

## COMPANY LAW

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## I. COMPANY LAW

### A. Legal Framework

**1. What protection is provided to shareholders under your country's legislation (e.g decision-making power on fundamental issues; pre-emption rights; equal treatment of shareholders of the same class; shareholder protection measures related to mergers and divisions etc.)? Please specify.**

In the Republic of Macedonia, according to the Company Law ("Official Gazette of RM" No. 28/04), see [05 Annex 01](#), shareholders are entitled to exercise their own rights in the company through the General Members' Meeting (Shareholders' Assembly). From the day of entry into the Book of Stakes, each shareholder is entitled to the following rights: take part in the work of the Members' Meeting, exercise their right to vote, and decide on fundamental issues as stipulated in the Company Law (change the statute, adopt annual account, adopt financial reports, decide on the distribution of profit, appoint and dismiss the management body members etc.).

The shareholders are entitled to equal positions in the company under equal conditions. Each signed contract or undertaken legal activity by any shareholder that violates the rights and interests of other shareholders is considered null and void, except if all shareholders agree on such contract or legal issue. As laid down in the Company Law, the shareholders may reject the resolutions of the Member's Meeting.

The increase of the core capital is done by the resolution of the Member Meeting, adopted by majority of votes, no less than two thirds of the vote carrying stakes represented at the Members Meeting. In case of multiple class shares, this resolution is valid if the majority of shareholders of each share class agree, however the majority may not be less than 2/3 of the shares. In case of increasing the core capital, the shareholders have the priority of subscribing newly issued shares, proportionally to the participation of their shares in the core capital of the company.

The decrease of the core capital is done by the resolution of the Members' Meeting, adopted with the majority of votes, which can not be less then 2/3 of the votes based on stakes – presented at the Members' Meeting. In case of several classes of shares, this resolution is valid if the majority of shareholders from each class of shares agree, as stated above.

Also, when a shareholding company is being transformed into another form, the protection of the shareholders is clearly provided through the obligation prescribed in the Company Law which lays down that the resolution for transformation of the company from one to another form must be reached by the Members' Meeting (Assembly) with the majority of votes, with a minimum vote of 2/3 of the shares with the right to vote presented in the Assembly. The Company Law in this case provides the opportunity for the shareholders to declare if they want to take part in the new form of company with their shares, respective to the nominal value of their shares. The shareholder independently decides on his/her participation, the number of shares he/she will participate with in the form of company to be established with the transformation. If the shareholder does not agree with the transformation, the company is obliged to buy his/her shares at the price proper to the adopted balance sheet in the resolution for the company transformation. If the shareholder does not accept the offered price he/she may file a proposal to the court to establish the real value of his shares, within 30 days from the day of refusing the offer.

The Company Law includes provisions which ensure procedure transparency for achieving status change (accession, merger and division) and protection of the shareholders' rights. The resolution for accession, merger and division is reached by the Members' Meeting of each company involved in the accession, merger and division with the majority of votes, but not less then 2/3 of the shares with

votes based on parts presented in the Assembly, except if the statute requires higher majority. If, as a consequence of the status change, the obligations of the shareholders are increased, the resolution is reached by agreement of all shareholders.

Each shareholder is entitled to inspection of the Agreement or the Division Plan and annexes which are included in them. At least one month prior to the day determined for the Members' Meeting to reach the resolution to adopt the Agreement or the Division Plan, each participating company is obliged to enable the shareholders access to the company's premises to go through the documents and other important information and notices that are important for reaching the resolution on accession, merger or division.

The Agreement, i.e. Division Plan are binding when adopted by the Members' Meetings (Assemblies) of the companies that take part in the accession, merger or division. The shareholder who has declared that he/she does not want to takeover shares in the merger company, a new company that is established by merger, or a newly established company, the company is obliged to buy his/her shares at the price established in the resolution for accession, merger or division. If the shareholder does not accept the offered price, he/she may file a proposal to the court to establish the real value of his shares within a deadline of 30 days from the day of refusing the offer.

The Company Law has equal treatment of shareholders of the same class, i.e. shares of the same class provide the same rights.

**2. Is there a minimum capital requirement for companies? If so, what is it? Are there safeguard clauses to protect the company's capital, e.g. rules on distributions to shareholders, on acquisition by a company of its own shares, on providing financial assistance to third parties for the acquisition of a company's shares?**

According to the Company Law ("Official Gazette of RM" No. 28/04), the minimum company's core capital for establishing a company is as follows:

For Limited Liability Company, the core capital may not be lower then 5.000 EUR in MKD counter value, based on the average exchange rate of the National Bank of Macedonia on the day of payment.

For Joint-stock Companies, a) with simultaneous foundation, without public announcement for subscribing shares, the nominal value of the minimum core capital amounts to 25.000 EUR in MKD counter value based on the average exchange rate of the National Bank of the Republic of Macedonia published on the day of adopting the statute; and b) for successive foundation, with public announcement for subscribing shares, the minimum amount is 50.000 EUR in MKD counter value.

In case of decreasing the core capital value, the company cannot pay dividend higher then 4% of the company's core capital, before two years have elapsed from the year when the decision on decreasing the core capital is adopted. This restriction is not valid in case when until the registration of the decision for decreasing the core capital in the trade register, the company meets the creditors' claims or issued suitable securities for their claims. The Company Law provides for a simplified method of decreasing the core capital, which can be used only in case of adjusting the core capital nominal value, to a lower nominal value, which is due to the loss covered by the core capital. In this case, the company has no obligation to meet the creditors' claims. A simplified decrease of the core capital may be done by a Decision, which needs to include a provision that the aim for the core capital decrease is to cover the losses and allocate funds in the law prescribed reserves. The simplified core capital decrease is applied only in the case when the company's undistributed profit and reserves are spent. The value of the decreased core capital cannot be paid to the shareholders and cannot be used for the purpose of exempting the shareholders from further deposit investment, according to which they overtook shares.

The company can have acquisition of own shares by purchasing shares by itself or by means of a person that acts in his/her own name on behalf of the company. The purchase of own shares is legally valid under the following conditions:

- 1) The Members' Meeting (Shareholders' Assembly) has adopted a Decision to obtain own shares by purchasing, which regulates the purchasing method, the highest number of shares to be acquired, the purchasing time framework, which must not be longer than twelve months and the minimum and maximum value that can be paid for them;
- 2) The acquired share nominal value, together with the shares that the company has acquired previously, i.e. that the company owns, must not exceed 1/10 of the core capital;
- 3) The acquisition of company's own share must not decrease the company assets below the value of the core capital and reserves, which, according to the statute or to the law, must be provided and must not be used for payment to shareholders;
- 4) The company acquires shares by purchasing shares which have been completely paid.

As an exception, the company can acquire own shares in contradiction to the previously stated conditions in case when the acquisition of own shares is necessary to prevent serious damage that the company may encounter. The decision on this is adopted by the Board of Directors, i.e. the Managing Board upon previous agreement of the Supervisory Board. In this case, at the next Assembly meeting the Board of Directors, i.e. the Managing Board is obliged to inform the Assembly about the reasons and purpose for acquisition of own shares, the number and nominal value of the acquired shares, the part of the acquisition shares in the core capital, the share price and the source of the assets used for the acquisition.

The company cannot lend money or in any other way credit the subscriber in the payment for shares.

### **3. Are enterprises subject to particular obligations regarding the protection of creditors and if so, what are they?**

The Company Law ("Official Gazette of RM" No 28/04), enforced in May 2004, provides that trade companies have obligation to protect creditors in Limited Partnership Company in the following cases:

- Limited partners who have not paid the entire contribution as stipulated in the Partnership Agreement shall be liable to the creditors of the limited partnership jointly and severally with other partners up to the amount of the agreed contribution decreased by the amount already paid. (Article 162 of the Company Law).
- The members and the manager shall be jointly and severally liable to the limited liability company for damages caused intentionally or due to gross negligence in the failure to make contributions or by improper making of non-monetary contributions, as a result of inflated valuation of contributions or any other detrimental behavior and action undertaken in the procedure for founding of the company for which the court finds them liable for the caused damage. If the compensation of damages is necessary for the purpose of fulfilling the liabilities against third parties, the limited liability company shall not give up the right to ask for compensation of damages nor negotiate regarding that right. (Article 181 of the Company Law).
- In case of decreasing core capital, the manager files an application form for entry in the trade register on the base of the resolution for the intention to decrease the core capital and announce in the "Official Gazette of the Republic of Macedonia". The announcement shall state that the company agrees, upon request by the creditors, to settle the claim or to provide a guarantee. It shall be deemed that all creditors agree with the intended decrease of the core capital, if no claims have been filed following the expiry of ninety days as of the day of publishing the announcement.

Known creditors shall also be notified in writing (Article 262 of the Company Law).

The application for entering the decision on core capital decrease is submitted for the purpose of registration in the trade register, after the deadline observed to enable creditors to submit their claims. The application also includes evidence that the company has issued securities to the creditors to settle the registered claims. If the submitted proof that the company has settled the claims of the creditors or has given guarantee that the filed claims shall be settled is false, the manager shall be jointly and severally liable with his/her entire property for the damages caused by the creditors whom he/she provided with false information, but only up to the amount that could not be covered with the property of the company (Article 263 of the Company Law).

The collateral of the creditors is prescribed in the Article 445 of the Company Law, where the company has obligation, for the claims established prior to the entry of the resolution on reduction of the core capital in the trade register, provided that:

- 1) the creditor has reported his/her claim established prior to adopting the resolution on reduction of the core capital, regardless if the claim is matured, within 90 days as of the date of publishing the announcement on the intention to reduce the core capital;
- 2) the creditor has requested collateral when reporting the claim which is not matured; and
- 3) there are sufficient reasons to consider that the reduction of the core capital shall diminish the company's capability to settle the creditor's claim.

- Members or shareholders of the company shall be severally liable for the company's liabilities, without limitation and jointly for the obligations of the company if they abuse the company as legal entity to make damage to own creditors (Article 28 of the Company Law).
- Founders of the company are jointly and severally liable without limitations for the damage suffered by the company and the creditors due to illegal activities, false or incomplete data they provided with respect to the founding of the company, contained in the report on founding or entered in the trade register, or contained in the enclosures, which pursuant to this Law, shall be enclosed to the application form for founding the company. Furthermore, if the members of the managing body have failed to operate and act with due diligence of diligent and conscientious trader, they shall be liable to the company for the caused damage as joint debtors (Article 299 and 362 of the Company Law).
- The companies with majority participation are considered responsible when they mislead a controlled company into undertaking certain legal affairs or action, or into failing to undertake such affair or action by which damage is caused to the controlled company or to a third party, and if they fail to compensate for the damages by the end of the business year. The company with majority participation must pay indemnity to the controlled company for the entire damage caused to the controlled company, and with regards to third party it shall be jointly and severely liable with the controlled company (Article 503 of the Company Law).
- In the procedure for status changes, there is an obligation to notify the creditors, as follows: known creditors whose claims are over 10.000 EUR in MKD counter value are to be notified in writing, individually at the address of their place of living, and if the creditor is a legal entity, at their headquarters' address.

Creditors that may not request settlement of undue claims from the companies subject to the accession, merger or division, and who believe that the accession, merger, or division shall endanger the settlement of their claims, shall file a request for securing the claims to companies subject to accession, merger or division within 30 days as of the day of announcing the notification. If companies subject to accession, merger or division fail to respond to the creditor's request within 15 days as of the day of the submitted request or fail to provide the required collateral, the creditor may, in the next 8

days, file a request with the court for termination of the procedure for accession, merger, or division. If the court determines that in the course of the procedure for accession, merger or division the creditor's request was not met or the collateral was not provided, it shall suspend the procedure, until the company subject to accession, merger or division submits a proof to the court, within the specified term, that claims of all creditors have been secured. (Article 523 of the Company Law)

The liquidators shall be obliged to complete the transactions in progress, collect the claims of the company, sell the remaining assets and settle the liabilities towards creditors. If so required by the liquidation, they may also enter into new transaction on behalf of the company in liquidation (Article 542 of the Company Law).

**4. Are companies required to publish information about major decisions affecting them? Are there other requirements for the publication of information by companies listed on the stock exchange? Are there for instance rules on contributions in kind and rules on creditor protection in the event of a reduction in the subscribed capital?**

In line with the Company Law ("Official Gazette of RM" No 28/04), the commercial entities are obliged to inform about decisions that affect their activity. The company is obliged to provide access to each shareholder in the company, shareholder's representative and to the successor of a dead shareholder, for inspection and coping during the working hours of the company to all acts, documents and information in possession.

Each shareholder or previous shareholder, shareholder's or successor of the late shareholder must be provided with the right to inspect the acts and other documents in the headquarters of the company, in the way prescribed by the agreement for the company, for the period when during which he/she was shareholder in the company.

If this right is not provided to the person he/she may request from the court with a proposal to make a decision on exercising this right. In a term not longer than within 8 days from the date of the request the court shall determine whether the person is entitled to access the documents and information and whether his/her access has been disabled, it shall bind the company to enable the access.

Resolutions made at the Members' Meeting, or resolutions made by the members by way of correspondence are recorded in the book of resolutions, by the manager. The resolutions shall be recorded in the book of resolutions immediately after they were made and certified with the signature of at least one of the members involved in the adoption of the resolution. The minutes from the held Members' Meeting where the resolutions were adopted, as well as the material, which documents the process of resolution making by way of correspondence, as well as, the adopted resolutions, shall be an inherent part of the book of resolutions. Each member shall be entitled to inspect the book of resolutions and may request from the manager copies of resolutions adopted at the Members' Meeting, or by way of correspondence.

Each shareholder must be allowed to inspect acts and other documents of the company (the statute and other acts, minutes and other documents of all member shareholders, minutes and resolutions reached at the meetings of the Managing Board or Supervisory Board, annual accounts and financial reports, attachments entered in the trade register etc.) at the company's venue as prescribed in the statute.

The right to be informed about the minutes and resolutions reached at the meetings of the managing bodies is exercised by the shareholders through the non-executive members of the Board of Directors or Supervisory Board.

If the company does not provide access for inspection and copying of the acts and documents, the shareholder can file a proposal to the court to allow inspection of acts and documents. In the proposal, the shareholder states the acts and documents that he would like to inspect or to obtain, and the form to be delivered.

Within eight days from the filed proposal, the court will reach a decision where it binds the company to allow inspection of acts and documents stated in the proposal by the shareholder or provide a copy of the acts and documents at the company's expense.

At the Members' Meeting each shareholder may require information about the condition of the company and its relations with other companies, if the information is related to the agenda of the meeting.

The shareholder that required to be provided with information can file a written request that his/her question, requirement and the reasons due to which he/she was rejected to get information for, are registered in the minutes.

The shareholder who was not given the information may also require protection of own notification right through the court. The proposal is filed within fifteen days from the day of the meeting.

The Managing Board, not later than thirty days of the day of their approval, but not later than 30 of June, delivers copies of approved financial reports accompanied by the annual reports for the company's activity, to the Annual Account Register at the Central Register of the Republic of Macedonia and displays them in the venue or another place for inspection. Each shareholder is entitled to the right to inspect them. The revised annual account, or revised financial reports where differences are established in the data of already submitted annual account or financial reports, are processed by the Central Register of the Republic of Macedonia .

The annual accounts data and financial reports data are public and available to all persons in the manner as described in the law. The Central Register of the Republic of Macedonia issues information, copies of accounts and certain data from electronic data base, in accordance with the Law on Central Register ("Official Gazette of RM" No. 50/01, 49/03).

The shareholder who does not pay the subscribed shares within the defined terms and conditions can, by means of hand delivered mail, to be given additional time, with the remark that if in the prescribed deadline for payment is not met, he/she is deprived of all partially paid shares . Additional terms are announced in the daily newspaper.

The shareholder who, despite the notification, does not pay in the necessary amount to the company, is deprived the shares and excluded from the company. In the announcement deprived shares in favour of the company are also announced.

The Members' Meeting can be convened by invitation or by public announcement. The public announcement is published in at least one public newspaper.

After reaching the decision on registration, the court, ex officio, delivers data from the trade register to be published in the "Official Gazette of the Republic of Macedonia". The announcement includes acts according to which the registration was performed and states the right to inspection of these acts in the trade register. The trade register data and the court decisions, for cases prescribed by this law, are published in the "Official Gazette of the Republic of Macedonia".

Also, certain legal and other actions, according to the Law on Takeover of Joint-Stock Companies ("Official Gazette of RM" No 04/02 and 37/02) must be published in one daily newspaper on the territory of the Republic of Macedonia (public bid for purchasing securities, intention to purchase etc.)

The Rulebook on quotation of securities on the Macedonian Stock Exchange JSC Skopje enforced on 14.05.2004, where most European Directives in this field are implemented, also includes most of OECD General Principles for transparency and publishing information. The following constant publishing obligations refer to:

General publication of data and information, announcements related to business activities (change of activity, status changes, mergers, joint deposits, important agreements etc.); obligations in relation with the capital (core capital increase/decrease, new loans, changes of issued shares rights, decisions for purchasing own shares etc); important changes in the financial condition (huge losses

or important profit increase, information related with the profit, purchasing, selling assets, new credit debts etc.); announcement of the dividend calendar; shares in public ownership (notification if the percent of the shares in public ownership is decreased under provided minimum of 25%); notification for important shares.

In the Republic of Macedonia, according to the Company Law, the shares can be paid in cash, by non-monetary deposit or a combination of both. Non-monetary deposit is paid to the entire amount prior to submitting the application for the establishment of the company. Non-monetary deposit must be made in such a way that the company can freely dispose with it, from the day of the registration of the establishment of the company in the trade register. Payment of the shares and other securities by labour or services, including labour and services already provided/executed is against to the Company Law.

The protection of the creditors in the case of subscribed capital decrease is elaborated in the previous question. (for more details see [05 I A 3](#))

#### **5. Do any particular regulations depend on the size of an enterprise? If so, what are they?**

The Company Law ("Official Gazette of RM" No. 28/04), obliges the company to inform about the resolutions that have affected its own activity. The Company Law is applied on all companies regardless of their size. However, for accounting purposes, in Article 470, commercial entities are classified as large, medium, small or micro-size commercial entities, depending on the number of employees, the annual revenues and the average value of the total assets on the basis of the annual account statements in the last two years (accounting years). Other laws also apply to commercial entities depending on their size, like the Law on Takeover of Joint-Stock Company ("Official Gazette of RM" No. 04/02 and 37/02), the Securities Law ("Official Gazette of RM" No 63/2000, 103/2000; 34/01; 4/02; 37/02; 31/03; 85/03).

#### **6. To what extent is your legislation inconsistent with the First and Second Company Law Directives?**

The Company Law ("Official Gazette of RM" No. 28/04), is completely harmonized with the First 68/151/EEC and the Second 77/91/EEC Company Law Directives, and the main objectives of these Directives are entirely met, i.e. the requirements for publishing information about joint-stock, limited liability companies and limited partnerships by shares are determined; highest restriction is put on the reasons, based on which the undertaken obligations on behalf of the companies are treated as invalid; there is a restriction in cases from which nullity can be produced as well as the rules for establishing a limited liability company, maintaining and changing the core capital of a limited liability company provided by the Law.

#### **7. Do you already have, or are you planning to introduce, legislation to align with the Third, Sixth, Eleventh and Twelfth Company Law Directives and the Take-over Bids Directive?**

The Company Law ("Official Gazette of RM" No. 28/04) incorporates and is harmonized with the Third 78/855/EEC, Sixth 82/891/EC, Eleventh 89/666/EEC and Twelfth 89/667/EEC Company Law Directives.

As to the procedure for takeover of joint- stock company in the Republic of Macedonia, the Parliament of the Republic of Macedonia in 2002 adopted the Law on Takeover of Joint- Stock Company ("Official Gazette of RM" No. 04/02 and 37/02). This Law is harmonized with the relevant Take-over Bids Directive.



## B. Administrative Capacity

### 1. What types of companies are recognised by your law? What is the total number of enterprises in each category?

According to the Company Law ("Official Gazette of RM" No. 28/04) there are the following types of trade companies: general partnership, limited partnership, limited liability company, joint-stock company and limited partnership by shares.

The total number of trade companies in each category is as follows:

	Types of companies	Total number
1.	general partnership companies;	2200
2.	limited partnership companies;	2
3.	limited liability companies;	62170
4.	joint-stock companies;	754
5.	limited partnerships by shares	0

Source: State Statistical Office

This data on trade companies refer to the period as of 31.12.2004.

### 2. Is there a central register for companies? If not, are there any plans in this respect? If yes, how does the register hold the company information (in electronic form, on paper, etc.). Please provide details about the information held by the register, e.g. company name and objects, financial details, identity of those running the company, authorised representatives, major decisions affecting the company, etc.

For the time being in the Republic of Macedonia there is no unique trade register, despite of the efforts to establish it in the past three years.

According to the Company Law ("Official Gazette of RM" No. 28/04) the unique register is to be established no later than 01.03.2005, and the transfer of the data in electronic form from the basic courts to the unique trade register is to be done no later than 01.07.2005.

The establishment of the electronic connection and the unique register data is in the process of preparation.

The Electronic Trade Register will be part of the central information base within the Central Register of the Republic of Macedonia, responsible for its establishing, maintenance and administration.

The trade register is maintained by the courts.

The data entrance in the trade register is done by the competent court within which area of activity are the head quarters of the company to be registered.

For the time being the registration is done by the Basic Court Skopje I Skopje, Basic Court Bitola and Basic Court Stip. The joint register of these courts is maintained by the Basic Court Skopje I Skopje.

In the trade register the data are in written and in electronic form.

The trade register is a public book that contains data and enclosures (documents and evidences) about companies legally obliged to be registered.

The trade register consists of registration files, where registration data and enclosures of documents and evidences for each registered company are enclosed.

All documents and evidences are maintained by the court in written form.

The data on companies are maintained by all three courts in electronic form. The following data are included:

- Personal identification number,
- Number and date of filing the application for registration,
- Subject of application,
- Title and address of the applicant,
- Legal form of the company, title and address of the company,
- Number and date of the act of establishing,
- Founder's data,
- Value and type of the founding core capital,
- Data on legal representatives,
- Data on the company's activity,
- Date of the decision for registration.

The decisions that are subject to registration according to the Law, also include the number and date of the reached decision by the relevant body.

The electronic register contains all data changes that have been entered in electronic form since the company's establishment or adjustment.

The data on assets in possession of the commercial entities and financial details on their activities are not entered in the electronic trade register maintained by the courts.

**3. Are there any fees that are charged for issuing certain documents (certificates, copies, transcripts, attestations, notifications) contained in the company register? If yes, are these fees limited to cover the administrative costs incurred in issuing such documents or are they set in a different way? What is the procedure for issuing these documents?**

Concerning the issuing of certain documents which are part of the trade register, charges are paid according to the Law on Court Fees ("Official Gazette of SRM" No. 46/90, 11/91 and "Official Gazette of RM" No. 65/92, 20/95, 48/99).

To file the application for registration in the trade register the fee is 1.200 MKD;

To have the decision on registering the established company entered in the register the fee is 2.000 MKD;

For the decision on registering an association, organization, changes in organization or status changes of the company, the fee is 1.000 MKD;

For the decision to enter other data about the company or make changes of entered data, the charge is 500 MKD for each registry page;

For the decision to register the termination of a company, the fee is 1.000 MKD;

For the application to register the share of the entity, half of the prescribed registration fee has to be paid;

For the decision to register the share of the entity, half of the prescribed fee has to be paid;

For the registration of data on changes in the share of the entity, half of the prescribed fee has to be paid;

For registering the share of the entity and deleting the share of the entity, the fee is 1.000 MKD;

For registering changes in the registered share of the entity, the fee of 5.000 MKD has to be paid;

For delivering entered data for the purpose of publishing in the "Official Gazette of the Republic of Macedonia", the fee is 500 MKD;

For notary authorization for determining other facts in the Public Register, the notary is awarded with 200 MKD;

For the certificate of performed administrative services based on this authorization the notary is awarded 1000 MKD;

The court fees are limited only to execute activities and issuance of the abovementioned documents.

The procedure for issuing documents is as follows:

According to the Court Rules of Procedure ("Official Gazette of RM" No. 9/97 and 27/04) acceptance of the written correspondence (documents, acts, monetary letters, telegrams and other shipments) is performed at the provided place in the Court Register. The acceptance is performed by an authorized officer who confirms the acceptance by putting a stamp on the copy of the written document.

The acceptance of the written correspondence posted to the court and the acceptance of the post from the post boxes are performed by an authorized court officer.

The officer who accepts the written correspondence decides on the documents which have to be charged.

If, while examining the documents the officer finds that the fee for the document has not been paid, or that the paid fee is lower than the prescribed or that it is a free of charge, the document is marked with the suitable stamp.

If the evidence for paid fee is not attached to the written document, the officer will warn the party to pay it within the prescribed period.

Accepted documents are transferred according to the marks in appropriate register files and immediately delivered to the Court Register manager.

Upon party's request, the court issues certificates, certificates on facts included in the documents or evidenced in the court and extracts from public books. Issuing certificates is performed by the Court Register.

Regarding the contents of the court decisions, minutes and other documents, no certificates are issued but only transcripts and extracts.

The transcripts are prepared in the Court Register or in the Copy Office and are delivered to the parties upon managers or authorized officer's signature in the unfilled part of the note which reads: "the validity of the transcript is certified by \_\_\_\_\_".

#### **4. How is information on companies published? Is there a national gazette?**

The data entered in the trade register are published in the "Official Gazette of the Republic of Macedonia".

**5. How can the public get access to the company information register, e.g. in person, by mail, by electronic means, etc.? Is everyone entitled to consult the register without having to prove a legitimate interest in the enquiry? Is there a fee for consultation?**

With the provisions of the Company Law ("Official Gazette of RM" No. 28/04) the question of access to the trade register data is regulated.

According to Article 85 of this Law, the data entered into the trade register are public.

For the time being inspection of the trade register can be performed personally or by post.

Each person, at his/her own expense, may submit a request to be issued a copy or registered transcript from the trade register data.

Each person may submit the request to review the file with enclosures or be provided with a copy of the enclosures at his/her own expense, with the exception of the book of documents of the general partnership and the limited partnership. Any member or person who has a legal interest may inspect the book of documents of these partnerships.

As per the Law on Court Fees ("Official Gazette of SRM" No. 46/90, 11/91 and "Official Gazette of RM" No 65/92, 20/95, 48/99) court fees are paid for each activity in the procedure.

According to the tariff number 28 of the Tariff Book, which is part of this law, related to transcripts of court acts, as well as transcripts of enclosures that the court will make upon party's request, the fee is 100 MKD for each page of the original. For each additional copy of the transcript of court's minutes, prepared at the same time with the original, the fee is 50 MKD.

For transcript in a foreign language the fee is double of the abovementioned fees.

For the request to be issued a transcript and certify the transcript the fee is 100 MKD.

According to the Law on Court Fees, i.e. Tariff number 27 referring to inspection of court documents, the fee is 300 MKD. For any verbal enquiries as to whether the party is or not entitled to require transcripts of documents or to review documents, no fee is required.

**6. What is the average time-scale between application for registration and effective registration of a company? What is the number of companies registered at this moment and in the last two years?**

The procedure for registration in the trade register begins with filing a written application, a registration form which includes the registration application. All necessary enclosures are filed along with the application (documents and evidences) with necessary information to be entered into the trade register.

According to the Company Law ("Official Gazette of RM" No. 28/04) the trade register entrance procedure is considered urgent. If all necessary conditions are met, i.e. if the application with the enclosures is filed in accordance with the Law, the court of competent jurisdiction will reach a decision for entrance, within 8 days from the day of application.

Based on the data obtained from the courts of competent jurisdiction, the average time necessary for registration from the application day to the final registration of the trade companies is:

Year	days
2001	57.5
2002	54.6
2003	54.3
Source: Ministry of Justice	

The number of trade companies that have been registered in the Republic of Macedonia in the past two years is:

- in 2002, 6.685 trade companies
- in 2003, 5.820 trade companies

The number of registered companies in 2004 is 4.721 until 30.09.2004.

The total number of registered companies is 65.126 on 31.09.2004.

**7. Are there any penalties or fines imposed on companies if annual accounts are not deposited at the company register? If so, what is the amount of such fines? What is the percentage of public and private limited liability companies that do comply with the requirement to file their annual accounts with the company register?**

The trade companies are obliged to submit their annual account to the Central Register of the Republic of Macedonia no later than the end of February of the following year, i.e. within sixty days from the beginning of a liquidation procedure or a status change. The annual accounts prepared for shorter periods are delivered until the end of the next month or upon the expiry of the last month of the accounting period.

The Managing Board of the company delivers copies of the approved financial reports accompanied by the annual reports of the company to the Annual Account Register at the Central Register of the Republic of Macedonia, not more than 30 days from the day of their approval, but not later than 30<sup>th</sup> of June.

Trade companies have an obligation to deliver consolidated annual accounts and report on the activity for the previous year to the Central Register of the Republic of Macedonia not later than 31<sup>th</sup> March of the following year.

If the companies do not meet these obligations within the prescribed deadlines, according to the Company Law ("Official Gazette of RM" No. 28/04,) they will be held responsible for misdemeanour subject to penalty in the amount from 50.000 to 150.000 MKD for legal entities, and 10.000 up to 50.000 MKD for the responsible person in legal entity.

In addition to the penalty, provisional measure for prohibition of performing activities is applied for period of three months to one year, and for the responsible person of the legal entity the provisional measure for prohibition of performing activity from in the period of three months to one year.

We would like to highlight that according to the Article 477 Paragraph 5 of the Company Law, the company that fails to submit the annual account reports and financial reports to the Central Register of the Republic of Macedonia for a period of three subsequent years shall cease to exist by deleting it from the trade register and a liquidation procedure shall be initiated.

The percent of the trade companies (public and private) that have complied with the obligation to submit annual accounts to the Central Register of the Republic of Macedonia is as follows:

- in 2002 (65,125%)
- in 2003 (64,494%)

Delivered annual accounts by the public and private limited liability companies in the business years of 2002 and 2003 have been prepared according to the Company Law ("Official Gazette of RM" No.28/96, 7/97, 21/98, 37/98, 63/98, 39/99, 81/99, 37/2000, 31/01, 50/01, 6/02, 61/02 and 51/03) which was in force until 07.05.2004, when the new Company Law entered into force. The obligation

of the existing and newly established companies according to the Company Law ("Official Gazette of RM" No 28/04) is foreseen to be in force after the end of business year 2004.

Concerning the data for existing trade companies in 2002 and 2003 year, we would like to point your attention to the fact that according to the Company Law, trade companies with blocked accounts which have been transferred to the relevant institution for blocked accounts, are deleted from the trade register in the procedure prescribed by the law, if within six months of the day when this law entered into force (the deadline expired on 08.10.2004) they do not unblock their account.

**8. Please identify the administrative or judicial authority responsible for the incorporation of companies.**

The courts are responsible for the registration of companies in the Republic of Macedonia.

The registration in the trade register is performed by the competent court depending on the address of the company's premises.

The Basic Court Skopje I Skopje is responsible for the area of the Court of Appeal in Skopje, the Basic Court Bitola for the area of the Court of Appeal in Bitola and the Basic Court Stip for the area of the Court of Appeal in Stip. The joint trade register is within responsibility of the Basic Court Skopje I Skopje for the territory of the Republic of Macedonia. The trade register maintains unique evidence of companies and collects registered company data from other competent courts for trade registers.

## **II. ACCOUNTING AND AUDIT**

### **A. Accounting**

**1. What legal instruments do you have in the accounting field? Are there any official instructions or recommendations by a standard-setting body?**

Accounting is regulated by the Company Law ("Official Gazette of RM" No 28/04), in the Rulebook for Accounting Standards ("Official Gazette of RM" No 40/97 and 73/99), where the International Accounting Standards of the International Accounting Standards Committee are adopted, as accounting standards that have been applied in the Republic of Macedonia as of 01.01.1998, as well as by the Law on Budget and Budget Beneficiaries Accounting ("Official Gazette of RM" No 61/02 and 98/02), and other adopted secondary legislation.

The accounting procedure for non-profit organizations is prescribed in the Law on Accounting for Non-profit Organizations ("Official Gazette of RM" No 24/03).

The Minister of Finance prescribes the procedure for maintenance of accounting and business books, accounting documents and data processing, accounting organization, reconciliation of incomes and expenses, evaluation of balance positions, re-evaluation and non-profit organizations' inventory with the Rulebook for Accounting for non-profit organizations ("Official Gazette of RM" No 42/03).

The Accounting Standards Committee was established by Government decision No 23-1436/1 on 23.06.1997 with the objective to monitor, harmonize and explain International Accounting Standards.

**2. Which enterprises fall within the scope of the general regulations? Are there special regulations for limited liability companies? Are there exceptions for small and medium sized companies?**

According to the Company Law ("Official Gazette of RM" No 28/04), (article 469), the obligation for accounting applies to: each large and medium size trader, traders defined by the law, and traders involved in banking, insurance, traders listed on the stock-exchange as well as traders whose financial reports are included in the consolidated financial reports of the above listed traders. All entities are obliged to prepare and submit financial reports according to the adopted international accounting standards. International Accounting Standards are updated on annual base, to be harmonized with current standards, as they are amended and adopted by the International Accounting Standards Board.

According to the Company Law (Article 478) the following traders are subject to auditing:

- large and medium size traders organized as joint-stock companies
- companies with securities listed on the stock exchange
- large and medium size traders organized as limited liability companies.

Small-size companies have no obligation to do audits of own annual reports. The small-size entities are obliged to prepare their own financial reports with reduced scope of data.

**3. Are consolidated accounts (the accounts of groups of companies) as well as the accounts of individual companies regulated? If so, are there exceptions for any groups of enterprises (e.g. size thresholds, legal forms) from the requirement to draw up consolidated accounts?**

Trade companies, according to Article 504 of the Company Law ("Official Gazette of RM" No. 28/04) which have dominant influence in one or several companies, are obliged to prepare and publish consolidated annual account statement and consolidated financial reports. The consolidated annual account statement and the consolidated financial reports are prepared in accordance with the prescribed accounting provisions established by the Minister of Finance, with the purpose of targeting tax effects.

Consolidated financial reports are prepared according to the international accounting standards.

The consolidated annual account and the consolidated financial reports must be prepared at the same date when the annual account and the financial reports of the dominant company are prepared.

The consolidated annual account includes a consolidated balance sheet and consolidated balance of success.

Article 504 of the Company Law is implicit that no trade company with dominant influence (independently of its size) is exempt from the obligation to prepare consolidated annual accounts and consolidated financial reports.

According to the Company Law, Article 505, the consolidated financial reports include a consolidated balance sheet, consolidated balance of success, consolidated money flow sheet, consolidated report on core capital changes and notices for consolidated reports, applied accounting policies and other information.

**4. What sanctions exist for not complying with financial reporting requirements?**

According to Article 599 of the Company Law, ("Official Gazette of RM" No 28/04) the trade companies will be penalized for committing a misdemeanour with monetary fine between 50.000 to 150.000 MKD, if they don't prepare, publish and submit annual accounts, i.e. consolidated annual accounts and financial reports.

Monetary fine between 10.000 to 50.000 MKD is prescribed for the responsible person in the trade company for committing a misdemeanour.

In addition to the monetary fine, security measure - prohibition for performing activities in the period of three months to one year is applied for the trade companies. To the responsible person is given a security measure – prohibition for performing duty in the period of three months to one year.

**5. What reforms of the legal instruments in the accounting area are planned, what is their content and when are they programmed for adoption?**

The Ministry of Finance is working on drafting secondary legislation acts regarding budget's accounting, budget's beneficiaries and non-profit organizations.

In addition, by the end of 2005 new Decree on Account Plan for Banks, Savings Banks And Other Financial Companies, will be prepared and enacted in accordance with the International Accounting Standards, to harmonize the balance schemes with new draft provisions for the accounting plan in accordance with Directive 86/635/EEC (for bank accounts) and a written elaboration of the contents of each account in the accounting plan for banks, savings banks and other financial companies.

Regarding the insurance companies accounting, the Ministry of Finance is preparing new Decree on Accounting Plan for the Insurance Companies and new Rulebook on the form and contents of balance schemes for the Insurance Companies, with which will be performed full harmonization with the EU Directive 91/674/EEC for annual accounts of insurance companies. These Acts are planned to be enacted in 2005.

In the Company Law ("Official Gazette of RM" No. 28/04) in the part on accounting, the EU directives in the field of accounting (the Fourth 78/660/EEC, Sixth 82/891/EEC and Seventh 84/253/EEC Directive) are completely implemented by applying International Accounting Standards in conducting the accountancy in the Republic of Macedonia.

The present accounting regulations have been drafted in accordance with the international criteria and standards and the EU Directives, prior to the enactment of the Law on Budgets and Budget Beneficiary Accounting ("Official Gazette of RM" No. 61/02 and 98/02) and the Law on Accounting for Non-profit Organizations ("Official Gazette of RM" No. 24/03). The upon mentioned regulations have been delivered to the European Commission for review and appropriate directions, proposals and suggestions by the EU experts, with the main objective, to complete the reforms of the accounting system, providing maximum harmonization of our accounting system with the systems in developed countries, i.e. at a recognized and accepted international level.

The future plans include update of the harmonization of accounting regulations with the EU directives.

**6. Are the Fourth (78/660) and/or the Seventh Directives (83/349) taken into account in these reforms?**

The Fourth Directive (78/660) and the Seventh Directive (83/349) have been taken into consideration in the reforms.

According to the Company Law ("Official Gazette of RM" No. 28/96, 7/97, 21/98, 37/98, 63/98, 39/99, 81/99, 37/2000, 31/01, 50/01, 6/02, 61/02, 51/03) the Minister of Finance in 1999 prescribed the form and the contents of the balance schemes (Rulebook on prescribing the form and contents of the balance schemes, "Official Gazette of RM" No. 23/99) which is compulsory obligation of the EU member countries, included in the Fourth and the Seventh Directive, as well as the Directive 86/635/EEC (for bank accounts) and the Directive 91/674/EEC (insurance accounts).



The balance sheet is prepared by all companies that conduct the accounting according to the Company Law and International Accounting Standards, where the small size companies prepare this balance sheet in a shorten manner by filling in positions marked with letters and Roman numbers.

For large and medium size companies a particular type of balance of success is prescribed, while for small size companies different balance schemes (with the Rulebook on prescribing the form and contents of the balance schemes) are prescribed, i.e. the balance sheet of success for small size companies.

According to the regulations in accounting referring to banks, savings banks and other financial organizations, the Minister of Finance prescribes particular balance schemes (Rulebook on the form and contents of the balance schemes for banks, savings banks and other financial organizations ("Official Gazette of RM" No. 27/1999)).

With the Rulebook on the contents and form of the balance schemes for insurance and re-insurance companies ("Official Gazette of RM" No. 36/99, 34/02), separate balance schemes are prescribed for insurance and re-insurance companies.

## **7. Have international standards or practices had an impact?**

The International Accounting Standards have been implemented since 01.01.1998 in the Republic of Macedonia.

All commercial entities implement the International Accounting Standards.

Large size trade companies and those that participate on the stock-exchange, as well as those that are required, are obliged to implement the International Accounting Standards.

By adopting the International Accounting Standards and prescribing the unique balance schemes, that arisen as an obligation of the EU member countries, included in the Fourth and the Seventh Directive, as well as the Directive 86/635/EEC (for bank accounts) and the Directive 91/674/EEC (insurance accounts), in the Republic of Macedonia was provided implementation of unique accounting regulations and a high level of harmonization of the accounting practices. In the same time the country is meeting the requirements for creation an accounting system compatible with the one in the EU countries.

## **8. Are the Council Directives 86/635/EEC (bank accounts) and 91/674/EEC (insurance accounts) taken into account in these reforms?**

The Council Directives 86/635/EEC (on bank accounts) and 91/674/EEC (on insurance accounts) have been taken into consideration in the reforms, where particular balance schemes for the banks and particular balance schemes for the insurance companies are prescribed. (for more details see [05 II A 5](#))

According to the accounting regulations for banks, savings banks and other financial organizations in the Republic of Macedonia, the Minister of Finance prescribed particular balance schemes (Rulebook on the form and contents of the balance schemes on banks, savings banks and other financial organizations "Official Gazette of RM" No. 27/99).

Also, separate balance schemes are prescribed for the insurance and re-insurance companies with the Rulebook on the contents and form of the balance schemes for the insurance and re-insurance companies ("Official Gazette of RM" No. 36/99, 34/02).

## **9. Is the IAS (International Accounting Standards) Regulation 1606/2002 taken into account in these reforms?**

The regulations for the implementation of the International Accounting Standards (IAS) have been completely taken into consideration.

By adopting the IAS and prescribing the unique balance schemes, that arise as an obligation for the EU member countries, the contents in the Fourth and the Seventh Directive, in the Republic of Macedonia was provided implementation of unique accounting regulations and high level of harmonization of the accounting practices. In the same time the country is meeting the requirements for creation an accounting system compatible with the one in the EU countries.

## ***B. Statutory auditors***

**1. If auditors exist, what authority is issuing them certificates and is responsible for their supervision? How many such certificates have been issued and how many of these were issued in 2003 (or the most recent year for which reliable data is available; please specify which year)?**

The Law on Audit ("Official Gazette of RM" No. 65/97, 27/2000, 31/01 and 61/02) regulates the issuing of work permit according to which the founder of an audit company submit request and the prescribed documentation to the Ministry of Finance. The Minister of Finance decides upon the submitted request within 30 days from the day of submitting the request.

The audit companies, which are licensed, are registered in the audit company register at the Ministry of Finance. According to the record from this register, 20 licenses have been issued for the audit companies based on permanent certification for authorised auditors until the end of October 2004.

The Minister of Finance takes away the work permit of the audit companies with Decision, in cases when they are not performing the audit in accordance with the Law and the procedures established with the International Accounting Standards, or in other cases prescribed by the Law.

In the past period, based on the provisions in the Law, the Minister of Finance has issued certificates for authorised auditors, based on written request and applied documentation, to the individuals in the field of science and practice who meet the conditions prescribed by the Law for recognition the title of an authorised auditor, as well as certificates for authorised auditors to the persons that have passed the exam for the authorised auditor. According to the register in the Ministry of Finance, the total number of issued certificates to authorised auditors is 136. In 2003, 47 permanent certificates for authorised auditors were issued, and in 2004, 43 permanent certificates for authorised auditors were issued.

(Regulated in the Articles 5, 6, 8, 30, 31 and 38-a of the Law on Audit).

**2. What requirements must be fulfilled to work as an auditor (training, experience, ethical rules)? What provision has been made for the necessary training? How many individuals underwent training in 2003 (or the most recent year for which reliable data is available; please specify which year)?**

Only an authorised auditor, employed in the audit company can be performed the Audit. The authorised auditor is independent and autonomous in performing the audit within his/her authorizations provided by the Law and the International Audit Standards.

According to the Law on Audit ("Official Gazette of RM" No. 65/97, 27/2000, 31/01 and 61/02), the authorized auditor must meet the following conditions:

1. to have Higher Education - Graduate economist;
2. to pass the exam for authorised auditor and to have certificate for authorised auditor;
3. no previous criminal record, i.e. be appropriate for the audit profession, and
4. to give a statement that he/she will apply in his/her work the rules established by the Code of Ethics of Professional Accountants and International Federation of Accountants.

The candidate for passing the exam for an authorised auditor, must have a minimum of 5 years of working experience in accounting, financial or evaluation activities, i.e. 3 years of working experience in audit or control operations.

During the audit, the auditor applies audit standards established by the International Federation of Accountants. When the text based on the International Audit Standards was completed by the Committee on Audit Standards, the standards was published in the ("Official Gazette of RM" No. 51/98). The Code of Ethics of professional accountants of the International Federation of Accountants was published in the special Bulletin of the Ministry of Finance in April 1998, reproduced with permission from IFAC.

In the present Law on Audit, there are no provisions for compulsory continuous professional training. The new Law on Audit, which is expected to be adopted in the second phase by the Parliament of the Republic of Macedonia in the first half of 2005, includes provisions stating that the authorised auditor is obliged to take courses with a prescribed number of classes over the year for continuous professional training and upgrading in the field of accounting and audit, organized by the Institute for Authorised Auditors.

(Regulated with the Articles 17 paragraph 2, 28 and 29 of the Law on Audit).

### **3. What sanctions exist in cases where statutory audit is carried out by an unauthorised person?**

The legal entity, i.e., the audit company shall be fined to the amount from 10.000 MKD to 300.000 MKD, in cases when:

1. an audit is not performed in a manner as prescribed by the Law and according to procedure determined by the International Audit Standards;
2. performing audit without having obtained a work permit;
3. performing activities referred to in Article 11 paragraph 1 of this Law for the company where the audit is conducted;
4. performing audit at the entity being audit, where the audit company owns shares or has invested assets, i.e. if performs audit in the entity being audit which has made investments in the audit company;
5. the audit company has no insurance for liability against damage caused by performing the audit , and in case it does not submit evidence on insurance of the liability against damages to the Ministry of Finance within the period prescribed for it;
6. the legal entity has not obtained consent for engagement of an external expert by the entity being audited and
7. the legal entity has not provided confidentiality of information and data obtained during the performance of the audit.

A person holding a responsible position in the legal entity, i.e., the audit company, shall also be fined from 1.000 MKD to 50.000 MKD for the aforesaid misdemeanours.

In addition to the fine referred to in Article 2 of this Article, the person in charge of the legal entity, i.e. audit company, shall be given a security measure of suspension from duties of positions of responsibility for a period from three months to one year.

A natural entity, i.e., an authorised auditor shall be fined with amount from 1.000 MKD to 50.000 MKD in cases when:

1. He/she does not conduct the audit using methods provided for by this law and according to procedures determined in the International Standards of Auditing;
2. He/she does not determined accurate activities and states erroneous opinion in the report;
3. He/she uses any of the documents drawn or obtained during the audit procedure for other purposes without having been given the consent by the entity being audited;
4. He/she has not provided confidentiality of information and data obtained during the audit and uses the information obtained during the audit for gaining property or any other benefits for himself/herself or for any other subject;
5. He/she conducts an audit over the entity without being allowed to do so and
6. He/she conducts an audit without having been authorized as an authorised auditor.

In addition to the aforesaid fine, an authorized auditor shall be given a security measure of suspension for practicing his/her professional business activity for a period from three months to one year for the aforesaid misdemeanours.

(Provided for by Articles 34 and 37 of the part referring to penal regulations of the Law on Audit ("Official Gazette of RM" No. 65/97, 27/2000, 31/01 and 61/02)).

**4. Have the qualification requirements been amended lately or are changes planned? Have the provisions of the Eighth Directive (84/253) been taken into account?**

Regarding amendments of qualification requirements, there have been no amendments made in this field recently.

Changes regarding qualification requirements are regulated by the Law on Audit, which is to be adopted. In line with the provisions of this, legal and contractual audit activities will be performed by certified auditors who have acquired an auditor certificate authorizing them to perform audit in the name of an audit company. Conditions to be met for sitting for the examination necessary for acquiring the title of an authorised auditor are the following:

1. to have Higer Education – Faculty of Economics;
2. three years experience in audit under supervision of an authorised auditor;
3. knowledge of Macedonian language;
4. presented credentials for a completed course in theoretical knowledge;
5. no previous criminal record, as follows :
  - a) in the period from effective criminal punishment until date when the punishment shall start to be served, and 5 years after the date when the prosecuted person has served the punishment, in case of conviction to punishment of imprisonment, of up to 3 years by a court sentence which has gone into effect;
  - b) in the period from when the sentence has gone into effect until the date when the punishment shall start to be served, and 10 years after the date when the prosecuted person has served the punishment, in case of conviction to a punishment of imprisonment for over 3 years by a court sentence which has gone into effect and
6. no security measure of suspension from practicing his/her profession, activity or duty is given.

The Directive Eighth (84/253) has been taken into consideration while drafting the new law. The second phase of adopting the new Law on Audit by the Parliament of the Republic of Macedonia is planned for the first half of 2005.

**5. Do statutory audits in your country comply with the principles and requirements set out in the Commission Recommendations of 16 May 2002 (Statutory Auditors' Independence in the EU: A Set of Fundamental Principles, OJ L 191 of 19.7.2002) and of 15 November 2000 (quality assurance for the statutory audit in the European Union: minimum requirements, OJ L 91 of 31.3.2001)?**

The commitment of the Republic of Macedonia to a full compliance of the national legislation with EU legislation, and the readiness to take advantage of the recommendations of the European Commission for providing independence of auditors, high quality of legal audit and legal regulations, has led to the requirement for adopting a new Law on Audit. The objective is to establish a strong and powerful professional association which will undertake activities that have so far been performed by the Ministry of Finance, this also to the end of solving problems related to the auditor's profession.

The provisions set out in the existing Law on Audit ("Official Gazette of RM" No. 65/97, 27/2000, 31/01 and 61/02), generally meet the principles and conditions of the Commission's Recommendations dated 16 May 2002 (independence of authorised auditors). Legal audit is performed in accordance with the principles of independence set out in the Commission's Recommendations and included in the existing Law on Audit. The new Law on Audit will certainly continue to incorporate these principles. The new Law on Audit, which is to be adopted by the Parliament of the Republic of Macedonia in the first half of 2005, regulates these principles in more detail (it will include provisions on violating the independence of authorised auditors while providing no-audit services to the entity being audited).

The new Law on Audit will provide legal audit quality at EU level, advised in the EU Commission's Recommendations EU dated 15 November 2000.

**6. If yes, are such principles and requirements part of your audit legislation or do you have any plans to give such principles and requirements a legally binding status, in line with the Communication adopted by the Commission on 21 May 2003 (COM(2003)286)?**

The new Law on Audit, which is in the process of adoption, deregulates the existing legal regulations, and transfers completely the existing legal authorizations and powers in the field of audit, or in certain segments partially, from the Ministry of Finance to the Council for Audit Promotion and Supervision and the Institute for Authorized Auditors. The goal is to stimulate the promotion of this profession, monitor the process of acquiring the title of a authorized auditor and observe the work of the Institute for Authorized Auditors by the Council. The establishment of this Institute shall promote high professional standards and improve audit services.

The principles and requirements of the EU Commissions' Recommendation will acquire a legal and obligatory status with the new Audit Law. They will be achieved by the establishment of the Council for Audit Promotion and the Institute for Authorized Auditors, with and appropriate structure, distribution of obligations and responsibilities among these bodies, and the method of regulating their operations.

The second phase of adopting the new Law on Audit by the Parliament of the Republic of Macedonia is planned for the first half of 2005.

### III. PROTECTION OF INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

#### ***A. General***

**1. If your country is a Party to the WTO/TRIPs Agreement, please give a target date by which the Agreement will be fully implemented in your country.**

The Republic of Macedonia on 04.04.2003 became a full member of the World Trade Organization/TRIPs Agreement ("Official Gazette of RM" – International Treaties No. 7/03).

The basic legislation for meeting the requirements by the TRIPs Agreement regarding copyright and related rights is the Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98 and 98/02, 04/05), and regarding industrial property, the Law on Industrial "Official Gazette of RM" No. 47/02, 42/03 and 9/04), both in complete compliance with the requirements of the TRIPs Agreement.

Since the date when the Republic of Macedonia became a WTO member, necessary notifications to the TRIPs Agreement have been deposited. Notification regarding copyright and related rights has been made in accordance with Article 1 paragraph 3 of the TRIPs Agreement, and with regards to already expressed reserve of the Republic of Macedonia referring to Article 5 paragraph 3 of the Rome Convention on the Protection of Rights of Artists, Performers, Phonographic Producers and Broadcasting Organizations (Rome Convention). The work on the notification, i.e., Memorandum for Compliance in accordance with Article 63 paragraph 2 of the TRIPs Agreement, is in progress and it shall be deposited to the TRIPs Council thereafter.

**2. If not, when does your country plan to accede to the TRIPs Agreement?**

The answer is provided in question [05. III. A. 1.](#)

**3. Which area(s) of intellectual, industrial and commercial property would you identify as requiring further major changes/adaptations to fully comply with the SAA and for what reasons?**

In order to ensure more effective system of protection of copyrights and related rights, the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05) was adopted on 12.01.2005. The goal is to achieve complete compliance with the EU directives, particularly on: the rental right, lending right and other related rights, legal protection of data bases, copyright and related rights with regards to use in an Information society environment, the resale royalty right etc.

In order to establish an effective regime of intellectual property in the field of copyright and related rights, other normative measures are being undertaken under the authority of other state bodies. The Ministry of Finance and the Customs Administration of the Republic of Macedonia are in charge of transposing the appropriate EU Regulation in customs measures regarding pirated and counterfeit goods, whereas the Ministry of Justice is in charge with the modification and amendment of legislation related to judicial authority matters.

An Action Plan for European Partnership for 2004 between the Republic of Macedonia and the EU has been drawn to the end of increasing the efficacy level of the entities in implementation and enforcement of the regime for implementation and protection of copyright and related rights.

In the upcoming period until 2006, particular emphasis shall be put on the tasks of creating necessary prerequisites for establishing associations for collecting management of the copyright and related rights and enabling their stable performance with regards to complete harmonization with EU directives in the light of rights related to reprography, use of phonograms published for commercial purposes, cable retransmission, the resale royalty right etc. This particularly refers to the fact that in the Republic of Macedonia there is only one association for collecting management of copyright and related rights, the Association of non-scenic musical works. This points to the need of professional technical assistance both for the state bodies and the associations which are to work in this field.

With this in mind, the intention of the Republic of Macedonia to achieve the level of protection similar to the one in the countries of the European Union is obvious and included in the other answers in this Chapter of the Questionnaire and Chapter 20, Culture and Audiovisual Policy. It is also an obligation of the SSA.

To the end of evaluating the level of compliance of the Macedonian legislation with the EU legislation in the field of industrial property, the Law on Industrial Property from 2002 ("Official Gazette of RM" No. 47/02) was delivered to the relevant EU bodies in July 2003. No opinions or comments on the text of the Law on Industrial Property have been received so far. Concerning compliance of the Law with the directives and regulations of the EU, there is a certain reserve that it does not comply completely with Directive 98/44/EC for Protection of Biotechnological Inventions of the European Parliament and the Council dated 06.07.1998. EU expert opinion will help determine possible failure to comply. It is also necessary to design the methods of its implementation and have comprehensive discussions on possible effects of the application of this Directive, particularly regarding to the human aspect. According to the European Partnership Action Plan for 2004, June 2006, has been set as a deadline for compliance of the Macedonian legislation with the EU legislation in the field of industrial property.

**4. Does your country have plans to accede in the next five years to any international conventions relating to intellectual, industrial and commercial property of which it is not yet a member? If so, which convention(s) and when?**

The Republic of Macedonia is committed to following the world trends in the field of intellectual property and applying the international standards. Therefore, the activities of the World Intellectual Property Organization (WIPO) related to adopting new international treaties in the field of copyright and related rights and in the field of industrial property are closely observed by the Republic of Macedonia. The Republic of Macedonia is willing to undertake all the necessary activities for their signing, ratification or accession.

For realization of this commitment in the field of industrial property, the procedure of ratifying the Geneva Act of the Hague Agreement, referring to international registration of industrial design is now in progress.

During the following five years, the Republic of Macedonia is planning to accede the following treaties, conventions and agreements:

Trademark Law Treaty (TLT),

Patent Law Treaty (PLT),

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks,

Nairobi Treaty on the Protection of the Olympic Symbol and

International Convention for Protection of New Varieties-of Plants (UPOV Convention).

**5. Do you have specialised courts or tribunals to hear intellectual or industrial and commercial property cases? How many such cases were the subject of court rulings in the period 2001 to 2003?**

There are no specialized courts or other bodies (e.g. tribunals etc.) acting (only) with cases related to intellectual, industrial and commercial property in the Republic of Macedonia.

Courts which act with cases in the field of intellectual property rights protection are the basic courts of first instance organized according to territorial jurisdiction, courts of appeal acting on appeals against the decisions of the basic courts and the Supreme Court of the Republic of Macedonia jurisdictional court acting in the cases of extraordinary legal remedies (Law on Courts ("Official Gazette of RM" No. 36/95: Articles 32, 33 and 34) and the Law on Litigation ("Official Gazette of RM" No. 33/98: Article 1)). Judicial protection of intellectual property in the Republic of Macedonia is provided by civil law protection, penal law protection, administrative and judicial protection.

The number of cases subjects to court decisions in the period from 2001 to 2003 is as follows:

- Copyrights and related rights : a total of 250 cases
- 2001 : 94 cases
- 2002 : 9 cases
- 2003 : 147 cases
  
- Industrial property : a total of 53 cases
- 2001 : 9 cases
- 2002 : 17 cases
- 2003 : 27 cases.

**6. Does your country provide for a specific border regime preventing importation, exportation and transit of counterfeited and pirated subject matter?**

In the Republic of Macedonia the special border regime for the prevention and control of import, export and transit of counterfeited and pirated products is provided by the following regulations:

- Paragraphs 1 and 3 of the Article 163 of the Customs Law ("Official Gazette of RM" No. 21/98, 26/98, 63/98, 86/99, 25/2000, 109/2000, 31/01, 4/02, 55/02 and 42/03) which regulate the treatment of goods prohibited for import by Customs authorities when they do not comply with conditions prescribed;
- Article 10 paragraph 1 item 9 of the Customs Administration Law ("Official Gazette of RM" No. 46/04 providing) among other competencies of the Customs authorities, prescribes the control of import, export and transit of goods for which special measures of protection of copyright and related rights and industrial property rights are prescribed;
- Article 215 of the part related to security measures of the Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03 and 09/04) and Article 165 of the Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98, 98/02, 04/05) determine customs measures which can be undertaken by the Customs authorities in cases when the person interested (title of right to industrial property and the title of copyright and related rights) reports that the import of certain goods violates his/her rights regulated by virtue of the aforesaid laws.

Customs measures, which can be undertaken by the Customs authorities based on aforesaid two laws are the following:

- Inspect the goods being subject to import accompanied by the title holder or his/her representative and exclude them from circulation or storage in a safe place in cases when the importer does not have appropriate credible evidence of manufacture of the goods being imported;
- request from title holder who has reported the violation of the rights granted by the aforesaid two laws to leave a deposit for the possible damages incurred by the implementation of the aforesaid measures. The deposit for the possible damage is calculated based on the



particularity of the goods in each case and covers the expenses incurred for storage of the goods, and the possible amount due to compensate for damages to the importer or the owner of the goods;

- immediately notify the importer about the undertaken measures and their destination;
- cancel the undertaken measures in cases when charges are not pressed for protection of the rights by the title holder related to industrial property within eight days and regarding copyright and related rights within ten days.
- For the implementation of the aforesaid measures in accordance with Article 15 of the Customs Law and the Law on General Administrative Procedure ("Official Gazette of the SRM" No. 52/56, 10/65, 18/65, 4/77, 11/78, 32/78, 9/86, 16/86, 47/86 and "Official Gazette of RM" No. 44/20), the Customs authority shall notify the interested persons in writing.
- Article 5 paragraph 2 of the Law on Industrial Property and Article 171 of the Law on Copyright and Related Rights provide that foreign legal and natural entities enjoy the same rights as domestic legal and natural entities in the Republic of Macedonia with regards to protection of the rights in the field of industrial property and the protection of copyright and related rights in line with the international treaties signed by the Republic of Macedonia with one or more states, adopted conventions or based on the implementation of the principle of reciprocity as established by the Minister of Justice.

As for the penalty policy, offences committed with regards to violation of the aforesaid rights are sanctioned by the laws regulating this field, and as for criminal offences by the provisions in the Penal Code (Official Gazette of RM No. 37/96, 80/99, 4/02, 43/03 and 19/04) Eg.: these offences are sanctioned based on Article 157 of the Penal Code in case of violation of copyright or related rights, so that a penalty of imprisonment of up to 1 year is provided for the basic violations, and up to 5 years for the qualified forms. When the violation is committed by a legal entity, the person in charge of the legal entity is punished. Copies of the copyright artefact referred to the related right and the means for its reproduction are confiscated. When counterfeited goods are in question, Article 272 of the Penal Code may be applied. Charges may be pressed or ex officio procedure initiated by the Public Prosecutor regarding the aforesaid violations.

The authorities competent for the implementation of the regulations related to the border regime for import, export and transit of goods and human beings (authorities at the Ministry of Interior and the Customs Administration), in case they are notified during implementation of their competencies (control of goods, persons etc.) or find out in any other way that there are grounds for suspicion that a criminal offence or a petty offence to be persecuted ex officio has been committed, are obliged to undertake special investigative measures necessary in accordance with Articles 140, 141, 142, 142-a, 142-e, 142-f of the Law on Penal Proceedings ("Official Gazette of RM" No. 15/97, 44/02 and 74/04) for the detection and ceasure of the perpetrators, location of the traces of crime or violation and safety of the objects which may serve as evidence in penal or misdemeanour proceedings initiated ex officio by the competent office of the public prosecutor or the competent court.

In order to achieve complete compliance of our legislation with the EU legislation the Draft Law for Customs Measures for Protection of the Rights Related to Intellectual Property has been drafted and will be adopted during 2005. (see [05 Annex 02](#))

This law will encompass all the activities and measures which may be undertaken by Customs authorities for the prevention of import, export and transit of counterfeited or pirate products in one regulation, certain measures will be elaborated in more detail and new measures will be provided in accordance with the EU Regulations and directives in force.

In the process of preparing this Draft Law supported with technical assistance by the Office for Customs and Fiscal Assistance of the European Union (EU-CAFAO MAK), the provisions of the TRIPs Agreement and the Regulations of the Council of Europe No. 1383/2003 dated on 22.07.2003 have been taken into consideration.

**7. Which system of exhaustion of intellectual, industrial and commercial property rights does your country apply? In particular, does your country apply a system of national or international exhaustion of trademarks? Does your country apply a system of national or international exhaustion of the distribution right (copyright and related rights)?**

Pursuant to Article 25 of the Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98, 98/02) the distribution right shall be considered as exhausted (national exhaustion) in the Republic of Macedonia with the first sale or other type of transfer of the ownership rights of an original or of a copy of a copyright work or a subject matter of a related right with an explicit or tacit consent by the right holder.

By the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05), Article 25 of the LCRR is amended with a new paragraph 2 provided that by exhausting the right of distribution, the author shall retain the rental right of the copyright work, except the architectural structures and works of applied arts and design. After the exhaustion of the right of distribution, the author has a right for an equitable remuneration for the lending. The lending right does not apply to the architectural structures and originals or copies of the works of applied arts and design.

With the first sale of the original or of the copy of a fixed performance in the Republic of Macedonia, made with explicit or tacit consent of the performer, it shall be considered that the distribution right of the aforesaid original or copy on the territory of the Republic of Macedonia is exhausted, with the exception of rental of the fixation of the performance. This approach to the exhaustion of the distribution right applies also to phonogram and film producers. Regarding the rights of the broadcasting organisations, the first sale of a fixation or a copy of a fixation of a broadcast in the Republic of Macedonia, transferred by an explicit or a tacit consent of the broadcasting organisation, exhausts the distribution right of the aforesaid fixation or copy of the fixation on the territory of the Republic of Macedonia. As for the rights to databases with 'sui generis' protection, the right to control of the sale of copies shall be exhausted by the first sale of a copy of the database made by the right holder or by another persons with his/her consent. Public lending of the aforesaid database is not considered as utilisation thereof. The aforesaid modifications are undertaken aiming compliance with the Directive 92/100/EEC and the Directive 96/9/EC.

Pursuant to Article 152 of the Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03, 9/04), the trade mark right holder does not have the right to prohibit use of a trade mark for goods or services put on the home market by himself/herself or by his/her consent, except in case when there have been essential modifications made on the goods or modification of their characteristics, or modification of the goods or services made after they have been placed on the market (national exhaustion).

**8. Does your country provide for an effective system of enforcement of intellectual property rights (both copyright and related rights and industrial property rights) to combat piracy and counterfeiting?**

- (a) If YES, is it fully compatible with Directive 2004/48/EC on the enforcement of intellectual property rights?**
- (b) Provisional and precautionary measures?**
- (c) Criminal law provisions?**
- (d) The possibility for the rightholder to obtain damages from the infringing party?**
- (e) Are infringements punishable by penalties?**
- (f) Do judicial authorities have the possibility to order the destruction of counterfeit or pirated goods?**
- (g) Do the administrative and enforcement authorities dispose of sufficient and sufficiently trained staff? What is the average length of the judicial procedures?**
- (h) If NO, what measures, procedures and remedies does your country envisage adopting in order to dispose of an efficient system to fight against piracy and counterfeiting?**

Taking into consideration the facts stated hereunder, we find that there is an effective system for implementation of the rights in the field of intellectual property in the Republic of Macedonia.

**(a)**

With regards to the facts stated hereunder, we find that the legislation in the Republic of Macedonia complies with Directive 2004/48/EC. (for more details see [05 III A 1](#))

**(b)**

Procedures for provisional measures and security measures are provided by the following laws:

In general, by the Law on Litigation ("Official Gazette of RM" No. 33/98, 44/02), Articles 263 and 297 thereof;

Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98, 98/02, 04/05), Articles 159, 160, 161, 162, 163 and 164 thereof;

Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03, 09/04), Articles 213 and 214 thereof;

Conditions for ordering provisional measures and its types are provided for by Articles 268 and 269 of the Law on Executive Procedure ("Official Gazette of RM" No. 53/97, 59/2000, 64/03).

Article 264 of the Law on Executive Procedure ("Official Gazette of RM" No. 53/97, 59/00, 64/03) provides that the court may order provisional measures on demand of the right holder prior to initiating and during the court or administrative proceedings, as well as after the end of the aforesaid proceedings, until the execution has been carried out. Procedures for provisional measures regarding protection of rights related to industrial property and copyrights and related rights are considered urgent.

Plaintiffs may demand copies, means, equipment and documents to be withdrawn from sales and be saved, actions for possible violations or continuation of violations be prohibited, and other provisional measures for the purpose of claims security be undertaken. Proceedings are considered urgent and they shall be undertaken in accordance with the regulation dealing with the executive proceedings. The court may pronounce the measure without hearing the other party (Article 162 of the Law on Copyright and Related Rights – (in the following text as: 'LCRR').

In case of any doubts that evidence should be secured from destroying or that they would not be secured later, this measure may be pronounced in an urgent procedure in accordance with regulations for proceedings. Inspection of premises, documents, inventory, data bases, computer programs, inspection and deprivation of documents, hearing of witnesses, findings and statements of experts are regarded as providing evidence (Article 163 of the LCRR).

Measures for protection also fall under civil measures. Individuals related to violation (manufacturers, publishers, importers, consignees or owners, i.e., copy holders of copies, subjects of related rights or means used to violate the right) shall provide information and documents on the violation without delay, and in case that the aforesaid individuals do not provide the information or the documents found in their possession, they shall be held responsible and compensate for the damage incurred due to failure of delivery (Article 164 of the LCRR).

Holders of copyrights or related rights may demand inspection of the implementation of the laws and other regulations by inspectors in charge at the Ministry of Culture and require appropriate information on it. They may demand pronouncing a provisional protection measure of deprivation of objects used and intended for committing violations or created by the violation itself, and may submit a request, i.e., a proposal for pressing charges at the courts of competent jurisdiction.

In case of premeditated violation, violation due to negligence of a material or other copyright or related right and right in the field of industrial property, the right holder may demand civil penalty of

payment of agreed or ordinary compensation for the use thereof, augmented for 200 % no matter whether the violation caused damages of property (Article 160 of the LCRR and Article 216 of the Law on Industrial Property).

Plaintiffs (authors or performers) may demand a compensation for violation of personality, honor and reputation or nonproprietary damage in case of violation of the ethics law even when there is no damage regarding property (Article 161 of the LCRR).

**(c)**

The Criminal Code of the Republic of Macedonia ("Official Gazette of RM" No. 37/96, 80/99, 4/02, 43/03, 19/04) provides the following criminal acts:

- Article 272: Counterfeit of signs for marking of goods, measures and scale weights– a penalty of imprisonment for a period from 3 months to 5 years,
- Article 285: Unauthorized use of somebody's firm - a penalty of imprisonment for a period of 3 years or a fine ,
- Article 286: Unauthorized use of somebody's invention or software – a penalty of imprisonment for a period of 3 years or a fine.

Protection from violation of copyright and related rights is provided by virtue of Article 157 of the Criminal Code. The aforesaid article provides that everyone who publishes, features, reproduces, distributes, performs and broadcasts without being authorized for it, or who otherwise encroaches somebody's copyright or related right i.e. copyright work performance or subject matter of related rights without being authorized for it, shall be fined to a fine or punished with imprisonment for a period of one year (paragraph 1). A person who has gained large property, i.e., profit without being duly authorized, shall be punished with imprisonment for a period from three months to three years, i.e., imprisonment for a period from six months to five years (paragraphs 2 and 3). An attempt for the aforesaid violations is also punishable (paragraph 4). Copies of the works of an author or subjects of related rights, as well as means for reproduction shall be confiscated and destroyed (paragraph 5). In cases when the criminal offence is committed by a legal entity, the person in charge shall be fined (paragraph 6).

Other provisions of the Criminal Code of the Republic of Macedonia are the following:

1. "The criminal offence of unauthorized infiltration into a computer system", Article 251 provides that anyone who deletes, changes, damages, hides or otherwise makes useless computer data, a program, an appliance for maintenance of a computer system or disables or impedes the use of a computer system, data or program or electronic communication without being duly authorized for it, shall be punished to a fine or imprisonment for a period of up to three years (paragraph 1). In case that the aforesaid offences are committed with regards to a computer system, data or programs being protected with special protection measures or used for the work of governmental institutions, public authorities or institutions or for international communication, and the perpetrator is a member of a group established for the purpose of committing such criminal offences, the penalty shall be imprisonment from one to five years (paragraph 3); in cases when the aforesaid criminal offences have enabled significant property for the perpetrator or caused big damage, the penalty shall be imprisonment from one month to ten years (paragraph 5). A penalty of fine or imprisonment for a period of up to one year shall be applied for unauthorized manufacturing, supply, sale, keeping or making available to others special devices, means, computer programs or computer data intended or suitable for committing the aforesaid offence (paragraph 6).
2. As for the criminal offence of "Computer fraud", Article 251-b provides that anyone who premeditated illegal gain of property for himself/herself or for another person by entering untrue data into a computer or a computer system, restraining to enter the true data, forging the electronic signature or otherwise causing untrue results of the electronic processing and

transfer of data, shall be punished to a fine or imprisonment for a period of up to three years (paragraph 1); in case of large gain of property, the penalty shall be imprisonment for a period from three months to five years; and in cases when the gain of property is significant, the penalty shall be imprisonment for a period from one to ten years (paragraphs 2 and 3). In cases when the intention of the offence is only to damage another person, the aforesaid article provides fine or a penalty of imprisonment for a period of up to one year, and if larger, i.e., significant damage is caused, the penalty shall be imprisonment for a period from three months to three years, i.e., imprisonment for a period from three months to three years (paragraphs 4 and 5). As for the criminal offence of unauthorized manufacture, supply, sale, keeping or making available to other person special devices, means, computer programs or computer data, the premeditated commitment of the offence referred to in paragraph 1, a fine or penalty for a period of up to one year shall apply (paragraph 6). An attempt for the aforesaid criminal offences is also punishable (paragraph 7). Special devices, means, computer programs or data for committing the criminal offence shall be confiscated (paragraph 8).

**(d)**

Compensation for right holders referred to in the LCRR, applies in case of violation of the intellectual property rights. Article 156 regulates the protection of the rights and compensation for it, Article 157 provides that in cases when there are several holders, each of them may demand a complete protection, and in case that there are several perpetrators, each of them shall be deemed completely responsible, and Article 161; the Law on Industrial Property with Articles 201 paragraph 1, 211 and 216 provide that compensation for the damage shall be estimated in accordance with the general regulations of damage compensation related to material and immaterial damage and a civil penalty.

**(e)**

Penal provisions of Articles 168 and 169 of the LCRR provide that offences committed shall be punished to a fine with regards to legal entities (amounting from 34.000 MKD to 300.000 MKD). The person in charge of the legal entity and/or the individual independent business activity or profession shall be fined from 1.700 MKD to 50.000 MKD. The natural entity shall be fined to a fine amounting from 1.000 MKD to 50.000 MKD. The protection measure of suspension from performing the business activity for a period from 3 months to 1 year and protection measure of confiscation of the illegally created objects or objects used for creation of illegal objects shall also be pronounced.

According to the Article 228 of the Law on Industrial Property infringer of industrial property rights, depends upon the infringement, shall be fined from 10.000 MKD to 300.000 MKD. In such cases the protection measure of suspension from performing the business activity for a period from 6 months to 1 year shall also be pronounced.

**(f)**

A right holder may demand from the court to order confiscation and destruction of products manufactured or in sale - Article 201 paragraph 2 of the Law on Industrial Property. The illegal products and wrapping material thereof or the production and other subjects of protection (e.g. matrixes, negatives, molds, panels or other means used for perpetrating the violation) shall be destroyed or remanufactured, the equipment intended to be used for violation of the rights referred to in the LCRR, i.e. in Article 159 paragraph 1 items 1, 2 and 3 and paragraph 3 thereof shall be destroyed or remanufactured, and it may be required that the illegal products or means are ceded.

Moreover, pursuant to Article 259 of the Law on Execution of Sanctions ("Official Gazette of RM" No. 3/97), an enforceable decision pronouncing security measure of confiscation of objects being used or intended to be used for committing of a criminal act, or created as result of committing a criminal act, shall be enforced by the court in accordance with the law and in a way determined in the decision.

**(g)**

There are no sufficient or sufficiently trained human resources available for the administration of the LCRR. Namely, the Sector for Administrative and Supervision Affairs and Control at the Ministry of Culture, being competent for the supervision and inspection, exercises its authority under rather unfavorable conditions regarding organization, human resources and technical equipment. The work of the Sector is organized in two Units with a total of 8 possible executors, 3 positions being full time employees and the others vacant. The duties of the vacant positions are performed by outsourcing free lancers due to the obligation for restrictive policy in new employments.

The Act for Systematization of Posts of the State Office of Industrial Property foresees 50 civil servants, a director and deputy director. At the moment only 23 civil servants are employed. The aim of drawing the Act for Internal Organization and Work of the State Office of Industrial Property which has been enforced as of 20.06.2004, was to increase the specialization of the experts in particular fields. For achieving more appropriate, more suitable and continuous specialization of human resources in particular fields the State Office of Industrial Property develops annual program for training of human resources.

The period determined for the procedures depends on the complexity of each particular case.

Civil proceedings last from 6 months to 3 years.

With regards to the average duration of court proceedings, the court proceedings regarding offences are usually done within two years before they become obsolete. One of the reasons for relatively long proceedings is the lack of specialized departments at the courts and insufficiently developed court practices in this field. This imposes the need to establish specialized departments at the courts, modify the existing regulations appropriately and organize training and seminars for the judges.

**(h)**

For the purpose of raising the level of efficacy regarding the implementation of the regime for exercising and protecting copyright and related rights, the following measures are planned:

- Human resources: the current coverage of supervision and control of all elements subject to control is poor. The plan to overcome this problem is by increasing the number of executors and filling the existing vacant positions at the competent Sector for Inspection at the Ministry of Culture;
- Training of human resources: There is an urgent and pressing need for technical assistance in professional training of the inspectors regarding new inspection techniques as well as permanent training in this field of the other public authorities competent for the implementation of the regulations provided for in this field;
- The Action Plan for the European Partnership for 2004 includes the following: the Republic of Macedonia has determined the tasks for implementation of activities with the purpose to put into effect the Program for Promotion and Implementation of the Regime of Effectuation and Protection of the Copyright and Related Rights and Education and Sensibility including an Analysis of the Situation and Proposal short-term and long-term Measures and Activities of the Coordination Body for Copyright and Related Rights. The objective of this Program is to draw action plans for undertaking more effective measures targeted at coordinated approach of work of the competent inspection authorities. This will also be supported by the Action Plan for Effective Implementation for the Protection of Copyright and Related Rights in the Republic of Macedonia;
- Improve inter-departmental cooperation: Draw an appropriate Action Plan for improving inter-departmental cooperation to the end of consistent and coordinated work of the competent bodies in this field, including inspection authorities;

- Raise public awareness: In order to improve the awareness of the need to protect copyrights and related rights it is necessary to create a web portal and web page, make campaigns on the significance of copy right protection and undertake other similar measures to raise public awareness, build capacities and provide necessary technical equipment etc.

The Law on Industrial Property provides that the State Office of Industrial Property shall cooperate with the other state bodies, legal and natural entities and citizens' associations in the field of industrial property, with other foreign offices, except if otherwise provided by law for the cases of certain exchange of information.

In the Action Program for 2005 the State Office of Industrial Property provides cooperation with all the subjects involved in the system of industrial property rights protection, including the Ministry of Interior, the Ministry of Justice, the Customs Authority, the State Market Inspectorate and the Commission for Protection of Competition.

The possibility to regulate by law the work of the State Market Inspectorate competent for confiscating infringed goods in sales is being considered in official meetings. There is a draft Project of the European Agency for Reconstruction for network communication with all the subjects involved in the system of the enforcement of the intellectual property rights protection.

## ***B. Copyright and Related Rights (Intellectual Property Rights)***

### **1. Does your country provide for protection of semiconductors? If yes, do you consider this protection to be in conformity with Directive 87/54/EEC?**

The Republic of Macedonia provides protection of semiconductors by virtue of the Law on Protection of Topographies of Integrated Circuits dated 22.01.1998 ("Official Gazette of RM" No. 5/98). The aforesaid Law entered in the force on 08.02.1998.

The Law is compliant to Directive 87/54/EEC.

### **2. Does your country provide for a rental right, lending right and the provisions on certain related rights set out in Directive 92/100/EEC?**

**a) If YES, please give full references and the principal contents of your legislation. Does the legislation notably provide for an unwaivable right to equitable remuneration for rental where an author or performer has transferred or assigned his rental right concerning a phonogram or an original copy of a film to a phonogram or film producer? Does your legislation provide that at least authors obtain a remuneration for public lending? Does it provide for a derogation from the exclusive public lending right and if so, would this be in line with the Directive? Does your legislation provide that a single equitable remuneration is paid by the user to the relevant performers and phonogram producers every time a phonogram published for commercial purposes is used for broadcasting by wireless means or for any communication to the public?**

**b) If NO, do you plan to adopt legislation on the protection of rental rights, lending rights and related rights? Please give details and dates.**

The Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98 and 98/02) regulates the rental right and other related rights included in EU Directive 92/100/EEC, but not the lending right.

**a)**

The Law on Copyright and Related Rights (hereinafter referred to as the 'LCRR'), regulates the rental right and other rights connected to the related rights, without the lending right. Therefore the LCRR is not completely harmonised with the aforesaid Directive.

Article 2, item 6 of the LCRR defines the rental right, i.e. providing of an original or a copy of a copyright work / subject matter of a related right to be used for a limited period of time for direct or indirect economic benefit.

As for the rights of the authors, the system of exclusivity of rights, including the right to rental (Article 19 of the LCRR) has been adopted. In the context of audio-visual copyright works, when signing contracts for film production and audio-visual adaptation, a film producer shall be transferred all the exclusive economic rights (presumption of transfer) by the authors, but the authors retain the right of equitable remuneration for each rental and they may not waive the aforesaid right. The right to rental also refers to the use of a computer programme.

In accordance with Article 111 of the LCRR, the artist - performer (hereinafter referred to as the 'performer') has an exclusive right to: broadcasting (hereinafter referred to as : the broadcasting) of the performance, except where the performance is a broadcast by itself or it is a broadcast from a fixation; public transmission of the live performance by technical means out of the space or place of performance, fixation of the live performance; reproduction and distribution of phonograms and videograms with fixed performances, as well as rental. Presumption of the transferability of the right to fixation, reproduction, distribution and rental with regards to the performance is provided for phonogram and film producers, however the performers retain the right of equitable remuneration for each rental and they may not waive the aforesaid right (Article 113 of the LCRR).

The right to reproduction, distribution and rental is an exclusive right of a phonogram producer (Article 118 of the LCRR). Single equitable remuneration is provided for a phonogram producer and the performer for broadcasting or other communication to the public of phonograms published for commercial purposes or its reproduction. The remuneration is distributed to the aforesaid subjects in a ratio of 50 % in case when there is no written contract for distribution signed.

The right to reproduction, distribution and public presentation is an exclusive right of the film producer (Article 122 of the LCRR).

Broadcasting organisations (hereinafter referred to as organisations) have the exclusive right to: re-broadcasting the programmes thereof and broadcasting via satellite; transmitting programmes at public places, against payment of an admission charge; fixation as well as reproduction and distribution of the fixations on broadcasting programmes and other similar rights (Article 129 of the LCRR).

The LCRR does not regulate the lending right as an exclusive right or a right to remuneration lending, and therefore, it does not regulate the right to public lending, including the right to remuneration to authors of public lending at least.

**b)**

The Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05), (hereinafter referred to as LALCRR'), was adopted for the purposes of complete harmonisation with the EU Directives. To the end of harmonisation with the aforesaid Directives, and to meet the needs of the Questionnaire on the limitations and exemptions with regards to copyright and related rights (hereinafter referred to as Questionnaire'), the Question regarding Directive 2001/29/EC, i.e. the so called Information Directive, shall be answered integrally.

With regards to complete harmonisation with the aforesaid Directive, the LALCRR defines also the lending right - use of an original or a copy of a copyright work and/or subject matters of related rights for a limited period of time with direct or indirect economic benefit in cases when the aforesaid right is being exercised by an institution open to public. At the same time, the definition of the right to distribution completes the definition that each form of transfer of possession (rental and lending), is also considered distribution. Consequently, the exclusive rights of the right holders (authors, performers, phonogram producers, film producers etc.) define only the right to distribution including



the right to rental and/or the corresponding lending right . For the regime of right to exhaustion, i.e. (for more details see [5 III A 7](#)).

LALCRR also provides provisions concerning the lending right according to which the author has the right to an equitable remuneration for the lending, after the exhaustion of the right to distribution. At the same time, the lending right does not apply to architectural works and original and copies of the applied arts and design. The following public institutions are exempted from payment of remuneration: Libraries for originals or copies of written works or copies of phonograms; galleries and museums for originals and copies of visual works of art or photographs and film libraries and educational institutions for originals or copies of videograms with fixed cinematography and other audio-visual works. Moreover, remuneration shall not be paid when inter-lending among public institutions, i.e., other non-profit organisations take place. Thus, the harmonisation with the Articles 4 and 5 of the aforesaid Directive has been achieved.

Presumption of transfer referred to in the provisions of the LALCRR for copyright works created in the course of employment; apply only to labour contracts regarding film production. Economical and other rights belong to the employee-author after five (5) years, and the employer has the right to demand new exclusive transfer thereof in case he/she pays the employee-author equitable remuneration for every type of economical right. Notwithstanding presumption or non-presumption of the right to rental with regards to copyright works created in the course of employment;, the authors are entitled to the right to equitable remuneration for each rental.

Provisions of the LALCRR concerning equitable remuneration upon contracts for film production and audio-visual adaptations are improved and apply to the right to equitable remuneration by the film producer for every use of the audio-visual works including rental thereof.

As for the rights of the performers, Article 113 of the LCRR has been corrected by virtue of the LALCRR by means of two separate articles providing that the presumption for transfer of the rights (fixation, reproduction and distribution, including rental) applies only to contracts regarding film production, and as for contracts for production of phonograms, performers are retained to the right to remuneration for each economical right transferred. In both types of contracts, performers are retained to the right of equitable remuneration for each use of the works including rental thereof, and they may not waive the aforesaid right.

Provisions regarding phonogram producers, film producers and radio and TV organisation are improved nomo-technically and with regards to style harmonised with the Directive, regulating the rights thereof in accordance with the other Directives.

Pursuant to the LALCRR, the user is obliged to pay the phonogram producer an equitable remuneration for every use as a single sum for the rights of the phonogram producer and the performer in case when a phonogram is published for commercial purposes or a reproduction thereof is used directly or indirectly for public transmission, broadcasting or rebroadcasting. Phonogram producers shall pay the phonogram performers a half of the remuneration, unless this Law determine otherwise. At the same time, a phonogram made available to the public with consent by the phonogram producer shall be deemed to be published for commercial purposes and shall be used under the aforesaid conditions.

It may be concluded that the adoption of the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05) is completely harmonised with the aforesaid Directive.

### **3. Is the term of protection of copyright and related rights in your country in conformity with Directive 93/98/EEC? If NO, how and by when do you intend to align your legislation with this directive?**

Directive 93/98/EEC was transposed in the Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/9 and 98/02) when it was adopted in 1996, The Law was harmonized with this Directive, however not completely. The terms of duration were fully harmonized for: the protection of authors (during their lifetime and 70 years after their death), including the terms with regards to anonymous and pseudonymous works; the beginning of duration of the terms (1<sup>st</sup> of January in the

year following the event is considered as the base for the calculation of terms) etc.; protection of the performers (50 years after the date of performance, in case when the fixation of the performance was first lawfully published or lawfully communicated to the public during the aforesaid period, the rights shall be valid for 50 years after the date of the first legal disclosure); protection of phonogram producers (50 years after the date the fixation was made, and if the phonogram was lawfully published for the first time during that period, the rights shall be valid for 50 years after the date of such publication. In cases when the phonogram was not lawfully published during the aforesaid period, but was lawfully communicated to the public, the rights shall be valid for 50 years, from the date of such communication to the public); protection of film producers (valid for 50 years from the date of completion of the fixation, and in cases when the videogram was lawfully published or communicated to the public for the first time, the rights shall be valid for 50 years from the date of the first legal disclosure); and protection of the rights of broadcasting (valid for 50 years from the date of the first broadcast). Provisions regarding terms of duration of the protection of audio-visual works were not harmonised.

In the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05), (hereinafter referred to as 'LALCRR'), the Article stipulating the terms for protection of the audio-visual works in the Law on Copyright and Related Rights (hereinafter referred to as the 'LCRR') is deleted, and in the Article related to the terms for the protection of co-authors, the terms of protection of audio-visual works are provided, so that the term shall be calculated or shall begin to endure with the death of the last person alive, independently of the fact whether they are deemed to be the authors of the work or authors of contributions to the work in accordance with the LCRR as follows: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specially created for use in the cinematography or other audio-visual work.

### Other Terms of Protection

Terms of the protection of disclosure of the previously unpublished works in the public domain, as well as publication of scientific and critical commentaries and reviews on previously disclosed in the public domain are also stipulated by the LCRR, but not sufficiently harmonised with the aforesaid Directive. LALCRR stipulates that a publisher who for publishes for the first time lawfully or an entity, who / which communicates to the public for the first time, a still undisclosed copyright work in which the copyright has expired, shall enjoy protection equal to the economical rights of the author determined by this Law (rights are valid for 25 years from the date of the first lawfully publication or the first lawfully communication to the public). A physical entity creating a scientific or critical comment or a review on a previously disclosure copyright work whose copyright has expired, shall enjoy protection equal to the economical rights of the author determined by this Law (rights are valid for 25 years from the date of the first lawfully publication).

Pursuant to the LALCRR, in cases when until the date of entering into force of the Law, the users have utilised lawfully the copyright works and the subject matters of related rights whose protection has expired until the date of entering into force of the Law, the aforesaid works, i.e., subject matters of related rights shall not enjoy the protection in accordance to the Law.

A complete harmonisation with the aforesaid Directive is achieved by virtue of the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05).

### 4. Does your copyright law provide for the legal protection of computer programs?

**a) If YES, is it fully compatible with Directive 91/250/EC, including with the provisions of this directive on authorship, restricted acts, exceptions to the restricted acts, decompilation and special measures of protection?**

**b) If NO, do you plan to adopt any legislation in this field? Please give details and dates.**

A whole section of a separate chapter is treating special provisions for computer programs in the Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98 and 98/02). The aforesaid section is basically harmonised with Directive 91/250/EEC. Nevertheless, during further evaluation,

some nomo-technical impreciseness consequently leading to incomplete harmonisation with the Directive has been established.

With the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05), hereinafter referred to as the 'LALCRR', the aforesaid non-reconciliation has been eliminated. Therefore, provisions regarding computer programs created under commissioning copyright contract have been deleted from the LALCRR. Pursuant to the LALCRR, authors of programs have exclusive economical rights to use the program and to authorise or prohibit use of the programs for the following purposes: reproduction, as well as loading, displaying, running, transmission, or storage of the computer programs, in cases when the aforesaid activities require such a reproduction; translation, adaptation or any other alteration, as well as reproducing of the results of that alteration, without prejudice to the rights of the person performing the aforesaid alteration and distribution of the originals of computer programs or copies in any form. Provisions concerning exhaustion of the right to distribution shall apply also in cases of distribution of the original or copies of a computer program.

Pursuant to the LALCRR, unless otherwise provided by contract, a legal user of a computer program may reproduce or perform any other processing referred to in the previous paragraph, including correction of errors necessary for running the program in accordance with the purpose thereof and with regards to the activities referred to in the previous paragraph, without authorisation from the author. A legal user may also reproduce, without authorisation from the author, a maximum of two copies of the program, one of which is reserve copy in case of necessary use. Also, the legal user of the copy of a computer program may observe, study or test the functioning of the program without an authorisation from the author in order to determine the ideas which are basic characteristic of any element of the program, if he does so while performing any of the activities of loading, displaying, running, transmission or storage of the program that he is entitled to perform.

Pursuant to the LALCRR, as for the reproduction of the code and alteration of its form, while exercising the right to reproduction, i.e., while exercising the right to any other alteration stated above, authorisation by the author is not necessary if it is made for the purpose of obtaining information aimed at achieving interoperability of an independently created computer program with other programs, upon the following conditions: the aforesaid activities to be carried out by the licensee or on their behalf, for that purpose, by a person authorized to do so: the information necessary for achieving interoperability was previously available to the aforesaid persons, and if these activities are confined only to the parts of the original program which are necessary to achieve interoperability. It is not permitted that the information necessary for achieving interoperability referred to in the previous sentence are: used for other purposes except for achieving interoperability of independently created computer programs; to be given to third parties, except when necessary for achieving interoperability of the independently created computer programs and to be used for developing, production or marketing of computer programs substantially similar in expression, or for any other act which infringes copyright. The aforesaid provisions may not apply in the way which may unreasonably prejudice the copyright or are in conflict with the normal use of the computer program.

The LALCRR is completely corrected with regards to the fact that it shall also be considered that a person infringed the exclusive rights, when the person knew or could be in a possibility to know that it distributed or possessed illegal copies of a computer program for commercial purposes.

The LALCRR contains a provision concerning the connection of relevant provisions on technological measures for the protection of computer programs, (for more details see [05 III B 7](#)).

It may be concluded that by means of the aforesaid corrections of the already transposed Directive into the basic text of the Law on Copyright and Related Rights, complete harmonisation with EU legislation has been achieved.

**5. Does your copyright law provide for the legal protection of databases?**

**a) If YES, is it fully compatible with Directive 96/9/EC, including on scope of protection, protection under copyright and sui generis protection?**

**b) If NO, do you plan to adopt legislation on the legal protection of databases (including sui generis protection)? Please give details and dates.**

The Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98 and 98/02), (hereinafter referred to as the 'LCRR') stipulates only provisions on copyright databases, i.e. collections which meet criteria for copyright works according to selection, purpose or arrangement of contents. However, there is no provision regarding exceptions and limitations of their data abase. This is not in compliance with Directive 96/9/EC.

Directive 96/9/EC is transposed in the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05), (hereinafter referred to as the 'LALCRR'). Thus, the LALCRR introduces a definition of database using elements stated in the Directive and equally referring to as copyright databases and databases with 'sui generis' protection. About the provision on the exceptions and limitations for copyright databases. (for more details see [05 III B 7](#))

A particular sub-section determines the rights of the maker of database with 'sui generis' protection as a particular type of related rights. An exclusive right of the maker of database with 'sui generis' protection is introduced in cases when he/she has presented that substantial quality and/or quantity investment is made in the database. The LALCRR determines the scope of protection, total, essential and non-essential parts of the database contents. The LALCRR stipulates the types of use: extraction and re-utilization, in correlation with the types of use referred to in LCRR. With the first sale of a copy of a database with 'sui generis' protection the right to control the further sale is exhausted, while public lending is not an act of utilisation. The LALCRR defines the rights of the lawful user in detail - the scope of the legally permitted utilization by the lawful user - the maker of disclosed database shall not prevent a lawful user from utilization the insubstantial parts of the contents thereof, evaluated with regards to quality and/or quantity for any purposes. In cases when a lawful user is authorised to utilise only part of the database, the aforesaid paragraph shall apply only for that part. A lawful user of a disclosed database shall not undertake any activities contrary to the normal use and/or in unreasonable degree prejudice the legal interests of the maker of a database. The lawful user of a disclosed database shall not cause damage to the right holder of the copyright or related rights with regards to works or subject matters of related rights of the aforesaid database. The LALCRR stipulates specific cases of free use of databases with 'sui generis' protection: extraction of parts of non-electronic database for private purposes; extraction of parts due to illustration for teaching purposes or scientific research, in case when the source is indicated and to the extend justified by non- commercial purposes, and extraction and/or re-utilisation of parts for the purposes of public security, in administrative and judicial proceedings.

The LALCRR refers to the particular term of duration and calculation of the database protection period mentioned above: 15 years after completion of the making of the database, and in case it has been legally disclosed, 15 years from the date of its first such disclosure. Article 51 of the LCRR stipulates the method of estimating the protection period (1 January in the year following the event is the base for calculation of terms) shall be applied adequate to the 'sui generis' protection. The term of duration for protection shall start to endure from the beginning, with any substantial change evaluated with regards to quality and/or quantity, to the database contents including any substantial change resulting from the accumulation of successive additions, deletions or alteration, qualifying the database as an substantially new investment, evaluated with regards to quality or quantity.

The LALCRR applies to the protection of databases with 'sui generis' protection, if 15 years have passed since their completion is made on the day of entering into force of this Law. The provision referred to in Article 10 paragraph 3 of Directive 93/98/EEC applies also to the databases with the 'sui generis' protection.

With this the Law Amending the Law on Copyright and Related Rights is fully compatible with the aforesaid Directive.

**6. Does your copyright legislation provide for the legal protection of copyright and related rights in conformity with Directive 2001/29/EC?**

Several articles of the Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98 and 98/02), arise from or may be legally interpreted regarding the scope of the provisions of WIPO treaties: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty i.e., the aforesaid Directive 2001/29/EC.

However, most of the articles of the Law on Copyright and Related Rights (hereinafter referred to as the 'LCRR') are compatible with the provisions of the Directive only partially or do not consistently correspond to it in correlation with each other as a whole, i.e., they are not in complete compliance with it, e.g. provisions regarding the exceptions and limitations of the rights in relation to the right to reproduction; provisions regarding technological measures for protection which do not stipulate all the elements etc. Also, the LCRR does not refer to the exclusive right for making available to the public and the protection of rights-management information.

A complete harmonization with the Directive has been achieved by virtue of the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05).

For the process of transposing the Directive in the provisions of the 'LCRR' it is already answered (for more details see [05 III B 7](#)).

**7. If YES, is it fully compatible with the listed exclusive rights of authors and certain neighbouring rightholders? Does your legislation provide, in particular, for a right of communication to the public of works and a right of making available to the public other subject-matter? Does it provide for the mandatory exception for "temporary copies" (Article 5.1)? Does it provide for other exceptions? If yes, can you list them? Does your country provide for a system of fair compensation to rightholders for the following: reprography, reproductions made by a natural person for private use, reproductions of broadcasts made by social institutions pursuing non-commercial purposes? Does your legislation provide for the legal protection of technological measures and rights management information? What sanctions and remedies does your legislation provide in respect of infringements of the rights and obligations set out in Directive 2001/29/EC?**

By virtue of the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05), (hereinafter referred to as the 'LALCRR'), the following definition of the right to reproduction has been modified and amended: making a copy of a copyright work or of its part, fixed on a material medium, directly or indirectly, temporary or permanently, regardless of the type of the medium of the copy, the number of copies and the manufacturing procedure. The definition has been introduced referring to the right of making available to the public-, individual use of an original or a copy of a copyright work being accessible to the public, by a wireless or a wire means, from the place and at the time chosen by the user himself/herself. The right to making available to the public is incorporated in all legal provisions related to their exercising by the right holders as an exclusive right- authors of copyright works, including audiovisual works; performers of their fixed performances; or phonogram producers with regards to their phonograms; for film producers for their audiovisual fixations: for broadcasting organisations with regards to their broadcasts, including cable re-broadcast; for makers of databases with 'sui generis' protection (re-utilization includes making available to the public).

Provisions referring to exemptions and limitations have been revised completely so that they are harmonized with the Directive, and also new types of lawfully permitted use with remuneration such as legal licences and lawfully permitted use without remuneration as a free use, which have not been regulated by the Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98 and 98/02), have been introduced in accordance with the aforesaid Directive. Thus, in line with the LALCRR, temporary reproduction of copyright works, i.e., subject matters of the related rights of transient or incidental nature, being integral and essential part of the technological process without



independent economic significance in itself, but with the sole purpose to enable transmission in a network among third parties through an intermediary and authorised use in accordance with the provisions of the Law on Copyright and Related Rights (hereinafter referred to as the 'LCRR'). In this way LALCRR is harmonised with Article 5 paragraph 1 of the Directive.

As for the part referring to exceptions and limitations the provisions regarding lawfully permitted use with remuneration as legal licences, the LALCRR regulates the following:

1. Reproduction of copyright works, in textbooks, reading books and other publications of a similar nature partially, or completely when they refer to short copyright works and works in the field of photography, fine and applied art, architecture, design and cartography, intended only for the purpose of illustration in teaching for non-commercial goals; and complete reproduction of articles in daily and periodical publications, as well as comments in broadcastings on issues of common interest in the field of economics, politics, religion, art, science etc., with the exception when the use is explicitly reserved by the author. The aforesaid use applies correspondingly to communication to the public.
2. Reproduction of copyright works is limited to three copies by the physical entity for private use, for purposes which are not commercial, neither directly or indirectly. The aforesaid reproduction does not refer to the scope of the whole work but as follows: for literary works, except when the circulation has been exhausted before the end of two years; for graphic publication of a music work, except by manual transcript; for databases in non-electronic form; and for architectural works, unless otherwise provided by this Law or as provided by the contract. As for the legal licences, the right to an equitable remuneration is obligatory. The LALCRR contains more detailed provisions referring to the right to an equitable remuneration for private copying (for types of reprographing, the obligation for remuneration payment, and the volume and amount of the remuneration determined by the Government of the Republic of Macedonia etc.). Pursuant to the LALCRR, the aforesaid provisions shall be applied after the expiry of three (3) years from entering into force of this Law. The reason behind is the lack of infrastructure of associations for collecting management of copyright and related rights (there is only one association for collecting management of copyright - the association of non-scenic musical works).

Provisions on the lawfully permitted use without remuneration as a free use are also corrected or modified and amended. They refer to:

1. the reproduction and communication to the public of reports on daily events or public political speeches and excerpts from public speeches and lectures or similar works by public, religious and other authorities;
2. the public performance of copyright works for illustration in direct non-commercial teaching and in non-commercial school performances, if the participants do not get remuneration for it; than reproduction and public presentation of broadcasted copyright works for illustration of direct non-commercial teaching, as well as public performances of copyright works in charity events, if the participants do not get remuneration for it;
3. the reproduction in up to three copies of the copyright work, without commercial goals for: scientific purposes, in the scope appropriate to the purpose of the use and for use by individuals with special needs, if the use is directly connected to the needs, while the reproduction is related to works correspondingly determined, is regulated in the same manner as in the provisions referring to private copying in the LALCRR;
4. the reproduction for own use by public non-profit institutions (archives, libraries, film libraries, museums, other cultural, educational, scientific and similar institutions), under the condition that the reproductions are made by means of own copy or a copy belonging to other similar institutions for the purpose of preservation and protection of works, while the reproduction is related to works determined by the LALCRR; and communication to the public or making available to the public the works for research or personal analysis through restricted terminals of the aforesaid institutions, under the condition that the works are part of the collection of the institution and that they are not for sale or they are not subject to authorisation;

5. Quotes from a copyright work in a scope corresponding to the purpose and aim of use, i.e., explaining, illustration, polemics and instruction;
6. Use of a copyright work which is not of essential significance with regards to the purpose of any object during its utilisation as an auxiliary element;
7. Private or other own modification, which is not intended for the public and is inaccessible for the public, its processing into parody or caricature, if it does not lead to confusion as to the source of the work and modification during the permitted use, when the opposition of the author to the modification is contrary to the principles of consciousness and honesty;
8. Use of databases which are copyright works or their copies, may be freely reproduced, modified, distributed or communicated to the public in whatsoever manner or reproduced, and distributed, or otherwise communicated to the public in whatsoever manner the results of the modification activities of the aforesaid collection, if this is necessary for the access to the contents and their normal use;
9. Use of copyright works for display in public exhibitions, sales, auctions, fairs etc. in the scope necessary for advertising these events by means of catalogues and other forms by their organiser, excluding any other commercial use;
10. Use of copyright works permanently displayed in parks, streets, squares or other public places, except when the use is in a three dimensional form and for the same purpose as the original, achieving commercial goals;
11. Use of works in architectural constructions or in the form of sketches or plans of architectural works for the purpose of their reconstruction;
12. Use of a copyright work for the purposes of public security, for arbitration, judicial, administrative or other public authorities, in the scope necessary for presenting evidence, reaching decisions, their elaboration and publication, and during religious gatherings or celebrations of public holidays;
13. Use of a copyright work in the scope necessary for the control of performance during the production or sale of phonograms and videograms, devices for their reproduction or communication to the public, and equipment for program reception, during the production process and sale;
14. Use of expressions of folklore by referring to the source and the origin of the work.

The provisions regarding technological measures for copyright protection, free use of technological measures in correlation with the provisions for limitations and exemptions, and referring to rights-management information, have been harmonized with the LALCRR. Thus, it is considered that a person has infringed the exclusive rights referred to in the LALCRR when he knew or he could be in a possibility to know that is performing actions to circumvent the technological measures aimed to protection of rights referred to in this Law. Also, it is considered that any person has infringed the exclusive rights referred to in this Law in cases of manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products and their component parts, or providing services with regards to whatever effective technological measures which: are promoted, advertised or marketed for the purpose of circumvention, and have only limited commercially significant purpose or use, except for circumvent, and are primarily designed, produced, adapted or performed for the purpose to enable or facilitate circumvention. In accordance with the LALCRR, technological measures include any technology, device or their component parts, which during their normal operation are designed for prevention or restriction of infringement of the rights determined by the Law. The aforesaid measures are deemed to be effective in case when the use of the copyright works, the subject matters of the related rights or the databases with 'sui generis' protection, is controlled by the right holders with the purpose to provide protection by means of application of controlled access, by means of protecting the process (such as coding, scrambling or other type of transformation of the works or the subject matters of the related rights), as well as by means of mechanisms for control of copying.

The right holder using technological measures is obliged to enable attainment of the rights without delay and as soon as possible, on demand of persons having lawful access to copyright works, subject matters of related rights and databases with 'sui generis' protection, if they are legally

permitted to use them with remuneration, such as legal licences, and in case of legally permitted use without remuneration such as free use of economical rights determined by this Law, by means of removal of the technological measures or by other means, for the following purposes: use for the purposes of teaching, reproduction in written format for private use; reproduction in written format for scientific purposes; use for the needs of individuals with special needs; reproduction for own use by non-profit institutions, such as libraries, film libraries, museums and other cultural, educational and scientific institutions, use for the purposes of public security, as well as in arbitration, judicial, administrative and other bodies; reproduction of ephemeral recordings created by broadcasting organisations; using the rights of a computer program and using the rights of databases with 'sui generis' protection. The aforesaid provisions do not apply when the obligations under contracts for application of technological measures, including contracts for the right of making available to the public, concluded between right holders and users of the copyright works, subject matters of related rights and databases subject to 'sui generis' protection, are met.

It is considered that any person infringes the exclusive economical rights in cases when knowingly and without authorisation is carrying out: removal or alteration of any electronic rights-management information; reproduction, distribution, import for distribution, rental or communication to the public a copyright work or a subject matter of related rights, whose electronic rights-management information have been removed or altered, while he/she knew or could be in a possibility to know that he/she induces, enables, facilitates or conceals an infringement of the right. Rights-management information is the information provided by the right holders which lead to the identification of the copyright works, subject matters of related rights, databases with 'sui generis' protection, authors, other right holders, terms and conditions for their use, as well as their appropriate numbers and codes, presented by this information.

The aforesaid provisions referred to in the Chapter on 'Protection of the Rights' and all the provisions regarding judicial protection and misdemeanour protection referred to in the LCRR, as well as Article 157 of the Penal Code ("Official Gazette of RM" No. 37/96, 4/02, 43/03, 19/04), refer to their protection respectively. (for more details see [05 III A 8](#))

By virtue of the aforesaid, the Law Amending the Law on Copyright and Related Rights is completely harmonized with the aforesaid Directive as well as with the other Directives referring to this field, with regards to exemptions and limitations referred to in the Law on Copyright and Related Rights.

## **8. Does your copyright law provide for a resale right for the benefit of the author of an original work of art?**

**a If YES, is it fully compatible with Directive 2001/84/EC?**

**b If NO, do you plan to adopt any legislation in this field? Please give details and dates.**

**a)** Article 21 of the Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98 and 98/02) regulates the resale royalty right for the authors of original artistic works, according to which, in cases when the original of the fine art work or the original of a literary or a musical work (manuscript) is sold or disposed of in some other way, the author is entitled to the right to be informed and remunerated with 3 % of the retail price of every subsequent sale. The author is to be informed about data on titles of the works disposed of, data on the owner and agent, the retail price, and the right of the author to inspection of the documents containing the aforesaid data. The owner is responsible for notifying the author, and in a case when the disposition has been made through a gallery, organisation of a public sale or other agent, the aforesaid entities have joint responsibility towards the owner of the work of art. The aforesaid right may not be subject to cancellation, disposition or judicial execution. Pursuant to Article 139 paragraph 2, the aforesaid right is subject to obligatory collecting management. Pursuant to Article 148 paragraph 4, the right of the competent association to a collecting management shall be attained under the Law and not depending on whether a contract with the author has been signed.

The Law on Copyright and Related Rights (hereinafter referred to as the 'LCRR') is not completely harmonized with the aforesaid Directive 2001/84/EC.



**b)**

By virtue of the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05), (hereinafter referred to as the "LALCRR"), a complete harmonization with the aforesaid Directive is ensured. The aforesaid provisions are already into force with the adoption of the LALCRR, but not later than 2010 as provided by the Directive.

To the end of harmonization with the Directive, the LALCRR provides a definition of an 'original of artistic work' in the sense of the Directive, as a work of visual, graphic or plastic art, such as: pictures, collages, paintings, drawings, graphics, engravings, lithographies, sculptures, ceramics, carvings, tapestries, glassware, and photographs and works created during procedures similar to photographing, as well as copies of the aforesaid works deemed to be originals. Copies of the aforesaid works created by the author him/herself or made with his/her consent in a limited number shall be considered originals, and they are usually numerated and signed by the author, or appropriately approved in some other way by the author.

The remuneration of the author related to the resale royalty right shall be determined according to the rates referred to in the Directive, as follows:

- 4% of the sale price up to 50.000 EUR;
- 3% of the sale price from 50.000,01 EUR to 200.000 EUR;
- 1% of the sale price from 200.000,01 EUR to 350.000 EUR;
- 0,5% of the sale price for the part of the price from 350.000,01 EUR to 500.000 EUR and
- 0,5% of the sale price with regards to the part of the price above 500.000 EUR.

All the amounts are expressed in MKD counter value based on the middle rate of the National Bank of the Republic of Macedonia on the date of sale.

The sale price is the net value without taxes calculated. The highest amount of remuneration cannot be higher than 12.500 EUR in MKD counter value. The remuneration shall be paid by the sales person, i.e., the gallerist, the organiser of a public sale, art gallery or other agent organizing the sale of works of art. The author, his/her successors or the associations for collecting management are entitled to the right to require information necessary for providing payment of remuneration for the resale, within three years from date of the sale of the copyright work, particularly with regards to: the titles of the disposed works, the author and the agent, the sale contracts, the sale price etc. The remainder of the regime for collecting management of the LALCRR has remained the same as referred to in the existing LCR, and the provision for delivery of information has been appropriately adjusted.

Pursuant to the LALCRR when an original (manuscript) of a literary or music work has been sold or disposed of some other way, his/her author is entitled to the right to be notified and be remunerated with 3 % of the sale price, expressed as a net value without taxes calculated, from each subsequent sale.

Thus the aforesaid amendments and modifications shall achieve a complete harmonization of the Law on Copyright and Related Rights with the aforesaid Directive.

**9. Has your country adhered to the two WIPO Treaties of 1996 (WCT and WPPT)? To which other international treaties and agreements relevant for copyright and related rights is your country a party?**

WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty was ratified by the Parliament of the Republic of Macedonia in 2003 by virtue of the Law on Ratification of the World Intellectual Property Organization Copyright Treaty ("Official Gazette of RM" - International Treaties No. 44/03) and the Law on Ratification of the World Intellectual Property Organization Performances and Phonograms Treaty ("Official Gazette of RM" - International Treaties No. 44/03).

WIPO Copyright Treaty for the Republic of Macedonia entered into force on 04.02.2004, while WIPO Performances and Phonograms Treaty for the Republic of Macedonia shall enter into force on 20.03.2005.

The Republic of Macedonia is also a member of multilateral international treaties regarding copyright and related rights, as follows:

- WTO/TRIPS Agreement ("Official Gazette of RM" - International Treaties No. 7/03);
- Convention Establishing the World Intellectual Property Organisation (WIPO Convention) on basis on succession ("Official Gazette of SFRY" - International Treaties No. 31/72);
- Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971), ("Official Gazette of SFRY" - International Treaties No. 14/75, 4/86);
- Universal Copyright Convention 1952 and 1971 Universal Copyright Convention ("Official Gazette of SFRY" - International Treaties No. 54/73, 56/74);
- International Convention for the Protection of Performers, Phonogram Producers and Broadcasting Organisations (Rome Convention), ("Official Gazette of RM" - International Treaties No. 50/97)
- Convention for the Protection of Phonogram Producers Against Unauthorised Duplication of their Phonograms (Phonogram Convention), ("Official Gazette of RM" - International Treaties No. 47/97)
- Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Satellite Convention) on basis on succession, ("Official Gazette of SFRY"- International Treaties No. 13/77).

With this, the Republic of Macedonia has met the obligations of ANNEX VII of the Stabilization and Association Agreement between the Republic of Macedonia and the European Union (SAA).

The Republic of Macedonia also ratified the Computer Crime Convention in 2004 ("Official Gazette of RM" No. 41/04).

**10. Does your copyright law provide for the protection of satellite broadcasting?**  
**a) If YES, do you consider that it is in conformity with the provisions of Directive 93/83/EEC, in particular as regards the principle of acquisition of broadcasting rights in accordance with the terms of this directive? Do you have a definition of communication to the public by satellite?**  
**b) If NO, do you plan to adopt any legislation in this field? Please give details and dates.**

**a)**

Article 2 item 11 of the Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98 and 98/02) defines the right to broadcasting as disclosure of a copyright work via radio and wireless television program signals, including satellite in coded or non-coded form or by wires, including cable or microwave systems. Also, the broadcasting by means of transmission of TV program signals on demand is considered as broadcasting. The aforesaid right adequately shall be exercised by the authors (by means of exclusive or non-exclusive transfer of rights, depending on the nature of the copyright work), by the performers (by means of exclusive or non-exclusive transfer of rights), by phonogram producers (by means of a lawfully permitted use with remuneration such as legal licences for phonograms published for commercial purposes), by film producers (as an exclusive transfer of rights) and broadcasting organisations (hereinafter referred to as broadcasting organisations), (as exclusive transfer of rights).

**b)**

Having in mind that full compatibility with the aforesaid Directive has not been achieved by virtue of the aforesaid provisions, harmonization is made with the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No. 04/05), (hereinafter referred to as the LALCRR) by means of adding up of the definition of broadcasting. Thus, the aforesaid definition is amended in the LALCRR and reads as follows: Broadcasting via satellite is carried out when under control and responsibility of a broadcasting organisation program signals for emitting of a program intended for

the reception by the public are sent, in an uninterrupted communication chain leading to the satellite and back to the earth. When the program signals are coded, broadcasting via satellite occurs under conditions that the means for decoding are available to the public through a broadcasting organisation or through another person with his/her consent. A 'satellite' is defined as any satellite working at the frequency reserved in accordance with the appropriate regulation regarding telecommunication for, emission of signals intended for reception by the public or for a closed individual communication when the conditions of signal receipt are corresponding to the conditions for reception by the public.

Thus, a complete harmonization with this part of the Directive referring to broadcasting via satellite is provided.

#### **11. Does your copyright law provide for the protection of cable retransmission?**

**a) If YES, do you consider that it is in conformity with the provisions of Directive 93/83/EEC, in particular in relation to the following: principle of mandatory collective management extended to non-members of a collecting society; principle of good faith in the negotiations for cable retransmission and principle of mediation?**

**b) If NO, do you plan to adopt any legislation in this field? Please, give details and dates.**

**a)**

The Law on Copyright and Related Rights ("Official Gazette of RM" No. 47/96, 3/98, 98/02) provides protection of cable retransmission, with the definition referred to in Article 2 item 12 of the Law on Copyright and Related Rights (hereinafter referred to as the 'LCRR'), regarding rebroadcast as simultaneous, complete and unaltered disclosure of a work already broadcast if it is subject to transmitting by a cable system or by microwave system and involving more than one hundred cable connections, or if the work has begun to be initially transmitted from abroad (cable retransmission).

Article 139 of the LCRR stipulates obligatory collecting management with regards to cable retransmission of copyright works, except for broadcasting by broadcasting organisations (Pursuant to Article 148 paragraph 4 of the LCRR, the rights referred to in Article 139 of the LCRR shall be attained by the collecting management of the rights by the appropriate association, regardless of the fact whether a contract has been concluded with the author (lack of membership of the author). Thus, the LCRR is in complete conformity with this part of the Directive.

**b)**

As for the elements which have not been harmonized with the Directive, i.e., provisions on the principle of mediation for cable retransmission with obligatory clause and a clause of good faith with regards to negotiations, the Law Amending the Law on Copyright and Related Rights ("Official Gazette of RM" No.04/05), (hereinafter referred to as LALCRR), provides the following solutions:

1. By virtue of the LALCRR remuneration for the use of copyright works, i.e., subject matters of related rights, including cable retransmission, is primarily determined by means of a contract concluded between a collective management association and the national broadcasting service, i.e., between a collective management association and a users' association, i.e., the chamber. The users' association, i.e., the chamber, is defined as an association, i.e. chamber representing the majority of users in the field of the determined activity, part of activity or joint activity. Until the contracted remuneration amount is determined, it is paid in accordance with the Rulebook for the Use of Copyright Works with the Tariff regarding remuneration amounts for the collective management association, upon consent of the Ministry of Culture. Neither of the contractual parties can refuse to negotiate on the contracts with regards to the aforesaid. The Rulebook including the Tariff of the association shall be applied in cases when the user or the users' associations, i.e., the chambers, refuse to negotiate. If the collecting management association refuses to negotiate with the user or with the users' associations, i.e., the chamber, this shall be considered grounds for deprivation of collecting management licence. The remuneration for the author shall be calculated and paid in advance, with conditions, method and amount determined by the Rulebook with regards to the Tariff, until the contract is concluded. The advance payment referred to in this paragraph shall be calculated from the funds intended for the purpose of remuneration payments determined by the contract.

2. The collecting management association is obliged to adopt the Rulebook with the Tariff for the use of the works in the procedure determined by the LALCRR, as follows: firstly, before determining the Rulebook with the Tariff for the use of copyright works, i.e., subject matters of related rights, the association is obliged to ask for opinion on the Draft Rulebook with the Tariff from users' associations, i.e., the chambers, as well as from the national broadcasting service as an individual user and from the Broadcasting Council; secondly, if the aforesaid subjects do not submit their opinions and proposals within 30 days, it shall be deemed that they agree with the Draft Rulebook with the Tariff; thirdly, if the association does not adopt completely or partially the opinions and the proposals from the aforesaid subjects, within 15 days from the date of their receipt, it is obliged to ask for an opinion from the Commission for Mediation in Copyrights and Related Rights with regards to the issue of disagreement; fourthly, the Commission for Mediation in Copyrights and Related Rights shall submit their opinion within 30 days from the date of receipt of the request with regards to whether the Tariff of the association covers the rights for which the association has a licence, and whether the remuneration is determined in accordance with the LALCRR, and if the Commission does not give their opinion within the determined period, it shall be deemed that the Commission agrees with the Draft Rulebook with regards to the Tariff; and fifthly, after conducting the aforesaid procedure, the association shall submit the Rulebook with the Tariff to the Ministry of Culture for approval. The Rulebook with the approved Tariff is published in the 'Official Gazette of the Republic of Macedonia' by the collective management association. If the collective management association does not submit the Rulebook with the Tariff within three months as provided by the aforesaid procedure, this shall be deemed as grounds for deprivation of the licence. Amendments and Modifications of the Rulebook with the Tariff are made by using the same method as for its adoption. With this LALCRR, the amount of the remuneration referred to in the Rulebook with the Tariff, as a rule, is determined depending on the way of the use of the work, i.e., the subject matter of related right. If the use is necessary for carrying out the business activity of the user (broadcasting, concert, dance or other similar uses) the amount is determined as a percent of the income, i.e., the profit gained by the user from the use of the copyright work, i.e., the subject matter of related right. When the user does not gain income from the use, i.e., profit, the amount of the remuneration may be determined as a percent of the costs entailed to the use as follows: remuneration for performers, costs for use of venues etc. If the use is not necessary for performing the business activity of the user, but is useful or agreeable for the beneficiaries of the services, such as: hotels and other accommodation facilities, exhibition venues, catering facilities or other public facilities, the amount of the remuneration shall be determined as a flat rate. Circumstances regarding the use, such as: type of use, area of use, category and size of the venue, duration and number of uses and discrepancy of the amounts of the prices with regards to the business of the user, shall be taken into consideration when determining the amount of the lowest percentage or the flat rate remunerations.

3. Pursuant to the LALCRR, the Commission for Mediation of Copyright and Related Rights is appointed by the Government of the Republic of Macedonia, upon a proposal from the Minister of Culture. The Commission is authorized to mediate in negotiations for concluding contracts between collective management associations and users, as well as to give opinions on the draft rulebooks with regards to Tariffs for use of the works. The Commission mediates in a negotiations and upon request of the contractual parties may give proposals on regulation of the mutual relations with regards to concluding contracts. Mediating for cable retransmission of copyright works and subject matters of related rights is obligatory. The Commission consists of a Chairman and four members with a four-year term in office. It is appointed from amongst the outstanding independent experts who can contribute to the achievement of goals established based on their experience and knowledge in the field of copyright and related rights. The Committee adopts an Operating Procedure providing methods of decision making with regards to cases determined by the aforesaid Law. The Commission may invite an authorised representative of each contractual party and other experts for relevant fields to attend their meetings. The representatives of the contractual parties and the experts invited shall participate in the work of the Committee having equal rights except for the right to vote. The Commission adopts the proposal for the regulation of mutual relations with regards to concluding mediated contracts and the opinion on the Draft Rulebook with the Tariff for use of copyright works, i.e., subject matters of related right, with a majority of votes of the total number of members. The members of the Committee and the other experts invited to the session are also entitled to remuneration. The amount of the remuneration is determined by the Minister of Culture and provided by the contractual parties in equal amounts.

4. The LALCRR provides that when the contractual parties during negotiations for concluding separate contracts for remuneration for the copyright works use, i.e., subject matters of related rights, do not reach agreement concerning the provisions of the contract and do not conclude it, any one of the contractual parties may demand mediation from the Commission. In capacity of an intermediary, the Commission is authorised to help the contractual parties and give proposals on the regulation of the mutual relations with regards to concluding the contract in question upon request from the contractual parties. The proposals shall be delivered to the contractual parties personally or via registered mail. The proposals of the Commission are considered accepted if none of the contractual parties has expressed disagreement in writing within three months from the date of receipt. The disagreement shall be delivered to the Commission personally or by registered mail.

### ***C. Industrial Property Rights***

#### **Patents**

##### **1. Please give a target date by which your country intends to file its application for membership of the European Patent Organisation.**

The Republic of Macedonia plans to submit an application for membership to the European Patent Organization in 2006.

The Parliament of the Republic of Macedonia has ratified the Agreement on Co-operation in the Field of Patents with the European Patent Organization on 18.09.1997 ("Official Gazette of RM" No. 49/97). The Agreement was signed by the Government of the Republic of Macedonia and the European Patent Organization by exchange of letters on 24.06.1997 for a period of 5 years and it was renewed twice for the following periods of 2 years each. It is still in effect.

##### **2. Please give an indication of areas of patent law/practice which will require changes/adaptations before your country can accede to the European Patent Convention.**

Patent rights protection regulated with the Law on Industrial Property adopted in 2002 ("Official Gazette of RM" No. 47/02, 42/03 and 09/04) is in complete compliance with the European Patent Convention.

##### **3. Please give an indication by when and how you intend to grant patent agents in your country the basic freedoms they enjoy under Community law?**

In line with EU legislation, the fundamental human rights and freedoms apply also to the patent agents. Most of the patent agents in the Republic of Macedonia are lawyers, and the legal profession is an independent profession guaranteed by the Constitution of the Republic of Macedonia. At the same time, the agents in the field of industrial property are organized in the Association of Industrial Property Agents founded in 1994, through which they attain part of their freedoms and rights.

Article 16 of the Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03, 9/04) related to Article 227 of the same Law, regulates the conditions to be met by natural and legal entities in order to be registered as agents in the field of industrial property (our Law does not make difference between the agent types in the field of industrial property such as patent agents, trademarks agents etc.). The aforesaid Law is compatible with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights and with the minimal rights based on the Paris Convention on Industrial Property Protection providing that the member states may also stipulate particular conditions in their national legislations to be met by individuals whose business activity is to represent others in the field of industrial property. Thus, special conditions apply also regarding representation of foreign natural and legal entities at the State Office of Industrial Property in the Republic of Macedonia.

**In the upcoming period, based on experiences and cooperation with the European Patent Office and the national institutions of EU member states, the Republic of Macedonia will upgrade the system of representing and will work on the achievement of EU standards.**

**4. In your country, what are the specific rules for patent of biotechnological and computer-implemented inventions?**

There are no specific rules for patenting of biotechnological inventions provided by virtue of the Law on Industrial Property adopted in 2002 ("Official Gazette of RM" No. 47/02, 42/03 and 09/04).

In line with Article 19 paragraph 2 item 3, the inventions whose subject matter of protection are computer programs are not deemed to be inventions.

There is an exception to the stipulation above for cases when the protection has not been demanded of for the subject matter of the invention as such.

**5. Has your country already modified its legislation in order to comply with the content of Directive 98/44/EC on biotechnological inventions?**

**a) If YES, is the law now fully in conformity or are further modifications required; if so, which and by when do you plan to adopt them?**

**b) If NO, give a target date by which your country will programme the appropriate modifications.**

The Republic of Macedonia has not modified the legal regulations in order to comply with EU Directive 98/44/EC for biotechnological inventions.

(b) The Action Plan for European Partnership of 2004 in the part referring compliance of the Macedonian legislation with EU legislation in the field of industrial property provides that EU Directive 98/44/EC is to be implemented in the national legislation not later than 2006.

The Draft Law on Seeds and Propagating Material of Agricultural Plants is in progress (in the second quarter of 2005 will be submitted for a debate to the Government of the Republic of Macedonia) and it will be compliant with the EU legislation. It provides that the seeds and propagating material of genetically modified sorts of agricultural plants shall be labelled additionally.

**6. In your country, do inventions in the pharmaceutical, chemical and foodstuffs sectors enjoy product patent protection?**

**a) If YES, since when?**

**b) If NO, have you programmed the introduction of product patent protection for this kind of invention?**

Pursuant to the Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03 and 09/04), an invention shall be protected in all fields of techniques and technology.

**a)**

Since 15.07.1993 when the Law on Industrial Property ("Official Gazette of RM" No. 42/93) entered into force.

**7. Are Supplementary Protection Certificates for pharmaceutical products available in your country?**

**a) If YES, since when?**

**b) If NO, please indicate a target date by which your country intends to introduce such a system.**

The Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03 and 09/04) regulates the Supplementary Protection Certificate for pharmaceutical products.

**a)**

By applying the Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03 and 09/04) implemented from 01.01.2004.

**8. Are Supplementary Protection Certificates for plant protection products available in your country?**

**a) If YES, since when?**

**b) If NO, please indicate a target date by which your country intends to introduce such a system.**

The Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03 and 09/04) regulates the Supplementary Protection Certificate for plant protection products.

**a)**

Since the adoption of Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03 and 09/04) implemented as from 01.01.2004.

## **Trademarks**

**1. Has your country already modified its trademark law in order to comply with the content of Directive 89/104/EEC on the approximation of the laws relating to trademarks?**

**a) If YES, is the law now fully in conformity or are further modifications required; if so, which and by when do you plan to adopt them?**

**b) If NO, give a target date by which your country will programme the appropriate modifications.**

The Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03 and 9/04) adopted in June 2002 is completely compliant with EEC Directive 89/104 as for the part regarding trade marks.

**2. What means does a holder of a registered trademark have to prevent third parties from using his trademark for products or services other than those for which the trademark has been registered?**

Pursuant to Article 149 of the Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03 and 09/04), a holder of a registered trademark is entitled to the right to prohibit the use of the trademark identical or similar to the trademark for different products and services if the aforesaid trademark is known in the Republic of Macedonia. The holder has the aforesaid right provided that trademark used by third parties without his/her consent, harms the distinctive character or reputation of the trademark in question or is considered to be unfair competition.

In case of violation of the industrial property rights, Part V of the Law on Industrial Property referring to judicial protection (i.e., Articles 201 and 202 thereof) provides that the trademark right holder may take action and plead the following:

1. compensation for damages;
2. have the person who has violated his/her right ordered to restrain from further violations;
3. confiscation or destruction of products manufactured or put into sales used for the purpose of violation of the right ;

4. submission of documents and data by the person who has violated his/her right and
5. Announcement of the sentence which establishes the violation in the media at the expense of the defendant.

The Law on Industrial Property (i.e., Articles 213, 214 and 215 thereof) provides security measures as follows:

1. provisional measures
2. submission of data and other documents from persons related to the violation
3. Customs measures
4. civil penalty.

Article 228 of the Law on Industrial Property provides penalty measures referring to the violation of trademark holder's rights.

### **Models and Designs**

**1. Has your country already modified its legislation in order to comply with the content of Directive 98/71/EC on the approximation of the laws relating to models and designs?**

**a) If YES, is the law now fully in conformity or are further modifications required; if so, which and by when do you plan to adopt them?**

**b) If NO, give a target date by which your country will programme the appropriate modifications.**

The Law on Industrial Property ("Official Gazette of RM" No. 47/02, 42/03 and 9/04) adopted in June 2002 is completely compliant with EC Directive 98/71 with regards to the part referring industrial design.