ICLG

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2017

10th Edition

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

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General Chapter:

1	**Cybersecurity** – Greg Lascelles & Salah Mattoo, Covington & Burling LLP		1

Country Question and Answer Chapters:

2	**Australia**	Clayton Utz: Colin Loveday & Scott Grahame	6
3	**Austria**	Oblin Melichar: Dr. Klaus Oblin	15
4	**Belarus**	Sysouev, Bondar, Khrapoutski SBH Law Office: Timour Sysouev & Alexandre Khrapoutski	22
5	**Brazil**	Souto, Correa, Cesa, Lummertz & Amaral Advogados: Jorge Cesa & Ronaldo Kochem	33
6	**British Virgin Islands**	Lennox Paton: Scott Cruickshank & Matthew Freeman	40
7	**Canada**	Blake, Cassels & Graydon LLP: Ryder Gilliland & Daniel Styler	54
8	**Costa Rica**	Axioma Estudio Legal: Andre Vargas Siverio	62
9	**Czech Republic**	Gürlich & Co.: Richard Gürlich & Kamila Janoušková	69
10	**Denmark**	Kammeradvokaten, Law Firm Poul Schmith: Kasper Mortensen & Henrik Nedergaard Thomsen	76
11	**Ecuador**	Quevedo & Ponce: Alejandro Ponce Martínez	84
12	**England & Wales**	Covington & Burling LLP: Greg Lascelles & Salah Mattoo	90
13	**Finland**	Waselius & Wist: Tanja Jussila	102
14	**Germany**	ARNECKE SIBETH Rechtsanwälte Steuerberater Partnerschaftsgesellschaft mbB: Dr. Robert Safran & Ulrich Steppler	110
15	**Ghana**	Sam Okudzeto & Associates: Esine Okudzeto & Rosemary Owusu	119
16	**Indonesia**	Makarim & Taira S.: Alexandra Gerungan & Raditya Anugerah Titus	126
17	**Ireland**	McCann FitzGerald: Seán Barton & Megan Hooper	133
18	**Japan**	Nagashima Ohno & Tsunematsu: Koki Yanagisawa	142
19	**Korea**	Bae, Kim & Lee LLC: Kap-You (Kevin) Kim & John P. Bang	150
20	**Luxembourg**	Loyens & Loeff Luxembourg S.à.r.l.: Véronique Hoffeld	157
21	**Macedonia**	Polenak Law Firm: Tatjana Popovski Buloski & Aleksandar Dimic	164
22	**Nigeria**	Kentuadei Adefe, Legal Practitioners, Mediators & Arbitrators: Kentuadei Adefe & Ottah Nelson	174
23	**Poland**	Kubas Kos Gałkowski: Paweł Sikora & Wojciech Wandzel	183
24	**Portugal**	Rogério Alves & Associados – Sociedade de Advogados, R.L.: Rogério Alves	191
25	**Romania**	Zamfrescu Racoţi & Partners Attorneys at Law: Cosmin Vasile & Alina Tugearu	199
26	**South Africa**	Cliffe Dekker Hofmeyr Inc: Pieter Conradie & Anja Hofmeyr	207
27	**Spain**	BROSETA: Patricia Gualde & Alfonso Carrillo	215
28	**Sweden**	Norburg & Scherp Advokatbyrå AB: Fredrik Norburg & Erika Finn	225
29	**Switzerland**	Bär & Karrer Ltd.: Matthew Reiter & Simone Burlet-Fuchs	232
30	**Turkey**	Gün + Partners: Pelin Baysal & Beril Yayla Sapan	240
31	**Turks & Caicos Islands**	Kobre & Kim: Tim Prudhoe & Alexander Heylin	248
32	**United Arab Emirates**	Hamdan AlShamsi Lawyers & Legal Consultants: Hamdan Alshamsi	255
33	**USA – California**	Skadden, Arps, Slate, Meagher & Flom LLP: Jason D. Russell & Hillary A. Hamilton	262
34	**USA – Delaware**	Potter Anderson & Corroon LLP: Jonathan A. Choa & John A. Sensing	270
35	**USA – Florida**	Richman Greer, P.A.: Leora B. Freire & Leslie Arsenault Metz	278
36	**USA – Georgia**	Holland & Knight LLP: Laurie Webb Daniel & Harold T. Daniel, Jr.	285
37	**USA – Illinois**	Drinker Biddle & Reath LLP: Justin O. Kay	294

Continued Overleaf →

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Country Question and Answer Chapters:

38	**USA – New Jersey**	Drinker Biddle & Reath LLP: Andrew B. Joseph & William A. Wright	303
39	**USA – New York**	Drinker Biddle & Reath LLP: Clay J. Pierce & Marsha J. Indych	310
40	**USA – Pennsylvania**	Drinker Biddle & Reath LLP: Michael W. McTigue Jr. & Jennifer B. Dempsey	319
41	**USA – Texas**	Jackson Walker LLP: Retta A. Miller & Devanshi M. Somaya	326
42	**USA – Washington, D.C.**	Miller & Chevalier Chartered: Brian A. Hill & John C. Eustice	333

EDITORIAL

Welcome to the tenth 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:

One general chapter. This chapter provides an overview of Cybersecurity, particularly from a UK perspective.

Country question and answer chapters. These provide a broad overview of common issues in litigation and dispute resolution in 41 jurisdictions, with the USA being sub-divided into 10 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 Covington & Burling 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.com.

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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, which 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. civil dispute department, commercial dispute department and labour dispute department). There are courts which specialise in criminal cases only or basic courts having a special department for criminal cases.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

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 and 12 months. For certain proceedings at basic courts like labour disputes, the Law on Civil Procedure provides for a six-month term 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 and 12 months in practice. The Supreme Court should decide in a term of eight months, per the law again, but the average time for a decision is between 12 and 24 months.

According to the Macedonian laws, certain types of disputes (such as disputes regarding employment relations; industrial property and copyright and related rights; family relations; hindering of possession, bankruptcy procedures; etc.) are considered as urgent and, in these cases, the courts decide in a shorter period of time. For example, the first instance procedure in the disputes related to the bankruptcy procedures should be completed within 60 days and the second instance procedure should be completed within 30 days.

Furthermore, the procedure in front of the first instance court in labour disputes has to be completed in a period of six months as of the day of filing the lawsuit. In the same disputes, the court of second instance shall be obliged to adopt a decision upon an appeal filed against the decision of the court of first instance in a period of 30 days as of the day of receipt of the appeal, i.e. in a period of two months, in case contention is held with the court of second instance.

The procedure in front of the first instance in disputes related to hindering of possession has to be completed in a period of six months as of the day of filing the lawsuit. The second instance court in these type of disputes should reach the second instance decision in a period of 30 days as of the day of receipt of the appeal.

Procedures based on collection of monetary claims must end within a period of three months.

The second instance court shall be obliged, in the procedure regarding an appeal against the decision of the first instance court due to a monetary claim, to reach a decision within a period of 30 days.

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 the 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 *cautio judicatum solvi*.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

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 change of a 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. Furthermore, pursuant to the Law on Obligations, a disputable right/claim may be subject to purchase agreement. However, an agreement for purchase of a disputable right by an attorney-at-law or another order recipient (to whom realisation of such right has been dedicated), or who would agree his/her participation in division of an awarded amount, would be null and void.

There is no direct prohibition on a non-party to litigation proceedings financing those proceedings.

1.8 Can a party obtain security for/a guarantee over its legal costs?

According to the Law on International Private Law, when a foreign national or a stateless person who is not domiciled in the Republic of Macedonia files a lawsuit before the courts of the Republic of Macedonia, he/she shall, at the defendant's request, provide the defendant a security for the payment of the litigation costs. The defendant should file such request not later than the preliminary court hearing, and in case of absence of preliminary court hearing, at the first hearing for the trial and prior to pleading to the merits of the plaintiff's claim. The security for the litigation costs shall be deposited in cash; however, the court may allow another appropriate form of security as well.

The defendant shall not be entitled to request security for litigation costs if:

1. in the state of which the plaintiff is a national, nationals of the Republic of Macedonia are not bound to deposit security of litigation costs;
2. the plaintiff was granted asylum in the Republic of Macedonia;
3. the litigation claim involves a plaintiff's request under its employment relations in the Republic of Macedonia;
4. the litigation claim is lodged in a matrimonial dispute or in a dispute related to establishing or contesting of paternity or maternity, or in a dispute related to legally required alimony; and
5. the dispute is related to a promissory note, checks, a counter lawsuit claim or issuance of a payment order.

In case of doubt whether the nationals of the Republic of Macedonia are bound to deposit security of litigation costs in the state of which the plaintiff is a national, the Ministry for Justice of the Republic of Macedonia should provide information on this issue.

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: (i) for claims based on unpaid invoices or a similar basis (initiation of such proceedings should be at the notary public); (ii) in case of claims for compensation of damages in case of insult (request for excuse should be sent to the potential defendant); (iii) in case of conducting a procedure for protection of rights of the employer in case of termination of employment; and (iv) in commercial disputes for a monetary claim whose value does not exceed 1,000,000 MKD or approximately EUR 16,000 and which should be initiated by a lawsuit before a court, the plaintiff is obliged to try to resolve the dispute by mediation before filing the lawsuit.

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. A general term 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 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, the legal framework should be explained and the relevant evidence should be submitted or proposed to be heard or reviewed by the court. However, providing relevant expertise together with the lawsuit 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. After serving the lawsuit to the defendant, consent from the defendant is necessary in order to alter the pleading, but even when the defendant opposes, the court can approve alteration should it consider that purposeful for the final decision upon the relations between the parties.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

According to the Law on Civil Procedure, the plaintiff can withdraw the pleading without the consent of the defendant, before the defendant enters contention on the main issue.

The pleading can also be withdrawn later, until the closing of the main contention in front of the first instance court, if the defendant agrees to it. If the defendant does not declare upon it within a period of eight days as of the day he has been notified of the withdrawal of the pleading, it shall be considered that he consents the withdrawal.

The withdrawn pleading shall be considered as if it has not been filed, and it can be filed again.

As an exception, in disputes for marriage divorce, the plaintiff may withdraw the pleading without consent from the defendant until the closing of the main contention in front of the first instance court and with consent from the defendant until the dispute is finally solved.

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 up until the first main hearing only. Also, the defendant can 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.

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 being filed at 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 be undertaken from the court such as: issuance of temporary injunctions; securing of litigation costs; exemption from paying procedural costs; adhering to 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 EUR 700 to EUR 1,000 for a natural person and with monetary penalty in the amount from EUR 2,500 to EUR 5,000 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, at what stage and 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 where the competence of a court in the Republic of Macedonia depends on the defendant's consent.

Furthermore, a lawsuit filed by a professional attorney at 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;
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 by which the defendant, due to justified reasons, was prevented from filing 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 reaching 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 if:

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 occur from opening a bankruptcy procedure;
6) both parties request settlement of the dispute via mediation or in another manner;
7) there is a war, or other reasons arise 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; and
2) the party is in an area which is cut off from the court due to floods, other accidents and the like.

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 or acceptable practices for conducting e-disclosure, such as predictive coding?

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; or
- 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 nor practices for conducting e-disclosure, such as predictive coding.

However, pursuant to the Law on Data in Electronic Form and Electronic Signature, any data in electronic form cannot be rejected or 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 with their statement would violate their duty to keep an official or military secret, cannot be heard as witness, until the competent body acquits him 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.

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 that is not proposed by any party in the case. 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 shall not be substantiated, but the court can order them to substantiate such facts if it considers that by admitting them the party would approach 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 confirm for sure 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 witnessing 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 of the duty to testify, on his request, due to reasons wherefore the witness can refuse to testify or to answer certain questions. 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 a judgment (general judgment).

If only several 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. 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 by the closing of the main contention, the court shall, without further contention, 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 summary judgments as explained above under question 6.5 (judgments due to not filing a response to a lawsuit; judgment 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 decision on the main issue.

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 of the costs.

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 conditions; 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.

The judgment based on admitting and the judgment 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 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 a written instruction that the dispute can be 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 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.

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

In commercial disputes for a monetary claim whose value does not exceed 1,000,000 MKD or approximately EUR 16,000 and which should be initiated by a lawsuit before a court, the plaintiff is obliged to try to resolve the dispute by mediation before filing the lawsuit.

II. ALTERNATIVE DISPUTE RESOLUTION

1 General

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 on their agreement is to be resolved through arbitration; the dispute is related to the parties' rights by which the parties are free to dispose; and there is no exclusive competence of the 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. All commercial disputes 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 600,000 MKD or approximately EUR 10,000) the parties are obliged to declare whether they agree for the dispute to be resolved in a mediation procedure.

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 resolving disputes between the parties related to rights by which the parties can freely dispose, 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 an 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.

In addition, in 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, 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 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.

In commercial disputes for a monetary claim whose value does not exceed 1,000,000 MKD or approximately EUR 16,000 and which should be initiated by a lawsuit before a court, the plaintiff is 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 fled 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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