases used for representation and entertainment purposes
- Purchases related to office equipment
- Purchases related to hotel accommodation, etc.

A VAT payer is entitled to partial VAT recovery in respect of purchases which are used to perform both supplies qualifying for recovery and exempt supplies. Partial recovery will be based on the ratio of qualifying for recovery of taxable supplies to total supplies.

The right to input VAT is possible in the relevant calendar period when a VAT registered person purchases the goods and services in question, and if all the conditions of the VAT law are fulfilled.

### Reimbursement of VAT

If in a given month the input VAT deduction declared by a registered person exceeds the amount of output VAT charged, the excess amount is subject to reimbursement.

The VAT for reimbursement is generally offset against VAT payables in subsequent periods, unless the VAT registered person has explicitly requested a refund. The term for a VAT refund is 30 days from the filing of the respective VAT return.

VAT claimed for refund is offset against other public payables (for taxes or penalty interest for late payment) of the taxpayer.

### VAT refund for non-residents

According to the VAT law, foreign entities registered for VAT purposes in their countries, which are not headquartered in Macedonia and which do not have a fixed establishment there, are entitled to recover the VAT paid for particular purchases of goods and services in Macedonia, upon their request. In order to apply for a VAT refund, the foreign taxable person should meet certain conditions and complete a statutory procedure.

The principle of reciprocity applies with regard to foreign entities entitled to claim refunds of Macedonian VAT.

In order to be entitled for a refund of Macedonian VAT, a foreign person registered for VAT purposes in their country of residence should meet the following conditions:

- The foreign person did not perform supplies on the territory of Macedonia, or
- The foreign person performed only supplies related to import, export and transit (exempt from VAT with the right to an input VAT credit for purchases related to them), or
- The foreign person performed only supplies for which an obligation of the Macedonian acquirer of the goods, or recipient of the services was to apply the reverse charge mechanism.

A refund of Macedonian VAT can be claimed by non-resident persons registered for VAT purposes in their countries for purchases of goods and services from Macedonian VAT registered persons, provided that the foreign person possesses a regular invoice with VAT separately shown. The amount of the relevant invoice should have been paid and the foreign person is able to prove the executed payment.

Generally, the VAT refund application must be accompanied by the original invoices or customs declarations on the basis of which the VAT refund is claimed, as well as a certificate issued by the competent tax authorities from the country in which the person

is established evidencing that the person performed economic activity during the calendar year when the right to claim refund of Macedonian VAT has arisen.

The minimum amount of VAT that can be claimed for refund is MKD 30,000 (approximately EUR 490) for one or several consecutive months in the calendar year.

The deadline for VAT application submission is 30 June in the year following the year in which the purchases were made.

The Macedonian tax authorities have six months to review the application for VAT refund submitted together with the documents attached to it and make the refund.

VAT refunds from the Macedonian tax administration are made only in MKD, which implies that a non-resident should open a non-resident bank account in order to obtain a VAT refund.

## **Taxation of individuals**

### **Personal income tax (PIT)**

#### *Residence*

Macedonian residents for tax purposes are considered individuals if they meet any of the following conditions:

- Have a permanent dwelling on the territory of Macedonia, or
- Reside in Macedonia for more than 183 days in any 12-month period.

Macedonian tax resident individuals are subject to tax on the worldwide income, whereas non-resident individuals are subject to tax on income derived from Macedonian sources.

Different residency rules may be provided for in DTTs.

#### *Income subject to tax*

Generally, the following types of income received by individuals are subject to personal income tax:

- Employment income, including the benefits provided to employees exceeding the maximum amounts determined in the PIT Law, the Law on Labor Relations and other pieces of legislation
- Employment income for work performed abroad based on employment relationship with a Macedonian employer
- Remuneration received for provision of services
- Remuneration received by members of the management and supervisory boards of legal entities

- Pensions
- Compensation for temporary illness
- Paid leave compensation
- Income from agriculture; agricultural income not exceeding MKD 1.3 million is subject to lump sum taxation
- Income from independent activities – business activity, professional and other intellectual services
- Income from property and property rights
- Royalties
- Income from capital, including dividends and other types of profit participation; interest on loans granted to legal entities or individuals, interest on bonds and securities. According to the latest amendments to the PIT Law, interest on term deposits and other deposits will be taxable from the date of Macedonia's accession to the European Union
- Capital gains from the disposal of securities, equity participations and immovable property. Capital gains realized by 31 December 2015 will not be taxable
- Gains from games of chance and other premium games and
- Other income, which includes all types of income that are not listed above which are not explicitly listed as exempt income under the provisions of the Macedonian PIT Law. The receipt by an individual of shares or securities for non-consideration is also considered other income within the terms of the PIT Law and PIT is due on the market value of the shares or securities received (except for those which have been subject to taxation under the Property Tax Law).

The income referred to above is considered taxable regardless of whether it is received in cash, securities, in-kind or otherwise.

### *Deductions and exempt income*

#### **Deductions**

Certain payments decrease an individual's taxable income, including mandatory health insurance, pension and disability contributions, as well as voluntary contributions up to certain thresholds, made on behalf of the taxpayer.

There is a statutory personal tax allowance which is deductible from the tax base when calculating personal income tax on salaries. The amount of personal allowance fixed by the PIT Law for 2012 is MKD 87,288 (approximately EUR 1,420), on an annual basis.

Deductions for donations made to certain qualifying institutions are also allowed up to an amount of MKD 24,000 (approximately EUR 400) if certain conditions are met.

There are also statutory deductions for particular types of non-employment income (such as income from immovable property, royalties, etc.) determined either as a fixed percentage of the gross income or at the level of the actual expenses incurred, if these are properly evidenced by documents. The statutory deductions vary in a range of 25% to 60% depending on the type of income received.

### **Exempt income**

Exempt income generally includes the following types of income:

- Interest on demand deposits, term deposits and current accounts, as well as interest under securities issued by the Republic of Macedonia or local self government
- Disability pensions
- Scholarships granted by government bodies and registered not-for-profit organizations
- Per diem allowances for business trips within the approved limits
- Specific types of rewards
- Compensation for a period of unemployment
- Children allowances
- Certain types of income received on the basis of insurance contracts and
- Certain types of compensation provided under the Law on Labor Relations of the Republic of Macedonia.

In addition, salaries of employees at a taxpayer operating in a technological industrial developing zone are exempt from PIT for a period of 10 years after the commencement of activities in the zone.

Thirty percent of the capital gains from the sale of immovable property, securities and equity participations are exempt from personal income tax, i.e. PIT is due on 70% of the realized gain.

Capital gains from sales of real estate are exempt from personal income tax if the disposal takes place more than three years from the acquisition date.

### *Relief from tax*

A tax credit may be used for foreign taxes paid provided the relevant conditions are met. Relief from tax may also be sought under the provisions of an existing DTT depending on the specific method provided for therein.

### *Tax rates and payment dates*

The personal income tax liability is determined on a calendar year basis. Macedonia applies a flat personal income tax rate of 10%.

The deadline for the submission of an annual personal income tax return is 15 March of the following calendar year. Individuals who derive only income from employment (with the exception of those individuals who receive employment income from abroad or from diplomatic or consular offices in Macedonia) and/or pensions, or agriculture income are not obliged to file an annual personal income tax return.

The annual personal income tax liability is ultimately determined by a decision of the respective tax office based on the annual personal income tax return submitted by the individual. The tax office should issue the decision for the determination of the annual personal income tax liability within 60 days from the date of the filing of the tax return.

### **Advance instalments for PIT**

Depending on the particular type of income received by the individual, there can be an obligation of either the payer of the income to deduct advance personal income tax upon payment of the respective income, or of the individual him/herself to make advance installment payments (determined on the basis of a decision of the tax office) during the calendar year.

Generally, the advance PIT installments are deducted by the payer of the income on income such as employment income; remuneration for provision of services; remuneration of members of the management and supervisory boards of legal entities; pensions; compensation for temporary illness; paid leave compensation; income from property and property rights; royalties; dividends; interest, etc.

The difference between the personal income tax liability determined in the tax office's decision and advance payments made during the year should be paid within 30 days from the date of receipt of the decision.

### **Payroll-related contributions**

Social contributions are fully borne by the remuneration recipient, i.e. employees, individuals providing services and similar. Payroll-related contributions are calculated on the basis of gross salary. The maximum amount of the insurable income for persons included in the system of mandatory pension insurance is limited to six average monthly salaries in Macedonia, based on the average salary published by the State Statistical Office. This threshold for 2013 amounts to MKD 183,570. The minimum amount of insurable income as a base for payment of social security contribution has been reduced and harmonized at 50% of the average monthly salary.

The social security contributions applicable for 2013 total 27%, and will be gradually reduced to 26.6% in 2014, and further reduced to 26.4% in 2015.

Description	2013	2014	2015
Pension and disability contributions	18.0%	17.6%	17.5%
Health insurance contributions	7.3%	7.3%	7.3%
Unemployment insurance contributions	1.2%	1.2%	1.1%
Additional health insurance in case of accidents at work and work related injuries	0.5%	0.5%	0.5%
<b>Total</b>	<b>27.0%</b>	<b>26.6%</b>	<b>26.4%</b>

For the members of the two pillar system (which is mandatory for persons employed for the first time as of 1 January 2003), pension and disability insurance is divided into two parts: 11.7% remain in Pillar 1 – the pension and disability insurance fund, and 6.3% are transferred to Pillar 2 – individual capital savings.

Salary calculations are submitted electronically on a monthly base and the payment is due by the 15th day of the current month for the previous month. Instead of contributions being paid to different institutions, an integrated collection of social contributions within the Public Revenue Office has been introduced.

## Property transfer, gift and inheritance taxes

### Transfer tax

The tax for the transfer of immovable property ranges from 2% to 4% and is levied on the market value of the property. The tax rate is determined by the respective municipality where the immovable property is located. Transfer tax is due by the seller of the property unless otherwise agreed between the parties.

Certain transfers of immovable properties are exempt from taxation including the transfer of an immovable property where contributed in kind for equity of a company, and the first sale of a residential apartment provided that the supply was subject to VAT.

### Property tax

Owners of immovable property situated in Macedonia are liable to property tax. The tax is levied on the market value of the property on an annual basis, at a rate which ranges from 0.10% to 0.20%. This rate is determined by the municipality where the property is situated. The person liable for the property tax is the owner (legal entity or an individual) of the immovable property, or the user of the property if a limited right to use the property was granted. The person using the property is liable for the property tax on immovable property owned by the Macedonian State.

### Gift and inheritance taxes

Certain individuals inheriting property (movable and immovable) are subject to inheritance tax. The tax rates depend on the relationship of the beneficiary to the testator or donor. No inheritance tax is levied provided that the beneficiary is a spouse or immediate family member. A gift tax is levied on donated property, as well as on property transferred without consideration. No gift tax is levied on property donated to spouses and immediate family members.

The inheritance and gift tax rates are in the following range:

- 2% to 3% for property inherited by/donated to brothers, sisters and their children
- 4% to 5% for inheritance/gifts (donations) between unrelated persons.

The tax rate is determined by the municipality where the property is located.

### Excise duties

Excise duties are levied on a variety of goods produced or imported in Macedonia. These include:

- Alcohol and alcoholic beverages
- Tobacco goods
- Mineral oils and
- Motor vehicles.

Excise duties can be determined in a percentage (proportional excise duty), in absolute amount per measurement unit (specific excise duty) or as a combination of both (combined excise duty).

### Customs duties

#### Import procedures

All goods entering the customs territory of Macedonia must be declared to the customs authorities and must be assigned a customs-approved treatment or use.

The person declaring the goods to the customs authorities must be registered in Macedonia, except when the person is declaring the goods for:

- Transit
- Temporary import and
- If the person declares goods occasionally and this is approved by the custom authorities.

### *Customs value*

The first and basic valuation method for determining the customs value is the transaction method, which is based on the price actually paid or payable for the goods when sold for export to Macedonia. Certain adjustments to this price might be necessary (e.g. freight and insurance cost incurred on the customs territory of Macedonia must be excluded from the customs value). If the customs value cannot be established based on the transaction value method, it is established based on the next possible valuation methods respecting the order of application.

### *Classification of goods*

The applicable tariff, which entered into force as of 1 January 2008, is based on the Combined Nomenclature (CN) of the European Community and on the international Harmonized System (HS) used by many industrialized nations in the world. This classifies all goods of international commerce so that each article is classified in one place and one place only, within the tariff. Classification determines the rate of duty applicable to imported goods and whether any special preferential treatment is available.

### *Charges at importation*

Customs duties are mainly charged on the customs value of the goods (ad valorem), although many agricultural products are also liable to specific duties, assessed according to the weight or quantity. A few items are subject to compound duties, i.e. a mixture of value-based and specific duties. The rate and type of duty applicable to an item is determined by its classification.

VAT is also charged at importation. Any such VAT paid may be recovered as input tax provided that (i) the importer is registered for VAT purposes in Macedonia, (ii) the goods are used in the line of his business activities, (iii) the importer has a proper import customs declaration issued in his name and has properly recorded it in his books, and (iv) the VAT is paid.

### *Export procedures*

When aimed to be exported, goods must be declared to the customs authorities as well. From a VAT perspective, the export of goods to a destination outside Macedonia can be zero-rated provided that (i) the goods are transported outside of Macedonia by the supplier, the customer or a third party authorized to transport the goods, (ii) the customer is established abroad and (iii) the exporter can produce the necessary evidence for export.

### *Inward processing regime*

Macedonia implements an inward processing regime, which allows a Macedonian manufacturer to import, process and export goods free of customs duty and VAT.

The inward processing regime takes two forms:

- *Drawback system* – under the drawback system, the customs duties and import VAT are paid in advance, when the goods are placed in a procedure of customs import for inward processing. Duties paid in advance are subject to refund when goods are exported to a destination country and the appropriate documentation is submitted, certifying that the procedure of export has been carried out.
- *Suspension system* – under the suspension system, the customs duties and VAT are suspended when the goods are first entered into an inward processing regime. However, these should be secured through a bank guarantee or a cash deposit.



## Chapter 7

# Employment Regulations



### Legislation

The major items of legislation that govern employment and labor relations in Macedonia are the Law on Labor Relations (“LRL”), the Collective Agreements and other legal acts (e.g. the Law on Employment and Work of Foreigners). The LRL regulates the implementation of the rights, obligations and responsibilities of the employee and the employer, namely:

- Conclusion, amendment and termination of employment contracts
- Working hours, absences and holidays
- Employment discipline
- Compensation and contractual liabilities of the parties to an employment contract
- Special protection for some categories of employees, etc.

Legal requirements are also provided in the Law on Health and Safety at Work, the Law on Personal Data Protection, as well as in a number of ordinances adopted on the basis of the LRL and the above-mentioned laws.

One of the main goals of the Macedonian employment legislation is to create a minimum level of protection for employees. As a result of this, the LRL, as well as the other relevant Macedonian legislation, contains numerous mandatory rules and regulations by which an employer hiring employees in Macedonia must abide and comply with.

## Employment contracts

### Contract forms and the obligation for notification

Employment contracts must be concluded in writing. An employment contract is kept at the business premises of the employer. One copy of the employment contract must be given to the employee on the day of its signing.

The employer is obliged to notify in writing the respective division of the Employment Agency of the following circumstances:

- Signing of each employment contract – the same day as of the date of signing and
- Termination of an employment contract – within eight days after its termination.

### Types of employment contracts

The LRL regulates the following major types of employment contracts:

- Contracts concluded for an indefinite period of time (contracts with an indefinite term) and
- Contracts concluded for a fixed period of time (contracts with a fixed term).

The most common and generally accepted type of employment contract in Macedonia is the contract with an indefinite term. It gives better protection to the employee's rights and interests as it provides more stable and long-term employment. Therefore, an employment contract concluded for an indefinite period of time cannot be transformed into a fixed-term contract without the prior written consent of the employee.

Under the fixed-term employment contract, the parties determine the period for which the contract shall be valid and binding. A fixed-term employment contract can be concluded for work which lasts for a definite time period, with or without termination up to five years.

In case of the continuation of employment after the expiry of a fixed-term employment contract, it will be transformed into a contract with an indefinite term for employment.

The LRL also provides the possibility for an employment contract for seasonal work, part-time employment, with a probation period and employment contracts as a trainee, for the purposes of vocational and independent work in the profession. The maximum duration of such a training period is one year.

## Working hours

The LRL contains mandatory provisions determining regular working hours under an employment contract in Macedonia. The regular working week is 40 hours comprised of five working days of eight hours each. These are in fact the maximum working hours that the parties to an employment contract can negotiate, unless otherwise provided for in the LRL. The law sets out mandatory limits for working hours within the working day

and week, in order to protect the rights of employees and to prevent an employer from imposing extended working hours.

All exceptions to the regular working week are expressly stipulated in the Law. A requirement to work more than the regulated hours is always compensated for by the employer, in a way provided for under the Law.

Special regulations cover part-time work, shift work, including night shifts and overtime. These provisions vary depending on the labor category of the employee and the associated working conditions.

## **Holidays**

Full-time employees are entitled to at least 20 working days of annual paid holiday. Certain categories of employees are entitled to additional holidays in a way provided for under the Law.

The official holidays are listed in the Law on Holidays of the Republic of Macedonia. The Government can designate additional official holidays.

## **Medical check-ups**

All employees must undergo periodic medical check-ups. Their frequency depends on the labor category, working conditions and the employees' age as determined by the Minister of Health, but they must be performed at least once every 24 months for all employees. Associated expenses are the employer's responsibility.

## **Healthy and safe working conditions**

One of the main obligations of the employer is to provide healthy and safe conditions at the workplace. The law aims to secure greater protection of the employee's life, health and working capacity by holding the employer responsible for the conditions under which the employee has to carry out his/her employment obligations.

Employees acquire protection at work in compliance with the prescribed measures and standards of work protection in accordance with the LRL and the Law on Safety and Health at Work.

Employees are required to observe the measures for protection at work and to perform the duties carefully in order to protect theirs and other people's lives and health.

If the stipulated measures for protection of work have not been implemented, employees may legally refuse to work, should their lives or health be under direct threat.

The fulfillment of the above obligations by employers is subject to inspection and control by the state labor authorities, which are entitled to impose fines in case of non-compliance with the rules and the standards for healthy and safe working conditions.

## Termination of employment contracts

Employment contracts may be terminated either by employers or employees in writing. The LRL determines cases in which employment is terminated with and without a notice period. Generally, the notice period must be at least one month preceding the termination of the employment contract, but not exceeding three months. Employers and employees may agree on monetary compensation instead of a notice period for termination. If an employer decides to unilaterally terminate the employment contracts of 150 employees or 5% of their employees, the procedure for collective redundancy should be observed. This procedure is applicable in case of staff reductions, decrease of workload and other business grounds for termination of employment on behalf of the employer. The procedure for collective redundancy includes mandatory obligations for the employer.

## Foreign nationals working in Macedonia

The Law on Employment and Work of Foreigners regulates the employment of foreign individuals in Macedonia. According to the provisions of the Law, foreign individuals, or individuals without citizenship of any country can be employed in Macedonia upon obtaining a work permit. The Employment Agency of the Republic of Macedonia issues a work permit upon an employer's or a foreigner's request.



## Chapter 8

# Foreign Nationals

### Legislative framework and general rules

The legal status of foreign nationals in Macedonia is governed by the Law on Employment and Work of Foreigners, the Law on Foreign Persons and the Law on Ownership and Other Property Rights.

Under Macedonian law, foreign nationals are restricted in exercising the following rights:

**Ownership rights** – foreign nationals have the right to acquire movable property in the same manner as Macedonian citizens.

With regard to immovable property, the same rules apply for foreign citizens as for the foreign legal entities as described previously in Section *Acquisition of real estate*.

**Professional rights** – foreign nationals cannot be employed as state public servants or customs officers, etc.

**Political rights** – foreign nationals are not eligible to be candidates for positions such as mayor, Member of Parliament, or president.

There is a general rule that foreign nationals are obliged to comply with Macedonian laws and the established legal order. In this respect, foreign nationals residing in Macedonia bear the same civil and administrative responsibilities, and are subject to penalty in the same way as Macedonian citizens, unless otherwise provided for under a special law, or an international agreement to which the Republic of Macedonia is a party.

All foreign nationals are obliged, upon entry in the Republic of Macedonia, to declare the purpose of their stay and to specify the address at which they will stay at the Ministry of Internal Affairs.

### Visas

Foreign nationals who wish to stay in Macedonia must obtain a visa unless they are subject to visa-waiver agreements.

A visa is a clearance for entry and/or stay on the territory of the Republic of Macedonia for a certain period of time.

The Law on Foreign Persons provides for the following major visa categories: transit visa (visa B), short-term visa (visa C) and long-term visa (visa D).

A transit visa is required for travel through Macedonia to another country. During the transit foreign citizens may stay in Macedonia up to five days.

A short-term visa allows a foreign citizen single or multiple entries into Macedonia for up to three months within a six-month period.

Valid for six months, a long-term visa allows a foreign national single entry into Macedonia and a stay of up to 30 days. Foreign citizens with a long-term visa are obliged to register at the Ministry of Internal Affairs within five days of their entering the Republic of Macedonia, whereas the Ministry is obliged to issue a temporary residence permit within 25 days of the registration date.

All visa applications should be submitted to the diplomatic and consular offices of the Republic of Macedonia.

### Visa exemption rules

Citizens of some countries can enter Macedonia without obtaining visas.

EU citizens do not need visas for a stay of up to 90 days. Citizens from the USA, New Zealand, Japan, Canada and Switzerland are also allowed to stay in Macedonia without visas for up to three months.

Calculation of the period commences on the day of first arrival into Macedonia as indicated in the foreign national's international passport.

### Residence permits

Residence permits are issued to foreign nationals entering Macedonia who intend to stay in the country three months or longer.

There are three types of residence permits:

- A. Residence up to three months
- B. Temporary residence permits and
- C. Permanent residence permits.

The most common grounds for issuance of temporary residence permits are:

- Employment, working and performing professional services
- Education or studying

- International exchange programs for students
- Specialization, professional improvement or practical qualification
- Scientific research
- Medical treatment
- Family reunification
- Humanitarian reasons
- Foreign national who is an immediate family member of a Macedonian citizen
- Foreign nationals of Macedonian origin
- Child of a foreign national who was born in the Republic of Macedonia
- Foreign national resident of an EU and OECD Member State who acquired an ownership right over an apartment, residence building or house with a value exceeding EUR 40,000.

The customary documents required for issuance of a temporary residence permit evidence the following: (i) the applicant has sufficient financial means to meet the costs of his/her stay in Macedonia; (ii) the applicant has been provided with accommodation or financial means for accommodation or, for residents of EU and OECD Member States, proof that he/she acquired residence property on the territory of the Republic of Macedonia with a value exceeding EUR 40,000; (iii) the applicant has health insurance; (iv) the applicant has met the requirements for a certain type of temporary residence permits; and (v) there are no grounds for refusal of entry.

An application for obtaining a temporary residence permit must be filed at a diplomatic and consular office of the Republic of Macedonia. As an exception, foreigners assigned by legal entities which undertake activities considered to be of significant importance for investments in the Republic of Macedonia as provided for in the law are entitled to apply for a temporary residence permit with the Ministry of Internal Affairs instead of the diplomatic and consular office of the Republic of Macedonia abroad.

Upon the application for obtaining a temporary residence permit, the Ministry of Internal Affairs makes a decision. The decision of the Ministry of Internal Affairs is then delivered in writing to the foreign national applicant through the diplomatic and consular office of the Republic of Macedonia in a foreign country.

A temporary residence permit can be extended if the grounds for its issuance still exist at the time of the extension. The extension will be rejected in case the foreign citizen has not resided on the territory of the Republic of Macedonia longer than one-fourth of the period for which the temporary residence permit was issued.

Once the foreign national has been granted a temporary residence permit, he/she may live, reside and travel in the Republic of Macedonia during the validity of the permit. The foreign national may freely choose and change his/her place of residence, or leave the country and enter it again.

Foreign nationals who have obtained a permanent residence permit have all the rights and obligations granted to or imposed on Macedonian citizens. For example, they can be employed by Macedonian employers, receive social security compensation, use tax benefits, etc.

## Work permits

Foreign nationals may work in Macedonia only after obtaining a work permit unless the conditions stated below for foreigners who do not generally require a work permit apply. The basis for obtaining a work permit is an employment contract or a business trip to undertake certain activities.

Work permits are issued as follows:

1. Personal work permit
2. Employment permit and
3. Work permit.

A personal work permit is issued for a fixed-time period up to one or three years, or for an indefinite time period upon request of the foreign national who intends to perform his/her own business activity in Macedonia.

An employment permit in general is issued for a period up to one year, unless otherwise determined by the Law.

Work permits are issued for various time periods depending on their purpose. Only one valid work permit may be issued to foreigners for a certain period. Work permits in general are issued by the Employment Agency on the basis of an application submitted by an employer, unless otherwise determined by the Law. A number of legal terms and conditions must be met for the permit to be issued.

Certain positions that require Macedonian citizenship are not available to foreign nationals.

## Foreign nationals who generally do not require a work permit in Macedonia

Foreign national business visitors may undertake a business trip in the country without a work permit.

A business visitor is a foreign citizen who resides in the Republic of Macedonia, and who does not have income in the Republic of Macedonia, or does not sell or offer services directly, but only participates in business meetings, establishes business contacts including negotiations concerning the provision of services or similar activities and including those services and activities related to the foreign company preparation to acquire presence in the market of the Republic of Macedonia. Those types of activities may be performed in the Republic of Macedonia for a limited period of 90 days within six months from the date of the individual's first entry.

### Foreign nationals who may work on short-term assignments without a work permit

Foreign nationals may be engaged to perform short-term assignments under the following conditions:

- Contractual services provided by foreign artists and professional authors
- Services related to commercial fairs
- Services related to the supply of goods and post-sale services
- Work performed by foreigners residing in the Republic of Macedonia for the purposes of studying and
- Services in cases of emergency.

For all other categories of employees a work permit is required. The work permit is issued provided that all requirements of the law are met.

Employers must register the commencement and discontinuation date of the work performed by foreigners at the Employment Agency.

The Employment Agency shall issue a certificate to the person responsible for registering the work performed by foreigners.

## Chapter 9

# Government Control

### Public procurement

The Law on Public Procurement represents a basis for establishing fair competition among economic operators, equal treatment and non-discrimination of economic operators, transparency and integrity in the process of awarding public procurement contracts, and rational and efficient utilization of the funds in the procedures for awarding public procurement contracts.

The aim of this Law is to bring Macedonian public procurement legislation in compliance with the relevant Directives of the European Union and to ensure that public procurement tenders are awarded according to the law of the EU.

#### Public Procurement Bureau

The Public Procurement Bureau was established as a state administration body within the Ministry of Finance and is the central body responsible for coordination and monitoring of the procurement system in the country.

The main objectives of the Bureau are providing a coherent legal framework that is consistent with EU legislation on public procurement, providing a framework for uniform application of regulations in the area of public procurement and developing the capacity for the implementation of procedures for awarding public contracts from contracting authorities in the Republic of Macedonia.

#### Electronic system for public procurement

The e-Public Procurement System (EPPS) is an online solution for conducting public procurement in the Republic of Macedonia. It enables secure trade between the Macedonian contracting authorities and local and international economic operators (bidders). The system offers a secure, efficient and transparent preparation and administration of all tender-related documents, removes unnecessary paper work and enables secure data flow throughout the entire process.

The Public Procurement Bureau is responsible for monitoring the process of electronic public procurements, registration of contracting authorities and for providing assistance to the contracting authorities and economic operators registered in the EPPS.

With the recent changes in the Public Procurement Law starting from 1 July 2012, improvements and changes to the system were implemented concerning: obligatory publishing of contract notices and conducting e-auctions for procedures below EUR 5,000 threshold (formerly known as simplified competitive procedure without publishing); implementation of the module for negative references for suppliers – including economic operators which perform contracts in an untimely manner, not up to the quality required or have not signed the contract; module for publishing of technical dialogue – when awarding contracts with specific subject and over EUR 130,000 for goods and services; implementation of a qualification system for awarding contracts for utilities; and publishing of notices for concessions and public private partnerships.

### Public procurement activities

The public procurement contract, according to the Law, can be:

- Contract for public procurement of goods
- Contract for public procurement of services and
- Contract for public procurement of works

The subject of the public procurement contract may be composed of several separate identical parts, whereas for each part, a separate contract may be concluded.

The legislation has established thresholds, above which the contracting authorities are obliged to award public procurement contracts according to the terms and procedures stipulated in the Law on Public Procurement. The contracting authority shall carry out simplified competitive procedures by publishing a contract notice on ESPP when the estimated value of the public procurement contract for goods and services is up to EUR 20,000 in MKD equivalent, or for works up to EUR 50,000 in MKD equivalent, excluding VAT. If the estimated value of the contract, excluding VAT, exceeds EUR 500,000 in MKD equivalent for supplies and services, and EUR 2 million for works, the contract notice shall also be published in the Official Journal of the European Union or in a respective business publication or technical or specialized magazine available to the broad international expert community and the general public.

### Main participants

Public procurement award procedures usually involve many participants, among which are the contracting authorities, candidates, contractors, subcontractors, suppliers and service providers.

The contracting authorities shall be:

- State and local government authorities and the city of Skopje

- Legal entities established for a specific purpose for meeting public interest needs, which are of non-industrial or non-commercial nature, legal entities, public enterprises, joint stock and limited liability companies established by the state or local government authorities
- Legal entities which conduct certain activities in sectors related to water energy, transport, postal services, or other.

Any Macedonian and foreign legal entities and individuals, as well as any combinations thereof, meeting the legal requirements set out in the Law on Public Procurement, may apply in public procurement procedures and be awarded public procurement contracts. The application process usually requires provision of many corporate and financial documents by the economic operator, issued by the competent authorities, certifying the fulfillment of required conditions by the contracting authorities.

Positive outcome from participation in public procurement procedures often depends on the completeness and validity of the bidders' qualifications documents in the tender and a lower tender price. Tenders are evaluated only by applying the criteria set in the tender documentation and published in the contract notice. After evaluation, the evaluation commission ranks the tenders and proposes the selection of the winning tender. No tender is rejected at the public opening of tenders, except for late submissions.

#### Types of public award procedures

Contracting authorities may choose to implement one of the public award procedures envisaged in the Law on Public Procurement, depending on the type and nature of the scope of the contract:

- Open procedure – where all interested candidates may submit an offer
- Restricted procedure – where only short listed candidates selected under the pre-qualification stage are invited by the contracting authority to submit an offer in the evaluation stage
- Competitive dialogue – where all interested candidates may submit an application for participation, and after a dialogue with the contracting authority, short listed candidates may submit an offer
- Negotiated procedure with or without prior notice – where the contracting authority negotiates the terms of the contract with one or more short listed candidates
- Simplified competitive procedures – which are executed under simplified terms and conditions in accordance with the strictly determined cases in the law
- Open conceptual solution contest – this procedure is executed (organized as a separate procedure or as a part of a procedure for awarding a public service contract) when the contracting authority acquires a plan or a project, mainly in the area of spatial or urban planning, architecture and civil engineering.

### *Special modalities for awarding public contracts*

- Framework agreement – the contracting party shall conclude a framework agreement by carrying out an open or restricted procedure. Notwithstanding the previously mentioned, other contract award procedures shall be conducted only in cases provided for in the Law.
- Electronic auction – as the final phase of open procedures, restricted procedures or negotiated procedures with prior publication of a contract notice, on the reopening of competition among the economic operators, party to the framework agreement.
- Starting from 1 January 2012, the contracting authorities are obliged to use an electronic auction for 100% of published announcements for open procedures, restricted procedures, negotiated procedures with prior publication of a simplified procedure.

The most common types of contract award procedures are the open and restricted procedures. Competitive dialogue and the negotiated procedure are applied only in exceptional cases.

## **Concessions**

The conditions and procedures for granting, implementing and terminating concessions in Macedonia are regulated by the new Law on Concessions and Public Private Partnership (“LCPPP”) effective as of 15 March 2012.

The LCPPP regulates the granting of concessions and the conclusion of agreement for establishment of public private partnership (PPP).

### **Objects of concession agreements**

The objects of concession agreements are:

- Goods of common interest for the Republic of Macedonia
- Public property of the state and/or municipalities.

Concessions do not transfer the ownership titles of properties, but only give the concessionaire the right to use the said properties with certain concession payments. The PPP regulates the cooperation between the public and private partners related to rendering of public service within the competences of the public partner, to the end users.

### **Types of concessions and PPP**

The types of concessions depending on their objective are:

- Public work concession – implementation of a construction project and management of a completed facility

- Public service concession – performance of activities determined by law as public services
- Concession of goods of common interest – use of goods of common interest or mining concession.

The types of PPP depending on the purpose of the funds for compensation and allocation of key risks are:

- Agreement for public supply of work – implementation of construction and designing activities
- Agreement for public supply of service – provision of selected service.

#### Parties to concessions and PPP agreements

The public authorities, grantors of concessions and parties to PPP agreements are:

- The Government of the Republic of Macedonia, for facilities in state ownership
- Municipalities and the city of Skopje, for facilities in municipal ownership.

Public partners to PPP agreements may also be public enterprises, public institutions, companies established or majority owned by the Republic of Macedonia, municipalities and the city of Skopje as well other legal entities, vested with the performance of duties of public interest.

Any Macedonian and foreign individual or legal entity meeting the legal requirements set out in the LCPPP may participate in a concession procedure and be granted a concession or be party to a PPP agreement.

#### Concession and PPP procedures

Concession and PPP procedures are implemented under the terms and conditions stipulated in the LCPPP. Procedures for granting of concessions and conclusion of agreements for establishment of PPP are carried out by the Committee for implementation of procedure, which depending of the type of concession/PPP, may be constituted by the Government of the Republic of Macedonia, or the mayor of the municipality or managing body in case of other legal entities. The LCPPP provides for the following types of concession and PPP procedures: open concession procedure, restricted concession procedure, procedure for negotiation with prior notification and competitive dialogue.

The last element of the concession/PPP process is the signing of a concession/PPP agreement, which may be concluded for up to 35 years.

Regarding a long validity term, for which they are usually concluded, the LCPPP envisages the possibility for concession/PPP agreements to be amended by virtue of written addenda.

### Appeal of the concession procedure

The LCPPP provides that any decision, action or omission by the contracting authorities in a concession/PPP procedure may be subject to appeal before the State Committee for Appeals of Public Procurement Procedures.

The appeal suspends the concession and PPP procedure. If the State Committee for Appeals of Public Procurement Procedures rejects the appeal, the claimant is entitled to submit a claim before the competent court. The claim does not suspend the implementation of the decision for selection of the most favorable candidate or the signing of the contract under the concession/PPP procedure.

### PPP Register

The Ministry of Economy keeps a public PPP Register which contains information on PPP agreements and the amendments thereto, which have been executed by contracting authorities.

## Licensing

### Licensing regime in electronic communications

The Law on Electronic Communications regulates the terms and the manner of carrying out activities in the electronic communications sector in the Republic of Macedonia.

The bodies authorized to regulate the activities in the electronic communications sector are the Ministry of Transport and Communications and the Agency for Electronic Communications ("the Agency").

The Agency for Electronic Communications operates as an independent regulatory body, established as a separate not-for-profit legal entity with public authorizations set out in the law.

Notification should be submitted to the Agency prior to the commencement of construction and/or use of public electronic communications networks and/or providing public electronic communications services, alteration or cessation in providing public communications networks and services. The Agency should register the operator or the service provider by recording it in the official records within seven days of the receipt of the notification, with written confirmation of the registration made. However, this registration in the Agency is not a sufficient condition for exercising the rights and obligations of operators or service providers under the Law on Electronic Communications. The respective rights and obligations should be exercised only if certain conditions under this and other relevant laws and regulations are fulfilled.

Radio and TV broadcasting activities require a license issued by the Broadcasting Council of the Republic of Macedonia, an independent not-for-profit regulatory body, with public competencies and authority in the field of broadcasting activity defined by the Law on Broadcasting Activity.

Licenses for radio and TV broadcasting activities are issued after an open competition process. A license can be issued at state, regional or local levels. The license term under the Law on Broadcasting Activity is nine years.

### Licensing regime in the energy sector

The Republic of Macedonia signed the Treaty Establishing the European Energy Community in October 2005.

In 2010, the Government adopted the Strategy for Energy Development of the Republic of Macedonia until 2030, which defines the most favorable long term development of the energy sector in Macedonia.

Activities in the energy sector are regulated by the Energy Law. The activities in the energy sector set out in Article 4 of the Energy Law can be carried out by local and foreign legal entities on the basis of a license issued by the Energy Regulatory Commission of the Republic of Macedonia ("the Commission").

The Commission is a regulatory body, which is fully independent from the interests of the energy industry, and governmental bodies, responsible for issuance, amendment and withdrawal of licenses for activities in the energy sector.

The license is issued for a period from three up to 35 years depending on the type of activity, the extent of the funds required for carrying out the activities, duration of the right of exploitation of the energy source, as well as the requirement of the entity. To acquire a license to carry out activities in the energy sector, a foreign entity should establish a branch office in the Republic of Macedonia.

The competencies of the Commission according to the law include establishment of regulations on forming prices for different types of energy and services related to activities in the energy sector and making decisions on the pricing of various types of energy in accordance with the regulations on price formation.

### Competition and antitrust regulations

The main part of competition and antitrust legislation in Macedonia is the Law on Protection of Competition.

The Law on Protection of Competition applies to all enterprises engaged in activities in or outside Macedonia if they prevent, restrict or distort competition within the country.

The Commission on Protection of Competition is an independent state body with the status of a legal entity, independent in its work and decision making process within the boundaries provided for by the Law. The Commission is responsible for enforcing the Law on Protection of Competition.

The basic competencies of the Commission on Protection of Competition are to control the application of the provisions of the Law on Protection of Competition, to monitor and

analyze the conditions on the market to the extent necessary for the development of free and efficient competition, and to conduct procedures and make decisions according to the provisions of the Law.

The Commission is empowered to impose sanctions in cases of prohibited agreements, decisions and concerted practices, unfair competition or abuse of monopoly or dominant market position.

The Commission is also responsible for issuance of authorization for the concentration of economic activities (e.g. mergers, acquisition of control, joint ventures).

#### Prohibited agreements, decisions and concerted practices

The law expressly prohibits and declares void all types of agreements between undertakings, decisions by associations of undertakings, as well as concerted practices of two or more enterprises having as their objective or effect the prevention, restriction or distortion of competition, which:

- Directly or indirectly fix prices or other trading conditions
- Limit or control production, market, technical development or investments
- Share markets or sources of supply
- Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage
- Make the conclusion of contracts subject to acceptance by the other party of additional obligations which, according to their nature or trade customs, are not related to the subject of contract.

The Commission on Protection of Competition may impose sanctions on the enterprises, parties to the agreements, when they prevent, restrict or distort competition.

#### Abuse of dominant position (monopoly)

The law generally prohibits a monopoly position except in cases where such a position is authorized by the state in accordance with the legislation of the Republic of Macedonia.

The law prohibits abuse of a dominant position of one or more enterprises on a relevant market or its part, which may:

- Impose, directly or indirectly, purchase or sale prices or other unfair trading conditions
- Limit production, markets and technical development to the disadvantage of consumers
- Apply different conditions to identical or similar types of contracts with regard to certain partners, thereby placing them at a competitive disadvantage
- Conclude contracts subject to acceptance by the other party of additional obligations

which, according to their nature or trade customs, are not related with the subject of contract

- Refuse to deal or encourage and request from other undertakings or association of undertakings not to purchase or sell goods or services to certain undertakings, with an intention to harm them in a dishonest manner
- Refuse to allow another undertaking access to its own networks or other infrastructure facilities, for adequate remuneration, provided that without such concurrent use the other undertaking is unable for legal or factual reasons, to operate as a competitor of the dominant undertaking.

#### Control on concentration of economic activities

Concentration of economic activities may have the following forms:

- Merger of two or more independent enterprises
- Acquisition of direct or indirect control of the whole or parts of one or more enterprises.

The law imposes on the enterprises participating in the concentration an obligation for a prior notification to the Commission on Protection of Competition if:

- The aggregate annual revenue of the participants in the concentration generated via the sale of goods and/or services on the world market amounts to at least EUR 10 million in MKD equivalent, realized during the business year preceding the concentration and provided that one of the participants is registered on the domestic market
- The aggregate annual revenue of the participants in the concentration, generated by sales of goods and/or services on the territory of the Republic of Macedonia, amounts to at least EUR 2.5 million in MKD equivalent realized during the business year preceding the concentration
- One of the participants in the concentration has participation on the market of more than 40% or the total market participation of all participants is more than 60% in the year preceding the concentration
- The Commission may authorize the concentration 25 days after receiving the notification.

### Banking supervision and the National Bank of Macedonia

The National Bank of the Republic of Macedonia ("NBRM") is the only supervisory authority responsible for the licensing and supervision of banks and savings institutions in the Republic of Macedonia.

The main purpose of the supervisory function performed by the NBRM is the maintenance of a safe and sound banking system and protection of depositors and other creditors that invest their money in the banking sector. The NBRM has established supervisory standards that are based on the international standards and practices set by the Basel Committee on Banking Supervision.

### **Supervisory standards**

While performing their activities, banks are obliged to comply with the existing supervisory standards that are implemented for the purpose of limiting the banks' risk exposure. The supervisory standards established and implemented by the NBRM are derived from the Basel Committee's principles and the European Directives. The most important standards implemented by the NBRM are:

- Capital adequacy, i.e. maintenance of an adequate capital base that will enable covering of the risk profile of banks. The capital adequacy ratio calculated as a ratio between the bank's own funds and its risk weighted assets must not be lower than 8%
- Criteria for classification of on-balance and off-balance sheet assets of banks according to their risk level and determining the adequate amount of impairments and special reserves for coverage of the banks' potential and/or established losses
- Exposure limits as a ratio between the total on-balance and off-balance sheet exposure to single persons and groups of connected persons and the bank's own funds
- Limits of exposure to foreign exchange (FX) risk and the manner of managing this type of risk
- Limits on investments in land, buildings, equipment and equity holdings.
- Licensing for banking activities (by the NBRM) includes:
  - Issuing licenses for the establishment and operation of banks and establishment of foreign banks' branches
  - Issuing licenses for statutory changes (acquisitions and mergers of banks, transformation of a savings institution into a bank and acquisition of a savings institution by a bank)
  - Issuing approvals according to the Banking Law.

The legal framework thoroughly defines the licensing process performed by the NBRM. In the licensing process, the NBRM follows the principles of legality, consistency per subject and in time, expertise, ethics and neatness.

### **Supervision**

Through its supervisory function, the NBRM reviews the safety, stability, level of risk exposure and compliance with the legal framework, with special consideration on the quantification and monitoring of the banks' risks exposure (credit risk, liquidity risk, operational risk, FX risk and other risks). The banking supervision analyzes the adequacy

of the procedures and systems for identification, measurement, monitoring and control of risks established and implemented by banks.

The NBRM performs its supervision through the following:

- Permanent off-site surveillance of the operations of banks and savings institutions by collection and analysis of reports submitted to the NBRM and
- On-site (full-scope or targeted) examinations conducted at banks themselves, i.e. examination of their performance through direct control of their documentation and established systems and procedures.

In cases of violation of provisions of the law or other acts, the NBRM is empowered to impose certain measures on the banks, such as: issuance of written warnings and orders to eliminate violations, prohibition of certain transactions, appointment of a trustee for a certain period, etc.

As a final and exceptional measure, the NBRM also has the right to withdraw banks' licenses.

## Foreign exchange regime

### Overview of the regime

The foreign exchange regime is regulated via the Law on Foreign Currency Operations and respective by-laws. For certain types of transactions there are requirements that impose duty for submitting a declaration at the NBRM (for example, transactions between residents and non-residents involving incoming and outgoing loans, opening of a bank account abroad if all preconditions are met, etc.)

With regard to the registration of direct investments of residents located abroad (inbound investors in Macedonia), such investments should be reported before the Central Register of the Republic of Macedonia.

### International payments and transfers

After declaring the justification for bank transfer, banks authorized for foreign transactions may execute international bank transfers abroad.

For transfers and payments abroad exceeding EUR 10,000 banks require specific documents proving the grounds for and the amount of the payment.

When the transfer is a transaction subject to registration at the NBRM, the registration document must be presented to the bank.

### Reporting to the NBRM

Local companies are required to report their borrowings from abroad to the NBRM on a monthly, quarterly and annual basis.

# Appendix A

## **Bilateral Agreements for the Mutual Protection and Encouragement of Foreign Investment**

Albania	Montenegro
Austria	Morocco
Belgium	Netherlands
Belarus	People's Republic of China
Bosnia and Herzegovina	People's Republic of Korea
Bulgaria	Poland
Croatia	Qatar
Czech Republic	Romania
Egypt	Russian Federation
Finland	Serbia
France	Slovakia
Germany	Slovenia
Hungary	Spain
India	Sweden
Iran	Switzerland
Italy	Turkey
Kazakhstan	Ukraine
Lithuania	OPEC Fund for International Development
Malaysia	

*Source: Ministry of Finance of the Republic of Macedonia*

# Appendix B

## Double Taxation Treaties to which Macedonia is a party

State	Dividends (%)	Interest (%)	Royalties (%)
Albania	10	10	10
Austria	15/0*	0	0
Belarus	15/5*	10	10
Belgium	15/10*	15	10
Bulgaria	15/5*	10	10
China	5	10	10
Croatia	15/5*	10	10
Czech Republic	15/5*	0	10
Denmark	15/5*	0	10
Estonia	5/0*	5	5
Finland	15/0*	10	0
France	15/0*	0	0
Germany	15/5*	5	5
Hungary	15/5*	0	0
Ireland	5/0*	0	0
Italy	15/5*	0/10*	0
Kosovo	5/0*	10	10
Latvia	15/5*	5	10/5*
Lithuania	10/0*	10	10
Moldova	10/5*	5	10
Netherlands	15/0*	0	0
Norway	15/10*	5	5

State	Dividends (%)	Interest (%)	Royalties (%)
Montenegro	15/5*	10	10
Morocco	10	10	10
Poland	15/5*	10	10
Qatar	0	0	5
Romania	5	10	10
Russian Federation	10	10	10
Serbia	15/5*	10	10
Slovakia	15/5*	10	10
Slovenia	15/5*	10	10
Spain	15/5*	5	5
Sweden	15/0*	0/10*	0
Switzerland	15/5*	0/10	0
Taiwan	10	10	10
Turkey	10/5*	10	10
Ukraine	15/5*	10	10
United Kingdom	15/5*	10/0*	0

Notes

\* The reduced rate can be applied under specific circumstances

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