



Mergers & Acquisitions

2018

Seventh Edition

Editors:

Michael E. Hatchard & Scott V. Simpson

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Macedonia

Kristijan Polenak & Tatjana Shishkovska
Polenak Law Firm

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 the 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. The takeover rules are mandatory for share transactions in companies listed on the Macedonian Stock Exchange and for transfers of 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 threshold that triggers a mandatory takeover bid is more than 25% of the voting shares in a company. The additional takeover thresholds are each 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 the CPC's website show the following statistics:¹

Thirty-six merger notifications were reviewed and approved by the CPC in the period from January until the end of August 2017, of which:

- only two transactions involved Macedonian companies directly, and the relevant M&A were performed in the Republic of Macedonia; and
- 34 M&A were performed outside of the Republic of Macedonia and between foreign companies.

No data are published on the CPC's website for any M&A which took place between the end of August 2017 until the end of 2017.

The CPC clearances involved various sectors, including but not limited to the TV media sector, IT sector, sector related to trade with medicine products, construction sector, the telecommunications sector, etc. Both of the transactions performed in the Republic of Macedonia were acquisitions of shares by way of execution of 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 in the total number of transactions relative to the whole of 2016, when the CPC reviewed and approved:

- four M&As performed in the Republic of Macedonia; and
- 22 M&As performed outside the Republic of Macedonia.

However, although there was a rise in the total number of M&A transactions which were notified to the CDC, only two of them were completed in the Republic of Macedonia, one of which is of low significance.

Significant deals and highlights

The most significant M&A transaction that has taken place in the Republic of Macedonia in 2017 is in the sector related to the issuance and administration of credit cards.

Acquisition of Diners Club International MAK DOOEL Skopje by Erste Card Club DOO

Erste Card Club DOO, a Croatian company, by way of entering into a share purchase agreement, has acquired from SKB Capital S.A. of Luxembourg 100% direct ownership of the companies Diners Club International Belgrade DOO, Diners Club International MAK DOOEL Skopje, and indirect ownership of the companies Diners Club International Montenegro DOO and DC Travel from Belgrade. The transactions relating to the acquisition of the companies, including Diners Club International MAK DOOEL Skopje, were finalised in the first quarter of 2017. *“As the largest issuer in the region, Erste*

Card Club DOO will bring new payment solutions from the products of Diners Club on the territory of Serbia, Montenegro and Macedonia and therefore will enrich the offer on the markets in the three countries...” stated Mr. Obrad Simovikj who, in the five years following the finalisation of the transaction, will be appointed as chairman of the supervisory board of DCI Belgrade.²

The other M&A transaction in the period from January until the end of August 2017 was in the sector of housing and gardens, and the same included the acquisition of 100% of the shares of the Company BRIKO MAKEDONIJA DOOEL Skopje for production, trade and services, by BRIKO KOSOVO SH.P.K., by way of entering into a notarised share purchase agreement.

Key developments

The significant decrease in M&A transactions in 2017 arose mostly as a result of the political crisis which has been ongoing in the country for the past two years, culminating in the first half of 2017. Namely, the failure to establish a new government from the beginning of December 2016 until the end of May 2017, accompanied by protests and political tension which dominated everyday life in the country during this period, have affected foreign investors’ decisions to undertake any large investments in the Republic of Macedonia.

An unproductive period of an additional four months after the appointment of a new government followed, while the government settles and selects new management in most of the institutions relevant for investments and the business sector as a whole. The change of the political scenery represented by a new government was also relevant to M&A in 2017, in particular in relation to the need to identify stability and certainty in the business environment. Nearing the end of the year, the effect of the political crisis slowly faded, and the potential of the Macedonian market is once again being noticed by international companies.

Notably, M&A transactions are frequently triggered by the attractiveness of the market, and specifically its size. In this sense, the Republic of Macedonia, being a small market, has relatively limited M&A opportunities.

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 local 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. However, regional private equity and investment funds may find interest in the opportunities on the Macedonian market, though none has stepped in, for the reasons of instability and small size.

For a large part of 2017, the Parliament was not in session and no new legislation was adopted during this period. In the second part of 2017 a significant amount of legislation was adopted, although none of it is expected to affect the M&A market.

The Law on Technological Industrial Development Zones (TIDZ) and the benefits for investors they provide, has garnered increased investment activity, resulting in the presence of international companies in the zones. Indirectly, this has affected the M&A market via several transactions with companies operating in these zones. However, the political crisis in 2017 affected these types of investments as well, and no new investments were made in TIDZ.

Industry sector focus

There has been a significant decrease in foreign direct investment (FDI) in the Republic of Macedonia in all sectors, and the most significant increase can be seen in the Mining & Quarrying sector.

Mining & Quarrying sector

The largest part of FDI was made in the Mining & Quarrying sector: in the first three quarters of 2017, the total amount of FDI in this sector was worth €27.84m. This increase is due to the large number of concessions granted by the Government of the Republic of Macedonia for exploitation of minerals in the country in the years prior to 2017. Large numbers of such concessions have started or are in the process of starting with exploitation of minerals.

2017 inbound investments³

There has been a general decrease of investments in the Republic of Macedonia in 2017 in all sectors. Namely, in comparison to 2016 when FDI totalled €338.43m, FDI in 2017 reached only €45.65m, which is more than seven times lower than in 2016.

Most inbound foreign direct investments in Macedonia originated from Austria, Germany, St. Vincent & the Grenadines and Luxembourg.

The year ahead

The political crisis which affected investments in Macedonia during 2017 has now ended, and significant political fluctuations which may affect investment in Macedonia are not expected to happen in the coming years.

The political crisis affected economic growth in Macedonia, being 1.5% at the end of 2017, which is a significant decrease in comparison to 2016 when economic growth was 2.4%. However, it is expected that this negative trend will end, and economic growth of 3–4% is foreseen in 2018 (depending on the institution making the economic analysis and prognosis).

Low taxation rates still remain attractive for investors and may lead to particular interest in acquisitions in the hospitality and tourism sectors, as well as in the information and communication technology sector. The opportunities in various sectors, including telecommunication, financial institutions, IT, mining, retail, real estate and the health sector are burgeoning and it is expected that the near future will see increased investments in Macedonia and revived M&A.

Government incentives, new export-oriented facilities, labour market growth and solid credit support are expected to maintain the assumption of economic growth in Macedonia, thus enabling stability. Moreover, the revival of the accession processes to NATO and the EU will consolidate the long overdue stability.

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

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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.

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1. http://www.kzk.gov.mk/mak/zapis_decision.asp?id=9.
 2. <http://faktor.mk/erste-card-club-doo-go-prezema-rabotenjeto-na-diners-club--vo-srbija-makedonija-i-vo-crna-go>.
 3. <http://www.nbrm.mk/ns-newsarticle-direktni-investicii-vo-republika-makedonija---metodologija-bpm6.nspX>.

**Kristijan Polenak****Tel: +389 2 3114 737 / Email: kristijan@polenak.com**

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 the 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.

**Tatjana Shishkovska****Tel: +389 2 3114 737 / Email: tsiskovska@polenak.com**

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.

She has 10 years of experience in various projects, mostly focused on M&A, corporate law, project finance, cross-border secured transactions, and financial arrangements of IFIs and international banks, which with her corporate experience gives her an excellent track record and know-how for transactions involving financing structures.

Polenak Law Firm

Orce Nikolov 98, 1000 Skopje, Macedonia

Tel: +389 2 3114 737 / Fax: +389 2 3120 420 / URL: www.polenak.com.mk

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