



Mergers & Acquisitions

2017

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Editors:

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Macedonia

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Overview

The legal framework governing mergers and acquisitions (M&A) in the Republic of Macedonia comprises laws defining corporate and contractual steps of the process, as well as the reporting obligations of participating companies.

The Law on Trade Companies, published in 2004 (Company Law), and the Takeover Law, published in 2013 (Takeover Law), are recognised as primary sources of law relating to M&A.

The Company Law stipulates the general conditions, processes and procedures and other forms of company reorganisation, applicable to all types of companies.

Under the Company Law, M&A are carried out either as a share purchase deal, on the basis of a notarised share purchase agreement, or as a regulated reorganisation on the basis of the merger agreement entered in a form of notarial deed, following strict corporate steps and disclosure requirements. The change of ownership as a consequence of an M&A transaction is subject to registration in the trade registry maintained by the Central Registry of the Republic of Macedonia.

A revised Takeover Law was passed in May 2013, regulating the takeover procedure applicable to companies that issue securities listed on the Macedonian Stock Exchange and securities issued by joint stock companies with special reporting requirements pursuant to the Law on Securities. The provisions of the Takeover Law apply for a period of one year after a company ceases to meet these criteria. The control takeover threshold that triggers a mandatory takeover bid is acquisition of more than 25% of the voting shares in a company. The additional takeover thresholds are acquisition of an additional 5% of the voting shares of the target company within a period of two years of the successful takeover, and the highest takeover threshold is 75% of the voting shares.

The provisions of the Takeover Law do not apply to purchase of shares owned by the Republic of Macedonia, including shares owned by beneficiaries of funds from the State Budget, agencies, funds and public companies and other institutions and legal entities performing activities of public interest established by state-owned assets.

In addition, the Securities Law, passed in 2005, regulates the manner and conditions for issuance and trading in shares, and sets the general legal framework of the capital market and the licensed market participants, disclosure obligations of joint-stock companies with special reporting obligations, and other issues with regard to shares.

The Macedonian Security and Exchange Commission (SEC) and the Commission for Protection of Competition (CPC) are the principal regulators related to M&A transactions.

The SEC is established as an autonomous and independent regulatory body with public authorisations prescribed by the Securities Law, the Law on Investment Funds and the Takeover Law. It extends the regulatory framework with secondary legislation relative to M&A, and in particular the acquisitions of listed and reporting companies, to which Takeover Law applies.

The CPC is a state body with the status of a legal entity, independent in its work and decision-making process within the competencies provided by the Law on Protection of Competition. It controls the application of the provisions stipulated in the Law on Protection of Competition, and monitors and analyses the conditions on the market to the extent necessary for the development of free and efficient competition. The CPC, *inter alia*, gives clearance in cases of mergers and acquisitions that meet the regulatory thresholds.

The publicly available information published on CPC's website show the following statistics:¹

- 26 merger notifications were reviewed and approved by the Commission for Protection of Competition in the period from January until the end of November 2016, of which:
 - four transactions involved Macedonian companies directly, and the relevant M&A were performed in the Republic of Macedonia; and
 - 22 M&A were performed outside of the Republic of Macedonia and between foreign companies.

The CPC clearances involved various sectors, including but not limited to the business premises rental sector, banking sector, travel services sector, etc. Most of the transactions performed in the Republic of Macedonia were acquisitions of shares by way of execution of a notarised share purchase agreements, in accordance with the Law on Trade Companies.

The trend, pursuant to the statistical data of the CPC, shows an increase of transactions relative to the whole of 2015, when the CPC reviewed and approved:

- eight M&As performed in the Republic of Macedonia; and
- 29 M&As performed outside the Republic of Macedonia.

Significant deals and highlights

The mergers that occurred in the business premises rental sector and the banking sector in 2016 are the most significant deals to have taken place in 2016 in the Republic of Macedonia.

Acquisition of Balfin MK DOOEL Skopje by Hystead Limited

Hystead Limited (Hystead), a UK company controlled by Hyprop Investments Limited (Hyprop), has acquired Balfin MK DOOEL Skopje, the owner of the Skopje City Mall, the largest mall in the capital city of Macedonia – Skopje. Hystead purchased 100% shareholding in Balfin MK DOOEL Skopje from Balfin Finance BV, Amsterdam for a purchase consideration of €92 million. Pieter Prinsloo, Hyprop's CEO, said: "Our objective is to own a high quality shopping centre portfolio in South-Eastern Europe. Macedonia is a small, open economy which has taken great strides to strengthen their economy over the last decade. The World Bank estimates Macedonia's real GDP growth of 3.3% for 2017. Skopje City Mall's high occupancy, promising footfall, balanced tenant mix and expansion opportunities ensure that it is an attractive investment. The mall's current management team will remain, to ensure the retention of critical skills. Our expectation is that the investment will enhance Hyprop's income distributions."

Acquisition of Alpha Bank AD Skopje by Silk Road Capital AG²

Silk Road Capital AG has acquired direct control over Alpha Bank AD Skopje by purchasing 100% of its shares.

Other notable M&A transactions in the period from January until the end of November 2016 include:

- acquisition of Amadeus Slovenia and NMC DOO Skopje by Amadeus IT GROUP S.A.;³ the relevant market in this transaction is the market for services related to the searching, payment, reservations, booking, issuance of tickets and other procedural services in real time provided by travel providers and tourist agencies regarding air tickets;
- acquisition of AD AGROKUMANOVO Kumanovo⁴ by METAL-NET DOO export-import Kumanovo and KVALITET-PROM export-import Kumanovo, affecting the market for wholesale of metal goods, pipes, devices and equipment for plumbing and central heating;
- acquisition of certain assets, i.e. production capacities, of Visteon MACEDONIA ELECTRONICS LTD by Delphi Hungary Autóalkatrész Gyártó Korlátolt Felelősségű Társaság;⁵ the relevant market in this transaction is the market for production of electrical and electronic equipment for motor vehicles (components of printed silicon circuits);
- acquisition of ADIENT SEATING DOOEL Stip (formerly JOHNSON CONTROLS STIP DOOEL Stip) and ADIENT AUTOMOTIVE DOOEL Strumica (formerly JOHNSON CONTROLS AUTOMOTIVE STRUMICA DOOEL Strumica) by Adient Global Holdings Ltd, an intra-group acquisition in the automotive sector; and
- accession of Blizoo Media and Broadband DOOEL Skopje into ONE.VIP DOO Skopje (a Telecom Austria subsidiary) driven by, and implemented for, the improvement of the range and quality and availability of telecommunications services and provision of advanced communications facilities and services within the Republic of Macedonia.

Key developments

Notably, M&A transactions are governed by the size of the market. Republic of Macedonia, being a small market, has limited M&A opportunities, leading to limited M&A transactions. In addition, the interest in acquisitions in the financial, real estate and telecom sector is declining, leaving a number of opportunities without completion.

The interest of international financial institutions has shifted from equity investments into increasing their loan portfolio on the market. Also, international finance institutions have several divestments in the financial sector.

The role of institutional investors in M&A transactions is not expected to increase. Pension funds tend to diversify their portfolio between investments in state securities and securities tradeable on local and foreign markets issued by listed companies, and private equity funds are not sufficiently developed.

Though there was an increase in legislation activity, none of the amendments made in the governing laws will affect the M&A market.

The Law on Technological Industrial Development Zones and the benefits for investors it provides have achieved increased investment activity, resulting in the presence of international companies in the technological industrial development zones. Indirectly, this has affected the M&A market by several transactions with companies operating in these zones.

Industry sector focus

There is an expansion of activity in the following sectors:

- the business premises rental sector; and
- the banking sector.

Business premises rental sector

The expansion of activities in the business premises rental sector is due mainly to the increased interest of foreign companies in starting businesses in the Republic of Macedonia. In the past couple of years, the number of foreign companies opening IT companies and information (call) centres in the Republic of Macedonia has significantly increased. These businesses, as well as companies in the telecommunications sector, are mostly interested in renting business premises. There is a 13.3% increase in leased business premises in comparison to 2014.

2016 inbound investments⁶

The rate of foreign direct investments through the first three quarters of 2016 has increased compared to the same rate in 2015. The majority of foreign investment in the first three quarters 2016 was in the sector for manufacturing of motor vehicles and other transport equipment, as well as in the financial intermediation services sector.

Most inbound foreign direct investments in Macedonia originated from Germany, Turkey and Slovenia.

The year ahead

The parliamentary elections held in December 2016 and the political situation will most likely adversely affect the volume of M&A transactions. Despite the elections, it is expected that the economy in 2017 will continue its steady growth between 3–4% (depending on the institution making the economic analysis and prognosis).

Low taxation rates remain attractive for investors and may lead to particular interest for acquisitions in the hospitality and tourism sectors, as well as in the information and communication technology sector. M&A opportunities remain in the banking and insurance sector, energy generation, food industry and retail markets.

Government incentives, new export-oriented facilities, labour market and solid credit support are expected to maintain the assumption of economic growth, thus enabling stability.

Stock market trading may be boosted by the creation of SEE Link DOO by the Macedonian Stock Exchange, the Bulgarian Stock Exchange and the Zagreb Stock Exchange, a company established for the purposes of facilitating order-routing and direct processing of trade deals between the markets in Macedonia, Bulgaria and Croatia. The project is an important first step in regional integration efforts, and should be seen as a transitional development to build upon, rather than a complete or final optimal solution. The goal is to develop the order-routing vehicle that has the potential to build sufficient critical mass by increasing trading volumes and improving liquidity in the regional stock exchanges. It has triggered interest by other stock exchanges in the region, and the Slovenian Stock Exchange and Belgrade Stock Exchange have joined this platform.

Nevertheless, Macedonia is not immune to external economic environmental influence, and the weakening of global growth in 2016 may have a negative effect on the Macedonian economy.

Overall, it is expected that the Macedonian M&A market will follow the trends in the south-east Europe region.

* * *

Endnotes

These statistics are not comprehensive and are based only on the information available from the CPC. They do not include all M&A transactions, but only those that triggered the notification requirements. There is no official record of all M&A transactions.

1. http://www.hyprop.co.za/news_article.php?articleID=4152.
2. <http://www.kzk.gov.mk/mak/zapis1.asp?id=1557&kategorija=9>.
3. <http://www.kzk.gov.mk/mak/zapis1.asp?id=1543&kategorija=9>.
4. <http://www.kzk.gov.mk/mak/zapis1.asp?id=1507&kategorija=9>.
5. <http://www.kzk.gov.mk/mak/zapis1.asp?id=1503&kategorija=9>.
6. <http://www.nbrm.mk/?ItemID=50E8D09D05661543BABD2F9F7E7A5D33>.

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Kristijan Polenak, attorney at law, admitted to the Macedonian Bar Association, 1997, is a managing partner of Polenak Law Firm and heads the Banking and Finance Team.

His 20-year experience in various projects, mostly focused on privatisations, M&A, and financial arrangements of IFIs and international banks, as well as his corporate experience, give him an excellent track record and know-how for transactions involving financing structures.

His experience in several industries, combined with his banking experience and various independent corporate positions in companies (including serving as member and Chairman of the Board of Directors of the Macedonian Stock Exchange; Board member in a still processing plant; a zinc and lead smelter; a brokerage house; and an insurance company) and banks (including his current participation as an independent member of Supervisory Board in a local bank), represent a solid basis for taking important roles as legal advisor to financial institutions as well as companies in various industries.

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Tatjana Shishkovska, attorney at law, admitted to the Macedonian Bar Association, 2009, is a junior partner of Polenak Law Firm and co-chair of the Corporate Law and Corporate Governance Team.

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