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The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2016

9th Edition

A practical cross-border insight into litigation and dispute resolution work

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EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Litigation & Dispute Resolution*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of litigation and dispute resolution.

It is divided into two main sections:

Two general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting litigation and dispute resolution work.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 49 jurisdictions, with the USA being sub-divided into 11 separate state-specific chapters.

All chapters are written by leading litigation and dispute resolution lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editor Greg Lascelles of King & Wood Mallesons LLP for his invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The International Comparative Legal Guide series is also available online at www.iclg.co.uk.

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has your jurisdiction got? Are there any rules that govern civil procedure in your jurisdiction?

The Macedonian legal system is a continental system. The Law on Civil Procedure that was enacted in 2005 governs civil procedure. This law has been changed and amended several times. The last amendment was made in October 2015.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The court system comprises 27 basic courts, four appellate courts and the Supreme Court of the Republic of Macedonia. An appeal is provided against a decision made by a basic court and is within the jurisdiction of an appellate court. Under the terms and conditions provided in the Law on Civil Procedure, extraordinary legal remedies may be submitted to the Supreme Court. The legal system does not recognise specialised civil courts. Narrow specialisation is provided within the courts in the form of specialised departments (e.g. the civil dispute department, commercial dispute department and labour dispute department).

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe?

The Law on Civil Procedure provides for two stages of proceeding at basic court, the preparatory hearing and main hearing. Appellate proceeding is in general non-public and the appellate court decides on non-public sessions, unless it finds it necessary to exercise certain evidence directly which is rather rare in practice. Supreme Court proceedings are non-public. Proceedings at basic courts usually take between eight to 12 months. For certain proceedings at basic courts like labour disputes, the Law on Civil Procedure provides for a term of six months for the court to decide. The Appellate court should decide upon appeal in a term of three months as per the law. However, this term usually takes between six months to 12 months in practice. The Supreme Court should decide in a term of eight months, per the law again, but an average time of deciding is between 12 months to 24 months.

1.4 What is your jurisdiction's local judiciary's approach to exclusive jurisdiction clauses?

The courts accept exclusive jurisdiction clauses subject to timely filed objections by a litigation party and if there is no exclusive jurisdiction of Macedonian courts determined by the law.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The Law on Court Taxes determines the amount of court fees. The Tariff of Macedonian Bar Association regulates attorney fees. A party that has lost a case should settle the procedural costs. There are no particular rules on costs budgeting except in case of *caution judicatum solvi*.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

There are no particular rules regarding funding litigation.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

Assignment of a claim is permissible under the rules of contractual law. In cases where a defendant has already provided their arguments against a lawsuit, then it is necessary to obtain their consent for a change of party in the proceedings on the basis of an assignment of a claim. However, the Law on Civil Procedure allows even assignors to continue to pursue the claim notwithstanding the assignment, if so agreed between the assignor and the assignee. There is no direct prohibition for a non-party to litigation proceedings to finance those proceedings.

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2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

There are no particular formalities to be applied prior to commencing a civil procedure except for claims based on unpaid invoices or a similar basis (initiation of such proceedings should be at the notary public), in case of claims for compensation of damages in case of insult (request for excuse should be sent to the potential defendant) and conducting a procedure for protection of rights of the employer in case of termination of employment.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Limitation periods apply in certain cases provided by different laws. These limitation periods depend on the type of claim. For example, claim for compensation of damages must be pursued in a term of three years from the date when a damaged party has learned about the damage and the entity / persons that have caused it, but in any case in a term of five years from the date when the damages have occurred, then a term of one year for utility expenses. Claims for unpaid leases or loans are subject to statute of limitation of three years. General terms for the statute of limitation for contractual claims is five years, and between legal entities for commercial claims is three years. In case of labour disputes for termination of employment or breach of other employment rights, the term for initiation of proceedings is 15 calendar days as of the day of receipt of the final decision of the employer or from the day of omission of the employer to make such decision.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

After the claimant has filed a claim to the court, the court will send the claim and enclosures to the defendant for submission of the statement of defence. Such delivery is organised either through the court bailiffs or via post. It can also be organised through the notary public. The date of service is the date when the defendant has received the claim or has rejected receipt. The court through the Ministry of Justice organises delivery of a claim to a foreign party through the Ministry of Justice and it usually takes six months.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Pre-action interim remedies are available. It could be a temporary injunction against the defendant for securing a monetary or non-monetary claim. It could be especially exercised as blocking of the defendant's asset including bank account or any other activity that could serve the purpose. The main criteria for the court to award such a temporary injunction are probability of the claim and existence of danger that the claim would be obstructed or non-compensable damage may occur.

3.3 What are the main elements of the claimant's pleadings?

The claim should be clearly determined, legal framework should be explained and relevant evidence should be submitted or proposed to be heard or reviewed by the court. However, providing relevant expertise together with the lawsuit (especially if the claim is monetary) is mandatory.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Pleadings can be amended, but only up to the first main hearing. There is an exception only with regard to the claim that is determining the claim by its nature.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/ claim or defence of set-off?

A statement of defence should contain relevant counter-arguments and facts supported by relevant evidence or proposal for evidence. The defendant can bring a counterclaim until the first main hearing only. The defendant can also bring a defence of set-off up until the contention in front of the basic court is closed.

4.2 What is the time limit within which the statement of defence has to be served?

The term for filing a statement of defence cannot be shorter than 15 calendar days or longer than 30 calendar days. Such term should be declared by the court in the invitation for submission of statement of defence. This term is shorter in labour disputes litigation.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

The defendant can always argue that it has no legitimacy to be the defendant in the case. However, this objection would be subject to an overall estimate of the case by the court. It can also invite a third party into the proceedings.

4.4 What happens if the defendant does not defend the claim?

If the defendant does not defend the case, the court may make a judgment due to not filing the statement of defence and it has enough arguments and evidence submitted by the claimant to make such a decision.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant can dispute the court's jurisdiction prior to entering into dispute of the claim. The court also looks into its jurisdiction on an *ex officio* basis.

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5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A third party can be joined into ongoing proceedings if it has an interested litigation party to which it joins to win the case.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

The Macedonian civil justice system allows for the consolidation of two sets of proceedings if such proceedings are between the same litigation parties.

5.3 Do you have split trials/bifurcation of proceedings?

The court may decide only on the basis of the claim first and then, after such decision becomes final, decide on the value of the claim (this would apply in case of a claim for compensation of damages).

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

There is an automatic allocation system before the civil courts in Macedonia.

Namely, the automatic allocation of court cases is performed by an automatic computer system for management of court cases. This system ensures each of the judges in the court are assigned an equal number of court cases under the criteria defined by the Supreme Court of the Republic of Macedonia.

After the legal document (lawsuit, counter-lawsuit, filing and others) is filed in the court archive, the officer authorised to perform the automatic distribution of cases by means of the automatic computer system for management of court cases, conducts an automatic distribution of the newly formed cases on a daily basis.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

According to the Law on Civil Procedure, the courts have significant management powers in civil litigations.

The president of the court council or the sole judge (depending on the type of the litigation and the value of the dispute) who deals with particular civil litigation shall: head the main hearing; interrogate the parties; exhibit evidence; give word to the members of the court council, to the parties, to their legal representatives and attorneys-in-fact; and shall announce the decisions of the court council.

Furthermore, it is the duty of the president of the council or the sole judge to ensure that the subject of the dispute is searched from all aspects, but thus the procedure is not postponed and if possible the contention is to be completed in a single hearing.

Also, the court shall not be bound to its decisions referring to managing the contention and a particular appeal shall not be allowed against the decision referring to the managing of the contention.

The parties are allowed to require certain legal action to be undertaken from the court such as: issuance of temporary injunctions; securing of litigation costs; exemption from paying procedural costs; adhering procedures; etc.

Also, the parties may object to certain measures undertaken by the president of the council referring to the managing of the contention. In such case, the court council shall decide upon such objection.

The cost consequences are usually ordered as costs in the cause and the same shall be determined at the end of the trial.

6.3 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

The Law on Civil Procedure provides that the court shall be obliged to complete the procedure without postponement with the minimum costs possible and it shall disable any abuse of the rights entitled to the parties of the procedure.

In this sense, the court is entitled to fine the parties and/or their attorney-in-fact with a monetary penalty in the amount from 700 EUR to 1,000 EUR for a natural person and with monetary penalty in the amount from 2,500 EUR to 5,000 EUR for a legal entity in case of abuse of the procedural rights.

6.4 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, in what circumstances?

When the court, during the course of the procedure, finds that a court in the Republic of Macedonia is not competent to resolve the dispute, it shall *ex officio* pronounce itself as non-competent to act upon the lawsuit, cancel the conducted activities in the procedure and dismiss the lawsuit, except in cases when the competence of a court in the Republic of Macedonia depends on the defendant's consent.

Furthermore, the lawsuit filed by a professional attorney in law, which is not understandable, is incomplete, is not signed and sealed or a sufficient number of copies have not been submitted, shall be dismissed by the court.

Also, the court may adopt a decision for dismissal of the lawsuit in case: another litigation is already ongoing upon the same claim; an absolute and final judgment has already been reached upon the same matter; a court settlement has been concluded for the subject of the case; or if there is no legal interest from the defendant to file a declaratory lawsuit.

6.5 Can the civil courts in your jurisdiction enter summary judgment?

The Law on Civil Procedure regulates the following types of summary judgments: judgment due to not filing response to a lawsuit; judgment due to absence and judgment without holding a contention.

If the defendant does not file a response to the lawsuit in the determined time period, the court shall reach a judgment by which it adopts the lawsuit claim (*judgment due to not filing response to a lawsuit*), should the following conditions be met:

1) the defendant was duly served with the lawsuit and the summons for giving response to the lawsuit;
2) the grounds of the lawsuit claim result from the facts listed in the lawsuit;

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3) the facts on which the lawsuit claim is based are not contrary to the evidence submitted by the plaintiff or to the generally known facts; and
4) there are no generally known circumstances from which the defendant, due to justified reasons, was prevented from filing a response to a lawsuit.

If the defendant in the response to the lawsuit does not abnegate the lawsuit claim, or does not appear at the pre-trial hearing until its closing, or at the first hearing for the main contention if there has been no pre-trial hearing or if he appears at these hearings but refuses to enter a contention, or is removed from the hearing, and does not abnegate the lawsuit claim, a judgment shall be reached by which the lawsuit claim is adopted (*judgment due to absence*), should the following conditions be met:

1) the defendant was duly summoned;
2) the plaintiff proposes reaching a judgment due to absence;
3) the defendant with the response to the lawsuit or with some other submission does not abnegate the lawsuit claim;
4) the grounds of the petition result from the facts stated in the lawsuit;
5) the facts on which the lawsuit claim is based are not contrary to the evidence the plaintiff has submitted or to the generally known facts; and
6) there are no generally known circumstances that would prevent the defendant from appearing at the hearing due to justified reasons.

If the defendant, in the response to the lawsuit, has admitted the decisive fact, regardless of the fact that he has abnegated the lawsuit claim, the sole judge, i.e. the president of the council can, without scheduling a hearing, reach a judgment, unless there are other obstacles to reach it (*judgment without holding a contention*).

6.6 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

The court will stop the procedure in case the plaintiff withdraws the lawsuit.

Also, the procedure shall be stopped when:

1) the party dies;
2) the party loses their litigation capacity, and has no attorney-in-fact in that procedure;
3) the legal representative of the party either dies or his representing authorisation terminates, and the party has no attorney-in-fact in the procedure;
4) the party – legal entity ceases to exist, i.e. the competent body decides in a legally valid manner to prohibit the work;
5) legal consequences from opening a bankruptcy procedure occur;
6) both parties request settlement of the dispute via mediation or in another manner;
7) there is war or other reasons appear that terminate the work of the court; and
8) in cases determined by another law.

Furthermore, beside the cases particularly mentioned above, the court may determine termination of the procedure, when:

1) the court chooses not to decide a legal issue that is relevant for the outcome of the case on its own upon; and
2) the party is in an area which is cut off from the court due to floods, other accidents and alike.

Also, the court can determine termination of the procedure when the decision upon the lawsuit claim depends on whether a misdemeanour or a crime prosecuted *ex officio* has been committed, who is the offender and whether he is liable, and particularly when suspicion arises that the witness or the expert witness has given a false statement or that the document used as evidence is false.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents?

Each party is obliged to state the facts and propose evidence on which it bases its claim or by which it abnegates the allegations and evidence of the opposing party.

When there is justified risk that it would not be possible to exhibit certain evidence or that its later exhibition would be hindered, the parties can require the court to exhibit such evidence before initiating the procedure.

The Law on Civil Procedure provides that the party or the third party who is required by the court to submit a document may not submit it if:

- it contains a business secret or another confidential trade or financial information;
- it is protected by the industrial property right: patent; industrial design; brand; mark of origin; and geographical mark;
- it is protected by particular professional authorisations or a business secret in accordance with the Law on Law Practice, the Law on Notary Practice, and the Law on Health Protection;
- it contains a state secret;
- there is a reasonable possibility that it is lost or destroyed;
- the access is restricted or prohibited by law; and
- the privacy of the party or of any other natural person might be violated by access to the document.

There are no special rules concerning the disclosure of electronic documents in Macedonia. However, pursuant to the Law on Data in Electronic Form and Electronic Signature, any data in electronic form cannot be rejected or cannot be deemed unacceptable only because it is in electronic form.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

A person, who would violate their duty to keep an official or military secret with their statement cannot be heard as witness until the competent body acquits them from the said duty.

Also, witnesses can refuse to testify before the court:

1) on what the party as its attorney-in-fact has entrusted him;
2) on what the party or another person has confessed to the witness as religious confessor; and
3) on facts the witness has acknowledged as an attorney at law, medical practitioner or when performing another profession or activity, if there is an obligation to keep secret everything acknowledged while performing the referred profession or activity.

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7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

The court can order a third party to submit a document only when such third party is obliged according to a law to show it or submit it, or when it refers to a document that, according to its content, is mutual for that person and the party that calls upon the referred document.

Before the court reaches a decision ordering the third party to submit the document, the court shall summon the third party to declare upon it. When the third party denies its duty to submit the document it holds, the court shall decide whether the third party is obliged to submit such document. When the third party denies that it holds the document, for the purpose of confirming this fact, the court can exhibit evidence. The legally valid determination on the obligation of a third party to submit the document can be enforced in line with the enforcement rules.

If the document is at a state body or a state administrative body or at a legal entity or natural person performing public authorisations and the party itself cannot affect the document to be handed in or shown, the court, on a proposal of the party, may obtain the referred document.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The court cannot exhibit evidence in the case that is not proposed by any party. However, if during the course of the procedure the court assesses that it is purposeful for resolving the dispute, it can remind the parties of their duty for stating decisive facts and proposing certain evidence. Please also see the explanation under question 7.1 above.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

There are no restrictions on the use of documents obtained by disclosure. Please also see the explanation under question 7.1 above.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

The basic rule of disclosure in civil proceedings in Macedonia is that each party is obliged to state the facts and propose evidence on which it bases its claim or by which it abnegates the allegations and evidence of the opposing party.

On the other hand, the facts that the party has admitted in court during the course of the litigation do not need to be substantiated, but the court can order them to substantiate such facts if it considers that the party, by admitting them, would approach to disposing with a claim with which otherwise it cannot dispose.

Also, the facts whose existence is presupposed by law shall not be substantiated, but it can be substantiated that such facts do not exist, unless otherwise determined by law.

In addition, generally familiar facts shall not be substantiated.

If based on the exhibited evidence, the court cannot for sure confirm certain facts, the existence of the fact shall be concluded by applying the rules on burden of proof.

8.2 What types of evidence are admissible, which ones are not? What about expert evidence in particular?

The Law on Civil Procedure, regulates the following evidence: inspection; documents; witnesses; expert witnessing; and hearing the parties.

However, the court shall exhibit expert witnessing as evidence if the party submits the professional finding and opinion of the expert witness in the lawsuit or in response to the lawsuit. If the party proposes expert witnessing as evidence, but renders possible that there are facts or circumstances for which it cannot obtain the professional finding and opinion, the court shall determine expert witnessing by a written order.

8.3 Are there any particular rules regarding the calling of witnesses of fact? The making of witness statements or depositions?

The expert witness shall be obliged to answer the court summons and to state their finding and opinion.

The expert witnesses shall be summoned by serving written summons stating their name and surname, occupation of the summoned, the time and place of appearance, the case they are summoned for and that they are summoned as expert witnesses. In the summons, the expert witness shall be reminded of the consequences of unjustified absence and the right to compensation of costs.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Does the expert owe his/her duties to the client or to the court?

As stated above, the court shall exhibit expert witnessing as evidence if the party submits the professional finding and opinion of the expert witness in the lawsuit or in response to the lawsuit. If the party proposes expert witnessing as evidence, but renders possible that there are facts or circumstances for which it cannot obtain the professional finding and opinion, the court shall determine expert witnessing by a written order.

In the order, the court shall state which facts and circumstances the expert witness performed and, on proposal of the party, shall determine to whom it assigns the expert witnessing.

The expert witness shall be obliged to answer the court summons and to state their finding and opinion.

However, the court shall acquit the expert witness from the duty to testify, on his request, due to reasons wherefore the witness can refuse to testify or to answer certain question. The court can acquit the witness from the duty to testify, on his request, due to other justified reasons as well. Acquittal from the duty to provide expert witnessing can be requested by an authorised employee in the body or organisation of the expert witness.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

The court shall decide upon the main issue and the secondary claims, by judgment (*general judgment*).

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If only a few of the most claims have reached a phase for adopting a final decision based on a contention, or if only part of the claim has reached a phase for adopting a final decision, the court can, in regard to such claims, i.e. for part of the claim, close the contention and reach a judgment (*partial judgment*).

If the defendant abnegates both the basis of the petition and the amount of the petition, and in regard to the basis the matter has reached a phase for adopting a decision, the court can, due to purposefulness, first reach a verdict on only the basis of the petition (*interlocutory judgment*).

If the defendant admits the claim before the closing of the main contention, the court shall, without further contending, reach a judgment by which the claim is adopted (*judgment based on admitting*).

If the plaintiff, before the closing of the main contention, waives the claim, the court shall, without further contending, reach a judgment by which the claim is dismissed (*judgment based on denying*).

In addition to this, the court may reach the summary judgments as explained above under question 6.5 (*judgment due to not filing a response to a lawsuit; judgment due to due to absence and judgment without holding a contention*).

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

The court shall decide on the litigation cost compensation, if the party has lodged such request to the court.

The party is obliged to specify the cost it seeks to be compensated for in the claim. Also, the party is obliged to lodge the claim for compensation of costs, at the latest at completion of the dispute preceding the decision on the costs, and if it comes to adopting a decision without a previous dispute, the party shall be obliged to lodge the claim for compensation of costs in the proposal for the court to decide.

The court shall decide upon the claim for compensation of costs in the judgment or in the decision whereby the procedure is closed. However, during the course of the procedure the court may, by way of a special decision, decide on the compensation of the costs only when the right to cost compensation does not depend on the main issue decision.

The party which completely loses the case shall be obliged to compensate the costs of the opposing party. If the party partially succeeds in the case, the court can, considering the success achieved, determine that each party shall cover its own costs or that one party shall reimburse a proportional part of the costs to the other party. Regardless of the outcome of the litigation, the party shall be obliged to compensate the opposing party for the costs caused by their fault or due to an occurrence on its part.

The court shall, when deciding which costs shall be reimbursed to the party, take into consideration only the costs necessary for the conduct of the litigation. Carefully assessing all circumstances, the court shall decide which costs were necessary as well as the amount.

9.3 How can a domestic/foreign judgment be recognised and enforced?

Foreign judgments will be recognised by Macedonian courts if the following conditions are met:

1. the party has provided the original or duly verified copy of the award to be provided;
2. the award is confirmed as final by the relevant authority;
3. the judgment is confirmed as enforceable by the relevant authority;
4. there was no violation of due process in the foreign procedure against the opposite party;
5. there is no exclusive jurisdiction of a Macedonian court for the subject of the dispute;
6. there is no agreement between the parties that a Macedonian court be competent for solving the dispute;
7. there is no *res judicata* in the substantive case; and
8. the judgment is not contrary to Macedonian public order.

The procedure for recognition is as follows:

1. a proposal for recognition and determination of enforceability of the foreign judgment is to be filed with the competent Macedonian court (on the basis of residence of the opposite party) against the opposite party;
2. the court will examine *ex officio* whether the above conditions for recognition have been met and may schedule a hearing;
3. if the above conditions for recognition have been met, the court will make a decision on the recognition and determination of enforceability of the foreign judgment;
4. the court will send the decision to the opposite party;
5. the opposite party has the right to file an opposition against the decision within 15 calendar days from the day of receipt of the decision;
6. a council of three judges will decide upon the opposition of the opposite party. If the court finds that the decision upon the opposition depends on certain disputable facts, then the court will decide upon a hearing;
7. the court will make a decision upon an opposition; and
8. any unsatisfied party has the right to file an appeal within eight days to the appellate court.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

A judgment can be appealed due to:

1. actual violation of the litigation procedure provisions;
2. wrong or incompletely determined factual condition; and
3. misapplication of the material law.

The judgment due to absence, not filing a response to a lawsuit or without holding a contention cannot be appealed because of a wrong or incomplete determined factual situation.

Judgments based on admitting and judgments based on denying can be appealed because of the essential violation of the litigation procedure provisions or because the statement for admitting, i.e. denying, has been given in a state of misdirection or under the influence of coercion or fraud.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

During the course of the entire procedure the parties can settle the dispute by way of court settlement. In this sense, the court is obliged to point the parties in the direction of the possibility for court settlement and to help them to conclude a settlement.

Also, in the disputes, where a mediation (as manner of solving the case in an out of court procedure) is allowed, the court is obliged to serve the parties with written instruction that the dispute can be

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resolved in a mediation procedure, along with the summons for the hearing on the main contention.

Furthermore, on the first hearing in a procedure for minor value disputes (disputes with a value that does not exceed 180,000 MKD or approximately 3,000 EUR and as of 1 February 2016 disputes with a value that does not exceed 600,000 MKD or approximately 10,000 EUR) the parties shall be obliged to declare whether they agree for the dispute to be resolved in a mediation procedure.

If the parties try to solve the case by way of mediation, the parties may require that the court procedure is stopped.

The latest changes in the Law on Civil Procedure that will start to apply on 31 January 2016, provide that in commercial disputes for a monetary claim whose value does not exceed 1,000,000 MKD or approximately 16,000 EUR and which should be initiated by a lawsuit before a court, the parties shall be obliged to try to resolve the dispute by mediation before filing the lawsuit.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

1.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

The methods of alternative dispute resolution that are available in Macedonia are arbitration and mediation.

Arbitration can be used as a method of dispute resolution if: the parties have agreed that any dispute upon their agreement is to be resolved through arbitration; and the dispute is related to the parties' rights by which the parties are free to dispose; and there is no exclusive competence of court for solving such dispute.

The arbitral award that is adopted in accordance with the applicable laws shall have the force of a legally valid judgment against the parties and shall represent an enforceable document.

The arbitration can be either domestic or foreign.

The parties may also resolve their disputes through mediation prior to commencing a court proceeding or in the course of a court procedure.

In case the parties have reached a settlement through mediation prior to initiation of court proceedings, and if they intend the settlement to represent an enforcement deed, the executed content of the settlement shall be solemnised by a notary public in written form in accordance with the law. If the mediation has been conducted by the court's referral, then the settlement that was reached shall act as the basis for a court settlement.

Alternative dispute resolution methods are not very developed in the Republic of Macedonia. Pursuant to the existing practice, the courts are still the most used dispute resolution forum. As of 1 February 2016, all commercial disputes that should be initiated with a lawsuit at the competent court amounting up to 1,000,000 MKD (approximately EUR 16,000) should be first submitted for mediation prior to commencement of civil litigation. Also, at the first hearing in the procedure for minor value disputes (disputes with a value that does not exceed 180,000 MKD or approximately EUR 3,000 and as of 1 February 2016 disputes with a value that does not exceed 600,000 MKD or approximately EUR 10,000) the parties shall be obliged to declare whether they agree for the dispute to be resolved in a mediation procedure. This practice is to be developed and the outcome will be known in years to come.

1.2 What are the laws or rules governing the different methods of alternative dispute resolution?

The laws governing the methods of alternative dispute resolution in Macedonia are:

- the Law on Mediation that regulates mediation as a method of alternative dispute resolution;
- the Law on International Commercial Arbitration of the Republic of Macedonia that regulates international arbitration in the Republic of Macedonia; and
- the Law on Civil Procedure which regulates the chosen courts, i.e. arbitration as a method of solving disputes without an international element.

1.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

The Law on International Commercial Arbitration of the Republic of Macedonia provides that its provision shall not apply to issues for which a law prescribes that the resolution of a particular dispute is within the exclusive competence of a court in the Republic of Macedonia.

The Law on Court Procedure provides that disputes without an international element on the rights at free disposal of the parties can be settled in the permanent chosen courts, founded by commercial chambers and other organisations anticipated by law, unless the law determines that certain types of disputes shall be exclusively decided by another court.

According to the Law on Mediation, mediation is defined as a manner of solving the disputes between the parties related to rights by which the parties can freely dispose of, unless the law determines that certain types of disputes shall be exclusively decided by a court or other public body.

1.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

According to the Law on International Commercial Arbitration of the Republic of Macedonia, the request of one of the parties filed to the court, prior to or during the arbitration procedure, to grant temporary protection measures, as well as the granting of such measure by the court, shall not be considered incompatible with the arbitration agreement.

Furthermore, if the parties have agreed to arbitration for the purpose of resolving a certain dispute, the court to which a lawsuit is filed for the same dispute and between the same parties, upon an objection of the defendant, shall declare itself to be without jurisdiction, shall abolish the activities taken in the procedure, and shall reject the lawsuit, unless it finds that the arbitration agreement is null and void, that it does not produce any legal effect, or it is impossible to be carried out. Such objection can be raised by the defendant before the court at the pre-trial hearing at the latest, and if the pre-trial hearing is not held, at the main hearing prior to contending on the main issue.

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In addition, in the disputes where a mediation (as manner of solving the dispute in an out-of-court procedure) is allowed, the court is obliged to serve the parties with, along with the summons for the hearing on the main contention, a written instruction that the dispute can be resolved in a mediation procedure. Furthermore, at the first hearing in the procedure for minor value disputes (disputes with a value that does not exceed 180,000 MKD or approximately EUR 3,000 and as of 1 February 2016 disputes with a value that does not exceed 600,000 MKD or approximately EUR 10,000) the parties shall be obliged to declare whether they agree for the dispute to be resolved in a mediation procedure.

The latest changes of the Law on Civil Procedure that will start to apply as of 1 February 2016 provide that in commercial disputes for a monetary claim whose value does not exceed 1,000,000 MKD or approximately 16,000 EUR and which should be initiated by a lawsuit before a court, the parties shall be obliged, before filing the lawsuit, to try to resolve the dispute by mediation.

1.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

The arbitral award reached in accordance with the law shall produce the same legal effect as a final and enforceable court judgment.

According to the Law on Civil Procedure, the award reached by the chosen court can be annulled upon a lawsuit of the party to the competent court under the terms and conditions provided thereto.

Also, the Law on International Commercial Arbitration of the Republic of Macedonia provides that a lawsuit for annulment of the arbitral award may be filed with the competent court under certain terms and conditions determined by that law.

The annulment may be requested within a certain time period.

Foreign arbitral awards may be recognised and enforced in Macedonia in accordance with the provisions of the Law on International Private Law and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards from 1958.

In case the parties have reached a settlement through mediation prior to initiation of court proceedings, and if they intend the settlement to represent an enforcement deed, the executed content of the settlement in written form shall be solemnised by a notary public in accordance with the law. However, if mediation has been conducted by the court's referral, then within three days as of the day the settlement was reached the mediator is obliged to provide the court with the executed version of the settlement, which shall act as the basis for a court settlement.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in your jurisdiction?

The only permanent dispute resolution institution in Macedonia is the Permanent Court of Arbitration within the Commercial Chamber of Macedonia.

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