

## FREEDOM TO PROVIDE SERVICES

<b>I. RIGHT OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE NON-FINANCIAL SERVICES .....</b>	<b>3</b>
A. GENERAL .....	3
B. HORIZONTAL REGIMES .....	7
<b>II. FINANCIAL SERVICES .....</b>	<b>10</b>
A. BANKING SECTOR .....	10
<i>General questions.....</i>	10
<i>Legal framework - Conditions of admission.....</i>	23
<i>Legal framework - Conditions of operation.....</i>	26
<i>Supervisory authorities .....</i>	37
B. INSURANCE SECTOR .....	45
<i>General.....</i>	45
<i>Legal framework - Supervisory Authority.....</i>	47
<i>Questions on the acquis - Conditions of admission and licensing .....</i>	51
<i>Questions on the acquis - Conditions of operation.....</i>	54
<i>Questions on the acquis - Information provided to the supervisory authority .....</i>	58
<i>Questions on the acquis - Compulsory insurance.....</i>	61
<i>Questions on the acquis - Motor insurance.....</i>	62
<i>Questions on the acquis - Third Country Branches or Agencies.....</i>	63
<i>Questions on the acquis - Other.....</i>	64
C. SECURITIES AND INVESTMENTS .....	68
<i>General questions.....</i>	68
<i>Legal framework - Investment firms .....</i>	70
<i>Legal framework - Collective Investment Undertakings .....</i>	76
<i>Legal framework- Markets .....</i>	85
<i>Legal framework - Supervisory authorities .....</i>	90
<i>Legal framework - Market structure information .....</i>	100
<b>III. PERSONAL DATA PROTECTION .....</b>	<b>101</b>
LEGAL FRAMEWORK .....	101
ADMINISTRATIVE CAPACITY .....	105
<b>IV. INFORMATION SOCIETY SERVICES.....</b>	<b>114</b>
GENERAL – E-COMMERCE.....	114

ELECTRONIC PAY-SERVICES (CONDITIONAL ACCESS – DIRECTIVE 98/84/EC) .....	116
DIGITAL SIGNATURE.....	117
SUPERVISORY AUTHORITIES .....	117

## **I. RIGHT OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE NON-FINANCIAL SERVICES**

### **A. General**

**1. Have you analysed the differences between:**

- a) the treatment that you offer to third countries in terms of establishment of subsidiaries of companies and the rights of establishment within the Community?**
- b) the treatment you give to subsidiaries of foreign companies established in your territory and the treatment the Community gives to subsidiaries of foreign companies established on its territory?**

**Please provide the findings of these comparisons.**

**a)**

The establishment of trade companies, and in this respect the establishment of their subsidiaries, is regulated by the Company Law (Official Gazette of the Republic of Macedonia No. 28/04). Foreign trade companies and sole proprietors, under conditions prescribed by the law, enjoy equal conditions with the domestic companies for the establishment and work on the territory of the Republic of Macedonia.

The Company Law does not recognise any additional restrictions regarding the freedom of subsidiaries and provision of services on the territory of the Republic of Macedonia, nor does it make a difference in the treatment of business activities of companies from third countries and the European Union member states.

The provisions in the Company Law are relevant to the decisions which regulate the right to business activities and the right to their establishment in the community.

The Company Law takes into full consideration and implements in entirety the company management and establishment models, which are derived from and are in accordance with the European legislation, particularly the Decree on the position of the so called European Company (Societas Europea) 2157/2001 of 8 October 2001.

**b)**

Regarding the entitled rights and entailed obligations, the Company Law does not make a difference between domestic companies and subsidiaries of foreign companies conducting business activities on the territory of the Republic of Macedonia.

Subsidiaries of foreign companies have to be registered and act in accordance with the Macedonian legislation, and in this respect there is no difference as to their treatment in the community, when it comes to business activities on its territory.

**2. Does your legislation contain any discriminatory provisions – such as language, nationality or residence requirement – that may affect the right of EU operators to establish in your country? If so, please provide a list of such requirements.**

The legislation of the Republic of Macedonia does not contain discriminatory provisions regarding the language, nationality and conditions of stay, which may affect the rights of EU operators that intend to establish business activities in the Republic of Macedonia.

### **3. What comparisons has your country drawn between its laws governing the entry and employment of third country nationals as "key personnel" and the laws in force in the Community?**

Entry and employment of foreign citizens in the Republic of Macedonia is regulated with the Law on Movement and Residence of Foreigners ("Official Gazette of the Republic of Macedonia" Nos. 36/92, 66/92, 26/93 and 45/02) and the Law on Terms for Establishing Working Relations with Foreign Citizens ("Official Gazette of SFRY" Nos.11/78 and 64/89). These regulations regulate the entry and employment of foreigners in a consistent, equal manner, regardless of the nationality and type of activity.

Regulations of the Republic of Macedonia that regulate the entry and employment of foreign citizens - the Law on Movement and Residence of Foreigners ("Official Gazette of the Republic of Macedonia" Nos. 36/92, 66/92, 26/93 and 45/02) and the Law on Terms for Establishing Working Relations with Foreign Citizens ("Official Gazette of SFRY" Nos.11/78 and 64/89), compared with the regulations that are in force in the Community, in particular with the Resolution on Limited Access for Employment of Foreigners from Third Countries on the Territory of Member Countries ("Official Journal" C 274, 19/09/1996 p. 0003-0006), do not make any difference in the treatment during the entry and employment of citizens from third countries.

Compared with the provisions contained in the Resolution for Limited Access for Employment of Citizens from Third Countries on the Territory of Member Countries ("Official Journal" C 274, 19/09/1996 p. 0003-0006) pertaining to „key personnel“ from third countries, our regulations provide for the following:

As provided for in the Resolution for Limited Access for Employment of Citizens from Third Countries on the Territory of Member Countries ("Official Journal" C 274, 19/09/1996 p. 0003-0006), the Law on Terms for Establishing Working Relations with Foreign Citizens ("Official Gazette of SFRY" Nos.11/78 and 64/89) also stipulates that the employment of foreigners will be made on the basis of a previously obtained work permit, which is a pre-condition for approval of temporary residence. In accordance with Article 12 of the Law on Movement and Residence of Foreigners ("Official Gazette of the Republic of Macedonia" Nos. 36/92, 66/92, 26/93 and 45/02), it is prescribed that for visa issuance for the purposes of employment, professional development, scientific research or conduct of certain professional activity, the Diplomatic Missions of the Republic of Macedonia requires consent from the Ministry of Internal Affairs. After the foreigner has entered in the Republic of Macedonia, the same registers him/herself in the Employment Agency and obtains an approval for work (work permit) that s/he uses as an application for filing it to the Ministry of Foreign Affairs for obtaining an approval (permit) for temporary residence. ( for more details see [Chapter 02 III E 1](#)). Temporary residence is approved for a period of one year, with a possibility for multiple extensions, until the existence of reasons for the work of the foreigner, i.e. for extension of the temporary residence.

Article 13 of the Law on Movement and Residence of Foreigners ("Official Gazette of the Republic of Macedonia" Nos. 36/92, 66/92, 26/93 and 45/02) provides for the issuance of business visa. Business visa can be issued to a foreigner for the purposes of performing business activities, stipulated in the regulations of the Republic of Macedonia, pertaining to foreign investments and foreign trade. It can be issued to a foreigner who performs professional activities defined with a contract for business and technical cooperation, for long-term production cooperation, for technology transfer, as well as for foreign investments. Business visa is also issued for intracorporative transfers. The term intra-corporative transfers means temporary transfers of foreigners for providing services with commercial presence in the Republic Macedonia, who are on leading managerial and executive functions, or who possess higher education or qualifications in demand on the labour market, which are essential for the operation of the trade company in the Republic Macedonia, that corresponds to the definition for "key personnel" defined in the Stabilisation and Association Agreement between the Republic of Macedonia and EU, Article 53, Paragraph 2. Business visa is issued for the period that is necessary for performing the working duties for which it has been issued (from 90 days until 3 years, with a possibility for its extension), but not exceeding the validity of the passport. Business visa issued to a foreigner has the status/validity as the temporary residence permit.

Currently, a new Labour Relations Law and Work of Foreigners is underway. It regulates the manner of employment of "key personnel". The Labour Relations Law and Work of Foreigners, in its first phase has been reviewed by the Assembly of the Republic of Macedonia, and its final adoption is expected by the end of 2005. The Labour Relations Law and Work of Foreigners will be harmonised with the EU standards and regulations.

**4. Does your legislation distinguish between EU companies wishing to establish in your country and those who wish to provide services there temporarily? If it does, what is the distinction? Is it possible for a company established in an EU Member State to provide services on the territory of your country without establishing a subsidiary there?**

The Company Law ("Official Gazette of the Republic of Macedonia" No. 28/04), which regulates business activities in the Republic of Macedonia, does not make a difference between trade companies intending to establish business activities in the Republic of Macedonia and those intending to offer temporary services. Furthermore, the Company Law provides that foreign trade companies and sole proprietors are equally treated in their operation with the domestic companies. In case they have not established a subsidiary in the Republic of Macedonia, they have to set up a branch office in order to be able to perform activities on the territory of the Republic of Macedonia.

**5. Which services are regulated and which are unregulated? How is this information made available?**

The following services in the Republic of Macedonia have been regulated by law:

- Legal services: Law on the Bar („Official Gazette of Republic of Macedonia" No.59/02), Law on Performing Notary Activities („Official Gazette of Republic of Macedonia" Nos. 59/96; 25/98; 6/02);
- Accounting and bookkeeping services, auditing services: Law on Accounting for Non-profitable Organisations ("Official Gazette of the Republic of Macedonia" No.28/04), Law on Accounting for Budgets and Budget Users ("Official Gazette of the Republic of Macedonia" Nos. 61/02, 98/02), Law on Audit ("Official Gazette of the Republic of Macedonia" Nos. 65/97, 27/00, 31/01, 61/02), Law on State Audit ("Official Gazette of the Republic of Macedonia" Nos. 65/97, 70/01, 31/03, 19/04, consolidated text 73/04);
- Architectural services, engineering services, full range of technical services: Law on Spatial and Urban Planning ("Official Gazette of the Republic of Macedonia" Nos. 04/96, 8/96, 28/97, 18/99, 53/01, 45/02);
- Medical and dental services, services from midwives, nurses, physiotherapists and paramedical personnel; Law on Health Care ("Official Gazette of the Republic of Macedonia" Nos. 38/91, 46/93, 55/95, 17/97, 10/04), Law on Social Protection ("Official Gazette of the Republic of Macedonia" Nos. 50/97, 16/00, 17/03, 65/04);
- Veterinary services: Law on Veterinary Health ("Official Gazette of the Republic of Macedonia" No. 28/98);
- Computer and related services: Company Law ("Official Gazette of the Republic of Macedonia" No. 28/04);
- Research and development services: Law on Scientific and Research Activities ("Official Gazette of the Republic of Macedonia" Nos.13/96, 29/02);
- Real estate services: Law on Ownership and Other Real Rights ("Official Gazette of the Republic of Macedonia" Nos.18/01);
- Rental/leasing services with or without operator: Law on Leasing ("Official Gazette of the Republic of Macedonia" Nos. 04/02, 49/03);
- Services for technical testing and analytical services: Law on Standardisation ("Official Gazette of the Republic of Macedonia" No. 54/02), Law on Accreditation ("Official Gazette of the Republic of Macedonia" No.54/02), Law on Metrology ("Official Gazette of the Republic of Macedonia" No.55/02), Law on Control of Goods Made of Precious Metals ("Official Gazette of the Republic of Macedonia" No.23/95);
- Advisory and consulting services in the field of agriculture, hunting, forestry and fishery: Law on Performing Agriculture Activities ("Official Gazette of the Republic of Macedonia" No.02), Law on Hunting ("Official Gazette of the Republic of Macedonia" Nos.20/96; 26/96; 34/97,

- 69/04), Law on Forests ("Official Gazette of the Republic of Macedonia" Nos. 47/97, 7/00), Law on Fishery ("Official Gazette of the Republic of Macedonia" No.62/93);
- Advisory and consulting services in the field of mining: Law on Mineral Resources ("Official Gazette of the Republic of Macedonia" Nos.18/99, 29/02);
  - Auxiliary services in distribution of electric energy: Energy Law ("Official Gazette of the Republic of Macedonia" Nos. 47/97, 40/99, 98/00, 94/02, 38/03);
  - Services for recruiting and appointing personnel: Labour Relations Law ("Official Gazette of the Republic of Macedonia" Nos.80/93, 03/94, 14/95, 53/97, 59/97, 21/98, 03/01, 50/01, 25/03, 40/03, 80/03), Law on Employment and Insurance in case of Unemployment ("Official Gazette" of the Republic of Macedonia Nos. 37/97, 25/00, 101/00, 50/01, 25/03, 37/04);
  - Services relating to investigations and security: Law on Detective Activity ("Official Gazette of the Republic of Macedonia" No. 80/99) Law on Securing of Persons and Property ("Official Gazette of the Republic of Macedonia" No. 80/99);
  - Maintenance and repair of equipment (not included: vessels, aircrafts and other means of transportation), sanitary services, photograph services, and packaging services: Company Law ("Official Gazette of the Republic of Macedonia" No. 28/04);
  - Postal services: Law on Postal Services ("Official Gazette of the Republic of Macedonia" No. 55/02);
  - Telecommunications services: Telecommunications Law ("Official Gazette of the Republic of Macedonia" No. 33/96, 17/98, 28/00, 04/02, 37/04);
  - Construction and related engineering services: Law on Spatial and Urban Planning ("Official Gazette of the Republic of Macedonia" Nos.4/96, 8/96, 28/97, 18/99, 53/01, 45/02), Law on Construction of Investment Facilities ("Official Gazette of the Republic of Macedonia" Nos. 15/90, 11/91, 11/94, 18/99, 25/99);
  - Distribution services: Law on Trade ("Official Gazette of the Republic of Macedonia" No. 16/04);
  - Educational services: Law on Primary Education ("Official Gazette of the Republic of Macedonia" Nos. 44/95, 24/96, 34/96, 35/97, 82/99), Law on Secondary Education ("Official Gazette of the Republic of Macedonia" Nos. 44/95, 24/96, 34/96, 35/97, 82/99, 29/02, 52/02, 40/03, 42/03, 67/04), Law on Higher Education Nos. 64/00, 49/03);
  - Services in the field of environment: Law on Environment and Nature Protection and Promotion ("Official Gazette of the Republic of Macedonia" Nos. 69/96, 13/99, 41/00, 51/00, 96/00, 45/02, 13/03) Law on Communal Activities ("Official Gazette of the Republic of Macedonia" Nos. 45/97, 23/99, 45/02, 16/04), Law on Waste ("Official Gazette of the Republic of Macedonia" Nos. 37/98, 16/04);
  - Financial services: Banking Law ("Official Gazette of the Republic of Macedonia" Nos. 63/00, 103/00, 37/02, 51/03, 85/03), Law on Foreign Exchange Operations ("Official Gazette of the Republic of Macedonia" Nos. 34/01, 49/01, 103/01, 51/03), Securities Law ("Official Gazette of the Republic of Macedonia" Nos. 63/00, 103/00, 34/01, 4/02, 37/02, 31/03, 85/03, 96/04), Law on Investment Funds ("Official Gazette of the Republic of Macedonia" No.9/00), Law on Providing Services for Swift Money Transfers ("Official Gazette of the Republic of Macedonia" Nos. 77/03, 2/04), Law on Mandatory Fully Funded Pension Insurance ("Official Gazette of the Republic of Macedonia" Nos. 29/02, 85/03, 40/04);
  - Insurance services: Law on Insurance ("Official Gazette of the Republic of Macedonia" Nos. 49/97, 79/99, 13/01, 26/01, 35/01, 4/02); Law on Supervision of Insurance ("Official Gazette of the Republic of Macedonia" Nos. 27/02, 98/02);
  - Social services: Law on Social Protection ("Official Gazette of the Republic of Macedonia" Nos. 50/97, 16/00, 17/03, 65/04);
  - Tourist and travel related services: Law on Tourism ("Official Gazette of the Republic of Macedonia" No. 62/04); Law on Catering ("Official Gazette of the Republic of Macedonia" No. 62/04);
  - Other recreational and cultural services (cinema services): Law on Culture ("Official Gazette of the Republic of Macedonia" Nos. 31/98, 49/03, 66/03);
  - Sports and other recreational services: Law on Sports ("Official Gazette of the Republic of Macedonia" Nos. 29/02, 66/04);

- Air transport services: Law on Civil Aircraft (“Official Gazette of the Republic of Macedonia” Nos. 45/86, 24/88, 80/89, 29/00) Law on Use of Airports (“Official Gazette of the Republic of Macedonia” Nos. 47/73, 38/90);
- Railway transportation services: Law on Macedonian Railways (“Official Gazette of the Republic of Macedonia” No.9/98);
- Road transportation services: Law on Transportation in Road Traffic (“Official Gazette of the Republic of Macedonia” No.68/04);
- Pipeline transportation services: Energy Law (“Official Gazette of the Republic of Macedonia” Nos. 47/97, 40/99, 98/00, 94/02, 38/03);

The services have also been regulated by the Law on National Classification of Activities (“Official Gazette of the Republic of Macedonia” No.7/98).

National classification is a standard harmonised with the European classification of activities NACE.REV.1 which is used for identification, grouping, and definition of activities per sectors, sub-sectors, divisions, groups, classes and sub-classes, according to which all business entities in the Republic of Macedonia are classified. Classification of activities is prepared by the Government of the Republic of Macedonia.

The aforementioned laws that regulate the sector of services are available in several ways. All laws are published in the Official Gazette of the Republic of Macedonia and access to all data published in the Official Gazette has been provided on the Internet, by way of annual subscription. At the same time, numerous laws have been placed on the web sites of relevant ministries. In the process of adoption of new laws, the publication of draft laws on the web sites of relevant ministries becomes a common practice for the purpose of giving opportunity to the public to make comments and give opinion. Seminars are organised and information is provided to the public through the media, as well.

### ***B. Horizontal regimes***

**6. Do you have any horizontal legislative or administrative requirements which apply to all businesses wishing to trade in, or with, your country? If yes:**

- a) Do these apply equally to businesses wanting to establish in your market and to businesses established in the EU supplying cross-border services? If not, what are the differences between the regime applying to establishment and the regime applying to service provision?**
- b) What are the procedures for obtaining a licence (or other form of authorisation)?**
- c) What are the requirements which have to be met to obtain a licence or authorisation? (For example, are there nationality or residence requirements, or does documentation have to be provided from the country of origin of the service provider?)**
- d) To what extent are requirements which the business has already fulfilled in its state of establishment taken into account?**
- e) How long does it take to obtain a licence?**
- f) Is there a fee for the licence? If so, how much is it?**
- g) Is the licensing requirement combined with mandatory membership of a chamber of commerce, trade association or other body? If this membership involves a fee, how much is it?**
- h) What is the justification in policy terms for the licensing system?**

**a)**

The legal and administrative requirements for all companies which intend to trade in or with the Republic of Macedonia are equal for all companies and provided in the Company Law (Official Gazette of the Republic of Macedonia No. 28/04). Foreign companies and sole proprietors cannot perform activities on the territory of the Republic of Macedonia unless they have established a branch

office. Foreign companies have to comply with the legislation in the Republic of Macedonia for their work in the Republic of Macedonia.

**b)**

The Company Law (Official Gazette of the Republic of Macedonia No. 28/04) provides a procedure for establishing a branch office. Through its branch office, the foreign company is entitled to perform activities in accordance with its form and area of activity, gain or undertake responsibilities, and access courts and other bodies in the Republic of Macedonia, under the same conditions as the domestic companies of the same form or subject of work, unless otherwise provided by the law. The foreign company and/or sole proprietor, applies to register the establishment of its branch office in the trade register in line with the seat of the branch office. The trade registration procedure is initiated when a written application form is filed by an authorised applicant. The application for a company registration is filed by the management body, i.e. an authorised member of the management body, unless otherwise provided by the law.

The application can be filed by an authorised applicant's warranty holder, notary verified, unless otherwise provided by the law. The application for registration is accompanied with the required appendices which contain evidence to be entered in the trade register. When it is determined that the registration conditions are met, i.e. that the submitted application has suitable contents and is filed by an authorised person, as provided in this law, and that all appendices (identification and evidence) provided by this law are attached, the decision on registration is reached within eight days from the application filing date without hearing. The decision on registration in the trade register is written on the form in accordance with the registration type with no further explanation.

When conditions for legal trade register entry are not met, the court reaches a decision by which the registration application is rejected. The decision contains an explanation as to why the application has been rejected.

**c)**

In accordance with the Company Law (Official Gazette of the Republic of Macedonia No. 28/04), the following documents are to accompany the registration application:

1. extract from the register in which the foreign company or foreign sole proprietor to establish the branch office is registered, which presents the registration contents and date;
2. transcript of the company's incorporation agreement or statute, or another act comparable to them, according to the foreign company's legislation, verified by a state body authorised for this according to the legislation of the company's country of origin, as well as a certificate issued by the foreign country's authorities that the agreement or statute, or another act comparable to them according to the legislation of the foreign country is still in force. In cases when, according to the laws of the country of origin, a written agreement or statute or another comparable act is not required according to the foreign country's legislation, a certificate of the relevant diplomatic or consular representation office of the Republic of Macedonia is submitted, which states that the company exists, lists the share-holders, i.e. partners and their shares of responsibility, whereas for foreign sole proprietors a certificate that they have not been erased from the register;
3. a list of individuals that have been entrusted with representation of foreign companies and foreign sole proprietors in the Republic of Macedonia, stating their name and surname, citizen personal identification number, i.e. passport number for foreign natural persons, and their citizenship and place of residence. The list is accompanied by evidence that these individuals have been legally appointed, according to company acts and country-of-origin legislation;
4. decision of the responsible foreign company body or foreign sole proprietor to establish a branch office;
5. a certificate of good standing for the foreign company or sole proprietor, issued by a relevant state organ or authorised auditor, in accordance with the legislation of the company's country of origin;



6. description of the activities and work to be performed by the branch office; and
7. if the law provides, permits, approval or another act, in which case the application is also accompanied with this evidence.

The requirement for other permits or requirements is not necessary for the establishment and registration of trade companies.

**d)**

The requirements already met by the company in its country of origin, are entirely taken into consideration while establishing a branch office or subsidiary. These conditions are the basis and precondition for the approval to work on the territory of the Republic of Macedonia in the two forms or organisation listed above.

Without evidence that the company has met the requirement in its country of origin (registration), the company cannot work on the territory of the Republic of Macedonia.

**e)**

In accordance with the Company Law (Official Gazette of the Republic of Macedonia No. 28/04), the procedure for registering a trade company or branch office, i.e. their registration in the trade register, is a matter of urgency. The competent court is obliged to apply equal treatment of subjects and respect the order in which applications have been filed with the court.

In case the application is clean, the judge is obliged to reach the decision within eight days of the application filing date. In the case the application is not clean, the judge is obliged to reach a decision in which the person authorised to file the application is instructed to clean the application.

**f)**

The registration taxes, i.e. the registration of trade companies or branch offices in the trade register, are provided by the Law on Court Fees (Official Gazette of the Republic of Macedonia No. 46/90, 65/92, 20/95 and 48/99).

The trade registration fee is 1.200,00 MKD. The company establishment registration fee is 2.000,00 MKD

The registration evidence is published in the Official Gazette of the Republic of Macedonia. This costs 500,00 MKD.

**g)**

The permit issuance, i.e. the trade company's registration in the trade register, is not conditioned by previous membership in the Chamber of Commerce or other trade association.

**h)**

Additional permits are necessary for other activities that the branch office or the subsidiary of the foreign trade company may perform. Their aim is to protect the activity and ensure legal operation, as well as control of the manner and conditions under which the activity is performed.

In case of specific areas which are regulated by specific legislation and conditions of work (e.g. flammable substance transport, passenger transport, weapon supply and distribution, health and pharmaceutical services etc.) and require additional permits, the ability of the branch office subsidiary regarding technical and expert facilities for performing such activities is subject to control, aimed to ensure the elimination of possible damage and consequences on people's life and health, their property, the environment and other values.

All conditions as set forth in the provisions apply equally to both domestic and foreign legal and natural persons which are engaged in the performance of commercial activities.

## II. FINANCIAL SERVICES

### A. Banking sector

#### General questions

**1. What is the current situation with regard to right of establishment and cross-border supplies of services in your country for EU credit institutions? Which conditions apply? Are there specific conditions regarding the opening of branches by foreign banks? Regarding the establishment of a foreign subsidiary?**

European Union credit institutions can establish banks and subsidiaries in the Republic of Macedonia. According to Article 4, paragraph 6 of the Banking Law (Official Gazette of the Republic of Macedonia No. 63/00, 103/00, 37/02, 51/03, 85/03), subsidiaries are legal persons registered in the Republic of Macedonia (commercial presence) in which other persons or groups work together and have: a) 50% or over of the voting shares; and, b) common interest as defined in Article 2, paragraph 7.

Cross-border (direct) service provision is not allowed. With the accession of the Republic of Macedonia to the European Union, the credit institutions of the European Union member states will be allowed to provide cross-border services.

Foreign bank service provision through branches is not allowed for the time being. According to the Banking Law (Article 2, paragraph 19), a branch is an organisational unit, legally dependent on the bank which directly performs financial or part of financial activities. In line with the obligations assumed for the accession of the Republic of Macedonia in the World Trade Organisation, provision of services through foreign bank branches will be allowed on 1 January 2008 the latest. By then, the legislation regarding European Union and third country credit institution branches will have been transposed.

As regards the establishment of a foreign bank subsidiary, there are no restrictions related to their right to establishment and provision of services. Foreign bank subsidiaries are established under the same conditions and in the same procedure that apply to banks founded by domestic legal and natural persons. (Article 6, paragraphs 8 and 19, part 1 of the Banking Law, Official Gazette of the Republic of Macedonia No. 63/00, 103/00, 37/02, 51/03). In addition to documents from Article 15 (for more details see [03 II A 8](#)), foreign bank subsidiaries in process of establishing have to submit: 1) evidence that the foreign bank establishing the subsidiary is authorised to collect deposits and other funds in its country of origin; 2) agreement by the supervising bodies in the country of origin to establish a subsidiary; and 3) evidence that the foreign bank supervision performs adequate supervision on consolidation basis (Article 19, paragraph 2 of the Banking Law).

**2. Are foreign credit institutions, once authorised, treated in every respect as a national undertaking?**

Following the receipt of the license to operate in the Republic of Macedonia, the banks established by foreign legal and natural persons and foreign credit institution subsidiaries receive the status of domestic entities and are treated same as domestic banks.

**3. What is the number of banks and other credit institutions operating in your country (if possible, by type of credit institution – banks, savings banks, mortgage credit institutions, etc.)? Please provide the following information:**

- a) Total number;
- b) Domestic;

- c) **Non-domestic Community, of which:**  
 i) **subsidiaries and**  
 ii) **branches.**  
 d) **Non-domestic non-Community, of which:**  
 i) **subsidiaries and**  
 ii) **branches.**

**Changes in (a) to (d) since 1999.**

The following overview shows the movements of bank institutions operating in the Republic of Macedonia from 1999 to 30 June 2004.

Overview of the movement of financial institutions in the Republic of Macedonia from 1999 to 30 June				
Year	Institution	Banks	Savings houses	Total
1999	Total	23	16	39
	- domestic	18	16	34
	- foreign, EU			
	Foreign EU bank branches			
	Foreign EU subsidiaries			
	Established by foreign legal and natural persons from EU (1)			
	foreign other than EU			
	foreign bank branch offices other than EU (2)	1		1
	Foreign bank subsidiaries other than EU			
	Established by foreign legal and natural persons other than EU (3)	4		4
2000	Total	22	19	41
	- domestic	15	19	34
	- foreign, EU			
	Foreign EU bank branches			0
	Foreign EU subsidiaries	2		2
	Established by foreign legal and natural persons from EU			
	- foreign other than EU			0
	foreign bank branch offices other than EU (2)	1		1
	Foreign bank subsidiaries other than EU	1		1
	Established by foreign legal and natural persons other than EU	3		3
2001	Total	21	17	38
	- domestic	13	17	30
	- foreign, EU			
	Foreign EU bank branches			0
	Foreign EU subsidiaries	2		2
	Established by foreign legal and natural persons from EU			
	- foreign other than EU			0
	foreign bank branch offices other than EU			
	Foreign bank subsidiaries other than EU	2		2
	Established by foreign legal and natural persons other than EU	4		4
2002	Total	21	17	38
	- domestic	13	17	30

	- foreign, EU			
	Foreign EU bank branches			0
	Foreign EU subsidiaries	2		2
	Established by foreign legal and natural persons from EU			
	- foreign other than EU			0
	foreign bank branch offices other than EU			
	Foreign bank subsidiaries other than EU	2		2
	Established by foreign legal and natural persons other than EU	4		4
<b>2003</b>	<b>Total</b>	<b>22</b>	<b>15</b>	<b>37</b>
	- domestic	13	15	28
	- foreign, EU			0
	Foreign EU bank branches	2		2
	Foreign EU subsidiaries			
	Established by foreign legal and natural persons from EU	1		1
	- foreign other than EU			0
	foreign bank branch offices other than EU			
	Foreign bank subsidiaries other than EU	2		2
	Established by foreign legal and natural persons other than EU	4		4
<b>30.06.2004</b>	<b>Total</b>	<b>21</b>	<b>15</b>	<b>36</b>
	- domestic	13	15	28
	- foreign, EU			0
	Foreign EU bank branches			
	Foreign EU subsidiaries	3		3
	Established by foreign legal and natural persons from EU	1		1
	- foreign other than EU			
	foreign bank branch offices other than EU			
	Foreign bank subsidiaries other than EU	1		1
	Established by foreign legal and natural persons other than EU	3		3

**Source NBRM**

(1) Under "banks established by foreign legal and natural persons from EU" are included banks that are established by foreign legal and natural persons from the EU territory, that are not registered as banks

(2) According to the Banks and Savings Houses Act (Official Gazette of the Republic of Macedonia No. 29/96, 37/98 and 25/00), which was in force in the period from 1996 to July 2000, foreign banks were allowed to establish branches in the Republic of Macedonia. The branch of a foreign bank had to have a status of a legal person and had to fulfill the capital requirements like all other commercial banks established under this law in Republic of Macedonia. There was only one such branch established in Republic of Macedonia during 1999, which was pre-registered in to foreign bank subsidiary at the beginning of 2001 in order to comply with the Banking Law enacted by the Parliament of the Republic of Macedonia in July 2000.

(3) Under "banks established by foreign legal and natural persons other than EU", are included banks that are established by foreign legal and natural persons from countries other than EU, that are not registered banks.

**4. Assets of the banking system (if possible, by type of credit institution – banks, savings banks, mortgage credit institutions, other):****a) Total assets of the banking system;****b) Assets owned by domestic credit institutions (in volume and share of total);****c) Assets owned by non-domestic Community credit institutions (in volume and share of total), of which:****i) By subsidiaries of non-domestic Community credit institutions (in volume and share of total);****ii) By branches of non-domestic Community credit institutions (in volume and share of total).****d) Total assets owned by non-domestic non-Community credit institutions (in volume and share of total), of which:****i) By subsidiaries of non-domestic non-Community credit institutions (in volume and share of total);****ii) By branches of non-domestic non-Community credit institutions (in volume and share of total).****Changes in (a) to (d) since 1999.**

The following overview shows the movement of the total assets of the banking system in the Republic of Macedonia from 1999 to 30 June 2004.

OVERVIEW OF TOTAL ASSETS OF FINANCIAL INSTITUTIONS BY TYPE IN THE REPUBLIC OF MACEDONIA							
						In (000) MKD	
Year	Institutions	Banks	% in total	Savings houses	% in total	Total	% in total
1999	Total	72.279.359	100%	759.536		73.038.895	100%
	- domestic	63.965.609	88%	759.536		64.725.145	89%
	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries						
	Established by foreign legal and natural persons from EU (1)						
	foreign other than EU						
	foreign bank branch offices other than EU (2)	891.911	1%			891.911	1%
	Foreign bank subsidiaries other than EU						
	Established by foreign legal and natural persons other than EU (3)	7.421.839	10%			7.421.839	10%
2000	Total	81.999.326	100%	1.037.855		83.037.181	100%
	- domestic	38.245.777	47%	1.037.855		39.283.632	47%
	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries	30.815.710	38%			30.815.710	37%
	Established by foreign legal and natural persons from EU						
	- foreign other than EU					-	
	foreign bank branch offices other than EU(2)	1.805.126	2%			1.805.126	2%
	Foreign bank subsidiaries other than EU	6.059.696	8%			6.059.696	7%
	Established by foreign legal and natural persons other than EU	5.073.017	6%			5.073.017	6%
2001	Total	105.632.888	100%	675.710	100%	106.308.598	100%

## Chapter 03 Freedom to provide services

	- domestic	51.671.245	49%	675.710	100%	52.346.955	49%
	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries	35.683.349	34%			35.683.349	34%
	Established by foreign legal and natural persons from EU						
	- foreign other than EU					-	
	foreign bank branch offices other than EU						
	Foreign bank subsidiaries other than EU	9.767.797	9%			9.767.797	9%
	Established by foreign legal and natural persons other than EU	8.510.497	8%			8.510.497	8%
<b>2002</b>	<b>Total</b>	<b>93.213.138</b>	<b>100%</b>	<b>955.809</b>	<b>100%</b>	<b>94.168.947</b>	<b>100%</b>
	- domestic	52.193.044	56%	955.809	100%	53.148.853	56%
	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries	26.975.258	29%			26.975.258	29%
	Established by foreign legal and natural persons from EU						
	- foreign other than EU					-	
	foreign bank branch offices other than EU						
	Foreign bank subsidiaries other than EU	10.700.009	11%			10.700.009	11%
	Established by foreign legal and natural persons other than EU	3.344.827	4%			3.344.827	4%
<b>2003</b>	<b>Total</b>	<b>104.875.355</b>	<b>100%</b>	<b>1.262.223</b>	<b>100%</b>	<b>106.137.578</b>	<b>100%</b>
	- domestic	55.630.100	53%	1.262.223	100%	56.892.323	54%
	- foreign, EU					-	
	Foreign EU bank branches						
	Foreign EU subsidiaries	31.353.187	30%			31.353.187	30%
	Established by foreign legal and natural persons from EU	650.521	1%			650.521	1%
	- foreign other than EU					-	
	foreign bank branch offices other than EU						
	Foreign bank subsidiaries other than EU	13.874.064	13%			13.874.064	13%
	Established by foreign legal and natural persons other than EU	3.367.483	3%			3.367.483	3%
<b>30.06.2004</b>	<b>Total</b>	<b>109.159.536</b>	<b>100%</b>	<b>1.438.934</b>	<b>100%</b>	<b>110.598.470</b>	<b>100%</b>
	- domestic	57.327.292	53%	1.438.934	100%	58.766.226	53%
	- foreign, EU					-	
	Foreign EU bank branches						
	Foreign EU subsidiaries	45.972.852	42%			45.972.852	42%
	Established by foreign legal and natural persons from EU	1.194.196	1%			1.194.196	1%
	- foreign other than EU					-	
	foreign bank branch offices other than EU						
	Foreign bank subsidiaries other than EU	1.402.784	1%			1.402.784	1%
	Established by foreign legal and natural persons other than EU	3.262.412	3%			3.262.412	3%

Source NBRM

(1) Under "banks established by foreign legal and natural persons from EU" are included banks that are established by foreign legal and natural persons from the EU territory, that are not registered as banks

(2) According to the Banks and Savings Houses Act (Official Gazette of the Republic of Macedonia No. 29/96, 37/98 and 25/00), which was in force in the period from 1996 to July 2000, foreign banks were allowed to establish branches in the Republic of Macedonia. The branch of a foreign bank had to have a status of a legal person and had to fulfill the capital requirements like all other commercial banks established under this law in Republic of Macedonia. There

was only one such branch established in Republic of Macedonia during 1999, which was pre-registered in to foreign bank subsidiary at the beginning of 2001 in order to comply with the Banking Law enacted by the Parliament of the Republic of Macedonia in July 2000.

(3) Under "banks established by foreign legal and natural persons other than EU", are included banks that are established by foreign legal and natural persons from countries other than EU, that are not registered banks.

The data for 2002 and 2003 do not include data on the assets of one bank which was placed under temporary management in January 2003, with a bankruptcy procedure opened against it in March 2004.

The movement of total assets of the banking system in the Republic of Macedonia from 1999 to 30 June 2004 was primarily determined by the deposit base fluctuation and bank assets changes as a result of the establishment of two new banks, the conversion of one savings house into a bank and the final capitalisation of several existing banks, whose controlling share packages were bought out by foreign strategic investors.

The outstanding assets increase of the banking system in 2001 is mainly a result of the increased citizens' deposits at the end of 2001, i.e. prior to conversion to **euro**. In this period, the total citizens' bank deposits increased by over 33 billion MKD, out of which 29 billion MKD or approximately 88% were citizens' bank deposits.

In 2002 there was a certain fall of the total assets in the banking system which was mostly determined by the deposit base movement. Namely, during this year, the total deposits fell by approximately 12 billion MKD, which is generally in line with the deposit base movement tendency in the banking system. However, in spite of the decrease of the deposit base, the banks in the Republic of Macedonia managed to retain over 70% of the foreign currency deposits of the population collected in the period prior to the euro conversion.

The assets increase in the banking system during 2003 and the first six months of 2004 is mostly related to the changes in the bank deposit activities, i.e. the rising total deposits. The rise of the total assets during this period amounts to 18 billion MKD, or 19.3% as compared to the situation at the end of 2002.

#### **5. Total deposits (if possible, by type of credit institution – banks, savings banks, mortgage credit institutions, etc ...):**

- a) Total deposits;**
- b) Deposits held by domestic credit institutions (in volume and share of total);**
- c) Deposits held by non-domestic Community credit institutions (in volume and share of total), of which:**
  - i) By subsidiaries of such credit institutions (in volume and share of total);**
  - ii) By branches of such credit institutions (in volume and share of total);**
- d) Total deposits held by non-domestic non-Community credit institutions (in volume and share of total), of which:**
  - i) By subsidiaries of such credit institutions (in volume and share of total);**
  - ii) By branches of such credit institutions (in volume and share of total).**

**Changes in (a) to (d) since 1999.**

The following overview shows the movement of the total deposits of the banking system in the Republic of Macedonia from 1999 to 30 June 2004.

OVERVIEW OF TOTAL DEPOSITS OF FINANCIAL INSTITUTIONS BY TYPE IN THE REPUBLIC OF MACEDONIA							
						In (000)MKD	
Year	Institutions	Banks	% in total	Savings house	% in total	Total	% in total
1999	Total	40.786.571	100,0%	302.715	100,0%	41.089.286	100,0%
	- domestic	36.880.982	90,4%	302.715	100,0%	37.183.697	90,5%

## Chapter 03 Freedom to provide services

	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries						
	Established by foreign legal and natural persons from EU (1)						
	foreign other than EU	3.697.755	9,1%			3.697.755	9,0%
	foreign bank branch offices other than EU (2)	207.834	0,5%			207.834	0,5%
	Foreign bank subsidiaries other than EU						
	Established by foreign legal and natural persons other than EU (3)						
2000	Total	46.644.384	100,0%	289.184	100,0%	46.933.568	100,0%
	- domestic	22.078.131	47,3%	289.184	100,0%	22.367.315	47,7%
	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries	20.619.447	44,2%			20.619.447	43,9%
	Established by foreign legal and natural persons from EU						
	foreign other than EU						
	foreign bank branch offices other than EU(2)	601.923	1,3%			601.923	1,3%
	Foreign bank subsidiaries other than EU	1.897.150	4,1%			1.897.150	4%
	Established by foreign legal and natural persons other than EU	1.447.733	3,1%			1.447.733	3,1%
2001	Total	69.995.289	100,0%	152.582	100,0%	70.147.871	100,0%
	- domestic	34.375.165	49,1%	152.582	100,0%	34.527.747	49,2%
	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries	27.810.320	39,7%			27.810.320	39,6%
	Established by foreign legal and natural persons from EU						
	foreign other than EU						
	foreign bank branch offices other than EU						
	Foreign bank subsidiaries other than EU	4.403.757	6,3%			4.403.757	6,3%
	Established by foreign legal and natural persons other than EU	3.406.047	4,9%			3.406.047	4,9%
2002	Total	57.904.817	100,0%	215.260	100,0%	58.120.077	100,0%
	- domestic	33.145.962	57,2%	215.260	100,0%	33.361.222	57,4%
	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries	19.227.892	33,2%			19.227.892	33,1%
	Established by foreign legal and natural persons from EU						
	foreign other than EU						
	foreign bank branch offices other than EU						
	Foreign bank subsidiaries other than	4.497.552	7,8%			4.497.552	7,7%



	EU						
	Established by foreign legal and natural persons other than EU	1.033.411	1,8%			1.033.411	1,8%
2003	Total	70.188.465	100,0%	281.789	100,0%	70.470.254	100,0%
	- domestic	37.441.548	53,3%	281.789	100,0%	37.723.337	53,5%
	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries	24.402.379	34,8%			24.402.379	34,6%
	Established by foreign legal and natural persons from EU	113.788	0,2%			113.788	0,2%
	foreign other than EU						
	foreign bank branch offices other than EU						
	Foreign bank subsidiaries other than EU	7.055.761	10,1%			7.055.761	10,0%
	Established by foreign legal and natural persons other than EU	1.174.989	1,7%			1.174.989	1,7%
30.06.2004	Total	75.839.151	100,0%	310.155	100,0%	76.149.306	100,0%
	- domestic	39.919.887	52,6%	310.155	100,0%	40.230.042	52,8%
	- foreign, EU						
	Foreign EU bank branches						
	Foreign EU subsidiaries	33.833.813	44,6%			33.833.813	44,4%
	Established by foreign legal and natural persons from EU	354.393	0,5%			354.393	0,5%
	foreign other than EU						
	foreign bank branch offices other than EU						
	Foreign bank subsidiaries other than EU	575.418	0,8%			575.418	0,8%
	Established by foreign legal and natural persons other than EU	1.155.640	1,5%			1.155.640	1,5%

**Source NBRM**

(1) Under "banks established by foreign legal and natural persons from EU" are included banks that are established by foreign legal and natural persons from the EU territory, that are not registered as banks. (2) According to the Banks and Savings Houses Act (Official Gazette of the Republic of Macedonia No. 29/96, 37/98 and 25/00), which was in force in the period from 1996 to July 2000, foreign banks were allowed to establish branches in the Republic of Macedonia. The branch of a foreign bank had to have a status of a legal person and had to fulfill the capital requirements like all other commercial banks established under this law in Republic of Macedonia. There was only one such branch established in Republic of Macedonia during 1999, which was pre-registered in to foreign bank subsidiary at the beginning of 2001 in order to comply with the Banking Law enacted by the Parliament of the Republic of Macedonia in July 2000.

(3) Under "banks established by foreign legal and natural persons other than EU", are included banks that are established by foreign legal and natural persons from countries other than EU, that are not registered banks.

The data for 2002 and 2003 do not include data on the assets of one bank which was placed under temporary management in January 2003, with a bankruptcy procedure opened against it in March 2004.

In the period between 1999 until 30 June 2004, the banks' deposit base had a tendency of continuous rise, except for 2002, i.e. following the large inflow of citizens' deposits into the bank system at the end of 2001, prior to the euro conversion.

At the end of 2001, the total deposits were by 33 billion MKD higher compared to the end of 2000, or there was an increase of nearly 50%. As already stated above, the rise in 2001 was due to the euro conversion, and primarily of the citizens' deposit increase.

The main determinant of foreign currency movement during 2002 was the citizen's deposits. Namely, during 2002 there was a net deposit withdrawal of about 12 billion MKD (90%), which is mostly due to the foreign currency deposit withdrawal. Nonetheless, although the previously stated deposit amount was withdrawn from the banking system, it may be concluded that nearly 70% of the deposit inflow prior to the euro conversion remained in the banks. The deposit withdrawal did not cause problems in the banks. This was a signal for a gradual and safe restoration of the citizens' confidence in the banks.

During 2003 and the first six months of 2004, the banking system in the Republic of Macedonia experienced a continuous increase of the deposit base. Thus, on 30 June 2004 the total deposits increased by 18 billion MKD or nearly 31% compared to 2002. Out of the total amount of new deposits, about 10 billion, or 55% are citizens' deposits.

Despite the continuous increase of the deposit base, there was still a significant disturbance of its maturity structure. Out of the total bank deposits, as high as 94% have the maturity period shorter than one year, i.e. the maturity structure is still unfavourable to provide for a more serious credit expansion of the banks' portfolios.

**6. Concentration of the market (respectively in % of assets, % of loans and as a % of deposits held by the largest 5, 10 institutions), indicating whether they are:**

- a) Domestic;
  - b) Non-domestic Community;
  - c) Non-domestic non-Community.
- Changes in (a) to (c) since 1999.**

The following overview shows the market concentration in the Republic of Macedonia between 1999 until 30 June 2004. The savings houses are excluded due to their small or insignificant share in the total assets, deposits and credits of the banking system.

**MARKET CONCENTRATION OF THE BANKING SYSTEM**

Banking system		In (000) MKD				
Year / criterion		All banks	Largest 5 banks	%	Largest 10 banks	%
1999	Assets	72.279.359	51.597.847	71,4%	61.478.297	85,1%
	Deposits	40.786.571	31.484.843	77,2%	36.396.357	89,2%
	Credits	35.454.790	26.452.562	74,6%	31.220.726	88,1%
2000	Assets	81.999.326	59.380.220	72,4%	71.151.040	86,8%
	Deposits	46.644.384	37.700.471	80,8%	42.665.942	91,5%
	Credits	38.170.200	27.064.542	70,9%	32.854.856	86,1%
2001	Assets	105.632.888	76.207.729	72,1%	91.047.456	86,2%
	Deposits	69.995.289	54.894.832	78,4%	63.646.817	90,9%
	Credits	40.891.013	28.249.045	69,1%	34.750.540	85,0%
2002	Assets	93.213.138	68.622.921	73,6%	79.934.309	85,8%
	Deposits	57.904.817	47.034.703	81,2%	52.797.650	91,2%
	Credits	41.675.627	30.226.886	72,5%	36.554.878	87,7%
2003	Assets	104.875.355	79.772.665	76,1%	91.594.887	87,3%
	Deposits	70.188.465	59.466.150	84,7%	65.665.174	93,6%
	Credits	48.110.229	35.584.834	74,0%	40.417.343	84,0%
30.06.2004	Assets	109.159.536	84.750.444	77,6%	95.851.860	87,8%
	Deposits	75.839.151	65.110.276	85,9%	70.218.585	92,6%
	Credits	53.279.036	39.724.481	74,6%	46.149.878	86,6%

Source NBRM

Domestic banks		In (000) MKD				
Year / criterion		All banks	Largest 5 banks	%	Largest 10 banks	%
1999	Assets	72.279.359	48.273.191	66,8%	56.208.845	77,8%
	Deposits	40.786.571	30.388.423	74,5%	34.085.882	83,6%
	Credits	35.454.790	23.825.034	67,2%	27.519.373	77,6%
2000	Assets	81.999.326	23.983.189	29,2%	30.166.821	36,8%
	Deposits	46.644.384	15.729.264	33,7%	19.265.849	41,3%
	Credits	38.170.200	12.992.508	34,0%	16.052.724	42,1%
2001	Assets	105.632.888	30.349.137	28,7%	42.680.199	40,4%
	Deposits	69.995.289	23.196.113	33,1%	30.489.544	43,6%
	Credits	40.891.013	11.719.616	28,7%	17.742.321	43,4%
2002	Assets	93.213.138	34.719.868	37,2%	45.028.866	48,3%
	Deposits	57.904.817	24.795.974	42,8%	29.451.602	50,9%
	Credits	41.675.627	16.018.593	38,4%	21.781.855	52,3%
2003	Assets	104.875.355	39.464.798	37,6%	46.367.636	44,2%
	Deposits	70.188.465	30.706.095	43,7%	34.207.034	48,7%
	Credits	48.110.229	16.910.780	35,2%	20.353.574	42,3%
30.06.2004	Assets	109.159.536	41.306.691	37,8%	49.879.008	45,7%
	Deposits	75.839.151	32.525.347	42,9%	36.384.772	48,0%
	Credits	53.279.036	18.697.171	35,1%	23.790.584	44,7%

Source NBRM

Not domestic, from EU countries		In (000) MKD				
Year / criterion		All banks	Largest 5 banks	%	Largest 10 banks	%
1999	Assets	72.279.359	-	0,0%	-	0,0%
	Deposits	40.786.571	-	0,0%	-	0,0%
	Credits	35.454.790	-	0,0%	-	0,0%
2000	Assets	81.999.326	29.337.335	35,8%	29.337.335	35,8%
	Deposits	46.644.384	20.074.057	43,0%	20.074.057	43,0%
	Credits	38.170.200	10.927.377	28,6%	10.927.377	28,6%
2001	Assets	105.632.888	33.174.684	31,4%	35.683.349	33,8%
	Deposits	69.995.289	26.351.766	37,6%	27.810.320	39,7%
	Credits	40.891.013	9.395.370	23,0%	9.874.160	24,1%
2002	Assets	93.213.138	24.727.109	26,5%	26.975.258	28,9%
	Deposits	57.904.817	18.120.573	31,3%	19.227.892	33,2%
	Credits	41.675.627	8.204.664	19,7%	8.829.260	21,2%
2003	Assets	104.875.355	28.403.802	27,1%	31.353.187	29,9%
	Deposits	70.188.465	22.655.562	32,3%	24.402.379	34,8%
	Credits	48.110.229	10.926.497	22,7%	12.004.282	25,0%
30.06.2004	Assets	109.159.536	43.443.753	39,8%	45.972.852	42,1%
	Deposits	75.839.151	32.584.929	43,0%	33.833.813	44,6%
	Credits	53.279.036	21.027.310	39,5%	22.359.294	42,0%

Source NBRM

Not domestic, from Non-EU countries					In (000) MKD	
Year / criterion		All banks	Largest 5 banks	%	Largest 10 banks	%
1999	Assets	72.279.359	3.324.656	4,6%	5.269.452	7,3%
	Deposits	40.786.571	1.096.420	2,7%	2.310.475	5,7%
	Credits	35.454.790	2.627.528	7,4%	3.701.353	10,4%
2000	Assets	81.999.326	6.059.696	7,4%	11.002.487	13,4%
	Deposits	46.644.384	1.897.150	4,1%	3.326.044	7,1%
	Credits	38.170.200	3.145.336	8,2%	5.875.434	15,4%
2001	Assets	105.632.888	12.683.908	12,0%	12.683.908	12,0%
	Deposits	69.995.289	5.346.953	7,6%	5.346.953	7,6%
	Credits	40.891.013	7.134.059	17,4%	7.134.059	17,4%
2002	Assets	93.213.138	9.175.944	9,8%	9.175.944	9,8%
	Deposits	57.904.817	4.118.156	7,1%	4.118.156	7,1%
	Credits	41.675.627	6.003.629	14,4%	6.003.629	14,4%
2003	Assets	104.875.355	11.904.065	11,4%	13.874.064	13,2%
	Deposits	70.188.465	6.104.493	8,7%	7.055.761	10,1%
	Credits	48.110.229	7.747.557	16,1%	8.059.487	16,8%
06.2004	Assets	109.159.536	-	0,0%	-	0,0%
	Deposits	75.839.151	-	0,0%	-	0,0%
	Credits	53.279.036	-	0,0%	-	0,0%
Source NBRM						

The data for 2002 and 2003 do not include data on one bank which was put in January 2003 under temporary management, with the bankruptcy procedure opened against it in March 2004.

Having in mind that, based on all three criteria, the concentration of the largest five banks in the banking system is higher than 70%, while concentration exceeds 84% in the case of the largest 10 banks in the analysed period, it is obvious that the banking system of the Republic of Macedonia is highly concentrated.

The share of domestic banks in the bank concentration has a tendency of continuous decrease in the analysed period. This tendency is due to the fact that several banks included in the group of the largest 5, and the largest 10 banks, were bought out by foreign strategic investors, mainly from EU member states or EU latest acceded member states during the analysed period. The same reasons are behind the increase of the EU banks' share in the bank system concentration in the Republic of Macedonia under all criteria from 0% in 1999 for, to 39%, and 44%, on 30 June 2004, for the largest 5 and 10 banks, respectively.

The foreign banks' share from countries other than EU during the analysed period is insignificant. There was a slight increase in 2001, 2002 and 2003 which was a result of the acquisition of one bank by a foreign strategic investor from Slovenia. This bank was included in the largest 5, i.e. the largest 10, on 30 June 2004, yet, since Slovenia acceded to the EU in the most recent extension, it is presented as a foreign bank other than from the European Union. Thus, other than EU foreign bank share in the largest 5, i.e. largest 10, on 30 June 2004 comes down to 0% by all criteria.

**7. Importance of the public sector in the banking industry:**

- a) Number of banks owned by public institutions and the amount of their assets and deposits;**
- b) Timetable, objectives and scope of the envisaged privatisation;**
- c) Do public banks benefit from special treatment? Do banks directed by public or political party officials benefit from special treatment and how? Do public utilities/companies keep their accounts with commercial banks?**
- d) Is there some policy to recapitalise them?**
- e) Indicate the percentage of bank capital held by public entities on a bank by bank basis.**

**a)**

In the Republic of Macedonia, there is only one bank, the Macedonian Bank for Development Support (MBDS), which is under state control (the term 'bank under state control refers to one bank in which the Government of the Republic of Macedonia, directly or indirectly, through another legal person under Government control, owns over 51% of the total number of voting shares).

MBDP was established with a standalone law - Law on Establishing the Macedonian Bank for Development Promotion, Official Gazette of the Republic of Macedonia No. 24/98 and 6/00) to support the development and promote further the Macedonian economy through:

- investing in small and medium size enterprises;
- supporting exports;
- managing foreign loans and donations.

MBDS was established as a joint stock company (Article 1 of the Law on Establishing the Macedonian Bank for Development Promotion (Official Gazette of the Republic of Macedonia 24/98 and 6/00)) and operates according to the Banking Law provisions, except for some specific elements which are individually regulated in the provisions of this particular law (Article 3 of the Law on Establishing the Macedonian Bank for Development Promotion (Official Gazette of the Republic of Macedonia 24/98 and 6/00)). MBDS is not authorised to collect deposits (Article 8 of the Law on Establishing the Macedonian Bank for Development Promotion (Official Gazette of the Republic of Macedonia 24/98 and 6/00) and cannot approve loans and issue guarantees to the state, public enterprises and institutions funded by the budget of the Republic of Macedonia. Its activities cannot be directed to crediting the establishment or development of small and medium size enterprises, export funding, issuing guarantees for loans approved for identified inflow from export, neither on insurance and re-insurance of export against commercial and non-commercial risks (Article 6 of the Law).

Under the law, the state dividend share in MBDS operations is transferred to the Bank's reserves (Article 13, paragraph 3 of the Law).

Shareholders of MBDS

Besides the Government, the Chamber of Commerce of the Republic of Macedonia, as well as other domestic and foreign legal persons, can also be founding partners of this Bank (Article 4, paragraphs 2, 3, 4 and 5 of the Law). The Government share in the initial capital of this bank cannot be lower than 51%. The total participation in the initial capital by foreign legal persons cannot be higher than 30%.

For the time being, the only shareholder of this Bank is the Government of the Republic of Macedonia.

MBDS Assets

The total assets on 30 June 2004 are 1.817.466.000 MKD.

**b)**

Privatisation Time Table and Objectives

From a historical viewpoint, majority owners of the banks in the Republic of Macedonia were the socially owned enterprises. With the privatisation of socially owned enterprises, there was a process of bank privatisation, so today all banks, except for the Macedonian Bank for Development Support, are in private ownership (see Table in the answer of this question under e).

The only state owned bank today is the Macedonian Bank for Development Support which was established in 1998 under a specially enacted piece of legislation – the Law on Establishing the Macedonian Bank for Development Promotion. In light of the specific type and objectives behind the establishment of this Bank (more details on this in the answer under a) of this question), the Government does not plan its privatisation, i.e. does not plan to reduce the state holding in MBDS below 51%.

**c)**

The only state bank does not enjoy special treatment in any respect

Public enterprises hold their accounts with commercial banks, though not with MBDS due to the fact that it is not allowed to receive deposits and provide payment services for clients (Article 8).

**d)**

There is no definite plan on the MBDS recapitalisation. If fit and proper investors are interested in investing in MBDS, the Government is ready to implement the possibility granted by the Law on Establishing the Macedonian Bank for Development Promotion, which provides 49% of the MBDS assets to be owned by domestic and foreign legal and natural persons (Article 4). This can be done through a new share issue, i.e. by increasing the equity, rather by selling part of the state owned stake (share holding).

**e)**

The public sector share in the banks' capital in the Republic of Macedonia for individual banks is presented in the Table below.

PUBLIC SECTOR SHARE IN THE BANKS' CAPITAL IN THE REPUBLIC OF MACEDONIA	
Bank	Share in % on 30 June 2004
1. Radobank, JSC Skopje	0,00%
2. Univerzalna Investiciona Banka JSC Skopje	3,20%
3. TKB JSC Skopje	0,55%
4. Komercijalna Banka JSC Skopje	9,55%
5. Tetovska Banka JSC Skopje	6,17%
6. KIB JSC Kumanovo	6,78%
7. Stopanska Banka JSC Bitola	9,83%
8. IPB JSC Skopje	0,00%
9. Stopanska Banka JSC Skopje	0,00%
10. Alfa Banka JSC Skopje	0,00%
11. Sileks Banka JSC Skopje	1,76%
12. Tutunska Banka JSC Skopje	0,26%
13. Makedonska Banka JSC Skopje	0,23%
14. IK Banka JSC Skopje	0,00%
15. Postenska Banka JSC Skopje	33,33%
16. Eurostandard Banka JSC Skopje	0,00%
17. Ohridska Banka JSC Skopje	1,78%
18. Ziraat Bankasi	0,00%
19. Prokredit Bank JSC Skopje	0,00%

20. MBPR	100,00%
21. Invest Banka JSC Skopje	0,19%

The public sector share in the banks' capital is due to the share of the unprivatised state enterprises and the Pension and Disability Insurance Fund. The public sector share in the banks' capital in the Republic of Macedonia is rapidly decreasing with the finalisation of the privatisation process and the fast pace of sale of shares of the Pension and Disability Insurance Fund.

## Legal framework - Conditions of admission

### 8. What are the essential requirements for the authorisation to take up the business of credit institutions (legal form, level of own funds, number and conditions concerning the persons who direct the business, others?)

The establishment and operations of banks in the Republic of Macedonia is regulated with the Banking Law (Official Gazette of the Republic of Macedonia No. 63/00, 103/00, 37/02, 51/03, and 85/03) and the Law on Micro-Financing Banks (Official Gazette of the Republic of Macedonia No. 61/02). Generally, for banks established under the Law on Micro-Financing Banks, the provisions of the Banking Law as defined in Article 4 of the Banking Law, and Article 5 of the Law on Micro-Financing Banks, also apply.

The provisions in the Law on Micro-Financing Banks referring to the establishment of this type of banks (Articles 4, 5, 6 and 7) were in force for two years after the entry into force of the Law, i.e. two years after 26 July 2002, which means that they do not apply any longer and, new banks cannot be established under this law any longer. Other provisions remain in force and the established micro-financing banks continue to operate in accordance with these provisions, as well as with the provisions of the Banking Law. During the period of effectiveness of the provisions pertaining to establishment, only one micro-financing bank was established in the Republic of Macedonia – Procredit Bank, with IMI, EBRD, KfW and IFC as shareholders. Procredit Bank filed an application with the National Bank of the Republic of Macedonia for its conversion into a bank established in line with the Banking Law and it is soon expected that the National Bank will approve the conversion. This practically means that there will be no banks established and operating under the Law on Micro-Financing Banks, and the law will cease to be in force.

In the Republic of Macedonia, for the time being, savings houses are also in operation. They were established under the Law on Banks and Savings Houses (Official Gazette of the Republic of Macedonia No. 31/93, 78/93, 17/96, 37/98 and 25/00) which was abrogated in 2000 with the adoption of the Banking Law, with exception of Chapter II "Savings Houses", which is still in force. The application refers only to the operation, and not to the establishment, so, as the Banking Law was adopted, approvals for establishing new savings houses have not been issued. It is planned that the status, requirements and operations of the savings houses are regulated until the end of 2005 in accordance with the Banking Law. The market share of savings banks is marginal. Total deposits by natural persons stand at about 1% of the total deposits in credit institutions.

#### Legal Form

The banks in the Republic of Macedonia are established as joint stock companies (Article 3, paragraph 1 of the Banking Law).

The savings banks are established as joint stock companies or limited liability companies.

### Initial Capital

Minimum capital requirement for establishment of a bank is 3.5 million EUR in denar counter-value (Article 8, paragraph 1 of the Banking Law). As already stated in the answer in Chapter 11, part I, A, question No.2, this amount will be increased to 5 million EUR by the end of this year (for more details see [11 I A 2](#)). Capital of 9 million EUR (eligible own funds) is required in order to perform activities explained in Article 46 of the Banking Law. More details regarding activities that can be performed by banks based on the amount of capital are given in the answer in Chapter [03 II A 12](#).

To establish a micro-financing bank the required capital was 4 million EUR (Article 5, paragraph 1 of the Law on Micro-Financing Banks). As stated above, this provision does not apply any longer.

### Bank Founders and Shareholders

As provided in Article 7 paragraph 1 and Article 15 paragraph 1, point 14 of the Banking Law, it is prohibited for bank founders and shareholders to be individuals who are subject to bankruptcy proceedings, individuals who are subject to an injunction to perform activities in their profession, activity or duty and individuals sentenced to prison:

- a) in the period from the date of sentence enforcement until the date the sentence has been served and 5 years after the sentence has been served, in cases when the individuals were sentenced with a final court decision with imprisonment up to 3 years, and
- b) in the period from the date of sentence enforcement until the sentence has been served, and 10 years after the sentence has been served, in cases when the individuals were sentenced with a final court decision with imprisonment over 3 years.

Also, prior to issuing the establishment and operations license to the bank, or permission to change the bank's structure, the National Bank governor assesses the qualifications, experience and integrity of shareholders (Article 15 paragraph 8 of the Banking Law). The evaluation is based on the documentation provided in Article 15 paragraphs 1, 2 and 3 and Article 11 paragraph 5 of the Banking Law which must be filed with the National Bank. If the National Bank assesses that the bank's shareholders do not meet the requirements for a healthy and prudent bank management, it will reject the application for issuance of establishment and operations license, i.e. reject the application for changing the shareholding structure of the bank (Article 11 paragraph 7 of the Banking Law).

### Documentation required for incorporation of a bank

In order to establish a bank, it is necessary to submit the following documentation and information provided in Article 15 paragraphs 1 and 2 of the Banking Law to the National Bank:

1. Draft establishment act;
2. Draft operating plan;
3. Proposed name of the bank;
4. Amount of capital and a statement that the funds will be deposited;
5. Source of capital;
6. Certificate from a relevant institution for regular payment of public taxes;
7. Information on the founders' identity and the number of shares of each founder;
8. Documented evidence on the appropriate status of the founders regarding the bank's stability;
9. Evidence on the financial position of the founders;
10. Information on the identity, educational background and experience of the managing board members, including professional history in the last 5 years;
11. Organisational structure of the bank;
12. Financial activities to be performed by the bank;
13. Financial reporting projection for the next 3 years;
14. Documentation which will help determine whether the individuals involved are not liable to be bank shareholders under Article 7 of the Law, and
15. Information on the IT system and technical facilities of the bank.



16. Legal persons who establish the bank, holding shares over 5% of the total number of voting shares of the bank also submit:
- Establishment act, statute of legal person and a list of management body members;
  - List of individuals who have over 10% shares in the legal person; and
  - List of companies in which the legal person holds over 10% of the shares, i.e. stakes.

In addition to the listed documentation the foreign bank which wants to open a subsidiary is obliged to submit the following documentation (Article 19 paragraph 2):

1. Evidence that the bank is authorised to collect deposits and other funds in the country of origin;
2. Approval by the supervision bodies in the country of origin to establish a subsidiary and
3. Evidence that the foreign bank supervision exercises adequate supervision on consolidation basis.

The documentation and procedure for getting permission to establish and operate a bank are elaborated in more detail in the Decision on the Required Documentation for Issuing Permission and based on the provisions in the Banking Law, Securities Law and Law on Micro-Financing Banks (Official Gazette of the Republic of Macedonia No. 68/03) Law on Micro-Financing Banks (Official Gazette of the Republic of Macedonia No. 68/03) and the Decision on Issuing Authorisation to Banks to Perform Payment and Credit Operations with Foreign Countries and Authorisation to do Foreign Currency Operations in the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 65/96, 16/01 and 85/01).

While reviewing the application for issuance of a permission to establish a bank, the National Bank governor assesses whether the bank will be organised and trained in compliance with the legislation and prescribed supervision standard qualifications, experience and integrity of the bank's managing body and shareholders and the feasibility of the submitted plan of operations and financial reporting projections.

### Managing bodies

The bank is managed by a Managing Board and Executive Body.

### Managing Board

The Managing Board of the bank (Article 58 of the Banking Law) includes a minimum of 5 and a maximum of 9 members. The Managing Board of the bank cannot include a member who:

1. Is a member of the National Bank Council;
2. Is employed at the National Bank;
3. Was sentenced to prison
  - in the period from the date of sentence enforcement until the date the sentence has been served and 5 years after the sentence has been served, in cases when the individuals were sentenced with a final court decision with imprisonment up to 3 years and
  - in the period from the date of sentence enforcement until the sentence has been served, and 10 years after the sentence has been served, in cases when the individuals were sentenced with a final court decision with imprisonment over 3 years
4. Was issued an injunction to work in his/her profession, activity or duty, for the duration of the effectiveness of the measure ;
5. Is a net debtor to the bank, evidenced by the methodology prescribed by the National Bank; and
6. Has acquired shares in contradiction to the Banking Law.

### Executive Body

The Executive Body of the bank (Article 62 of the Banking Law) is composed of a minimum of two individuals who are equally responsible for the work of the bank and the obligations undertaken by the bank.

The candidates for the Executive Body of the bank need to meet the following conditions;

1. Have higher education qualifications;
2. Have a minimum of 5 years of successful professional experience in the field of finance or banking or 3 years of professional experience as personnel with particular authorisations and responsibilities in the bank; and
3. Be knowledgeable in bank related regulations.

The management body of the bank cannot include a person who:

1. is a director or a president of an enterprise or legal person;
2. is member of the National Bank Council; and
3. has been sentenced to prison :
  - in the period from the date of sentence enforcement until the date the sentence has been served and 5 years after the sentence has been served, in cases when the individuals were sentenced with a final court decision with imprisonment up to 3 years and
  - in the period from the date of sentence enforcement until the sentence has been served, and 10 years after the sentence has been served, in cases when the individuals were sentenced with a final court decision with imprisonment of over 3 years
4. Was issued a safety measure injunction to perform in his/her profession, activity or duty for the duration of the effectiveness of the measure;
5. Has acquired shares in contradiction to the Banking Law.

The members of the Executive Body must be in permanent employment in the bank. At least one of the members must have knowledge of the Macedonian language and the Cyrillic Script.

Any changes in the composition of the Executive Body of the bank require an approval to be granted by the National Bank. In reviewing the above, the National Bank governor assesses the integrity of the nominees for the Executive Body (Article 15 paragraph 8 of the Banking Law).

### **Legal framework - Conditions of operation**

#### **9. What are the provisions concerning prudential ratios:**

- a) solvency ratio;
- b) liquidity ratio.

**Indicate the average level of these ratios for the industry.**

#### **a)**

The solvency ratio in the Republic of Macedonia is defined as capital adequacy ratio. This indicator measures the solvency position of the banks through incorporating credit and foreign currency risks to which the banks are exposed in their work.

The capital adequacy ratio is a ratio between the guarantee capital and the risk weighted assets, defined in line with the Basel Committee recommendations on capital adequacy, i.e. the 1988 Basel Capital Accord.

The banks in the Republic of Macedonia are obliged to maintain the capital adequacy rate at a minimum level of 8%. The National Bank of the Republic of Macedonia may prescribe a capital adequacy rate higher than 8%, at most 16%.

The guaranty capital includes the basic capital and the additional capital, in line with the Basel Capital Accord.

The risk weighted assets are a sum of the weighted book values of assets on the balance sheet (with risk weightings of 0%, 20%, 50% and 100%) and credit equivalent to the book value of off-balance sheet by their risk degree (with credit conversion factors of 0%, 50% and 100%). The credit equivalents of the specific off-balance sheet positions, such as financial derivatives, are calculated as a product of the book value of these balances and the relevant conversion factor determined by the maturity of the contract type.

The capital adequacy ratio and the calculation procedure are regulated in Article 30 of the Banking Law (Official Gazette of the Republic of Macedonia No. 63/00, 37/02, 51/03, and 85/03), the Decision on the Methodologies of Determining Banks' Guarantee Capital (Official Gazette of the Republic of Macedonia No. 77/00), and the Decision on the Methodology of Determining Risk Weighted Assets of Banks (Official Gazette of the Republic of Macedonia No. 50/01).

In order to ensure adequate level of capital for covering the exchange rate risk, the calculation of the capital adequacy indicator takes into account also the aggregate open foreign exchange position, calculated in accordance with the Decision on Determining and Calculating the Open Foreign Exchange Positions of the Banks (Official Gazette of the Republic of Macedonia No. 103/01 – consolidated text).

The capital adequacy indicator is calculated as a ratio between the bank's guarantee capital and the sum of the risk weighted assets and the aggregate open foreign currency position.

The following Table shows the movement of the bank capital adequacy level in the period from 1999 to 26 June 2004.

CAPITAL ADEQUACY RATIO OF THE BANKING SYSTEM IN THE REPUBLIC OF MACEDONIA

Year	Capital adequacy in %
1999	28,67
2000	36,73
2001	34,26
2002	28,12
2003	25,83
30.06.2004	25,70

Source NBRM

The high level of bank capital adequacy ratio in the Republic of Macedonia is due to the high share of cash deposited in the domestic and foreign banks and the government securities in total banking assets, which, in line with the risk weighted assets regulation, carry a risk weighting of 0% i.e. 20% respectively. In addition, the high capital adequacy rate is due to the high share of own funds in the total financial potential of the banks, which was at the level of about 20% from 1999 until 30 June 2004.

The relatively high and stable capital adequacy ratio is an indicator of a stable solvency of the banks, i.e. it is an indicator of the relatively high level of the banks' ability to absorb a certain level of loss, before reaching the insolvency zone. However, the high capital adequacy indicator is also a sign of the relatively low efficiency of the banks in performing their financial intermediation.

The capital adequacy rate has a stable and continuous downward trend, which is a result of the continuous process of lending banks' activities in the analysed period.

Activities on full harmonisation of the regulations on capital adequacy to the requirements of the 1996 Basel Capital Accord amendments with regard to the incorporation of the market risk and the new Basel Capital Accord (Basel II) are in process.

**b)**

The prudential liquidity ratio limits are in the process of being defined. At the moment the National Bank of the Republic of Macedonia is able to monitor the residual contractual and expected maturity structure of the banks' assets and liabilities by individual balance sheet positions, based on the Decision on the Methodology for Determining, Evaluating and Managing Banks' Liquidity Risks adopted at the end of 2003 (Official Gazette of the Republic of Macedonia No. 84/03). The prudent risk management limits will be calculated based on the collected data analysis and they will be incorporated in the legal framework.

In addition, a supervision circular was adopted in 2004 that defines more precisely the basis for the systems and procedures on banks' liquidity risk management, and in particular:

- The liquidity risk management policy (definition of the optimal asset and liability structure, basic liquidity indicators, the role of the management bodies in the domain of liquidity risk management etc.);
- The adequate information system which will enable timely and continuous monitoring and control of liquidity risks;
- Identification and monitoring of the funding concentration, particularly from the aspect of deposit base stability;
- Testing of liquidity in order to determine the influence of various conditions (stress scenarios) on the liquidity position of the banks, as well as on the ability of the banks to comply with the established limits; and
- Management of the liquidity risk on a consolidated basis.

**10. Is there a deposit guarantee scheme? Describe the main elements of it.**

There is a deposit insurance scheme. The scheme was established by the Law on Deposits Insurance Fund (Official Gazette of the Republic of Macedonia No. 63/00, 29/02, 43/02, 49/03 and 66/03) and is based on the principles of Directive 94/19/EC.

The essential elements of the Fund are;

- The Fund was established by the Republic of Macedonia.
- The Fund is managed by a Managing Board (composed of 5 members nominated by the Government of the Republic of Macedonia, out of which three upon recommendation of the Minister of Finance, one by the governor of the National Bank of the Republic of Macedonia and one by the director of the Banking and Insurance Association) and a director. (Article 11, Paragraph 12 point 10)
- The Fund resources come from the initial capital deposited by the Republic of Macedonia, the insurance premiums deposited by the banks and savings houses – members of the Fund, which at annual level cannot be higher than 0.7% of the total personal deposits in each bank or savings house (Article 7 paragraph 1), single payment premiums deposited by banks and savings houses as membership fee amounting to 1% of the initial capital of the bank or savings house, as well as income from Fund placements.
- The funds can be used solely for payment of deposit insurance to natural persons and the Fund's operating costs (Article 6, paragraph 3)
- In cases of lack of funds for deposit insurance payment, the Fund secures the funds from additional inflows from the banks and savings houses (the amount, in this case, is limited to the triple amount of a monthly premium), by borrowing in the country and abroad, or by borrowing from the budget (Article 8).
- The Fund can place the funds into short-term securities of the Republic of Macedonia and the National Bank of the Republic of Macedonia, in debt securities issued by foreign countries, central banks and public international financial institutions to the amount of the insured

deposits in foreign currency, as well as in futures, options and term agreements with deposit institutions, to the maximum of 2% of the Fund sources. For placement safety, foreign institutions where the Fund sources are placed must be rated by at least two internationally certified agencies in one of the two highest categories (Article 6).

- Fund membership is obligatory for all institutions (banks and savings houses) which collect deposits from natural persons (Article 4 paragraph 1)
- Fund membership terminates when the governor of the National Bank of the Republic of Macedonia cancels the bank incorporation and operating license or cancels the part of the license related to deposit collection from natural persons (Article 4 paragraphs 2 and 3).
- The subjects of insurance are the denar and foreign currency deposits made by natural persons to the maximum of 20.000 EUR in a single bank or savings house, and 100% of the deposit is paid to a maximum of 10.000 EUR with 90% of the deposit between 10.000 and 20.000 EUR (Article 9 paragraph 2). The natural person deposits are considered insured if they have been deposited in the bank or savings house before the date of termination of the establishment and operations license.
- The insurance does not apply to natural person deposits with favourable interest rates, different from those announced by the bank or savings house, the deposits of natural persons who own over 5% of the voting shares or are bank or savings house managing body members, deposits of the next of kin of owners of over 5% of voting shares and members of the managing bodies, and deposits related to transactions in which money laundering has been performed, in cases when the offender has been sentenced and the punishment is enforced (Article 10 paragraph 1).
- The payment from the Fund sources is effected within three months from the final decision of the governor of the National Bank of the Republic of Macedonia on the termination of the establishment and operations license of the bank or savings house (Article 9 paragraph 1)

**11. Is there a regulation preventing the use of the financial system for the purpose of money laundering? Describe the main elements of it (see also Chapter 4 – free movement of capital).**

The restriction to use the financial system for money laundering is regulated by the Law on Money Laundering Prevention (Official Gazette of the Republic of Macedonia No. 70/01) and other Proceeds from Criminal Activities (Official Gazette of the Republic of Macedonia No. 46/04), the adoption of which terminated the Law on Money Laundering Prevention (Official Gazette of the Republic of Macedonia No. 70/01) and the Rulebook on the Contents of Transaction Reports (Official Gazette of the Republic of Macedonia No. 54/04)

In addition to the Law on Money Laundering Prevention (Official Gazette of the Republic of Macedonia No. 70/01) and other Proceeds from Criminal Activities, the following laws refer to the prevention of the use of the financial system for money laundering : The Criminal Code of the Republic of Macedonia (Official Gazette of the Republic of Macedonia Nos. 37/96, 80/99, 4/02, 43/03 and 19/04) , Law on Criminal Procedure (Official Gazette of the Republic of Macedonia Nos. 15/97, 44/02, 74/04), Banking Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 37/02, 51/03 and 85/03), Law on Providing Services for Swift Money Transfers (Official Gazette of the Republic of Macedonia Nos. 77/03, 2/04), Law on Foreign Exchange Operations (Official Gazette of the Republic of Macedonia Nos. 34/01, 49/01, 103/01, 51/03).

Essential elements of the money laundering prevention system:

- Client identification:
  - in one or several related transactions (regardless of whether they are cash or non-cash) for the amount of or above 15.000 EUR in denar counter-value;
  - in establishing business or contractual relations;
  - before opening an account or savings account, receipt of shares, securities, bonds and other securities, enabling the use of safes, real estate management or receipt and payment on behalf of third persons;

- in life insurance, when a single or several instalments amount to over 1.000 EUR in denar counter-value, or when the single premium is higher than 2.500 EUR in denar counter-value;
  - immediately upon entry into a casino;
  - in providing services such as rapid money transfer before each transaction to the amount of or above 2.500 EUR in denar counter-value.
- Identification of authorised individuals;
  - Evidence of inflow and outflow of cash and securities across border lines which exceed the legally permitted maximum and upon reports to the Directorate of Money Laundering Prevention at every import or export of cash or securities of over 10.000 EUR in denar counter-value and whenever there is reasonable suspicion related to money laundering or terrorism funding.
  - Special control of transactions of which there is reasonable suspicion of being related to money laundering or terrorism funding;
  - Compiling and keeping evidence on transactions and clients that perform them;
  - Submitting evidence to the Directorate of Money Laundering Prevention on:
    - Cash transactions at the amount of 15.000 EUR or above, related cash transactions which sum up to the amount of 15.000 EUR or above (within three work days)
    - Transactions (regardless of the amount and type – cash or non-cash) in cases when there is suspicion that money laundering is in question (not later than 24 hours);
  - Introducing internal implementation programmes for measures on preventing money laundering and continuous training of staff at relevant institutions;
  - Defining the 'entities' responsible to undertake measures and activities for money laundering prevention;
  - Regulate the authorisations of the Directorate of Money Laundering Prevention as a financial intelligence unit;
  - Cooperation with relevant state bodies and institutions, as well as with authorised bodies, organisations from other countries and international organisations authorised for the detection and prevention of money laundering and financial terrorism;
  - Authorise the Directorate for Money Laundering Prevention to hold temporarily a transaction (up to 72 hours) and submitting the initiative for defining interim measures (hold transaction and temporary confiscate money or property) to the relevant public prosecutor;
  - Administrative sanctions for violation of regulation.

## 12. What are the activities which a credit institution is authorised to carry on?

The bank established with capital amounting to 3.500.000 EUR can perform the following financial activities (Article 45 of the Banking Law, Official Gazette of the Republic of Macedonia No. 63/00, 103/00, 37/02, 51/03, 85/03):

1. Receipt of all types of cash deposits of legal persons;
2. Receipt of all types of cash deposits of natural persons;
3. Grant and take out loans in the country;
4. Foreign currency exchange;
5. Issue debit cards;
6. Issue electronic money;
7. Financial leasing;
8. Payment operations in the country;
9. Perform economic and financial consulting
10. Provide services for invoice payment and register keeping
11. Provide other financial services (deposits, leasing of safes etc);
12. Issue denar denominated cash guarantees, sureties and other forms of guarantee;
13. Purchase and sell short-term securities for own account or clients' accounts
14. Purchase, sell and pay debt; and
15. Perform services like swift money transfer in line with the Law on Providing Services for Swift Money Transfers. (Official Gazette of the Republic of Macedonia No. 77/03, 2/04)

In addition to the above listed activities, the bank which has been established with capital of 9.000.000 EUR can do the following financial activities (Article 46 of the Banking Law).

1. Perform payment operations with abroad;
2. Perform credit and guarantee activities with abroad;
3. Perform factoring on behalf of clients;
4. Trade with securities for its own account and for clients' accounts;
5. Trade in foreign currency and perform foreign currency transactions;
6. Trade in financial derivatives;
7. Keep and manage securities and items made of precious metals;
8. Purchase and sell, guarantee and place security issuance
9. Give services to the bank – estate custodian.

As already stated in the answer to the question in Chapter [11 I A 2](#), there will be amendments to the Banking Law in 2005, in which the capital required to open a bank will be increased to 5 million EUR, which will entail the revision of Articles 45 and 46 of the Banking Law. The financial activities that the banks are allowed to perform will be harmonised with the activities in Annex 1 of Directive 2000/12/EC.

The banks which have been established in line with the Law on Micro-Financing Banks can perform the following activities (Article 8 paragraph 1):

- Receive all types of cash deposits from legal and natural persons;
- Grant loans;
- Take loans in the country and abroad;
- Perform foreign currency and exchange activities;
- Issue credit cards;
- Issue electronic money;
- Financial leasing;
- Perform payment operations in the country;
- Perform payment operations abroad;
- Economic and financial consulting
- Give services for invoice payment and register keeping
- Issue denar and foreign currency guarantees, sureties and other forms of guarantee;
- Trade in foreign currency and perform foreign currency transactions.

In line with Article 8 paragraph 2 part 1 of the Law on Micro-Financing Banks, the activities for granting loans, financial leasing and issuing denar and foreign currency money guarantees, sureties and other forms of guarantee may be performed by the bank only for;

- Traders in compliance with Article 1 of the Company Law (Official Gazette of the Republic of Macedonia No. 28/04);
- Freelance individuals (lawyers, notaries etc.);
- Individuals dealing with farming activities in line with Article 7 paragraphs 1 and 2 of the Law on Promoting the Agriculture Development (Official Gazette of the Republic of Macedonia No.11/02); and
- Individuals performing handicraft activities in line with the Law on Performing Handicraft Activities (Official Gazette of the Republic of Macedonia No. 62/04)

For the time being (until the regulation listed in the answer in Chapter [03 II A 8](#) is adopted), the savings houses, in line with Article 90 of the Banking Law and Savings Houses (Official Gazette of the Republic of Macedonia No. 31/93, 78/93, 17/96, 37/98, and 25/00) can perform the following activities;

1. Collect denar savings deposits from natural persons;

2. Grant loans to natural persons and individuals who perform individual activity and have no status of legal persons;
3. Take loans from banks and savings houses; and
4. Provide economic and financial consulting.

**13. Which annual accounting prudential and statistical information is the bank required to give to the supervisory authority in respect of its business?**

Annual report on the bank accounts for the previous year is delivered to the National Bank of the Republic of Macedonia the latest by 5 March of the current year.

This report contains data on the balance and turnover of accounts of banks defined according to the chart of accounts for banks and saving houses prescribed by the Ministry of Finance of the Republic of Macedonia.

On the basis of this Report, the National Bank of the Republic of Macedonia prepares the following statements:

- Re-classified income statement by types of revenues and expenditures;
- Re-classified balance sheet per types of assets and liabilities and capital accounts; and
- Report on off-balance sheet items and positions;

Annually, banks deliver to the National Bank of the Republic of Macedonia the following:

- Audit report for the year that finished on 31 December, prepared by an authorised audit company; and
- Annual report on the bank operation; on the basis of Article 73 of the Banking Law.

Annually, banks deliver to the National Bank of the Republic of Macedonia the following prudential reports:

- Report on credit exposure of the bank towards insiders and persons related to them;
- Report on credit exposure of the bank towards shareholders of the bank owning voting shares exceeding 5% of the total voting shares and persons related to them;
- Report on credit exposure of the bank towards individual companies in which the bank has an equity stake and persons related to them;
- Report on large credit exposures of the bank towards individual entities; and
- Report on credit exposure of the bank towards insiders, shareholders owning over 5% of voting shares, companies in which the bank has equity stakes, and large credit exposures; on the basis of the Decision on Limits for Credit Exposure of Banks (Official Gazette of the Republic of Macedonia No.01/04 – consolidated text).
- Report on classification of credit exposure by client – credit risk;
- Report on credit exposure by country and classification of risk by client – foreign entities (country risk); and
- Report on classification of assets by activity; on the basis of the Decision for Determination of Methodology for Classification of on- and off-balance sheet assets of banks according to the degree of their risk (“ Official Gazette of the Republic of Macedonia” No.21/02 – consolidated text),
- Report on average monthly open foreign exchange position; on the basis of the Decision for determination and calculation of open foreign exchange position of banks (Official Gazette of the Republic of Macedonia No.103/01 - consolidated text),
- Report on concluded credit arrangements with residents in foreign currency; on the basis of the Decision on the conditions and manner of concluding credit arrangements in foreign currency between residents (Official Gazette of the Republic of Macedonia No.66/03) and Instruction for implementation of the Decision on the conditions and manner of concluding credit arrangements in foreign currency between residents (Official Gazette of the Republic of Macedonia” No.72/03).



- Report on the contractual maturity structure of assets and liabilities in denars and foreign currency;
- Report on the projected maturity structure of assets and liabilities in denars and foreign currency;
- Report on the balances of the 20 largest depositors of the bank; and
- Report on liquidity benchmarks;  
on the basis of the Decision on the methodology for determination, assessment and management of liquidity risk of banks (Official Gazette of the Republic of Macedonia No.84/03),
- Report on risk weighted assets;
- Report on risk weighted off-balance sheet assets; and
- Report on risk weighted off-balance sheet assets – financial derivatives; and on the basis of the Decision on the methodology for determination of risk weighted assets of banks (Official Gazette of the Republic of Macedonia No. 50/01),
- Report on guarantee capital;
- on the basis of the Decision on the methodology for determination of guarantee capital of banks (Official Gazette of the Republic of Macedonia No. 77/00),
- Report on net debtors of the bank;  
on the basis of the Decision on the methodology for determination of net debtors of banks (Official Gazette of the Republic of Macedonia No. 28/01),
- Report on changes in the ownership structure of the bank; on the basis of Article 26 of the Banking Law.

Other prudential reports that are annually submitted to the supervisory body are the following:

- Report on newly approved and extended credits;
- Report on newly approved off-balance sheet items and positions;

Pursuant to Article 40 of the Law on National Bank of the Republic of Macedonia (Official Gazette of the Republic of Macedonia Nos. 3/02, 51/03, 85/03, and 40/04), the National Bank of the Republic of Macedonia, for the purpose of performing its functions, collects, processes, publishes and distributes data and information.

The same Article stipulates that the National Bank of the Republic of Macedonia prescribes the manner and scope of collecting and processing, distribution and publishing of collected data and information.

Also, in accordance with Article 69, paragraph 2 of the Banking Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 37/02, 51/03, and 85/03), the National Bank of the Republic of Macedonia prescribes the forms, types and methodology, content and terms of delivery of the reports that are submitted to the National Bank.

According to the Instruction for filing, collecting, supervision and data processing from the accounting status of banks and other financial organisations No.3/92 from 15 May 1992, banks submit accounting data forming the balance sheet and income statement every 8<sup>th</sup> day of the current month, for the last day of the previous month. On the basis of collected information in such manner, as submitted in an electronic way to its electronic system, the National Bank of the Republic of Macedonia re-classifies the accounts and produces financial reports on banks and saving houses for supervision purposes, as well as for the needs of the monetary policy.

The National Bank of the Republic of Macedonia, in the course of the year 2005, will draft a regulation that will refer to bank accounting and financial reporting of banks to the National Bank of the Republic of Macedonia. This regulation will be harmonised with the rules of International Financial Reporting Standards.

**14. Is there a specific regulation concerning the annual accounts and consolidated accounts of banks? Explain the main rules applying to the format of the balance sheet and to the publication of the annual accounts.**

The banks' annual financial statements are submitted and published in accordance with the provisions in Article 476-480 of the Company Law (Official Gazette of the Republic of Macedonia No. 28/04), the Rulebook on Balance Schemes Format and Contents for Banks, Savings Houses and other financial organisations (Official Gazette of the Republic of Macedonia No. 27/99), the International Accounting Standards adopted in the Republic of Macedonia and published in the Official Gazette of the Republic of Macedonia Nos. 40/97 and 73/99.

The banks' financial statement consolidation and publishing is regulated in Articles 504-506 of the Company Law (Official Gazette of the Republic of Macedonia No. 28/04), the Decision for Consolidated Bank Supervision (Official Gazette of the Republic of Macedonia No. 84/03) and the International Accounting Standards adopted in the Republic of Macedonia and published in the Official Gazette of the Republic of Macedonia Nos. 40/97 and 73/99.

The balance sheets prescribed by the Rulebook on Balance Schemes Format and Contents for Banks, Savings Houses and other financial organisations (Official Gazette of the Republic of Macedonia No. 27/99) are almost completely harmonised with Articles 4 and 27 of the EU Directive of 8 December 1986 (86/635/EEC).

This Rulebook does not prescribe that the banks' financial statements need to be accompanied by notes on financial statements, which is determined as a requirement in Article 40 of the EU Directive of 8 December 1986 (86/635/EEC). There are also certain differences in the rules for presenting assets pledged as collateral, as well as some differences in the rules on evaluating financial instruments compared to the ones prescribed by the Directive (86/635/EEC).

A task force has been established with the objective to evaluate, i.e. prepare comparative analysis of the harmonisation of the legal accounting framework in the Republic of Macedonia with the EU Directive of 8 December 1986 (86/635/EEC) and the International Financial Reporting Standards. In addition, a new chart of accounts for the banks is now being designed which will enable the implementation of the requirements for measuring, evaluation and presentation of financial instruments determined by international accounting standards.

The annual accounts, along with the legally binding Annual Report on the work of the company in the previous business year, are prepared and submitted to the Central Register for Annual Accounts in the Republic of Macedonia and to the Ministry of Finance of the Republic of Macedonia – the Public Revenue Office, not later than 28 February for the previous year.

The accounting and auditing of the banks is particularly regulated in Articles 69-76 of the Banking Law (Official Gazette of the Republic of Macedonia Nos. 63/ 00, 103/00, 37/02, 51/03, and 85/03).

The banks' financial reports and books are subject to a mandatory audit conducted by audit companies. The audit company prepares an audit report in line with the Law on Auditing (Official Gazette of the Republic of Macedonia Nos. 65/97, 27/00, 31/01, and 61/02). The audit company files its audit report with the National bank of the Republic of Macedonia, the bank's managing body and the Ministry of Finance.

In cases when the auditor determines that the bank is not able to meet its obligations or that the bank worked in contradiction to the legislation in force, the auditor is obliged to inform the Minister of Finance and the governor of the National Bank of the Republic of Macedonia immediately.

The banks are obliged to publish an extract from the audited financial statements containing the opinion of the certified auditor in at least one of the daily newspapers within 15 days of the approval of the audit by the Bank Shareholders' Assembly.

**15. Is there a regulation concerning the capital adequacy relating to risks other than credit risks?**

In addition to the credit risk, while assessing the capital adequacy, the banks exposure to the exchange rate risk through adding the bank's aggregate open currency position to the risk weighted balance and risk weighted off-balance sheet assets, is included.

The aggregate open currency position is determined on the basis of the Decision on Determining and Assessing the Banks' Open Currency Positions (Official Gazette of the Republic of Macedonia No. 103/01- consolidated text).

The open aggregate currency position is a balance of foreign currency assets and liabilities position and the denar balance of currency clauses, calculated individually for each foreign currency which appears in the bank's balance sheet.

The open aggregate currency position referring to the above Decision may be an aggregate balance of currency assets position and aggregate balance of currency liabilities position

The aggregate balance of currency assets position is a sum of the positive amounts of the balances between the balance of foreign currency assets and liabilities positions expressed in denar counter-value on the day of notification.

The aggregate foreign currency liabilities position is a sum of negative amounts of the balances between foreign currency assets and liabilities positions expressed in denar counter-value on the day of notification.

The calculation of capital adequacy of the banks in the Republic of Macedonia is regulated by Article 30 of the Banking Law (Official Gazette of the Republic of Macedonia No. 63/00, 37/02, 51/03, and 5/03) and the Decision on the Methodology for Determining the Risk weighted Banks' Assets (Official Gazette of the Republic of Macedonia No. 50/01).

As stated in the answer to the question in Chapter [11.1.A.2](#) the Capital Adequacy Directive (Directive 93/6/EEC) will be implemented by the end of 2005 in the part of market risk.

**16. Is there a regulation concerning the large exposures? Describe the main elements of it.**

A large credit exposure towards single subjects is the credit exposure either equal or higher than 10% of the bank's guarantee capital. The total amount of large credit exposures must not exceed the amount eight times higher than the bank's guarantee capital (800% of the credit capital).

The term 'single subject' refers to all legal and natural persons which, in line with the Banking Law, are considered to be related.

The credit exposure of one bank to a single subject includes the total debt on- and off-balance sheet, i.e. the credit exposure reflects the highest possible loss which may occur in cases the client fails to meet in full the obligations towards the bank.

In Chapter III, Supervision Standards in the Banking Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 37/02, 51/03, and 85/03), provisions are stipulated which regulate the banks' exposure, as follows:

- credit exposure towards a single subject;
- credit exposure towards a single shareholder whose shares are over 5% of the total number of voting shares ;
- credit exposure towards the bank's management body, members of the Managing Board and other bodies of the bank and individuals with special rights and obligations; and
- total large credit exposures towards single subjects

The Decision on Credit Exposure Limits (Official Gazette of the Republic of Macedonia No. 01/04), regulates the conditions for implementing the provisions of the Banking Law related to credit exposure in more detail.

**17. Is there a regulation concerning the supervision on a consolidated basis? Describe the main elements of it.**

The legal requirement for the performance of consolidated supervision of the banks by the National Bank of the Republic of Macedonia is included in Article 69, paragraph 4 and Article 77 of the Banking Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 37/02, 51/03, and 85/03). The elements of the regulation on banks' supervision on consolidation basis (provided in the Decision on Banks' Consolidated Supervision (Official Gazette of the Republic of Macedonia No. 84/03) whose practical implementation starts from 31 December 2004, identify the following elements:

*1. The scope of consolidated supervision, i.e. the subjects which compose the banking group.*

The banking group refers to a parent entity (bank or financial holding company) seated in the Republic of Macedonia which controls one or more banks, other financial institutions or companies for bank assistance services which are regarded as subsidiaries to the bank or financial holding company. A bank or a financial holding company is subject to supervision in cases when;

- directly or indirectly possess the majority shares or majority voting shares in the subsidiary;
- it is entitled to directly or indirectly nominate and dismiss the majority members in the managing bodies of the subsidiary, including a signed agreement with one or more shareholders in the subsidiary for transferring their voting right or achieving dominant influence on the operations of the subsidiary; or
- in any other case when the National Bank of the Republic of Macedonia has determined that the parent company has a dominant influence over the subsidiaries

A bank, or a financial holding company, has a share in other subsidiaries when it has direct or indirect ownership of a minimum of 20% of the equity and voting rights of these subsidiaries.

The bank seated in the Republic of Macedonia under control of the financial holding company in the Republic of Macedonia is subject to consolidated supervision based on the financial statements of the financial holding company. In cases when the financial holding company seated in the Republic of Macedonia has control over two or more banks seated in the Republic of Macedonia, which are not mutually related in the aspect of control or share, the bank subject to supervision is considered to be the one with largest equity, and in cases when the equity is the same, the bank which is subject to consolidated supervision is considered the one which first received license from the National Bank of the Republic of Macedonia.

Exceptions to consolidated supervision of subordinated subjects are in the following cases:

- If the subordinated subject has a seat outside of the territory of the Republic of Macedonia, in a country in which there are legal restrictions to transfer required information;
- If the inclusion of the subordinated subject does not significantly affect the determination of the banking group's financial position; and
- If the inclusion of the subordinated subject in consolidated supervision may cause incorrect or inadequate conclusions regarding the objectives of the consolidated supervision.

The bank subject to consolidated supervision is obliged to notify the National Bank of the Republic of Macedonia on the subjects of the bank group that it intends to exclude from consolidation and on the reasons for their exclusion. The National Bank of the Republic of Macedonia assesses whether the proposed consolidation scope provides a complete and true presentation of the financial state of the bank group;

*2. Methods of consolidation of a bank group financial statements*

Consolidated financial statements are made in line with the applicable accounting standards. The selection of the consolidation method depends on the equity share of the parent company or the voting rights in the other subjects of the group.

Consolidated financial statements are made by the method of complete consolidation of the financial statements of the parent bank, the financial holding company or their subsidiaries.

In cases when the parent company has a stake, the consolidated financial statements are made by the equity method.

In cases of joint control, when the parent company's obligations are clearly defined and restricted to the level of its equity share, while making the consolidated financial statements of the bank group the proportional consolidation method is used.

### *3. Rights to risks management at bank group level*

The bank subject to consolidated supervision is responsible for monitoring the risks to which the banking group is exposed and the adjustment with the limits determined in the Banking Law and other regulations. This means establishing an adequate risk management system at the group level, when each subject in the group needs to have adequate systems for generating data and information required for risk management on consolidation grounds. The banking group needs to be organised in such a way that will enable the bank, subject to consolidated supervision, to monitor the risks to which the group is exposed and undertake measures for reducing the risks. The prudent limits determined in the Banking Law which apply to single banks also refer to the banking group.

### *4. The format and content of the statements and other information required for consolidated supervision and deadlines for their submission to the National Bank of the Republic of Macedonia.*

The bank subject to consolidated supervision is responsible to submit the statements and information on the composition of the banking group, including data for individual group subjects, consolidated financial statements (balance sheet and balance of success), as well as consolidated statements on risk management in the banking group, which are filed with the National Bank of the Republic of Macedonia on semi-annual basis.

## **Supervisory authorities**

**18. Which is the competent authority to grant a license to a credit institution and to supervise it? Please indicate name and address. Has this authority other functions? Which? Does the supervisory authority publish an annual report? If so, could it provide the Commission with a copy or a summary in one of the EU languages? Is there institutional cooperation between the different domestic supervisory authorities?**

The National Bank of the Republic of Macedonia is the institution responsible for granting licenses for establishing a bank, or a savings house, and for the supervision of their work.

The seat of the National Bank of the Republic of Macedonia is in Skopje, address: Bulevar Kuzman Josifovski Pitu bb.

Within the boundaries of its rights and obligations the National Bank performs the following functions:

- determines and implements the monetary policy;
- regulates the general liquidity of the banking system;
- regulates the liquidity of foreign payments;
- determines and implements the foreign currency policy of the denar;
- manages and handles currency reserves;
- organises the payments system in accordance with the law;
- coordinates the payment system, in accordance with the law;
- coordinates payments and balances between banks' accounts and performs cash distribution;
- issues licenses for establishment and operation of banks and savings houses;

- performs supervision of banks and savings houses;
- issues licenses for performing services for swift money transfers and performs supervision over the operations of subjects which perform services for swift money transfers in accordance with the law;
- issues licenses for exchange office operations and performs supervision of their operations in accordance with the law
- performs the operations of custodian of pension funds in accordance with the law
- issues notes and coins;
- purchases rare and original coins from the territory of the Republic of Macedonia;
- performs operations for the account of the state bodies and the state government;
- represents the Republic of Macedonia in international financial institutions, in accordance with the law;
- introduces information systems; and
- establishes and manages the Register of data on credit exposure of legal and natural persons to banks and savings houses in the Republic of Macedonia.

The functions of the National Bank of the Republic of Macedonia are determined in Article 10 of the Law on the National Bank of the Republic of Macedonia (Official Gazette of the Republic of Macedonia Nos. 3/02, 51/03, 85/03 and 40/04).

In accordance with Article 55 paragraph 1, item 2 of the Law on the National Bank of the Republic of Macedonia, the National Bank of the Republic of Macedonia submits reports to the Assembly of the Republic of Macedonia as follows:

- Semi-annual and annual reports on the work of the National Bank of the Republic of Macedonia;
- Semi-annual and annual reports on the supervision and undertaken measures in banks and savings houses; and
- Semi-annual and annual reports on the currency reserves management.

The National Bank of the Republic of Macedonia produces other reports on a daily, monthly, quarterly and annual basis and publishes them in printed and electronic form.

(Annual Report of the supervisory authority – Banking Sector in one of the EU languages, with annual report of NBRM for 2003, see [03 Annex 01](#)).

In accordance with Article 38 paragraph 1 of the Law on the National Bank of the Republic of Macedonia (Official Gazette of the Republic of Macedonia Nos. 3/02, 51/03, 85/03 and 40/04), the National Bank of the Republic of Macedonia may exchange information with domestic auditing bodies as well as foreign supervisory bodies of international banks.

Based on Article 44 of the Law on Foreign Exchange Operations (Official Gazette of the Republic of Macedonia No. 34/01, 49/01, 103/01, and 51/03), the supervisory bodies are obliged to cooperate and exchange all information and data necessary to perform supervision. Related to this Article of the Law on Foreign Exchange Operations, the supervisory bodies are the National Bank of the Republic of Macedonia, the Ministry of Finance (State Currency Inspectorate), the Ministry of Economy and the Securities and Exchange Commission of the Republic of Macedonia.

The National Bank of the Republic of Macedonia has so far signed memoranda of cooperation with the central banks of the Republic of Slovenia, the Republic of Bulgaria, and the Russian Federation.

The signing of the memorandum of cooperation with the Securities and Exchange Commission of the Republic of Macedonia is in progress.

**19. How many professionals are employed by the supervisory authority? What are the professional qualifications required?**

In the National Bank of the Republic of Macedonia the activities related to bank supervision are concentrated in two individual departments:

- Bank Supervision Department, with staff of 34; and
- Bank Regulations Department, with staff of 6.

The following Table presents information on the organisational structure of the two departments, the number of staff and their qualifications:

QUALIFICATION STRUCTURE OF THE STAFF IN THE SUPERVISION BODY		
Bank Supervision Department	Number of staff	Qualifications
Management	3	3 UDQ
Field Supervision Sector	16	1PhD; 11 UDQ
Off-field Supervision Sector	7	3 UDQ; 4 HSQ
Safeguard, Monitoring and Measures Sector	2	2HSQ
General Operations Supervision Sector	6	6 HSQ
<b>Total</b>	<b>34</b>	
Bank Regulations Department	Number of staff	Qualifications
Management	2	1 UDQ; 1 MS
Methodology Sector	2	2 UDQ
Sector for Analysis of Financial Stability	2	2 UDQ
<b>Total</b>	<b>6</b>	
Source NBRM		
HSQ	-	High School Qualification
UDQ	-	University Degree Qualification
MS	-	Master of Science
PhD	-	Doctor of Economics

The individuals applying to work in the bank supervision departments, who will not be performing management functions, are required to have the following qualifications:

- Have a university degree from the faculties of economics, law, electrical and technical science or science and mathematics,
- Have knowledge of a minimum of one universal languages,
- Have team work abilities, and
- Have basic knowledge on the regulations in banking.

To perform a management function, in addition to the listed requirements, the applicants need to have relevant working experience, good knowledge of the banking regulations and coordination abilities.

The bank supervision staff is in the process of constant training and upgrading through internal seminars organised by the National Bank of the Republic of Macedonia, as well as through their attendance of international seminars on banking regulations and banking supervision.

**20. What powers does the supervisory authority possess in order to require supplementary periodical information? Can the authority carry out on the spot verification?**

The National Bank of the Republic of Macedonia, within the framework of performing the supervision function, is authorised to require additional periodic information on the bank's operations.

The procedure of performing supervision and monitoring, as well as the data that the banks are obliged to submit to the National Bank of the Republic of Macedonia for the performing of the supervisory function, are determined in Chapter VII of the Banking Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 37/02, 51/03, and 85/03).

In accordance with Article 78 of the Banking Law, the National Bank of the Republic of Macedonia performs its supervisory function through;

- permanent off-field monitoring of the banks' operations by compiling, analysing and verifying the reports submitted to the bank;
- full scope or partial on-site examination of the banks, and
- taking measures aimed at ensuring regulatory compliance

In the process of supervision and monitoring, the banks are obliged to submit and make available the complete documentation that the authorised staff of the National Bank of the Republic of Macedonia requires.

According to Article 80 of the Banking Law, the National Bank of the Republic of Macedonia while performing bank supervision may require:

- Reports and information on the bank's operations,
- Report on audits and additional information on performed bank audits, and
- Exceptional reviews on the bank's operations.

The authorised National Bank staff may keep or take out of the bank only copies or photo-copies of the documents, registered at a notary if necessary.

The authorised National Bank staff perform verification on the spot, through a full scope or partial examination in the bank's premises.

**21. Can the supervisory authority ensure that managers and directors act in a fit and proper way? Intervene if they do not?**

The bank management body includes a minimum of two members, who are equally responsible for the bank's operations and obligations undertaken by the bank according to Article 62 of the Banking Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 37/02, 51/03, and 85/03).

An applicant for the bank management body member is required to have:

- University degree;
- A minimum of five years of successful professional experience in the field of finance; and
- Knowledge of banking regulations.

The bank management body members must meet the fit and proper criteria, i.e. cannot be:

1. director or president of any trade company or legal entity;
2. member of the National Bank Council;
3. sentenced to incarceration
  - in the period from the date of effectiveness of the sentence date of incarceration termination and five years after the date of incarceration termination, in cases when the incarceration sentence is up to three years;



- in the period from the date of effectiveness of the sentence until the date of incarceration termination and ten years after the date of incarceration termination, in cases when the incarceration is over three years;
- 4. an individual who has been subject to an injunction on performing activities in his/her profession, activity or responsibility while the measure is in force;
- 5. an individual who has acquired shares in a bank or savings house with no prior consent from the National Bank of the Republic of Macedonia in cases when it is necessary (acquisition of 5%, 10%, 20%, 33%, 50% and 75% of the total number of voting shares) and has acquired 1% to 5% voting shares without submitting evidence on the source of the funds.

The management body members must be in permanent employment in the bank and at least one of the members must have knowledge of the Macedonian language and its Cyrillic Script.

While issuing consent to nominate management body members in the bank, the National Bank of the Republic of Macedonia assesses their:

- educational qualification and professional experience;
- knowledge in banking regulations and practices;
- integrity, and
- the person's history, experience, managerial and organisational skills which provide safety that he/she will perform the function in accordance with the legal regulations and in the interest of the bank's creditors and shareholders.

The licensing procedure for members of the bank's management body is regulated in the Instruction Manual for Licensing No. 1713 of 28 May 2001. The licensing procedure has two stages. The first stage includes the collection of required documentation for reaching the decision and interviews with the applicants for management body members. In the second stage the License Committee decides on the opinion of the task force, and makes a report with a suitable proposal, which is submitted to the National Bank Governor. Based on the submitted proposal, the National Bank Governor of the Republic of Macedonia decides on issuing or not issuing consent for the bank's management body member.

The bank's management body performs the following functions (Article 63 of the Banking Law)

- Manages the bank operations
- Represents and acts on behalf of the bank
- Implements the decisions reached by the bank's Assembly and Management Board, i.e. is concerned with their implementation;
- Initiates and proposes promotion related to the bank's operations; and
- Appoints and dismisses staff with special rights and obligations in the bank, in line with the bank's Statute.

Article 64 of the Banking Law, provides that the bank's management body is responsible for the bank's operations in compliance with the law.

If the management body members fail to comply with the provisions of the Banking Law and regulations adopted by the National Bank of the Republic of Macedonia, if they execute imprudent banking practices or with their work impede the timely execution of the bank's operations for their creditors, the National Bank of the Republic of Macedonia, in line with item 6 of Article 85 of the Banking Law, may cancel the consent for appointment of the management body.

## **22. What are the powers of intervention of the supervisory authority in case of undertakings in difficulties? Under what circumstances may the authorisation of a credit institution be withdrawn?**

In line with Article 85 of the Banking Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 37/02, 51/03, and 85/03) the National Bank of the Republic of Macedonia is obliged to:

1. Submit a warning in writing, or submit recommendation to the bank;

2. Require a meeting of the Bank Management Board or Shareholder Assembly, in order to review the situation and achieve agreement on the measures for improving the situation in the bank;
3. Order the bank in writing to comply with the provisions in the Banking Law, the National Bank regulations and other regulations relevant to the operations of the banks, to cease the business transactions which can jeopardise the banks' stability, cease servicing obligations to creditors, i.e. take measure to improve the conditions of the bank's operations.
4. Order the bank to take measures to ensure compliance with the legislation by signing a protocol;
5. Prohibit the bank from issuing dividend or paying profit in another way;
6. Cancel the consent for appointment of the bank's Managing Body;
7. Prohibit the bank from collecting savings deposits;
8. Prohibit the bank from increasing the average total assets, including off-balance sheet positions regarding the previous period;
9. Prohibit the bank from acquiring ownership in other legal entities, establish parts of banks or representative offices, i.e. in any way extend the network of operations;
10. Prohibit the bank from any kind of extended exposure to a loan applicant classified in risk categories C, D, and E;
11. Order the bank to sell own shares in other legal entities;
12. Order one or more shareholders in possession or control of over 10% of the voting shares to reduce their share to a level below 10%;
13. Impose measures for procedural improvement in payment of due debts of the bank
14. Recommend to the bank's Managing Board a merger with other banks or acquisition by another bank.
15. Recommend transfer or sale of bank's funds to other banks;
16. Restrict salaries and compensations for the management body members and the bank staff;
17. Recommend that the bank reduce the operational costs;
18. Nominate a bank trustee;
19. Nominate a temporary bank manager;
20. Cancel the license for establishment and operation of the bank;
21. Order the bank to increase the capital;
22. Require that one or several shareholders rehabilitate the bank;
23. Prohibit the bank from granting loans or other types of credit exposure to related subjects, unless they are covered by securities issued or guaranteed by the government of the Republic of Macedonia or the European Union, which are kept by an independent third entity - a deposit institution, and whose market value at any time exceeds 125% of the value of loan or other credit exposure;
24. The interest rates paid by the bank on the deposits must not increase above the ordinary interest rates valid for deposits in relevant amounts and due maturity in the Republic of Macedonia;
25. Order the bank to reduce the scope of activities or terminate operations of parts of the bank or its subsidiaries for which the National Bank has assessed that they cause losses in the bank's operations.
26. Require the bank to dismiss one or several employees with particular rights and obligations who have had such status for longer than 180 days immediately prior to the bank's undercapitalisation;
27. Order the bank to eliminate a subsidiary, or other part of the bank, which the National Bank has assessed is threatened by insolvency or cause losses in the bank's operations
28. Prohibit the bank from performing part of all financial activities;
29. Restrict the bank's credit increase;
30. Exclude the bank from currency market participation;
31. Order the bank to terminate payments abroad, except for payment of due obligations;
32. Order the bank to restrict the foreign borrowings.

The governor can authorise staff from the National Bank to perform supervision over the implementation of the above listed measures in the bank.

If the bank in its operation exhibits constant failure to comply with the provisions of this law and other regulations, the National Bank of the Republic of Macedonia may, in line with Article 86 of the Banking Law, nominate a trustee.

In accordance with Article 91 of the Banking Law, the National Bank of the Republic of Macedonia assigns a temporary management to the bank or submits a recommendation to the relevant court to initiate bankruptcy procedure on the bank, when it has determined that the bank is insolvent, i.e. under the following conditions:

1. The total amount of the bank's debts is higher than the assets determined by the methodology of the National Bank of the Republic of Macedonia;
2. The capital adequacy ratio is lower than one-fourth of the prescribed 8% in Article 30 of the Banking Law; and proceeding
3. The bank does not pay the due debts.

Draft amendments to the Banking Law are currently being prepared referring to the part which regulates the temporary management, liquidation and bankruptcy of the bank. These changes will strengthen the role of the National Bank of the Republic of Macedonia in finding solution strategies for the banks with temporary management and implementation of these procedures in order to increase efficiency. The Ministry of Finance is planning the implementation of amendments and annexes to the Banking Law by the end of 2005.

According to Article 22 of the Banking Law, the National Bank governor can reach a decision to cancel the license for establishing and operations of the bank if he/she determines that:

1. The license was given on the basis of false evidence;
2. The bank has failed to reach a decision for establishment within 30 days of receiving the license for establishment and operation, i.e. a decision on status changes, within 30 days from receiving the license for executing status changes;
3. The bank has failed to file an application to be registered in the Trade Register within the set deadline;
4. The bank has failed to begin operations within 90 days from the issuance of the establishment and operations license;
5. The bank fails to work in compliance with the issued license and legislation;
6. The bank fails to meet the technical, organisational, personnel and other conditions for performing banking operations in compliance with the standards determined by the National Bank of the Republic of Macedonia.
7. The bank has not received consent on the management body for longer than six months;
8. The bank has suspended banking operations for a period longer than one year;
9. The bank fails to comply with obligations for timely and accurate information of the National Bank on its capital increase, i.e. new share issue, high credit exposure, change of management body composition, change of voting share ownership structure, establishing or terminating parts of the bank in the country, terminating a bank, branch, subsidiary or representative office abroad, capital investment in the financial or non-financial institutions in the country or abroad, which are lower than bank's guarantee capital and fails to comply with the reporting requirements of the National Bank of the Republic of Macedonia which render the off-field monitoring process impossible;
10. The parent bank of the subsidiary has terminated operations on whichever ground;
11. The banks' capital dropped to the level below 3.5 million EUR in denar counter-value;
12. The bank fails to implement, or acts contrary to measures imposed by the National Bank of the Republic of Macedonia which: a) prohibits the bank to pay profit as dividend or other form, b) prohibits the bank from collecting savings deposits, c) prohibits the bank from having ownership stakes in other legal entities, d) prohibits the bank from establishing parts of the bank or representative offices, i.e. in any manner extending the operations network, e) prohibits the bank from increasing the credit exposure to loan

applicants classified in various categories C, D and E; f) cancels the consent for appointment of a management body; g) orders the bank to perform shareholder's rehabilitation; h) prohibits the bank from placement increase; and i) prohibits the bank to have interest rates higher than the common interest rates valid for deposits in relevant amounts and maturity in the Republic of Macedonia;

13. The bank has failed to rehabilitate by implementing rehabilitation procedure and temporary management; and
14. The bank meets the conditions for introducing a bankruptcy procedure and liquidation procedure.

The items listed above also refer to the savings houses in the Republic of Macedonia.

### **23. Are the institutions issuing electronic money regulated? If so, in which way?**

Issuance of electronic money is not regulated separately. The Banking Law allows banks which have operating licenses issued by the National Bank of the Republic of Macedonia to issue electronic money (Article 45 item 6 of the Banking Law, Official Gazette of the Republic of Macedonia No. 63/00, 103/00, 37/02, and 51/03). Currently none of the banks in the Republic of Macedonia is performing this activity.

By the end of 2007 at the latest, a regulation will be adopted in line with Directive 2000/46/EC, i.e. in addition to the banks, the service of issuing electronic money will be permitted to specially regulated credit institutions – electronic money institutions. The criteria to be complied with for performing such activities will also be defined. It is estimated the transposition to be justified after, in line with Article 11 of the Directive, a report by the Commission for Implementing Directive 2000/46 has been submitted by the end of April 2005, proposing changes, particularly on the part of protection of the bearers of electronic money. By then, the capacity of the Bank Supervision Department will strengthen regarding the implementation of the increased number of activities (licensing and supervision of electronic money institutions.)

### **24. Do you apply any special measure for the supervision of financial conglomerates, as defined in Directive 2002/87/EC? If so, please describe them.**

There are currently no financial conglomerates on the market in the Republic of Macedonia. This is the reason why there is no regulation and special measures of supervision as defined in Directive 2002/87/EC.

As the financial markets and institutions develop, there will be a gradual process of incorporating this in the legislation and practices, with particular reference to the relevant Directive.

### **25. How is the operational independence of the supervisory authority ensured, in line with international standards (Basel Committee, IOSCO and IAIS core principles)?**

Under the Law on the National Bank of the Republic of Macedonia and the Constitution of the Republic of Macedonia, the National Bank of the Republic of Macedonia is an institution independent in the performance of its activities, and these include also the function of bank supervision.

Under Article 4 of the Law on the National Bank of the Republic of Macedonia (Official Gazette of the Republic of Macedonia Nos. 3/02, 51/03, 85/03, and 40/04), the National Bank of the Republic of Macedonia and the members of the bodies authorised for adopting decisions, when performing their functions, do not require and do not receive instructions from the state bodies and the state government. Under Article 55 of the Law on the National Bank of the Republic of Macedonia, the National Bank of the Republic of Macedonia is obliged to inform the Assembly of the Republic of Macedonia on a semi-annual and annual basis on the supervision and the measures undertaken in respect of banks and savings houses. The National Bank of the Republic of Macedonia is not obliged to request any prior consent from a state body for reaching decisions on undertaking corrective measures and performing supervisory activities.

There is a particular Bank Supervision Department within the National Bank of the Republic of Macedonia which performs supervision of banks and savings houses. In line with the National Bank organisation, the Bank Supervision Department reports and is directly responsible to the National Bank Governor.

The World Bank and IMF FSAP mission found that the National Bank of the Republic of Macedonia is in full compliance with the Basel Principle 1 (2) which refers to the operational independence of the regulatory body.

**26. Are professionals employed by the supervisory authority subject to limitations (time or other) regarding the possibility to be employed as senior staff in commercial banks?**

In accordance with Article 133-b of the Collective Agreement of the National Bank of the Republic of Macedonia, in cases where employment terminates through employee resignation, the worker does not have the right to be employed in a commercial bank, savings house or auditing house for a period of two years from the date on which employment was terminated. In all other cases the personnel of the National Bank of the Republic of Macedonia are not subject to restrictions regarding the possibility to get employment at higher positions in commercial banks.

***B. Insurance sector***

**General**

**1. What is the current situation with regard to right of establishment and cross-border supplies of services in your country for EU insurance companies? Which conditions apply?**

Pursuant to Article 7 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), insurance operations can be performed by:

- a) An insurance company seated (registered) in the Republic of Macedonia, which has received a license for insurance operations from the Minister of Finance. Insurance companies are established solely as joint stock companies seated in the Republic of Macedonia.
- b) A branch office of a foreign insurance company which has been granted a license for insurance operations by the Minister of Finance.
- c) An Insurance company from an EU member state, which has established a branch office on the territory of the Republic of Macedonia or has been authorised directly to perform insurance operations on the territory of the Republic of Macedonia in compliance with the Law on Supervision of Insurance.

Under the Law on Supervision of Insurance:

- A foreign country refers to any country which is not a member of the European Union;
- A foreign insurance company refers to any insurance company on the territory of a foreign country, or natural person with a permanent place of residence on the territory of a foreign country;
- An insurance company of a member state refers to an insurance company on the territory of the European Union member state or a natural person with a permanent place of residence on the territory of the member state.

Pursuant to Article 251 of the Law on Supervision of Insurance the provisions which refer to performing insurance activities by foreign insurance company will enter into force on 1 January 2008. The provisions referring to insurance operations performed by an insurance company from the

European Union member states will enter into force on the day when the Republic of Macedonia becomes a full member of the European Union.

**2. Are foreign insurance companies, once authorised, treated in every respect as a national undertaking?**

Insurance companies which are licensed to perform insurance operations in the Republic of Macedonia, in compliance with the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02) receive the status of domestic entities and are treated same regardless of their ownership structure.

**3. Is there a legal monopoly in one or more insurance branches (e.g. motor insurance)?**

Under the law, there is no monopoly as to performing insurance activities, i.e. no insurance company is licensed to perform insurance operations in certain insurance classes or undertake insurance activities under different conditions compared to other insurance company.

**4. What is the number of insurance institutions operating in your country?**

- a) Total number;
- b) Domestic;
- c) Non-domestic EU, of which:
  - i) subsidiaries
  - ii) branches
- d) Non-domestic non-EU, of which:
  - i) subsidiaries
  - ii) branches.

Changes in (a) to (d) since 1999.

Number of insurance institutions operating in the Republic of Macedonia:

		1999	2000	2001	2002	2003	2004
Domestic companies		4	4	4	7	7	9
EU Companies		0	0	0	0	0	0
	Branches	0	0	0	0	0	0
	Subsidiaries	0	0	0	0	0	0
Foreign companies							
	Branches	0	0	0	0	0	0
	Subsidiaries	0	0	0	0	0	0

Source: Ministry of Finance

**5. Concentration of respectively the life and non-life markets (in terms of gross premiums held by the largest 5, 10, 15 and 20 undertakings), indicating whether they are**

- a) Domestic;
- b) Non-domestic EU;
- c) Non-domestic non-EU.

Changes in (a) to (c) since 1999.

Table: Concentration in 5 companies					
1999	Non life	100%	Domestic	100%	
			Foreign	/	EU
					Other
	Life	100%	Domestic	100%	
			Foreign	/	EU
					Other

2000	Non life	100%	Domestic	100%		
			Foreign	/	EU Other	
	Life	100%	Domestic	100%		
			Foreign	/	EU Other	
	2001	Non life	100%	Domestic	100%	
				Foreign	/	EU Other
Life		100%	Domestic	100%		
			Foreign	/	EU Other	
2002		Non life	100%	Domestic	100%	
				Foreign	/	EU Other
	Life	100%	Domestic	100%		
			Foreign	/	EU Other	
	2003	Non life	98.2%	Domestic	98.2%	
				Foreign	/	EU Other
Life		100%	Domestic	100%		
			Foreign	/	EU Other	
Source: Ministry of Finance (based on data in the annual reports of insurance companies); Processed by: Ministry of Finance						
Comment: In 2003, seven (7) domestic insurance companies had license to perform insurance operations in the insurance market of the Republic of Macedonia , out of which one (1) insurance company had the license to perform life insurance operations, non-life insurance and re-insurance and six (6) insurance company had the license to perform non-life insurance. The Table does not present the data on two insurance companies which had licenses to perform non-life insurance operations, one of which was established in 2002 and participated in the gross premium for 2003 with 1.8%, and the other was established in 2003 and did not operate that same year.						

## Legal framework - Supervisory Authority

### 6. What is the set-up and structure of the financial supervisory authority in your country? Who supervises the insurance company's business overall, its state of solvency and its technical provisions and the assets covering them (please indicate name and address)?

Pursuant to Article 159 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), the Ministry of Finance performs supervision of insurance companies and, where necessary, supervision of legal persons related to the insurance company.

Name: Ministry of Finance  
Address: Dame Gruev 14  
City: 1000 Skopje

Within the Ministry of Finance and in line with the job organisational chart, there are:

- An Insurance Supervision Department in charge of insurance company supervision as follows:

- permanent off-field supervision of the work of insurance companies by collecting and analysing reports and data submitted by the insurance company in line with the Law on Supervision of Insurance ;
  - field (annual or additional control) supervision of the insurance company operations;
  - additional measures of supervision
- b. Insurance System Department which performs activities related to drafting legislation in the field of insurance, processes applications for issuing licenses and consents for insurance company and insurance brokerage companies, prepares analyses, information, reports and other materials related to the insurance system and other activities related to improvement of the insurance system.

## **7. What powers does the supervisory authority have**

- a) in order to require the necessary supplemental information**
- b) to carry out on-site inspections**
- c) in order to ensure that managers work in a fit and proper way**
- d) in case of insolvency**
- e) to sanction and remedy violations of the law?**

The powers of the Ministry of Finance regarding supervision of the insurance company operations are regulated with the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 84/02, 98/02 and 33/04). Currently, the Ministry of Finance is working on drafting the secondary legislation which will regulate certain issues related to the insurance company obligations to submit reports and information on their work in more details.

- a) Under the Law on Supervision of Insurance, the Ministry of Finance is authorised to request any evidence and information necessary to conduct the supervision. Insurance companies are obliged to submit the evidence and information within the deadline determined by the Ministry of Finance.
- b) In conducting the supervision, the Ministry of Finance may require that the insurance company:
  - provides reports and information on the company's operations;
  - submits an audit report and additional information which are produced by it;
  - submit statistical and other data by groups and classes of insurance and re-insurance, as well as extraordinary audit of the insurance company's operations.

In the process of supervision, the insurance company is obliged to present to the authorised representatives of the Ministry of Finance the complete documentation on the company's operations.

- c) Under Article 24 of the Law on Supervision of Insurance, the Ministry of Finance issues consent for the performance of the function of a member of the management body of the insurance company. The member of the insurance company's Management Body can be an elected person who meets certain legal conditions, such as appropriate educational background and experience in insurance management (Article 23). The Ministry of Finance can also withdraw the consent in cases where the person works in contradiction to the regulations for risk management, the other provisions in the Law on Supervision of Insurance, as well as other laws regulating the operations of the insurance company. The consent may also be withdrawn in cases where the person fails to perform risk control of the company's operations, fails to establish an internal audit system or fails to ensure that the insurance company keeps trade books and other accounting evidence in compliance with the Law on Supervision of Insurance, the Company Law, the Law on Accountancy and other legislation (Article 27).
- d) In line with Article 167 of the Law on Supervision of Insurance , the Ministry of Finance is authorised in cases of insolvency to instruct the insurance company's management body to prepare a plan with measures aimed at establishing the necessary level of solvency margin, call the Shareholder Assembly where solution to the problem will be proposed, such as share capital increase by a new issue of shares or by retained earnings, recommend the company's management body to undertake measures for improving the risk management system, to



increase debt recovery efficiency, enhance the internal control and audit efficiency, as well as other measures necessary to conduct proper risk management. Also, the Ministry of Finance is authorised to implement the measure of prohibition for the company to perform certain types of payment or freely dispose of the funds which cover the technical reserves and sources which cover the mathematic reserve.

- e) In line with Article 164 of the Law on Supervision of Insurance, the Ministry of Finance can, in cases where the insurance company's operations are in contradiction to the legislation, issue the following suspension measures:
- order to eliminate non-compliant operations;
  - impose additional measures;
  - revoke the operating license;
  - liquidate the insurance company;
  - submit a recommendation for opening bankruptcy proceedings.

In cases of non-compliance with the provisions of the Law on Supervision of Insurance, the Ministry of Finance may bring a misdemeanor procedure before the competent court against the insurance company as well as against the responsible person in the insurance company. The responsible person in the insurance company may be banned from working in the insurance company for up to one year.

#### **8. How many actuaries are employed by the supervisory authority?**

Currently, the Insurance Supervision Department at the Ministry of Finance has a staff of one holding the position of an actuary. This is due to the lack of a Training and Upgrading Program for Actuaries in the state prior to 2002, when for the first time the Ministry of Finance, by means of technical assistance, organised an advanced actuary course lasting two years. In June 2004, with the end of the two-year training, a staff of nine was trained and certified after passing the actuarial exam.

In line with the strategic plan of the Ministry of Finance, the supervision function is planned to strengthen in the following period, among other things, by taking on an additional number of actuaries.

In compliance with the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), the Ministry of Finance, being the body in charge of supervising the work of insurance companies, controls whether the insurance companies, along with the annual balance sheet submitted to the Ministry of Finance, also submit an authorised actuary's certificate. The authorised actuary issues a certificate after the audit of compliance of data in the annual accounts with the insurance accounting standards and the accuracy of the annual accounts regarding the establishment of technical and other reserves of the insurance company. The authorised actuary is obliged to verify whether the premiums and technical reserves have been calculated in compliance with the provisions in the Law on Supervision of Insurance, and whether they have been calculated and allocated in a way that will ensure long-term meeting of obligations which derive from the insurance contracts by the insurance company (Article 116).

#### **9. What are the requirements of professional secrecy with respect to the members of the supervisory authority?**

In accordance with Article 20 of the Law on Civil Servants (Official Gazette of the Republic of Macedonia Nos. 59/00, 112/00, 34/01, 103/01, 43/02, 98/02, 17/03, 40/03, 85/03, 17/04 and 69/04), the staff at the Ministry of Finance are obliged to treat the data at their disposal as highly confidential.

#### **10. Which provisions exist with regard to the exchange of information with supervisory authorities of third countries?**

Under Article 233 Paragraph 1 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), the Ministry of Finance compiles and processes data relevant for performing supervision.

The Ministry of Finance may distribute these data to relevant supervisory bodies of member states, where performance of supervision of the insurance companies so requires, and where these bodies are legally obliged to keep the evidence confidential, as well as to relevant supervision bodies in foreign countries, where performance of supervision of insurance companies so requires, and where these bodies are legally obliged to keep these data confidential (Article 233 paragraph 3). Notwithstanding the above, the Ministry of Finance may submit data obtained from relevant supervisory bodies in the member states, only upon consent given by the body that submitted the data. (Article 233 paragraph 4)

**11. Does the supervisory authority publish an annual report? Could it provide the Commission with a copy or a summary of the report in one of the EU languages? What are the powers of intervention in case of insolvency, abuses of authorisation?**

The Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02) does not impose an obligation on the Supervisory Body to prepare annual reports. Nevertheless, the Insurance Supervision Department within the Ministry of Finance prepares, for internal purposes, internal and unofficial annual reports on the insurance market and insurance supervision, on the basis of data contained in annual reports of insurance companies. Pursuant to IAIS principles and standards, the Ministry of Finance plans to publish in the future the Annual Reports on the official web site of the Ministry of Finance.

(Annual report on the insurance market and insurance supervision – see [03 Annex 02](#))

Authorisations for interventions in case of insolvency or misuse of authorisations are described in the answer to Question no.7 in Section II Financial Services, Sub-section B, Sector Insurance, Item 2, Legal Framework – Supervisory Bodies. (for more details see [03 II B 2 7](#))

**12. How is the operational independence of the supervisory authority ensured, in line with international standards (Basel Committee, IOSCO and IAIS core principles)?**

The Insurance Supervision Department is an organisational unit within the Sector of Affairs Immediately Related to the Minister at the Ministry of Finance. In performing the activities under its competence, the Department acts in an independent manner in accordance with the Principles of IAIS, i.e. with ICP 3 – Supervisory Body. Nevertheless, regarding the essential criteria of this principle, the following must be mentioned:

The management structure of the Insurance Supervision Department is defined in the Rulebook on Systematisation of Job Positions in the Ministry of Finance, adopted in April 2004.

Namely, according to the Rulebook, the Insurance Supervision Department is an organisational unit within the Sector of Affairs Immediately Related to the Minister at the Ministry of Finance and consists of three employees.

Head of the Department for Insurance Supervision;

Advisor for Insurance Supervision;

Senior Associate for Insurance Supervision.

In relation to appointment and removal of the Head of the Department and its employees, the procedure described in the Law on Civil Servants (Official Gazette of the Republic of Macedonia Nos. 59/00, 112/00, 34/01, 103/01, 43/02, 98/02, 17/03, 40/03, 85/03, 17/04 and 69/04) shall apply.

Institutional relations among the Insurance Supervision Department, the enforcement and court authorities are not closely defined.

The Insurance Supervision Department is an organisational unit within the Sector of Affairs Immediately Related to the Minister at the Ministry of Finance. It is financed from the Budget of the Republic of Macedonia.

The Insurance Supervision Department is transparent regarding the procedures for adoption of supervision decisions. Decisions of the Insurance Supervision Department are consistent.

All significant amendments to the legislation relating to insurance operations and supervision practices, are usually subject to prior consultations with participants on the market.

## **Questions on the acquis - Conditions of admission and licensing**

### **13. Which conditions are required of new insurance companies by national law before taking up the business of direct insurance?**

**In particular, what are the requirements regarding**

- a) prior authorisation**
- b) schemes of operations / soundness of business plan**
- c) suitability of shareholders / owners**
- d) limiting itself to the business of insurance**
- e) legal form**
- f) needs test?**

The Ministry of Finance is a body responsible for issuing licenses for insurance operations. According to Article 3 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02) and the Company Law (Official Gazette of the Republic of Macedonia No. 28/04) the insurance company may be established solely as a joint stock company seated in the Republic of Macedonia.

The insurance company may only perform solely insurance and/or re-insurance operations (Article 4 paragraph 1). The insurance company may perform insurance operations in one or more insurance classes, within one of the insurance groups (Article 6):

- non-life insurance (classes from items 1 to 18 of Article 5 of the Law on Supervision of Insurance)
- life insurance (classes from item 19 to 23 of Article 5 of the Law on Supervision of Insurance).

The procedure for acquiring license for insurance operation is largely harmonised with Directive 73/239/EEC of the European Union Council.

#### **a)**

The founders of the insurance company have to file an application for insurance operations as well as suitable documentation which will prove that the legal requirements for acquiring this license have been met.

In line with Article 32 of the Law on Supervision of Insurance, the application for acquiring license for insurance operation is accompanied by: Draft Establishment Act; Draft Statute; Operations Plan; Business Policy Act Proposal; proposed Management Body members; evidence that a certain amount of money has been deposited as share capital and organisational fund on separate temporary accounts at a payments institution; list of shareholders, their names, surnames, addresses and names and seats of legal persons, as well as data on the total nominal value of shares and percent of shares in the share capital of the insurance company; the shareholders who hold qualified share units need: a copy of the registration in the trade register in cases when the shareholder is a legal person; information on mutual direct and indirect capital, management and family relation of the shareholders and their financial standing, as well as evidence that no bankruptcy or liquidation procedure against the legal/natural person is in progress, copy of the book of shares in cases when the shareholder is a joint stock company, and as for foreign legal shareholder persons this document

needs to be presented along with a notary certified translation; an audit report by an authorised auditing company for the last two financial years for legal persons shareholders; draft contracts for outsourcing activities, if the insurance company intends to authorise other subjects to perform external activities; documentation based on which it may be concluded that the insurance company is capable with its human resources, technical equipment and organisation to perform operations stipulated in the Establishment Act of the insurance company.

In cases when the shareholder is a foreign legal person or domestic legal person holding directly or indirectly a majority stake of a foreign legal person, the application for license for insurance operations, in addition to the above listed documentation is accompanied by: evidence from the foreign insurance company that it holds a license for insurance operations in the country of origin; if the foreign shareholder is an insurance company, an opinion of the foreign institution authorised for insurance company supervision, and; an audit report from a first-class audit company for the last financial year in cases when the foreign shareholder is a legal person which is not an insurance company.

The application for license for insurance operations must be accompanied by a certificate of an authorised actuary that the insurance company will be able to provide the necessary level of solvency margin, regarding the planned type and scope of activities.

In line with Article 15 of the Law on Supervision of Insurance the share capital of the insurance company in establishment needs to be at a minimum level of the guarantee fund, which may not be lower than:

- 750.000 EUR when the insurance company policy covers all or some risks of insurance classes under items 10, 11, 12, 13, and 15 of paragraph 2 Article 5 of the Law on Supervision of Insurance ;
- 500.000 EUR when the insurance company policy covers all or some risks of insurance classes under items 1, 2, 3, 4, 5, 6, 7, 8, 16 and 18 of paragraph 2 Article 5 of the Law on Supervision of Insurance ;
- 350.000 EUR when the insurance company policy covers all or some risks of insurance classes under items 9 and 17 of paragraph 2 Article 5 of the Law on Supervision of Insurance;
- 2.500.000 EUR when the insurance company policy covers all or some risks of insurance classes under item 14 of paragraph 2 Article 5 of the Law on Supervision of Insurance;
- 1.400.000 EUR when the insurance company policy covers all or some risks of insurance classes under item 14 of paragraph 2 Article 5 of the Law on Supervision of Insurance , if the annual premium amount in this class in each of the last three financial years is lower than 230.000 EUR or 4% of the total amount of insurance premiums in that period of all classes within which the insurance company performs insurance operations;
- 750.000 EUR, under the condition that the insurance company policies cover all or some risks in life insurance;
- 1.500.000 EUR if the insurance company performs re-insurance.

In cases when the insurance company covers risks of two or more classes of non-life insurance, when determining the amount of share capital, the highest prescribed amount of the guarantee fund for this insurance class will be taken into consideration.

**b)**

In line with the Law on Supervision of Insurance , the Operations Plan of the insurance company includes: the basics of business policy; insurance classes within which the insurance company plans to perform insurance operations; principles of re-insurance, including a table for highest coverage for each insurance class; the estimate of the necessary level of solvency margin; projected incorporation costs, organisational costs and development expenses, which need to be covered from the organisational fund of the company; liquidity assessment, as well as financial sources required for meeting obligations and ensuring the necessary level of solvency margin; a projection of expected results for a minimum period of three years, primarily related to expected incomes from premiums, expected damages, expenditures for performing insurance, expected profits, expected claim coverage and the level of technical and other reserves (Article 38).

In cases where the insurance company intends to perform insurance operations including tourist assistance insurance for individuals who face problems while in transport or other cases of absence from home or the permanent place of residence, the Operations Plan must also include a specification of the disposable funds of the insurance company necessary to meet non-monetary obligations (assistance means) which derive from this insurance class (Article 18 paragraph 1, item 5).

The insurance company is obliged to prepare an annual Operations Plan and submit it to the Ministry of Finance no later than by 31 December of the current year for the next year (Article 38 paragraph 4).

**c)**

In line with Article 32 of the Law on Supervision of Insurance the suitability of the shareholders / owners is assessed from the aspect of their financial situation as well as their mutual direct and indirect capital, management and family relation. Thus, for the establishment of an insurance company the application for license for insurance operations is filed along with:

- information on mutual direct and indirect capital, management and family relation and their financial situation;
- evidence that there is no bankruptcy or liquidation procedure against the shareholding legal persons in progress.

**d)**

In line with Article 4 of the Law on Supervision of Insurance, insurance companies may only perform insurance operations for which they have been granted a license by the Ministry of Finance, after an adequate application has been filed which confirms that the legal conditions have been met.

**e)**

In line with Article 13 of the Law on Supervision of Insurance, an insurance company may be established by domestic and foreign natural and legal persons.

**f)**

The Operations Plan must include a realistic plan for the future position of the company in the insurance market.

**14. What are the rules with regard to the change of control of an insurance company (e.g. approval requirement, notification, standards to be met)?**

In line with Article 18 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), the Ministry of Finance issues consent for direct and indirect acquisition of shares in insurance companies where the total share amount is equal or exceeds the rate of qualified shares of the insurance company, i.e. for gradual or immediate acquisition of ownership of 10%, 20%, 33%, 50% or 75% of the voting shares in the insurance company. In cases when the individual who has been granted consent to acquire a qualified share intends to sell the shares, which means that his/her holding is reduced below the limit for which the consent is issued, the person is obliged to notify the Ministry of Finance about his/her intention.

The Ministry of Finance issues consent for status changes in the insurance company, i.e. on merges or joint ventures with another company or the de-merger of the insurance company into several individual insurance companies (Article 48).

The consent of the Ministry of Finance is also required for transfer of the insurance portfolio i.e. transfer of insurance contracts of one or several insurance classes, along with the funds which cover the technical reserves and/or the mathematical reserve, at the level of technical reserve and/ or mathematical reserve which need to be allocated for the insurance portfolio which is subject of transfer to another insurance company (Article 42, 43 and 44).

**15. What are the rules applicable to insurance intermediaries operating in your country? What conditions do they have to fulfil before they may take up their business (e.g. registration, tests, professional requirements)?**

The conditions for performing insurance broker operations are regulated in Part 10 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), the Law of Obligations (Official Gazette of the Republic of Macedonia Nos. 18/01, 04/02, 05/03), in the part referring to brokering agreements, and in the Rulebook on the Procedure of Conducting Examinations for Insurance Brokers (Official Gazette of the Republic of Macedonia No. 48/02).

Insurance broker operations are intermediary activities in contracting insurance and re-insurance coverage and in recovery of indemnity claims upon occurrence of a damage causing event.

Insurance broker operations may be performed exclusively by insurance brokerage companies licensed by the Minister of Finance. An insurance brokerage company is established as a joint stock company seated in the Republic of Macedonia, the founders being both domestic and foreign legal and natural persons. In order to acquire a license for insurance broker operations the following conditions must be met: deposit initial capital of a minimum of 75.000 EUR in denar counter-value, employ a minimum staff of 2 in the insurance brokerage company, insure the obligations of the insurance broker company to policy holders in case of violating some provisions of the brokering contract up to a certain amount which in individual cases may not be lower than 250.000 EUR and/or the total amount covering all insured cases must not be lower than 500.000 EUR.

An insurance broker is a person licensed by the Minister of Finance. In order to acquire the insurance broker license, the person must have passed state exam and have no less than one year of professional experience in the field of insurance. The insurance broker acts on behalf and for the account of his/her clients in their relation with insurance and re-insurance companies and observes good business practices.

## **Questions on the acquis - Conditions of operation**

**16. What are the requirements imposed by national law as regards prior approval of premia or policy conditions for non-compulsory or compulsory insurance?**

In line with Article 32 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), in addition to the application for insurance license, insurance companies in establishment are obliged to file the general and specific requirements by insurance class, as well as premium tariffs by insurance group and class with premium structures of all insurance classes.

In case of changes of the general and specific conditions in insurance and/or premium tariffs of insurance groups and classes, the insurance company is obliged to inform the Ministry of Finance (Article 164).

The authorised actuary of the insurance company is obliged to verify if the premiums and technical reserves have been calculated in accordance with the law and whether they have been allocated in a way which will enable long-term fulfillment of obligations arising from the insurance contracts. For the performed activities the authorised actuary issues a receipt which is attached to the annual account of the insurance company (Article 121).

In cases where the authorised actuary determines that the premiums have been calculated and allocated in a way which may jeopardise the long-term ability of the insurance company to meet obligations arising from insurance contracts, the actuary is obliged to notify the insurance company's

management body, and if the management body fails to undertake any measures, the actuary is obliged to inform the Ministry of Finance immediately (Article 116).

**17. What are the rules concerning the establishment of technical provisions? Are life/non-life insurance companies are obliged to employ actuaries?**

In line with Article 80 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), in order to ensure permanent fulfillment of obligations on insurance contracts, the insurance companies are obliged to establish technical reserves which include the transfer premiums reserves, bonus, discount and damage reserves and other technical reserves.

The insurance company which performs life insurance or other types of insurance, to which the probability tables and estimates similar to life insurance apply, are also obliged to allocate mathematical reserves in a determined percentage of paid in insurance premiums, in accordance with the technical base. The insurance company concluding insurance policies with investment risk borne by the insured party is also obliged, referring to these insurance policies, to allocate specific funds to cover the technical reserves.

With technical assistance provided from the European Commission, the Ministry of Finance is currently in the process of drafting regulations which will regulate the procedure of allocating technical and/or mathematical reserve of insurance companies in more detail.

In line with Article 113 of the Law on Supervision of Insurance, insurance companies licensed to perform insurance are obliged to nominate an authorised actuary and inform the Ministry of Finance.

**18. What is the definition of solvency margin?**

In line with Article 68 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), the equity of the insurance company include basic and additional capital. The term "capital" determined in the Law on Supervision of Insurance (per the items included in its calculation) is equivalent to the term "solvency margin" in Directive 73/239/EEC.

The basic capital of the insurance company includes the paid in share capital, the company's reserves, the transferred undistributed profit, undistributed profit of the current year reduced by the company owned shares, long-term intangible assets, uncovered losses and other potential obligations of the company (Article 69).

The additional capital of the company includes the paid in share capital of the cumulative priority shares, subordinated debt instruments, securities without a set maturity and half of the outstanding share capital in exceptional cases when the amount of paid in capital is higher than 25% of the total share capital of the insurance company. While assessing the company's capital, the additional capital will be taken into account in amounts not exceeding 50% of the basic capital (Article 70).

While assessing the company's capital, the amount of the basic and additional capital is also reduced by the investment of the company in shares or subordinated debt instruments issued by another insurance company or financial institution in which the insurance company holds a stake of a minimum of 10%, as well as other investments in these entities which are included in the capital assessment of these entities, as well as investments of the company in shares or subordinated debt instruments issued by the insurance company or financial institution, with the exception of those listed above, which amount to over 10% of the insurance company's capital calculated prior to the setoff of the previously listed investments (Article 70).

The insurance company's capital must at any time be at least equivalent to the solvency margin of the insurance company, which is calculated by the premium rate method or damage rate method, depending on which method offers a better result.

The calculation methods of the required solvency margin level, on life and non-life insurance are prescribed in detail in the Law on Supervision of Insurance (Article 75 and 76).

**19. What are the solvency margins broken down by life/non-life insurance companies operating in your market?**

The required solvency margin level of the insurance company which carries on non-life insurance activities or/and re-insurance is calculated in line with Article 75 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), which provides that the insurance company's capital which carries on non-life insurance and/or re-insurance, must at any time be at least equivalent to the necessary solvency margin level of the insurance company, which is calculated by the premium rate method or the damage rate method, depending on which method offers better results (Article 16 of the EU Directive 73/239/EEC).

The required solvency margin level of the insurance company which carries on life insurance activities is calculated in line with Article 76 of the Law on Supervision of Insurance (Article 28 of the EU Directive 2002/83/EC), which provides that the capital of the insurance company' which carries on life insurance activities must at any time be at least equivalent to the necessary solvency margin level, which is calculated as a sum of two results (the first coming from the total amount of the mathematical reserve, and the second from the risk capital, calculated for those insurance classes in which the risk capital is not a negative figure).

**20. What are the minimum levels of capital / minimum guarantee fund?**

In line with Article 77 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02), the guarantee fund of the insurance company is one third of the required level of the margin of solvency.

In addition, the guarantee fund of the insurance company which performs insurance in non-life insurance classes must not be lower than:

- 750.000 EUR, if the insurance policy covers all or some risks of the insurance classes provided in items 10, 11, 12, 13 and 15 of paragraph 2 Article 5 of the Law on Supervision of Insurance ;
- 500.000 EUR, if the insurance policy covers all or some risks of the insurance classes provided in items 1, 2, 3, 4, 5, 6, 7, 8, 16, and 18 of paragraph 2 Article 5 of the Law on Supervision of Insurance ;
- 350.000 EUR, if the insurance policy covers all or some risks of the insurance classes provided in items 9 and 17 of paragraph 2 Article 5 of the Law on Supervision of Insurance ;
- 2.500.000 EUR, if the insurance policy covers all or some risks of the insurance classes provided in item 14 of paragraph 2 Article 5 of the Law on Supervision of Insurance ;
- 1.400.000 EUR, if the insurance policy covers all or some risks of the insurance classes provided in item 14 of paragraph 2 Article 5 of the Law on Supervision of Insurance if the annual premium amount in this class in each of the last three financial years is lower than 230.000 EUR or 4% of the total amount of insurance premiums in that period of all classes in which the insurance company insurance operations;
- 750.000 EUR if the insurance policy covers all or some risks of the life insurance group;
- 1.500.000 EUR if the insurance company re-insurance.

In the case when the insurance company covers risks from two or more classes of non-life insurance, when determining the amount of shareholder capital, the prescribed amount of a guarantee fund for that class of insurance for which the amount of the guarantee fund is highest will be taken into account

Shareholder capital of the insurance company has to be at the minimum of the legally prescribed amount of a guarantee fund (Article 15).



**21. What are the rules for investing funds of an insurance company (e.g. diversification, limits on the amounts)?**

The rules for investing funds covering technical reserves are prescribed in the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02, 98/02).

When selecting the type of investment for funds covering technical reserves, the insurance company is obliged to take into account the insurance classes within which it performs insurance in a way which will ensure investment security, profitability and liquidity. Also, the funds covering the technical reserves must be diversified in a way which will ensure that there is no significant reliance on any fund category, market or investment. The insurance company is obliged to make an adjustment of fund investment covering the technical reserves against risk of potential loss due to the interest rate changes, foreign currency fluctuations, credit risks and other market risks, with obligations which arise from the insurance agreements which are affected by them (Article 87).

In line with Article 88 of the Law on Supervision of Insurance, the funds which cover the technical reserves may have the form of accounts and deposits with banks licensed by the National Bank of the Republic of Macedonia, if they bear interest (not higher than 60% of the value of the technical reserves); securities and other bonds issued or guaranteed by the National Bank of the Republic of Macedonia (not higher than 80% of the value covered by the technical reserves); deposit certificates and other securities issued by banks licensed by the National Bank of the Republic of Macedonia (not higher than 60% of the value of the technical reserves); bonds and other securities issued or guaranteed by the Republic of Macedonia (not higher than 80% of value covered by the technical reserve); shares issued on the basis of the permission granted by the Securities and Exchange Commission, registered on the primary or secondary markets of the Macedonian Stock Exchange or another registered securities exchange controlled by the Securities and Exchange Commission (up to 30% of the value covered by the technical reserves); bonds and other securities issued by joint stock companies in the Republic of Macedonia on the basis of the permission granted by the Securities and Exchange Commission, registered on the primary or secondary markets of the Macedonian Stock Exchange or another registered security market controlled by the Securities and Exchange Commission (up to 40% of the value covered by the technical reserves); commercial bonds issued by first class joint stock companies in the Republic of Macedonia (up to 40% of the value covered by technical reserves); documents on share units and shares of investment funds (up to 20% of the value covered by technical reserves); bonds and other securities issued by foreign companies and central banks of the European Union member states, Japan and USA; bonds and other securities with fixed income issued by non-government, foreign companies and banks from the European Union member states, Japan and USA; shares and securities which can be traded on the main stock markets in the European Union member states, Japan and USA; documents on share units and shares issued by authorised investment funds with seats in the European Union member states, Japan and USA, which have invested mainly in registered shares on the markets in these countries; forward contracts on exchange rates and financial derivatives, if these investments are exclusively aimed at currency risk hedging; other types of investment which comply with the rules issued the Ministry of Finance.

Insurance companies may invest in instruments of foreign issuers out of the Republic of Macedonia up to 20% of funds which cover the technical reserves.

**22. What are the rules with respect to insurance and the means of electronic commerce?**

The rules regarding insurance and the means of electronic commerce are not prescribed. Insurance companies can freely collect and submit offers in electronic way, however, the insurance policy as a document of a signed contract must be in written form.

**23. What are the rules relating to distance marketing of insurance contracts?**

Particular rules on distance marketing have not been prescribed.

## **24. What information has to be provided to a customer with respect to concluding a contract?**

In line with Article 49 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02), the insurance agreement which covers risks on the territory of the Republic of Macedonia includes the following data: events based on which there is an obligation of the insurance company to cover damages specified in the agreement, as well as events due to which the payment obligation of the insurance company ceases; ways of performing, the extent and maturity of obligations of the insurance company; the amounts and conditions for premium payments, as well as legal consequences in case of default; period of the insurance agreement validity in which the following must be mentioned in particular: procedure of automatic insurance agreement renewal, procedure of canceling the agreement or partial/complete termination of the insurance agreement, as well as obligations of the insurance company in such cases; consequences of claims based on the insurance agreement in cases of missed deadlines; deadlines, conditions and scope of advance payment in accordance with insurance policies in cases of life insurance; deadlines and conditions regarding the share of the insured individuals in the insurance company's profits, as well as criteria for calculation of their share and conditions and methods of calculating the residual value payment.

In cases of legal protection insurance, the insurance agreement precisely includes an item in which the insurance company undertakes to pay only the expenses of the legal representation by a lawyer or another person appointed by the insurance company.

In cases of insurance related to natural entities, the insurance company or the insurance brokerage company is obliged, when making the insurance agreement, to inform the insured individual in writing about the following: name, legal status, seat and address of the insurance company and the branch office through which the insurance agreement was concluded; general and specific conditions on policies applied on the insured person and the insurer, and the law regulating the insurance agreement; cases in which the general and specific conditions of the policy do not apply to the relations between the insurance company and insured person, performance, scope and maturity of obligations of the insurance company; period of validity of the insurance agreement; the premium amount and allocation of the premium by risks (if the insurance agreement covers risks from various insurance classes) and the amounts of taxes and other expenses related to the premium and the total amount that needs to be paid out; the right to delay or cancel the insurance agreement; referral to the Ministry of Finance as the supervisory body of the insurance company where a complaint can be filed regarding the insurance company or insurance brokerage company activities.

In cases of life insurance or insurance against consequences from accidents with the right to recover part of the insurance premium, the insured individual, in addition to the information listed, must be informed of the following: bases and criteria for profit distribution; a table with the policy residual value; the minimum premium and minimum period of insurance required for the insurance agreement capitalisation and the rights of the insured person in that particular case; in cases when the investment risk is a burden of the insured person, the funds that cover the mathematical reserve for that particular insurance and the investment structure of the funds; the tax regulations related to the insurance.

## **Questions on the acquis - Information provided to the supervisory authority**

### **25. Which rules apply to insurance companies with regard to the format of the balance sheet, net or gross presentation, acquisition costs (profit and loss accounts), valuation of investments (historical vs. current value), unrealised investment gains?**

The regulations that apply to insurance companies regarding financial reporting are provided in the Company Law (Official Gazette of the Republic of Macedonia No. 28/04), the Regulation of the Insurance Company Chart of Accounts (Official Gazette of the Republic of Macedonia No. 34/02),

The Rulebook on the Format and Contents of Insurance Company Balance Schemes (Official Gazette of the Republic of Macedonia No. 36/99) and the International Accounting Standards.

The Balance of Success includes:

- Technical calculation of the operations in non-life insurance;
- Technical calculation of the operations in life insurance;
- Non-technical results – total calculation.

The balance sheet is divided into assets and liabilities:

- Assets include
  - Registered claims and unpaid capital
  - Intangible assets;
  - Tangible assets ;
  - Investments;
  - Investments on the account and risk of the life insurance policy holder;
  - Claims;
  - Other assets;
  - Costs paid in advance and outstanding income;
  - Off-balance register
- Liabilities include:
  - Capital and reserves;
  - Second degree liabilities;
  - Technical reserves;
  - Non-insurance-technical reserves
  - Other reserves;
  - Deposits kept after operations have been transferred to re-insurance and financial and accounting relations;
  - Other liabilities;
  - Deferred payment of future expenses and revenues ;
  - Off-balance register

The Ministry of Finance is currently drafting a by-law for a total harmonisation of the financial statement schemes with Directive 91/674/EEC.

Insurance companies are obliged to have their financial statements and annual reports audited. Audit reports for the previous year are to be submitted to the Ministry of Finance no later than 1 June of the current year.

The Ministry of Finance is currently drafting a by-law scheduled for adoption before the end of 2005. The by-law will include specific regulations on the valuation of investments, revaluation of investments, acquisition costs and the unrealised investment gains, which the insurance companies will be obliged to apply in their financial reporting.

## **26. What specific rules apply to the publication of annual accounts of insurance companies?**

Pursuant to Article 120 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02), insurance companies are obliged to submit to the Ministry of Finance annual accounts for the preceding business year, which is the same as a calendar year, during the first three months of the current year.

The insurance companies are under the obligation to have their annual reports and business balance sheet audited. Audit reports for the previous year need to be submitted to the Ministry of Finance no later than 1 June of the current year. (Article 129)

Insurance companies shall publish the audit report together with the opinion of the auditor in at least one daily newspaper within 15 days from the approval of the report by the Shareholders' Assembly, but not later than six months from the end of the audited business year (Article 132).

**27. Which annual accounting, prudential and statistical information is the insurance undertaking required to give to the supervisory authority in respect of its business?**

In addition to the obligation for preparation and submission to the Ministry of Finance of the Annual accounts (described in details in the answer to Question no.25 in Section II Financial Services, Subsection B, Sector Insurance ([03 II B 25](#))), a Confirmation from an authorised actuary and a Report from an authorised auditor, insurance companies, in accordance with Article 104 of the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02) shall also be obliged to make calculation and monitoring of the following: 1) level of capital; 2) the required level of solvency margin; 3) the amount of technical reserves; 4) the value of assets covering technical reserves; 5) the type, investment and allocation of assets covering the technical reserves or the mathematical reserve; 6) the statistical insurance data. Companies shall be obliged to submit these data to the Ministry of Finance within seven days upon the end of each quarter.

The management body of the insurance company shall also be obliged to notify the Ministry of Finance in cases when the liquidity or the solvency of the insurance company is under threat or when the financial position of the insurance company has changed to the extent where the insurance company is no longer able to provide the required level of solvency margin (Article 26).

**28. What are the rules relating to requests of the supervisory authority for additional information?**

Under the Law on Supervision of Insurance, the Ministry of Finance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02) shall have an authorisation to request any data and information necessary for implementation of the supervision. Insurance companies shall be obliged to submit such data and information in a manner and within a time period as set forth by the Ministry of Finance.

Insurance companies shall be obliged to deliver for review to the authorised personnel from the Ministry of Finance the entire documentation relating to the operation of the company (Article 160).

**29. What are the rules governing on-site inspections / on the spot inspections?**

The procedure for implementation of the on-site supervision is regulated by the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02).

Pursuant to Article 159 of the Law on Supervision of Insurance, the Ministry of Finance shall conduct supervision of insurance companies for the purpose of determining whether the insurance activities have been conducted in compliance with the rules on risk management, other provisions of the Law on Supervision of Insurance or other laws that regulate the operation of insurance companies.

In the course of implementation of the supervision, the Ministry of Finance may request the insurance company to provide report and information relating to the operations of the company, report from the audit and additional information contained thereto, statistical and other data per groups and classes of insurance and re-insurance, as well as extraordinary reviews on the operation of the company (Article 160).

During the implementation of the supervision, the insurance company shall be obliged to deliver for review to the authorised personnel from the Ministry of Finance the entire documentation relating to

the operation of the company. The authorised personnel may keep and take out only copies of the documentation, which is property of the company (Article 160).

## Questions on the acquis - Compulsory insurance

### 30. Which insurances are compulsory?

In accordance with Article 154 of the Law on Insurance (Official Gazette of the Republic of Macedonia No. 35/01- consolidated text), the following kinds of insurance shall be mandatory:

- insurance of passengers in public transportation against consequences of accidents;
- insurance of owners, i.e. users of motor vehicles against damages caused to third parties;
- insurance of owners, i.e. users of aircrafts against damages caused to third parties;
- insurance of owners, i.e. users of vessels and motor boats against damages caused to third parties;
- insurance of owners, i.e. users of rail transport vehicles (trains, trailers , etc.) against damages caused to third parties;

Owners, i.e. users of means of transport that include motor vehicles, vessels, aircrafts and rail transport vehicles registered for transportation of passengers in public transportation shall be obliged to conclude an agreement with an insurance company for insurance of passengers against consequences of accidents. The passenger involved in an accident, i.e. the user of the insurance in the event of death of the passenger, shall be entitled to a claim from the insurance company where the insurance was purchased. If the owner/user of a vehicle failed to conclude an agreement for insurance of passengers in accordance with the provisions of this Law, and the accident already happened, the passenger, i.e. the person who would have been the user of the insurance provided that the insurance agreement had been concluded, may claim payment of the insured amount from any insurance company that provides such types of insurance services on the territory of the Republic of Macedonia.

The owner/user of a motor vehicle and coupled vehicle shall be obligated to conclude an agreement for insurance against damages that she/he might cause to third parties in the course of using thereof (automobile liability insurance ) because of death, physical injury, deterioration of health, destruction or damaging of objects, except in respect of damage to objects that she/he received for transportation. Motor and coupled vehicles under this Law shall be all motor vehicles driving on public roads where the traffic is conducted in accordance with the regulations for registration of road vehicles that must have a vehicle registration that is extended within time periods not exceeding 12 months upon a technical check up, and for the tractors regardless of the possession of vehicle registration and the terms for technical check up. According to this Law, the following parties shall not be considered as third parties and shall not have the right to indemnification of damages on the basis of automobile liability insurance: the negotiator of the insurance, owner, co-owner, user and any other owner of vehicle even in cases where they did not drive the vehicle when the damages were caused, the driver of the vehicle who is responsible for damages and the persons who illegally acquired the vehicle, although at the moment of the accident, they did not drive the vehicle. A person who suffered damages on the territory of the Republic of Macedonia by use of a motor vehicle, the owner/user of which does not have automobile liability insurance shall have the right to claim indemnification of damages from any insurance company that provides mandatory automobile liability insurance. The insurance company that has received such claim for indemnification of damages shall be obligated to pay the indemnification as if the insurance agreement had been concluded.

The insurance company shall have the right to claim refund from the owner/user of the vehicle who failed to conclude an agreement for automobile liability insurance in the amount of the paid indemnification. If the paid indemnification may not be collected or completely collected from the debtor of the refund, the uncollected amount shall be born by all insurance companies that provide automobile liability insurance proportionally to the premium that they acquire from that kind of

insurance. A person who suffered damages by use of an unknown motor vehicle shall have the right to claim indemnification from the insurance company providing automobile liability insurance only for nonmaterial damages, up to the lowest amount on which the automobile liability insurance for passenger vehicles must be agreed.

The owner/user of an aircraft registered in the Registry of Aircrafts of the Republic of Macedonia shall be obligated to conclude an agreement with the insurance company that provide insurance of this kind for insurance against damages that the aircraft may cause to third parties for death, injury, deterioration of health, destruction or damaging of objects, except for damage to objects that it received for transport. Persons that are transported with the aircraft shall be considered as third parties. Persons who upon an order of the owner/user of the aircraft or on his/her behalf work on conducting transportation shall not be considered as third parties.

The owner/user of a vessel, i.e. motor boat with engine power exceeding 1,5 hp registered for business, sport and recreation purposes and entered in the Ship Registry, shall be obligated to insure against damages that the ship, i.e. the motor boat may cause to third parties and passengers because of death, physical injury or deterioration of health, destruction or damaging of objects, except for damage to objects received for transportation.

The owner/user of rail transport vehicles entered in the Registry for performing such activities in the Republic of Macedonia shall be obligated to conclude an agreement with the insurance company that provides insurance of this kind for insurance from damage liability that it may cause to third parties because of death, injury, deterioration of health, destruction or damaging of objects, except for damages to objects that it received for transportation.

### **31. What are the specific legal provisions relating to compulsory insurance to be fulfilled by an insurance company?**

According to Article 55, paragraph 2 of the Law on Insurance (Official Gazette of the Republic of Macedonia No. 35/01 - consolidated text), insurance companies that are members of the State Insurance Bureau dealing with automobile liability insurance shall harmonise the common terms, tariffs on premiums and unique criteria of claim adjustments. The State Insurance Bureau shall publish the harmonised unique terms and tariffs on premiums.

According to Article 228, paragraph 2 of the Law on Supervision of Insurance, insurance companies that provide compulsory insurance shall be obligated, within the frames of the State Insurance Bureau, to establish a Guarantee Fund for payment of damages from the premium assets acquired from separate kinds of mandatory insurance.

## **Questions on the acquis - Motor insurance**

### **32. Is motor insurance compulsory in your country?**

In accordance with Section Five of the Law on Insurance (Official Gazette of the Republic of Macedonia No. 35/01 – consolidated text), the automobile liability insurance shall be mandatory. Owners/users of motor vehicles shall be obligated to conclude an agreement for insurance against damages to third parties (automobile liability insurance) as a result of death, physical injury, deterioration of health, destruction or damaging of objects, except for damages to objects that they have received for transportation (Article 61).

Currently, the Ministry of Finance is preparing a new Law on Mandatory Traffic Insurance where the Fourth Directive of the Council of EU (2000/26/EEC) should be completely incorporated, which refers to automobile liability insurance for damages caused to third parties. The Law on Insurance (Section Five) shall cease to be valid with the adoption of the new Law on Mandatory Insurance.

**33. What are the damages covered (esp. both damages to things and injuries to persons)? Are there exclusions in the persons covered?**

According to Article 61 of the Law on Insurance (Official Gazette of the Republic of Macedonia No. 35/01- consolidated text) insurance contract for automobile liability insurance covers the following damages caused to third parties by use of vehicles: death, physical injury, health damage, destruction or damaging of objects.

The Law on Insurance defines the minimum amounts for which the automobile liability insurance must be concluded.

If the agreed amount for automobile liability insurance is not sufficient for covering all damages caused by the same accident, compensation of damages caused to persons shall have priority.

If there are several damaged parties, and the total compensation exceeds the agreed amount in the automobile liability insurance, the rights of damaged parties towards the insurance company shall be proportionally reduced.

The insurance company that paid to a damaged person an amount that is higher than the one that she/he is entitled to (taking into consideration the proportional reduction of compensation due to the fact that she/he did not know, nor could have known about the existence of other damaged persons) shall have obligations towards other persons only up to the agreed amount in the automobile liability insurance.

Pursuant to the Law on Insurance, the following parties shall not be entitled to compensation of damages based on automobile liability insurance and shall not be considered as third parties: the negotiator of the insurance, owner, co-owner, user and any other owner of a vehicle even if they did not drive the vehicle at the moment of causing the damage, the driver of the vehicle responsible for the damage, and persons who obtained the vehicle in an illegal way, even if they did not drive the vehicle at the moment of the accident (Article 63).

**34. Is there a maximum amount of coverage in the law?**

The maximum amount of coverage is not stipulated by law, however, the lowest amounts of insurance cover on which the agreement must be concluded for insurance of owners, i.e. users of motor vehicles against damages caused to third parties (automobile liability insurance), is stipulated in the Law on Insurance (Official Gazette of the Republic of Macedonia No.35/01 – consolidated text). The obligation for payment of claims by insurance companies may not be higher than the determined amounts, unless a higher amount has been agreed in the insurance agreement (Article 64).

**Questions on the acquis - Third Country Branches or Agencies**

**35. What are the principles and conditions for authorisation of an undertaking whose head office is outside the country?**

The Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02) stipulates the provisions pertaining to the performing insurance operations by foreign insurance companies (through branch offices) to enter into force as of 1 January 2008, while the provisions pertaining to performance of insurance operations by insurance companies from EU member countries (directly or through branch offices) shall apply as of the date when the Republic of Macedonia becomes a full member of the EU (Article 251). The conditions pertaining to the

performance of insurance activities of foreign insurance companies are described in the answer of Chapter 3, Section II Financial Services, Sub-unit B Sector Insurance, Question No.1 ([03 II B 1](#)).

### **Questions on the acquis - Other**

**36. Are there any insurance classes (e.g. credit insurance) for which a specialisation requirement exists to the exclusion of other classes, meaning that an insurance company offering that class of insurance can only operate in this area to the exclusion of the others?**

Under Article 6 of Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02), insurance companies may perform insurance operations within the group of non-life insurance or within the group of life insurance.

There is no legal restriction that obliges any insurance company to exclusively perform insurance operations only within one class of insurance.

**37. What are the rules on portfolio transfer (e.g. authorisation, publication, rights of policy holders)?**

Under Article 42 of Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02) an insurance company may, by way of an agreement, make a transfer of insurance agreements in one or several insurance classes (hereinafter: insurance portfolio) together with the assets covering technical reserves and/or mathematical reserves in the amount equal to the technical reserves and/or mathematical reserves that need to be set aside for the purposes of the insurance portfolio which is subject of the transfer to another insurance company.

No consent of the insured persons shall be needed for the transfer of the insurance portfolio.

The agreement for transfer of the insurance portfolio shall enter in force on the date when the Minister of Finance makes a decision for granting a permission/license for the transfer of the insurance portfolio. The insurance company that acquires the insurance portfolio shall be obliged to inform the insured persons about the transfer, within a period of 5 subsequent days and in at least two daily newspapers on the territory on which the insurance portfolio covers the risks.

The insurance company may transfer insurance portfolio to:

1. another insurance company with main office in the Republic of Macedonia;
2. an insurance company from a member state or its branch office in the Republic of Macedonia or another member state;
3. a branch office of a foreign insurance company in the Republic of Macedonia;

**38. What are the rules concerning the winding up of an insurer (e.g. notification, approval, publication, rank of insurance claims, rank of creditors)?**

The procedure relating to liquidation and bankruptcy of insurance companies is prescribed with the Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia Nos. 27/02 and 98/02), Company Law (Official Gazette of the Republic of Macedonia No.28/04) Bankruptcy Law (Official Gazette of the Republic of Macedonia Nos. 55/97, 53/00, 37/02, and 17/04), and Law on Obligations (Official Gazette of the Republic of Macedonia Nos. 18/01, 04/02 and 05/03).

The Law on Supervision of Insurance describes the proceedings for liquidation and bankruptcy of insurance companies. (from Article 169 through 184 for liquidation and from Article 185 through Article 199 for bankruptcy).



### **a) Liquidation**

According to the Law on Supervision of Insurance, the Minister of Finance shall issue a decision specifying when the conditions for initiation of liquidation proceedings are met, provided that:

- the assembly of shareholders of the insurance company adopts a decision for termination of the insurance company;
- the license of the insurance company for performing insurance activities was revoked;
- the permission of a management body member for performing his/her function was withdrawn, or the member was removed or failed to perform the function as a management body member for more than 6 months and if the supervisory body failed to appoint a new management body member for a period of 3 months in compliance with this Law, due to which, the insurance company does not have at least two members in the management body.
- insurance company failed to bring its work in compliance with the provisions of this Law.

The Ministry of Finance files with the competent court a petition for initiation of liquidation proceedings, to which the decision specifying that the conditions for initiation of liquidation proceedings have been met is also attached.

The court that has jurisdiction over the territory where the main office of the insurance company is located shall be competent for initiation and administration of the liquidation proceedings. Bodies of the competent court that implement liquidation proceedings shall be the liquidation council and the liquidator. The liquidation council shall be appointed by the Court. The liquidation council shall make a decision for opening liquidation proceedings, without a hearing, within 8 days from the date of receipt of the petition for initiation of liquidation. The insurance company shall have the right to file an appeal against the decision within 8 days from the date of receiving it. The appeal shall not postpone the enforcement of the decision.

The liquidation council shall appoint a liquidator of the insurance company with the decision for opening liquidation proceedings, upon the proposal of the Ministry of Finance. The decision for opening liquidation proceedings shall in particular contain the following data:

1. business name, main office, address and gyro account number of the insurance company;
2. surname, name and address of the liquidator, and
3. date of opening the liquidation.

Creditors shall be invited with the decision for opening liquidation proceedings to report all their claims to the liquidator within 30 days from the date of the latest notification for opening liquidation proceedings. The list of creditors' claims and the schedule of their settlement shall be prepared by the liquidator. All debtors to the insurance company shall be invited with the decision for opening liquidation proceedings to settle their obligations. The liquidation council shall, with the decision for opening of the liquidation proceedings, determine the opening of the liquidation proceedings of the insurance company to be entered in the Trade Register.

Creditors shall be informed about the opening of the liquidation proceedings for the insurance company with public announcement. The public announcement shall be placed on a notice board of the competent court, and published in the Official Gazette of the Republic of Macedonia and in at least one daily newspaper, during 5 subsequent working days. The public announcement shall be placed on the notice board of the competent court on the date of issuance of the decision for opening liquidation proceedings. The decision for opening liquidation proceedings shall contain:

1. title of the court that issued the decision for opening liquidation proceedings;
2. certificate from the decision for opening liquidation proceedings;
3. business name, main office and number of insurance company account;
4. name and address of the liquidator;
5. public call to the creditors of the insurance company for reporting their claims;
6. public call to the debtors of the insurance company for settlement of their obligations without any delay;

7. date of placing the public announcement on notice board of the competent court, and
8. date of hearing.

The decision for opening liquidation proceedings shall be delivered to the Ministry of Finance, the insurance company, banks and the payment operations agency where the insurance company has an account. The decision for opening liquidation proceedings shall also be delivered to the court administrating the Trade Register. The Court shall be obliged ex officio, on the basis of the delivered decision for opening liquidation proceedings to record the opening thereof. The decision for opening liquidation proceedings shall be announced by placing it on the notice board of the competent court.

As of the date of opening of the liquidation proceedings, the liquidator of the insurance company may not conclude contracts, except for the contracts that are necessary for realisation of assets during the liquidation, and upon a prior approval by the liquidation council of the competent court.

As of the date of issuance of the decision for opening liquidation proceedings, all rights and obligations of members of the managing and supervisory body of the insurance company shall be terminated, as well as the rights of the Assembly of shareholders.

The liquidator shall prepare balance sheets for initiating the liquidation containing the status for 30 days as of the date of opening the liquidation, as well as a report clarifying the items from the balance sheet for liquidation.

The liquidator shall be obligated to submit the balance sheets for liquidation and the report to the competent court and Ministry of Finance within 15 days from the date of opening the liquidation.

The liquidator shall have the rights and obligations of the managing body of the insurance company. The liquidator shall represent the insurance company. The liquidator shall sign by adding the suffix "in liquidation" after the business name. The liabilities of the insurance company arising from insurance agreements shall cease to be valid within 30 days from the date of opening the liquidation proceedings.

The liquidator shall be obliged to collect the claims of the company, transfer into cash the remaining property and settle liabilities towards the insured persons arising from insurance agreements, as well as towards other creditors. Upon converting all assets into cash, the liquidator shall notify the liquidation council and submit a proposal for distribution of the liquidated estate. The liquidation council, on the basis of the proposal of the liquidator, shall issue a decision for distribution of the liquidated estate to creditors whose claims have been determined. The property that remains after the settlement of claims of creditors shall be distributed by decision among the shareholders of the insurance company. The property shall be distributed proportionally to the nominal amounts of shares, unless otherwise stipulated in the Charter. The liquidator shall be obliged to submit to the Ministry of Finance quarterly reports on the implementation of liquidation.

Upon the liquidation, the liquidator shall be obliged to file an application form for elimination of the insurance company from the Trade Register maintained by the Registry Court. The liquidator shall attach to the application form the initial liquidation balance sheet, approved annual accounts and reports, as well as distribution plan and plan for settlement of creditors' claims. Books and documents shall be kept for ten years after the elimination of the insurance company, in a place determined by the registering court.

If the liquidator determines during the implementation of liquidation that assets of the insurance company are insufficient to cover the claims of all creditors or if assets of the insurance company may not be converted into cash for the purposes of settlement of creditors' claims, she or he shall immediately notify the Ministry of Finance and submit a proposal for termination of liquidation as well as a petition for opening bankruptcy proceedings before the competent court.

Provisions of the Company Law and the Bankruptcy Law shall apply to liquidation proceedings for insurance companies, unless otherwise provided with this Law.

Provisions of the Bankruptcy Law that regulate the prior procedure for determination of conditions for opening bankruptcy proceedings, legal consequences from opening bankruptcy proceedings, asset management and having assets at disposal that are part of the bankruptcy estate, settlement of creditors in bankruptcy proceedings, reorganisation plan, personal management, releasing from other liabilities, special types of bankruptcy proceedings for sole proprietors, bankruptcy proceedings involving foreign subjects, board of creditors and assembly of creditors shall not apply to liquidation proceedings against insurance companies.

## **b) Bankruptcy**

Provisions of the Bankruptcy Law shall apply to bankruptcy proceedings against insurance companies, except for the provisions pertaining to reporting hearing, reorganisation plan, social plan, assembly of creditors, personal management, release from other liabilities, and special types of bankruptcy procedures for sole proprietors.

The Minister of Finance shall issue a decision specifying that the conditions for initiation of bankruptcy proceedings against the insurance company have been met.

The Ministry of Finance shall issue a petition for opening bankruptcy proceedings to the competent court on the first working day upon the adoption of the decision specifying that the conditions for initiation of bankruptcy proceedings have been met. The decision will be enclosed with the petition. In addition to the Ministry of Finance, a petition for opening of bankruptcy proceedings against the insurance company may be filed by creditors and the insurance company itself, as well as the liquidator of the insurance company. If the petition for opening bankruptcy proceedings is filed by the creditors or by the insurance company itself, the court shall submit a copy of the filed petition and all other pertinent decisions adopted during the bankruptcy proceedings to the Ministry of Finance. Insurance agreements concluded by insurance companies shall cease to be valid upon expiration of 30 days from the opening of bankruptcy proceedings against the insurance company.

The bankruptcy trustee shall be obliged to submit to the Ministry of Finance quarterly reports on the implementation of bankruptcy proceedings.

Claims arising from insurance agreements shall have a priority right to a settlement from the bankruptcy estate over other bankruptcy creditors. Claims shall be settled according to the following schedule:

1. claims arising from life insurance agreements, insurance against accident consequences and health insurance for which tables of probability are applied and calculations similar to the ones applied in life insurance shall have a priority right to settlement from the assets that cover the mathematical reserve, in the amount that is equal to the necessary financial cover stipulated in the insurance agreements from which the claims arise;
2. other claims arising from life insurance agreements, insurance from accident consequences and health insurance for which tables of probability are applied and calculations similar to the ones applied in life insurance that may not be settled from the assets covering the mathematical reserve;
3. claims arising from non-life insurance agreements and other classes of insurance, for which no assets have been included in the assets that cover the mathematical reserve, and which refer to indemnification of damages that occurred prior to the opening of bankruptcy proceedings;
4. claims arising from non-life insurance agreements and other classes of insurance, for which no assets have been included in the assets that cover the mathematical reserve for compensation of a part of the premium for the period following the termination of insurance agreements.

The bankruptcy trustee shall be obliged to request from the curator to conclude the list of investments of assets that cover the mathematical reserve with the status on the date of opening the bankruptcy proceedings. Assets covering the mathematical reserve in bankruptcy proceedings shall represent a special bankruptcy estate. The amount of claims arising from life insurance agreements, insurance

against accident consequences and health insurance for which tables of probability are applied and calculations similar to the ones applied in life insurance and the amount of assets that cover the mathematical reserve shall be determined by the curator with the balance on the date of opening of the bankruptcy proceedings.

In addition to the main account of the insurance company against which bankruptcy proceedings have been opened, the bankruptcy trustee shall be obliged to open a special cash account with the payment operations agency for each fund of assets that cover the mathematical reserve. The bankruptcy trustee shall manage the cash acquired by conversion into cash the investments of assets that cover the mathematical reserve through a special cash account. The curator must confirm the bankruptcy trustee's and all other authorisations for payment from the special cash account.

**39. What is the set-up of the supervision of insurance groups and financial conglomerates (e.g. different capital adequacy rules, solvency requirements, intra-group transactions)? Is there an additional supervision of these entities?**

The Law on Supervision of Insurance (Official Gazette of the Republic of Macedonia No. 27/02 and 98/02) does not contain separate provisions pertaining to supervision of financial conglomerates. The Ministry of Finance, being the body in charge of supervision over the operation of insurance companies and insurance broker companies, in case of discovering any irregularities in their operation pertaining to mutual relations, shall apply the same measures as for the remaining insurance companies. For the purpose of implementing the supervision over the operation of such groups, it may request from other bodies in charge of supervision of other financial organisations data on the ownership structure and mutual relations (Article 22 of the Law on Supervision of Insurance).

### ***C. Securities and investments***

#### **General questions**

**1. Is there an authority in charge of supervising regulated markets? If yes, please indicate name and address. Does the supervisory authority publish an annual report? Could it provide the Commission with a copy or a summary of the report? Is this authority also in charge of supervising collective investment undertakings?**

**Is there an authority in charge of supervising regulated markets? If yes, please indicate name and address.**

The following bodies in charge of supervision exist in the Republic of Macedonia:

- The Securities and Exchange Commission (hereinafter: Commission) is an independent organisation, in charge of implementation of the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 09/00), and Law on Taking Over of Joint Stock Companies (Official Gazette of the Republic of Macedonia Nos. 04/02 and 37/02), and all regulations adopted on the basis thereof. The Commission has a status of a legal person.

The Securities and Exchange Commission regulates and supervises all participants in the operation of trading in long-term securities on the territory of the Republic of Macedonia (Article 157 of the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04).

The address of the main office of the Securities and Exchange Commission is the following:  
Boulevard Sveti Kliment Ohridski no.54, 1000 Skopje, P.O. box 859.

The web site of the Securities and Exchange Commission is the following: [www.sec.gov.mk](http://www.sec.gov.mk)

- Agency for Supervision of Fully Funded Pension Insurance has been established for the purpose of performing supervision over the operation of companies in charge of pension funds management.

The address of the Agency is the following: Dame Gruev no.14, 1000 Skopje, The Republic of Macedonia. The web site of the Agency is the following: [www.mapas.gov.mk](http://www.mapas.gov.mk)

### **Does the supervisory authority publish an annual report?**

The Securities and Exchange Commission in accordance with the Securities Law is accountable for its work before the Assembly of the Republic of Macedonia and files annual report on its work, financial plan and annual account. (Article 163 paragraph 2 of the Securities Law "Official Gazette of Republic of Macedonia" Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04).

An audit company audits and evaluates the annual account of the Commission in accordance with the international auditing standards and prepares an audit report in compliance with the audit regulations.

The Commission publishes part of the audit report with the opinion of the authorised auditor in at least one daily newspaper in the Republic of Macedonia and on the web site of the Commission within 15 days from the date of its adoption by the Commission (Article 163-a of the Securities Law "Official Gazette of Republic of Macedonia" Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04).

- The Agency for Supervision of Fully Funded Pension is responsible for its work to the Government of the Republic of Macedonia and files a report for its work during the previous year within six months upon the expiration of the calendar year. The report on the work of the Agency is approved by the Government of the Republic of Macedonia and delivered to the Assembly of the Republic of Macedonia for information purposes. (Article 54, paragraph 2) of the Law on Fully Funded Pension (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04).

The Agency publishes a report on the status of the fully funded pension in the Republic of Macedonia for the previous year in the Official Gazette of the Republic of Macedonia within six months following the end of the calendar year. (Article 54, paragraph 1) of the Law on Fully Funded Pension (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04).

### **Could it provide the Commission with a copy or a summary of the report?**

Please find attached the Annual Report on the Operation of the Securities and Exchange Commission for the year 2003, see [03 Annex 03](#).

The Annual Report on the Operation of the Securities and Exchange Commission can be also found on its web site: [www.sec.gov.mk](http://www.sec.gov.mk)

Reports on the operation of the Agency for Supervision of Fully Funded Pension in the Republic of Macedonia will be prepared upon the implementation of the reformed pension system in the Republic of Macedonia, which is expected in the second half of the year 2005.

### **Is this authority also in charge of supervising collective investment undertakings?**

In accordance with the Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 9/00) the Securities and Exchange Commission is competent for issuance of approvals for establishing and operation of investment funds, investment fund management companies, open-end and closed-end funds and deposit banks.

The Commission supervises the operation of investment fund management companies and deposit banks and prescribes the manner of supervision of operation thereof.

### **2. Is there a central securities register?**

Central Securities Depository operates in the Republic of Macedonia. It functions as a joint stock company in compliance with the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04) and performs the following activities:

- keeps a securities registry;
- provides an international number for identification of securities (ISIN) for all issues of securities;
- verifies and settles transaction in securities in line with the principle of delivery against payment and
- provides additional services for issuers and holders of securities.

Founders of the Central Securities Depository can be brokerage houses, banks, insurance companies, and fund management companies. Participants in the operation of the Central Securities Depository can be the founders of the Central Securities Depository.

The address of the Central Depository of Securities is the following: Blvd. Kuzman Josifovski Pitu no.1, 1000 Skopje.

The web site of the Central Depository of Securities is: [www.cdhv.org.mk](http://www.cdhv.org.mk)

### **Legal framework - Investment firms**

### **3. Please outline the legal framework adopted for the operation of investment companies, mutual funds, pension funds.**

There is no definition of investment companies in the current legislation of the Republic of Macedonia. The Law on Investment Funds ("Official Gazette of Republic of Macedonia No. 09/00) does not refer to investment companies.

The term mutual funds means open-end investment funds regulated by the Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 09/00). This Law regulates the terms for establishment of investment funds and fund management companies and the manner of their operation, selection of deposit banks and supervision of their work.

The Law on Investment Funds applies to any natural and legal person that acquires monetary assets by way of a public call for their collective investment in securities, i.e. shares, bonds, treasury bills, commercial papers, state treasury bills, deposit certificates and documents for investment in joint undertakings, the purpose of which is acquisition of profit on the basis of entrepreneurial efforts of other parties.

Pursuant to this Law, an investment fund is established for pooling monetary assets intended for investments, collected from investors by way of a public call, which are managed by the fund management company on behalf of the investors. Investment funds may be established as open-end

or closed-end funds. Open-end fund is a separate entity, having no status of a legal entity, of which owners of share certificates have the right to a proportional part of the profit of the fund and right to request buying-up of share certificates. The open-end fund is established by raising monetary assets by way of public call for the sale of share certificates. The open-end fund is registered in the registry of the Securities and Exchange Commission and acquires the property of a going concern as of the date of its entry in the registry of the Commission. For the purposes of establishing an open-end fund, the fund management company adopts a statute, prepares the public call and the prospects of the fund, and concludes a contract with a deposit bank in accordance with the provisions of the Law on Investment Funds. The Securities and Exchange Commission issues an approval to the fund management company for establishing an open-end fund. The fund management company may start raising the monetary assets through public sale of share certificates after receiving the approval from the Securities and Exchange Commission for establishment of the fund. The Securities and Exchange Commission supervises the operation of investment funds, fund management companies and deposit banks in the field of operation with investment funds.

Regarding the pension funds, a thorough reform of Macedonian pension system has been implemented since 1999, for the purpose of ensuring its long term solvency. The new pensions system consists of three pillars: first mandatory pillar – based on inter-generation solidarity, second mandatory pillar - based on fully funded pension insurance and third voluntary pillar – based on fully funded pension insurance.

The persons employed as of 1 January 2003 shall be obligatorily included in the new system, while the remaining beneficiaries shall have the right to make a voluntary choice for inclusion in the new system. The contributions for pension beneficiaries who will be included in the new system will be shared between the two pillars in the following manner: 65% in the first pillar and 35% in the second pillar.

Pension beneficiaries who will remain in a system with only one pillar will receive full age-based pension, disability or family pension from the first pillar. Pension beneficiaries, who will be included in the system of two pillars, will receive pension from the first pillar and part of the pension from the second pillar in case of age-based retirement. In case of retirement based on disability or family pension, the beneficiaries will receive the full pension from the first pillar, where the assets accumulated on their individual account will be transferred in the first pillar. The minimum guaranteed pension shall also be provided from the first pillar.

Pension from the second pillar, with the right to a personal choice of the member shall be paid by way of purchasing pension annuity, which is paid for the rest of the life from a special institution authorised for such activities or through programmed withdrawals provided by the company managing the pension fund, where he/she was a member as of the date of his/her retirement, which will be regulated with a separate law.

The voluntary pension insurance (third pillar), as part of the multi-level pension system in the Republic of Macedonia shall be regulated in more details with a separate law.

The legal framework of the mandatory fully funded pension insurance consists of the following:

- Law on Amending and Appending the Law on Pension and Disability Insurance (Official Gazette of the Republic of Macedonia No. 24/00).
- Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04).

A State Fund for Pension and Disability Insurance of the Republic of Macedonia has been established according to the Law on Pension and Disability Insurance. The Fund has the capacity of a legal entity and its activity is of public interest.

An Agency for Supervision of Fully Funded Pension Insurance has been established on the basis of the Law on Mandatory Fully Funded Pension Insurance ("Official Gazette of Republic of Macedonia" Nos. 29/02, 85/03 and 40/04). The purpose of establishing the Agency is protection of interests of the

members of the pension funds and stimulation of the development of the fully funded pension insurance. In performing its duties, the Agency conducts activities such as: organising tenders, issuing, revoking and terminating licenses for establishment of pension fund management companies and approvals for managing pension funds.

**4. Is the provision of investment services subject to authorisation in your country? Is there any exception (undertakings which do not provide services for third parties, investment services not carried out on a professional basis)? How are investment services defined? Which activities require previous authorisation to be carried on? Are credit institutions and/or insurance undertakings authorised to carry on any of these activities? Do they need specific authorisation? What conditions are new investment firms required to meet by national law before taking up their businesses (legal form, initial capital, good repute and sufficient experience for persons who direct the business, fit and proper test for shareholders)?**

**Is the provision of investment services subject to authorisation in your country?**

Yes, an approval from the Securities and Exchange Commission is needed for providing investment services.

**Is there any exception (undertakings which do not provide services for third parties, investment services not carried out on a professional basis)?**

There are no exemptions according to the current legislation in the Republic of Macedonia.

**How are investment services defined?**

There is no definition for investment services in the current legislation of the Republic of Macedonia. Nevertheless, the term investment services means trading with long term securities performed by brokerage houses and banks (receipt and execution of investors' orders referring to purchasing and selling of long term securities on behalf of and for the account of the client, trading with long term securities on their own behalf and for their own account, managing the financial property for the account of their clients, organising, preparing and buying out newly issued long term securities and counseling clients during issuing and trading with long term securities), activities relating to investment consulting, activities relating to fund raising from investors by way of public calls and their collective investment of funds in securities, i.e. shares, bonds, treasury bills, commercial papers, state bills, deposit certificates and documents for investments in joint undertakings.

The new Draft Securities Law, the adoption of which is expected during the first half of the 2005, regulates the matter relating to portfolio managers, who are authorised to manage the portfolio of securities on behalf and for the account of clients with whom they have concluded an agreement for management of portfolio of securities.

**Which activities require previous authorisation to be carried on?**

Since investment services are not defined, an approval from the Securities and Exchange Commission is needed for the above mentioned services: trading long term securities, investment consulting, raising funds from investors by way of public calls and their collective investments in securities.

**Are credit institutions and/or insurance undertakings authorised to carry on any of these activities?**

Pursuant to the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), operations relating to trading with long term securities may be performed by brokerage houses and banks (Article 104, paragraph 1 of the Securities Law). This means that in addition to brokerage houses, banks can also perform



activities relating to trading with long term securities, receipt and executing orders by investors relating to purchasing and selling of long term securities on behalf of and for the account of the client, trading with long term securities on their own behalf and for their account, managing the financial property on behalf of their clients, organising, preparing and buying out newly issued long term securities and consulting clients during issuance and trading with long term securities (Article 106 of the Securities Law).

Insurance companies may not trade with long term securities.

**Do they need specific authorisation?**

Yes, an approval from the Securities and Exchange Commission is needed.

**What conditions are new investment firms required to meet by national law before taking up their businesses (legal form, initial capital, good repute and sufficient experience for persons who direct the business, fit and proper test for shareholders)?**

A fund management company commences its operations upon obtaining an approval from the Securities and Exchange Commission. The Securities and Exchange Commission issues an approval to the fund management company for establishment, provided that it has met the following requirements:

1. The principal equity paid in at the moment of filing the application to amount to at least 500.000 DEM in denar currency according to the middle exchange rate of the National Bank of the Republic of Macedonia on the date of payment provided that the company manages only one fund.

Should the fund management company be established to manage several funds, the principal equity will increase for 250.000 DEM in denar currency, per each subsequent fund.

2. To fulfil the pre-conditions relating to personnel, technical and organisational suitability for work, defined by the Securities and Exchange Commission in the Rulebook on technical and organisational suitability necessary for establishment and operation of a fund management company (Official Gazette of the Republic of Macedonia No. 85/00). Regarding the personnel, the Rulebook prescribes that the company needs to perform its activities through at least one authorised participant-individual who has passed the technical examination for performing activities relating to securities or for investment consulting, proof that employees in the company have not been convicted for criminal acts against property, for falsification of money, stamps and documents, and for tax evasion, statement from employees with the company that they will not concurrently be authorised for performing activities relating to securities or for investment consulting with another fund management company. Technical capability means that the company possesses relevant IT and communications systems for conducting operations. Organisational suitability means existence of organisational elements that provide for efficient performance of the company's activities. For fulfilling the requirements relating to organisational suitability, the company is obliged to submit an act for confidentiality of business secrets, for preventing the misuse of business secrets, as well as for the manner of flow of information in and outside the company, and an act for dealing with customers.

3. Members of the management body shall have consent from the Securities and Exchange Commission for management and governance of the company. A member in the management body of the company and an employee with the same may not be:

- a person convicted for the following criminal acts: causing fraudulent bankruptcy, infringement of the obligation to do bookkeeping, causing damages to creditors, giving benefits to creditors, misuse of the procedure of forced settlement, or bankruptcy, unauthorised revealing or acquisition of business secrets or fraud for a period of five years after the verdict becomes final, during which the time for serving the sentence is not calculated or
- a person against whom the following safety measure has been pronounced: prohibition for performing activities subject of operations of the company, for the period of validity of the prohibition.

4. To have Charter of the company,
5. To have an appointed authorised auditor and
6. To have paid the fee for obtaining an approval from the Securities and Exchange Commission.

The Securities and Exchange Commission shall decide upon the application for obtaining an approval for establishment within a period of 60 days from the date of receiving the complete application. The Securities and Exchange Commission issues an approval for establishment of the company on the basis of elements stated in the elaboration for establishment of the company. Should the commission fail to make a decision for issuing an approval, it shall be considered that the application has been rejected.

The fund management company is obliged to commence its work within six months as of the date of receiving the approval for establishment issued by the Securities and Exchange Commission (Article 44 of the Law on Investment Funds "Official Gazette of Republic of Macedonia" No. 09/00).

**NOTE:**

During the first half of 2005, new amendments of the Law on Investment Funds will be adopted, which, among other things, will correct the amounts of the principal equity, i.e. their expression in EUR (denar currency), instead of in DEM.

**5. Is the acquisition of holdings in investment firms subject to specific requirements?**

Pursuant to the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), a brokerage house may be established by at least two domestic or two foreign, legal and natural entities.

No special conditions have to be met for the purpose of acquiring a share in investment companies, except in cases where the banks appear as participants on the money market. Only in such cases, a prior approval from the National Bank of the Republic of Macedonia needs to be obtained.

Regarding the companies in charge of pension funds management, each acquisition or transfer of stocks of the company is subject to prior approval from the Agency for Supervision of Fully Funded Pension Insurance, or otherwise it shall be considered as void.

This obligation does not refer to stock transactions where the performed transaction, of the buyer or the person related to him/her, has resulted in mutually acquired shares not more than 3% of the equity of the company.

A company may not purchase stocks from another company in charge of pension fund management and they may not merge, consolidate or split. In case of distortion of the already established relations, legal entities shall be obliged to conduct appropriate harmonisation within six months.

**6. Are there prudential ratios (solvency, liquidity)? Are they applied on a consolidated basis?**

Prudential ratios are not applied in the operation of brokerage firms and banks; however, this matter is planned to be regulated in more details with the new Draft Securities Law, the adoption of which is expected in the beginning of 2005.

The basic principles of investing are defined in the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03, and 40/04). Pension funds assets are invested in accordance with the provisions of this Law for the purpose of acquiring the highest amount for the benefit of members of the pension fund, based on the principles of safety of pension fund assets, diversification of investments risk, and maintenance of adequate liquidity.

A company in charge of pension funds management shall be obliged at any time to maintain the amount of equity capital, but it may not be less than one half of the amount of the initial capital

amounting 1.500.000 EUR, prescribed in the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03, and 40/04).

Shareholders of the company shall be obliged to increase the equity capital of the company for 1.000.000 EUR through investments, within 45 working days, when the pension fund assets managed by that company exceed 100.000.000 EUR and in each subsequent future case when the pension fund assets will increase for additional 100.000.000 EUR.

The company shall be obliged to immediately inform the Agency about each decrease in the equity capital below the amount set forth in this Law, and the Agency may withdraw the approval for pension fund management issued to the company if upon the decrease of the capital below the requested amount it has failed to perform the necessary increase, with the term specified by the Agency, which may not be shorter than 3 months and longer than 12 months.

**7. What is the current situation with regard to right of establishment and cross-border supplies of services in your country for EU investment firms? Which conditions apply?**

Foreign legal entities or natural entities, including those from EU, who would wish to trade on the stock market in the Republic of Macedonia, need to establish a legal entity as a joint stock company in compliance with the Company Law (Official Gazette of the Republic of Macedonia No.28/04), the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04) and the Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 09/00) that will operate as a brokerage house, a bank, or a fund management company.

The new Draft Securities Law, the adoption of which is planned in the beginning of 2005, will contain provisions under which a foreign brokerage company authorised to provide services relating to securities in the member countries of the OECD, may provide such services on the territory of the Republic of Macedonia through its own branch office that has a working license issued by the Securities and Exchange Commission.

The company in charge of pension funds management may be established by domestic and foreign legal entities under the terms prescribed in the Company Law (Official Gazette of the Republic of Macedonia No.28/04) and the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04). The company must be established in the Republic of Macedonia and work in compliance with the relevant legislation in force.

Foreign founders who wish to provide investment services in the Republic of Macedonia need to respect the provision of the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), and the Law on Foreign Exchange Operations (Official Gazette of the Republic of Macedonia No. 34/01, 49/01, 103/01, and 51/03).

It is planned that the new Draft Securities Law will contain provisions that will regulate the conditions and procedures for issuing operating licenses and relevant documentation that the foreign brokerage company must submit to the Securities and Exchange Commission for obtaining such license.

Founder of the company in charge of pension funds management needs to be a legal entity who fulfils the conditions set forth in the Company Law Companies (Official Gazette of the Republic of Macedonia No.28/04), as well as the following conditions of the Law on Mandatory Fully Funded Pension Scheme (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04):

- to possess capital in amount of at least 20.000.000 EUR;
- to have been in existence for at least three years;
- to have been continually solvent during its operation in the Republic of Macedonia or abroad;
- to have a permanent managerial team consisting of competent, professional and experienced persons;

- to be a foreign financial institution that must have an investment-grade rating by reputable international credit rating agencies, for a period of at least one year prior to applying for a founder.

## **Legal framework - Collective Investment Undertakings**

**8. Are collective investment undertakings subject to authorisation requirements in your country? Which legal forms and structures of collective investment undertakings are provided? Are there rules governing the investment policy of a collective investment undertaking (eligible assets, investment limits)? Are there risk-management processes employed to monitor and measure the overall risk of a collective portfolio?**

**Are collective investment undertakings subject to authorisation requirements in your country?**

Collective investment undertakings in securities are defined in the Law on Investment Funds ("Official Gazette of Republic of Macedonia No. 09/00) as open funds.

Open fund is a separate property, having no status of a legal entity, the owners of which possessing share documents have the right to a proportional part of the profit of the fund and a right to request repurchase of the share certificates.

For the purposes of establishing an open fund, the fund management company adopts a statute, prepares public call and prospectus of the fund, and concludes a contract with a deposit bank in accordance with the provisions of this Law.

A fund management company files an application for obtaining an approval for establishment of an open fund to the Securities and Exchange Commission. The application contains the following:

1. Business name and registered office of the fund management company,
2. Name of the open fund and
3. Number and date of the approval issued by the Securities and Exchange Commission for establishment of the fund management company.

The following documents are attached to the application for obtaining an approval for establishment of an open fund:

1. Statute, public call and prospect of the fund;
2. Contract of the company with the deposit bank;
3. Documents for meeting the requirements for operation of the fund management company in compliance with the provisions of this Law;
4. Specimen of the share certificate; and,
5. Receipt for paid fee for obtaining the approval for establishment of the open fund.

The approval for establishing an open fund is published in the Official Gazette of the Republic of Macedonia by the Securities and Exchange Commission (Article 19 of the Law on Investment Funds "Official Gazette of Republic of Macedonia" No. 09/00).

**Which legal forms and structures of collective investment undertakings are provided?**

The Law on Investment Funds recognises the open and closed funds as legal forms and structures for joint investments.

- Open fund is a separate property, having no status of a legal entity, the owners of which possessing share certificates have the right to a proportional part of the profit of the fund and right to request buying-up of the share documents. The open fund is established by collecting monetary assets by

way of public call for selling share documents (Article 18 of the Law on Investment Funds "Official Gazette of Republic of Macedonia" No. 09/00).

The open fund is registered in the registry of the Securities and Exchange Commission and acquires the capacity for running business as of the date of its entry in the registry of the Commission.

- Closed fund is a joint stock company established for the purposes of collecting monetary assets by way of public call for selling own shares and investing such assets in securities (Article 30 of the Law on Investment Funds). The closed fund is established by collecting monetary assets by way of public call for selling shares. The closed fund is established and managed by a fund management company. A fund management company files an application for obtaining an approval for establishment of a closed fund to the Securities and Exchange Commission.

The approval for establishing a closed fund is published in the Official Gazette of the Republic of Macedonia by the Securities and Exchange Commission (Article 31 of the Law on Investment Funds).

A pension fund management company can be established and can operate only in a form of a joint stock company, where the initial capital of the company amounts to at least 1.500.000 EURO. Shares of the company are common personal shares and the company may not issue priority shares. Shareholders of the company, according to their participation in the equity of the company, have equal status in the company. The single activity of the company is managing pension funds, representing them before third parties and other activities relating to pension funds management. For a period of ten years as of the date when the payment of contribution in the mandatory fully funded pension insurance has commenced, the company can establish and manage only one pension fund.

The pension fund is defined in the Law on Mandatory Fully Funded Pension Insurance ("Official Gazette of Republic of Macedonia" Nos. 29/02, 85/03 and 40/04), and its legal form derives from an open investment fund that is a private property and has no capacity of legal entity. The pension fund consists of assets from contributions of fund members and inflows from invested contributions. Owners of the pension fund are its members and their individual ownership rights are determined from the amount of assets on their accounts. Assets of the pension fund are completely separated from the assets of the company that manages that fund and they are kept under custody.

### **Are there rules governing the investment policy of a collective investment undertaking (eligible assets, investment limits)?**

Securities, which the fund invests in, consist of the following: securities, monetary deposits and other assets.

Investment funds can invest assets in the following types of securities:

- securities listed and traded on the stock exchange market or sold on the money market or other regulated market, and
- securities from new issues, if the conditions for their issuance contain an obligation for filing a request for inclusion of the securities in a stock-exchange market, money market or some other regulated market. (Article 13 of the Law on Investment Funds "Official Gazette of Republic of Macedonia" No. 09/00).

### **Restriction of investments**

- The fund may not invest more than 20% of the value of its property in securities of one issuer. By derogation, the fund may, without any restrictions, invest in debt securities of the Republic of Macedonia.
- the fund may acquire at least 20% of the total number of issued shares of one issuer.
- the fund may acquire the most up to 15% of the total nominal value of debt securities issued by one issuer.

- the fund may not invest more than 15% of the total number of shares issued by one issuer and more than 10% of the total nominal value of debt securities issued by one issuer. The fund may exceed the maximum in cases of market distortions with an approval from the Securities and Exchange Commission, but it is obliged to reach the balance upon the normalisation of market conditions.
- deposits in banks and other monetary assets of the fund may amount the most up to 25% of the property of the fund. The fund may exceed the maximum referred for a period of four months from its establishment.
- the fund may not invest in securities issued by the selected deposit bank or branch office of a foreign deposit bank, as well as in deposit assets of these institutions.
- the fund may not invest in securities issued by other funds.

The Securities and Exchange Commission shall, with special rules, regulate the conditions and procedure for harmonisation of restriction of investment in cases of merger or consolidation of two or more funds, or merger or consolidation of two or more issuers in the fund (Article 14 of the Law on Investment Funds).

Investment of pension fund assets is regulated in Chapter XIII of the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03, and 40/04) and the Regulation on investment of pension fund assets (Official Gazette of the Republic of Macedonia No. 44/04) where the instruments in which the investments are possible, the conditions and restrictions are defined.

Pension fund assets can be invested only in the following instruments (Article 105 of the Law on Mandatory Fully Funded Pension):

- bank deposits in banks having license from the National Bank of the Republic of Macedonia, if they bring interest;
- bonds and other securities issued or guaranteed by the National Bank of the Republic of Macedonia;
- deposit certificates, commercial papers and bonds issued or guaranteed by banks having licenses from the National Bank of the Republic of Macedonia;
- mortgage securities issued by banks having license from the National Bank of the Republic of Macedonia;
- bonds and other securities issued or guaranteed by the Republic of Macedonia;
- shares issued on the basis of the approval of the Securities and Exchange Commission of the Republic of Macedonia that are listed on the official market of the stock exchange of long term securities or on some other regulated market of securities in the Republic of Macedonia controlled by the Securities and Exchange Commission;
- bonds issued by joint stock companies in the Republic of Macedonia, except for the ones issued or guaranteed by banks on the basis of an approval from the Securities and Exchange Commission of the Republic of Macedonia that are listed on the official market of the stock exchange of long term securities or on some other regulated market of securities in the Republic of Macedonia controlled by the Securities and Exchange Commission;
- commercial papers issued by first class joint stock companies in the Republic of Macedonia;
- share documents and shares of investment funds in the Republic of Macedonia operating on the basis of the Law on Investment Funds;
- bonds and other securities issued or guaranteed by foreign governments and central banks of member countries of the EU, Japan or USA;
- debt securities having investment-grade rating according to international credit rating agencies, issued by non-state, foreign companies or banks from member countries of the EU, Japan and USA.
- shares issued by foreign companies or banks having investment-grade rating according to international credit rating agencies, traded on the main stock-exchange markets in the member countries of the EU, Japan or USA;

- share documents, shares and other securities issued or guaranteed by authorised investment funds with registered office in a member country of the EU, Japan or USA that mostly invested in shares listed on the stock-exchange markets in these countries.
- other types of investments in compliance with the Agency's acts, provided that it is not contrary to Article 108 of this Law, upon a prior opinion of the Securities and Exchange Commission.

Trading with securities of pension funds is conducted exclusively on regulated secondary capital markets, except in cases of state securities and short term securities that may be acquired directly from the issuer, such as share documents and shares of investment funds that can be acquired directly from an open or closed investment fund or from fund management companies.

Pension fund assets can be used for investing in instruments that fulfil the conditions prescribed by the Agency for:

- conditions that need to be fulfilled by the regulated secondary capital markets where the pension funds assets are traded;
- quality of shares, bonds and other securities, in which pension funds assets are invested and
- states or groups in which the pension funds assets can be invested.

Pension fund assets may not be invested only in the following instruments (Article 108 of the Law on Mandatory Fully Funded Pension Insurance:

- shares, bonds and other securities that are not listed on an official market, or which are not publicly traded;
- instruments that cannot be managed legally;
- tangible goods that are rarely listed on regulated markets and the evaluation of which is uncertain, such as antiques, works of art and motor vehicles;
- real estate and any kind of share in real estate except for mortgage securities and indirect investment through investment funds;
- shares, bonds and other securities issued by: a shareholder of a company, asset custodian or the pension fund and persons related to them;
- futures contracts, option contracts, forward contracts and other derivative instruments, and
- other instruments as defined by the Agency upon a prior opinion of the Securities and Exchange Commission of the Republic of Macedonia, where the investment would be contrary to the interests of the pension funds members.

**Are there risk-management processes employed to monitor and measure the overall risk of a collective portfolio?**

There is no regulation in the Republic of Macedonia that regulates the risk management processes used for monitoring and determination of the total risk in the common portfolio in more details.

Pension fund management companies calculate the value of pension funds assets on daily basis in compliance with Chapter IX of the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03, 40/04) and the Regulation on evaluation of pension fund assets (Official Gazette of the Republic of Macedonia No.44/04). Twice a year, companies determine the inflow in the pension fund for the three previous years in compliance with the aforementioned Law. Accounting of companies and pension funds is performed in compliance with the laws and international accounting standards.

**9. Are the assets of collective investment undertakings entrusted to a depositary? Which further obligations have to be fulfilled by the depositary? Is the depositary subject to prior approval? Which requirements apply for the depositary?**

**Are the assets of collective investment undertakings entrusted to a depositary?**

The property of collective investment undertakings pursuant to the Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 09/00) is transferred to a deposit bank selected by the fund management company. (Article 52 of the Law on Investment Funds).

Pension fund management company shall be obliged to select a single asset custodian whom it will entrust the responsibility of keeping the pension fund assets. Should the pension fund have assets outside the territory of the Republic of Macedonia, the asset custodian may select a sub-custodian for keeping such assets. Nevertheless, the National Bank of the Republic of Macedonia shall be the asset custodian of pension funds during the first five years calculating from the date of commencement of the payment of contribution in the mandatory fully funded pension insurance.

**Which further obligations have to be fulfilled by the depositary?**

The deposit bank, in addition to keeping the property of the fund on the basis of a contract with the fund management company and upon its order shall perform the following activities:

- ensures that the monetary assets from the sale of shares in the fund or securities of the fund are immediately paid on a separate fund account with the bank;
- issues share documents, receives the purchased documents, pays the owners of share documents and pays the participation in the profit of the fund;
- determines the value of single share in the fund;
- pays dividend to shareholders;
- executes orders of the company, in compliance with the law and the statute of the fund;
- ensures that the revenues from the property of the fund are used in compliance with the law and the statute of the fund, and
- implements liquidation and other matters in compliance with the contract that the deposit bank has concluded with the fund management company.

The deposit bank, on its own name and for the account of owners of share documents, i.e. on the name and for the account of owners of shares, executes their claims towards the fund management company. It does not exclude the right of owners of share documents to execute their rights on their own (Article 53 of the Law on Investment Funds "Official Gazette of Republic of Macedonia" No. 09/00).

An asset custodian may provide services of keeping assets for several pension funds, but it is required that the keeping of assets, the operations relating to such assets, and the record keeping of pension funds to be administered for each pension fund separately, and separate from other clients and its own assets, operations and records.

The asset custodian of a pension fund shall perform the following activities: keep in safe the securities that represent the assets of the pension fund and keep as electronic records on a special account with the Central Securities Depository; keep in safe the settlement documents relating to payment of monetary assets on the bank account of the pension fund and reimbursement of monetary assets from the bank account of the pension fund; work as a settlement broker, sell and purchase securities on the basis of orders of the company and collect the revenues from dividends, interest and all other revenues stemming from investment of assets of the pension fund; ensure that contracts relating to investment acquisition and transfer of pension fund assets are in conformity with the law, the pension fund statute and orders for transaction of the company and that such orders are in compliance with the law; cooperate and supervise the sub-custodians and calculate and pay in taxes.



**Is the depositary subject to prior approval? Which requirements apply for the depositary?**

According to the Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 09/00), the selection of a deposit bank and any other change is subject to an approval from the Securities and Exchange Commission, upon a previously obtained consent for the bank from the National Bank of the Republic of Macedonia. The contract concluded between the fund management company and the deposit bank, as well as its amendments and addenda enter into force on the date of issuance of the approval of the Securities and Exchange Commission.

Deposit banks of investment funds may be banks having headquarters on the territory of the Republic of Macedonia or branch offices of foreign banks.

A bank that appears as a founder of a fund management company may not be a deposit bank of that company.

The fund management company and the deposit bank must, in the course of performing their obligations, act independently and exclusively in the interest of owners of share documents and shareholders (Article 52 of the Law on Investment Funds).

The following requests refer to the deposit bank:

- the deposit bank is obliged to perform the duties and activities it has been authorised for on the basis of a contract with the fund management company with due care according to the good business practices.
- it is responsible before the fund management company, before the owners of share documents in the open fund and before the shareholders of the closed fund.
- it is liable for the damages caused due to failing to perform or irregular performance of duties set forth in the contract.

Pension fund management company selects an asset custodian and they together must permanently have a contract for keeping of assets. The selection of an asset custodian and the contract are subject to a prior written consent from the Agency for Supervision of Fully Funded Pension Insurance. The selection of another custodian is carried out only upon a prior written approval by the Agency, on the basis of a comprehensive request with all necessary information about the proposed asset custodian.

The bank must fulfil the following conditions for the purpose of acting as an asset custodian of pension funds: minimum capital of 20.000.000 EUR, not be a shareholder in the fund management company it is to keep the property of, nor to be a shareholder in a party related to the company; non-existence of any capital relations between such parties and members of the managing bodies, and the employees with the asset custodian not to be members of the management or supervisory board, general manager, manager or other employees with the fund management company, whose assets it keeps, and not to be in such relations with other parties that are related with the company.

The selected asset custodian should be a bank or a specialised depository institution that has a working license issued by a competent body and is authorised for such activity in compliance with the national laws and has an investment-grade rating according to well known international credit rating agencies. The Agency prescribes in greater detail the criteria regarding the rating of sub-custodian.

**10. Are companies providing collective investment management services (management companies, investment companies) subject to authorisation? What are the authorisation requirements? Which additional activities of a management company may also be authorised? Which operating conditions apply?**

**Are companies providing collective investment management services (management companies, investment companies) subject to authorisation? What are the authorisation requirements?**

A fund management company shall be established upon obtaining an approval from the Securities and Exchange Commission. The Securities and Exchange Commission issues to the company an approval for establishment provided that the company has fulfilled the following requirements:

1. The principal capital paid at the moment of filing the application to be at least 500.000 DEM in denar counter-value according to the middle foreign exchange rate of the National Bank of the Republic of Macedonia on the date of payment, provided that the company manages only one fund. If the fund management company is established for managing several funds, the principal capital shall increase for additional 250.000 DEM in denar counter-value, for each subsequent fund.

2. To fulfil the detailed conditions relating to personnel, technical and organisational suitability for work, set forth by the Securities and Exchange Commission, in accordance with the Rulebook published in the Official Gazette of the Republic of Macedonia No. 85/2000. Regarding the personnel issues, the Rulebook prescribes in greater detail that the company should perform its activities through at least one authorised participant/person who has passed the professional examination for performing activities relating to securities or investment counselling, evidence that the employees with the company have not been convicted for criminal acts against property, for falsification of money, stamps and documents, and for tax evasion, statement from employees with the company that they shall not be concurrently authorised for performing activities relating to securities or for investment counselling with another fund management company. The term technical suitability means that the company possesses relevant information and communication system for conducting the activities. The term organisational suitability of a company means existence of an organisational section that ensures efficient performance of activities of the company. For the purpose of meeting the requirements in the light of organisational suitability, the company shall be obliged to file an act for keeping business secrets, preventing the misuse of a business secret, as well as the manner and possibility for flow of information in and out of the company and an act for working with clients.

3. Members of the management body must have an approval from the Securities and Exchange Commission for managing the company. A member of a management body of the company and employee with the company may not be a person:

- who has been convicted for the following criminal acts: causing fraudulent bankruptcy, infringement of the obligation for keeping business books, damaging creditors, misuse in the course of the procedure for forced settlement or bankruptcy, unauthorised revealing or obtaining a business secret or a fraud for a period of five years after the verdict became effective, where the time spent serving the sentence is not calculated or against whom a safety measure has been pronounced – prohibition to perform the activity which is the main activity of the company, for the period of validity of the prohibition.

4. To have a statute of the company.

5. To have an authorised auditor.

6. To have paid the fees for obtaining an approval from the Securities and Exchange Commission (Article 44 of the Law on Investment Funds, Official Gazette of the Republic of Macedonia No. 09/00).

Amendments to the Law on Investment Funds are to be adopted in the first half of 2005. These amendments, among other things, should harmonise the amount of the principal capital of the fund management company.

In the initial phase of operation of the fully funded pension insurance, the Agency for Supervision of Fully Funded Pension Insurance shall issue two licenses for establishment of companies on the basis of international public tender.

Licenses for establishment shall be issued concurrently to the two bidders who will meet the requirements set forth in the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04) and on the basis of the competitive fee that they will collect from contributions of pension fund members.

The following documents are filed: draft statute of the company, draft statute of the pension fund it will manage with, draft contract with the asset custodian, list of founders and information about the relations among legal entities and explanations about the nature of such relations; excerpt from the registration court about all persons who would appear as founders, names and addresses of members of management boards of founders and certified copies of the last three financial reports revised by an authorised external auditor; documents confirming that on the date of bidding on the tender the founders that will possess 51% of the principal capital of the company have sufficient experience in managing assets and have investment-grade rating according to well known international credit rating agencies, at least for a year prior appearing as founders; evidence about the origin of financial assets that will be paid in on the name of founding capital of the company; list of candidates for members of the management board and supervisory board of the company together with statements declaring that they agree to perform these functions in case the bid succeeds, data about persons with special authorisations and responsibilities that are proposed to be responsible about the investment decisions; plan for proceeding with the establishment of the company and pension fund; as well as an organisational plan about the structure of the company; investment strategy programme of the pension fund and other documents necessary for pre-qualification prescribed by the Agency.

#### **Which additional activities of a management company may also be authorised?**

An investment fund management company shall be responsible only for performing the activities relating to management of the fund in compliance with the provisions of the Law on Investment Funds and the statute of the fund, where no additional activities are approved to it.

Taking into consideration that the pension fund management companies are established for the sole purpose of managing pension funds, obtaining an approval for performing additional activities is not possible.

#### **Which operating conditions apply?**

An investment fund management company commences its operations upon obtaining an approval from the Securities and Exchange Commission, according to the procedure and terms prescribed in the first part of the answer to this question.

Conditional approval for managing a pension fund is issued with the issuance of the license. The approval becomes valid after the establishment of the company for which it notifies the Agency, as well as for the entry in the trade registry by delivering the certified copies of founding acts and the statute of the company, copy of the conditional approval and other documents in compliance with the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04).

Thus, all conditions necessary for the pension fund management company to commence its operations are fulfilled. The company may start to work upon the date set forth by the Agency for Supervision of Fully Funded Pension Insurance.

**NOTE:**

During the first half of 2005, amendments to the Law on Investment Funds will be adopted, which, among other things, will correct the amounts of the principal capital, i.e. their expression in EUR (in denar counter-value) instead of in DEM.

**11. Which information has to be supplied to the unitholders (full and simplified prospectus, annual report)?**

A Fund management company is obliged to submit to the investors in the fund and the Securities and Exchange Commission the following documentation:

- audited annual financial statements for each fund it manages, within three months from the adoption of the final account of the fund,
- prospectus on investment funds it manages and their adjustments,
- quarterly financial reports for each fund it manages, within two months from the expiration of the quarter,
- a report on each change that might significantly influence the investor's decision on investment within three days upon the occurrence of the change.

A pension fund management company is obliged to:

- inform the members of the pension fund in writing, at least twice a year, about the status of assets on their individual accounts, the date of payment of contributions and the transfer of assets for the member of that fund during the relevant period and the transformation of contributions and transferred assets into accounting units.
- submit data to each member of the pension fund it manages, on the value and participation of assets of the pension fund invested in certain type of assets, including data about the issuer of the relevant security, on the last date of evaluation prior 31 December of each year. The obligation for providing data on the issuers of securities refers to investments in securities that represent at least 1% of the value of assets of the pension fund. The company is also obliged to submit data on the total amount of broker commission paid by the company and its foreign managers of pensions fund assets, during the period from the latest report and on the average amount of such costs per one accounting unit of that fund.
- to publish an information prospectus on the pension fund it manages, not later than 31 March every year, with true and correct data with status on 31 December of the previous year, that will contain the following data: names of members of management and supervisory board of the company; names and addresses of shareholders and their participation in the equity of the company; name and residence of the asset custodian and data in case of eventual change of the asset custodian made during the previous year and reasons for such changes; basic principles of investment for the stated period and self-limitations in investments, except for the limitations determined by the Law on Mandatory Fully Funded Pension Insurance ("Official Gazette of Republic of Macedonia" Nos. 29/02, 85/03 and 40/04); compensations collected from members of the pension fund; data that are delivered to members at least once a year; the number of pension fund members; the net value of pension fund assets on the last date of estimation prior 31 December, and other data relevant for the operation of the company and management of the pension fund that the Agency may prescribe for the purpose of ensuring transparency.

Data contained in the information prospectus are published in a form of brochure in at least one daily newspaper that is distributed over the entire territory of the Republic of Macedonia. The company is obliged, upon request of a member of the pension fund, to provide insight in the information prospectus and the Charter of the pension fund it manages.

**12. What is the situation of collective investment undertakings from EU Member States in your country? How will the right of establishment and cross-border supplies of services of EU management companies be dealt with?**

The Commission recalls that Chapter 4 of the EC Treaty on free movement of capital has also to be respected.

**What is the situation of collective investment undertakings from EU Member States in your country?**

Insofar, The Republic of Macedonia has not had any particular experience in establishment and operation of collective investment undertakings with EU country members.

An approval from the Securities and Exchange Commission is needed for issuance and introduction of foreign securities in the Republic of Macedonia.

Under Article 15 of the Law on Foreign Exchange Operations (Official Gazette of the Republic of Macedonia Nos. 34/01, 49/01, 103/01 and 51/03), the Securities and Exchange Commission, in 2001, adopted a Rulebook for Obtaining Approval for Issuance and Introduction of Foreign Securities in the Republic of Macedonia (Official Gazette of the Republic of Macedonia Nos. 49/01, 58/01 and 61/03).

The Securities and Exchange Commission, with this Rulebook, defines the conditions and manners under which an approval for execution of such transactions may be obtained.

In making a decision, the Securities and Exchange Commission will also take into consideration the financial rating of the issuer of securities prepared by one of the following internationally recognised rating agencies: Moody's Investors Service, Standard and Poor's, Fitch IBCA, or Thomson Bank Watch.

Issuance and introduction of foreign debt securities with maturity exceeding three years is not permitted in the Republic of Macedonia until the completion of the first phase of the Stabilisation and Association Agreement between the Republic of Macedonia and the European Union.

**How will the right of establishment and cross-border supplies of services of EU management companies be dealt with?**

The Company Law (Official Gazette of the Republic of Macedonia No. 28/04) stipulates that foreign trade companies and foreign sole proprietors may not perform activities on the territory of the Republic of Macedonia if they have not registered a branch office under the conditions stipulated in this Law.

Cross border (direct) provision of services is not permitted. Upon the accession of the Republic of Macedonia to the European Union, management companies from EU member countries will be permitted to provide cross border services.

**Legal framework- Markets**

**13. Are there regulated markets? How are such markets defined? Are there national rules which limit the number of persons which have access to those markets? Can credit institutions become members of a regulated market?**

**Are there regulated markets? How are such markets defined?**

The following regulated markets exist in the Republic of Macedonia:

- Macedonian Long Term Securities Exchange JSC Skopje, which was established as a joint stock company for the purpose of organised trade with long term securities. Currently only one securities exchange operates in the Republic of Macedonia.
- Money and Short Term Securities Market has been established as a joint stock company for the purposes of ensuring conditions necessary for matching the supply and demand for money and short term securities.

Pursuant to the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), trade with short term securities may be also conducted off the market for money and short term securities (over the counter trade), in accordance with the Rules adopted by the National Bank of the Republic of Macedonia. (Article 67-a of the Securities Law "Official Gazette of Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04).

Pursuant to the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), the Long Term Securities Exchange has been established for the purposes of ensuring conditions necessary for matching the demand and supply of long term securities, i.e. for organised trade with long term securities (Article 68 of the Securities Law).

A legal and other person may not be entered into the trade registry under the title Long term securities exchange and may not use in its operations the title Long term securities exchange unless it has been established as a stock market for long term securities and has obtained an operating license for establishing and operating a stock market for long term securities.

A stock market may be established by domestic and foreign legal and natural entities. A stock market is established as a joint-stock company according to the provisions of the Company Law (Official Gazette of the Republic of Macedonia No.28/04).

A stock market may be established under the following conditions:

- founders must possess the minimum amount of cash to participate in the equity and have relevant business premises for organising the broker activities.
- to have already obtained a license for establishment and operation from the Securities and Exchange Commission;
- to be equipped both with personnel and equipment necessary for performing stock exchange operations.

A stock market is established with principal capital in cash of at least 500.000 EUR in denar currency according to the middle exchange rate of the National Bank of the Republic of Macedonia on the date of issuing the license for establishment and operation of the stock market.

Participation of a sole founder in the principal capital of the Stock Market may not exceed 10% of the amount of voting shares of the Stock Market.

Founders of the stock market may sell their own shares to any legal and natural person.

**Are there national rules which limit the number of persons which have access to those markets?**

There are no rules in the Republic of Macedonia that restrict the number of persons who have access to regulated markets.

**Can credit institutions become members of a regulated market?**

Pursuant to the Securities Law, members, i.e. participants in trading on the Stock Market may be brokerage houses and banks (credit institutions) registered and licensed to operate in the Republic of Macedonia upon a previously obtained approval from the Securities and Exchange Commission.

**14. What are the information requirements vis-à-vis competent authorities and investors on transactions performed on regulated markets?**

The stock market is obliged to submit to the Securities and Exchange Commission (hereinafter: Commission) daily, weekly and monthly reports on its operation, giving necessary information about the situation on the market (number and percentage of traded instruments, joint stock companies, number and value of transactions by authorised stock market participants, etc).

The stock market is obliged under the Securities Law ("Official Gazette of Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04) to submit to the Commission an annual report of its operations, for which it must receive an approval from the Commission.

The stock market submits to the Commission financial statements for the previous year audited by an independent auditor, at the latest by 31 May of the current year. (Article 100 of the Securities Law)

The stock market is obliged to organise and install a relevant IT system through which it will regularly and promptly inform the public about the following:

- title of the issue and type of securities traded on the Stock Market;
- the last buy and sell price, the highest, lowest and closing price of separate types of securities;
- volume and value of traded securities and
- other relevant information important for the operation of the Stock Market.

In addition to this, the stock market has enabled the Securities and Exchange Commission to conduct direct supervision over the current trading with securities (instruments) every day during which such transactions are conducted.

**15. Which instruments can be dealt in on regulated markets? What are the conditions required for the admission of these instruments to official listing on the regulated markets?**

**Which instruments can be dealt in on regulated markets?**

The following items are traded on regulated markets: shares, bonds, treasury bills, commercial papers, state bills, deposit certificates and other financial instruments that are considered as investment according to the Securities and Exchange Commission (Article 2 of the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04)).

**What are the conditions required for the admission of these instruments to official listing on the regulated markets?**

According to the Securities Law, conditions, procedures and manner of quotation of long term securities on the Stock Market are regulated with regulation, upon a prior approval by the Securities and Exchange Commission.

The quotation of long term securities is carried out upon request of the issuer, filed in writing. Long term securities offered for quotation on the Stock Market contain all elements determined in legal and other regulations, as well as in the approval for their issuance.

General pre-condition for quotation of long terms securities is that they should be completely paid in and unlimitedly transferable.

The Stock Market is obliged to keep separate registry for each issuer, where all data are entered and kept, as well as documents on the issuer, the securities of which are quoted on the Stock Market.

The Rulebook on Quotation of Securities on the Macedonian Stock-Exchange JSC Skopje, from May 2004, that was approved by the Securities and Exchange Commission, regulates the quotation of securities, stock-exchange market rate, market of joint stock companies with public ownership and free market.

#### Quotation:

The following general pre-conditions relating to the issuer must be fulfilled in order for the securities to be listed on the stock-exchange market:

- the issuer can be a trade company, the state, a state institution or a unit of the local self-governance. If the issuer is a trade company, the same must be registered in the Republic of Macedonia and work according to the current legislation.
- the issuer and its activity must be suitable for quotation according to the opinion of the Stock-Exchange Market.
- The company requesting quotation for the first time must have relevant experience and reputation in the activity.
- The latest financial report of the company that is listed for the first time not to be older than six months from the date of its adoption at the Assembly of Shareholders.
- The Stock-Exchange Market must be assured that there is enough public interest for the activity of the issuer of securities for which the quotation is requested.
- The issuer is obliged to submit audited annual financial statements for the last three years.
- In addition to the aforementioned, the following general pre-conditions pertaining to securities must also be fulfilled:
- Securities for which quotation is requested on the Stock-Exchange should be securities without restrictions regarding their transferability.
- When a request is filed to the Stock-Exchange Market Rate for any kind of securities, the request must refer to all securities of that kind.
- For each subsequent issuance of securities of the same kind, as the ones that have already been listed, the issuer informs the Stock-Exchange Market about the level of realisation of the new issuance (number of shares and percentage) and file again a formal Request for Quotation on the Stock-Exchange Market.
- Securities that are convertible into another kind of securities can also be accepted for listing on Stock-Exchange Market.

According to the Rulebook on Quotation, the following pre-conditions for quotation of shares, i.e. bonds apply:

1. For stock-exchange market rate of securities, the issuer must fulfil the following pre-conditions:

1.	Veracity and objectivity of financial reports	- audited financial statements for the last three years
2.	Principal equity	at least 2.000.000 EUR
3.	Percentage of securities in the public	at least 25%
4.	Number of shareholders	at least 200

2. At least 25% of shares of a certain kind should be property of at least 200 shareholders. During the calculation of the percentage from the previous paragraph, the shares possessed by the following parties shall be exempted:
  - a) directors of the issuer,
  - b) more significant shareholders (individual or institutional) with ownership exceeding 10% of the kind of shares and
  - c) long term securities ownership of the Government of the Republic of Macedonia and other state institutions.



1. For stock-exchange market rate of bonds, the issuer must fulfil the following pre-conditions:

1.	Veracity and objectivity of financial reports	- audited financial statements for the last three years
2.	Total nominal value of realised issuance	at least 500.000 EUR
3.	Percentage of bonds in the public	at least 25%
4.	Number of bond-owners	at least 50

2. Bonds, the issuer of which is the Republic of Macedonia, a state institution or the National Bank of the Republic of Macedonia, and bonds for which the guarantee has been given by the Republic of Macedonia, shall be listed for Stock-Exchange Market Rate.
3. Different series of same kind of bonds of certain issuer must be accepted on the same segment for stock-exchange market rate.

Pursuant to the Rulebook of the Macedonian Stock-Exchange Market JSC Skopje, the securities are traded on the unofficial market, as well, which consist of the following:

1. Market of joint stock companies with public ownership is the market segment on the Stock-Exchange Market where the securities of joint stock companies, kept in the Registry of the Securities and Exchange Commission are listed, i.e. joint stock companies, which upon their establishment have issued securities by way of public call, or have more than 100 shareholders and principal equity exceeding 1.000.000 EUR.
2. Free market which is a market segment where all other types of securities are traded, except for the ones for stock-exchange market rate and the market of joint stock companies with public ownership.

Free market is an organised place for trading, where authorised participants trade with securities, pursuant to the Securities Law and Procedures for trading on the Stock-Exchange Market.

#### **16. Can EU – issuers have access to official listing on regulated markets?**

In accordance with the current legislation in the Republic of Macedonia relating to listing of securities on regulated markets, there are no special conditions and restrictions for issuers of securities from other countries (including EU member countries) for listing of their securities in the Republic of Macedonia. In the course of the first issuance and introduction of foreign securities in the Republic of Macedonia, an approval from the Securities and Exchange Commission is needed (Article 15 of the Law on Foreign Exchange Operations (Official Gazette of the Republic of Macedonia Nos. 34/01, 49/01, 103/01 and 51/03), .

This means that a foreign issuer, in addition to the aforementioned conditions, may list his/her securities on the stock market in the Republic of Macedonia provided that they meet the listing conditions and comply with the stock market listing rules that apply to Macedonian entities, as well.

## Legal framework - Supervisory authorities

**17. Describe the powers and duties of supervisory authorities on the securities sector (to carry out on-the-spot verifications, to require supplementary information, to cooperate with third countries authorities). Are supervisory authorities bound to secrecy as to information received from third countries competent authorities in particular? How many people are employed by these supervisory authorities? What are the professional qualifications required?**

**Describe the powers and duties of supervisory authorities on the securities sector (to carry out on-the-spot verifications, to require supplementary information, to cooperate with third countries authorities).**

The Securities and Exchange Commission (hereinafter 'Commission') supervises the work of the following subjects in the field of operations with securities: brokerage houses, banks operating with securities, the long term securities exchange, the central securities depository, investment funds, investment fund management firms, investment consulting firms, brokers, investment advisors and joint stock companies in their securities operations.

Within its supervisory activities, the Commission verifies the legal obligations and the regularities of the material and financial operations of the authorised participants (Brokerage houses and banks in their operations with securities). The Commission supervises the authorised participants' work, inspects the books, acts, and other documents of brokerage houses and banks related to securities, and particularly referring to: documents required to execute a stock market transaction (an agreement between the authorised participant and the client seller/buyer of securities); authorisation to make reservations on the client's securities account registered in the Central Securities Depository; payment and withdrawal of cash related to selling and purchasing of securities; letter of authorisation and other documents required for securities transfer; keeping the order book; monitoring the client's, the banks' and the brokerage houses' orders; maintaining cash flows on a separate account of the clients (the so called "client account"); capital liquidity prescribed by the law; status changes; base capital increase, decrease and changes; adequacy and quality of management; compliance with the rules in the exchange market operations and the professional ethics of brokers; compliance with the code of ethic and honour in the stock market; supervision of acts of authorised participants; human resources, technical and organisational conditions of work for the authorised participant; meeting obligations by the authorised participant to inform the Commission; bring the company's acts in compliance with the legislation; supervision of the registration in the trade register and incorporated changes in it; supervision of the company management system; supervision of meeting the financial obligations towards the Securities and Exchange Commission; reports and information on business activities of brokerage firms and banks; audit reports and additional information on conducted audits of the brokerage firms and banks and other documents subject to control.

During supervision, the person authorised by the Commission may require from the authorised participant to ensure that access is allowed to the business books, business records, administrative or business registers and other documents related to securities operation in the scope necessary for the verification, i.e. the scope provided by the legal responsibilities of the Commission. The person overseen is obliged, upon Commission's requirement, to submit the software statements, i.e. copies of business books, business documentation and administrative, i.e. business evidence.

The Commission may conduct regular and random inspection. According to the way the inspection is conducted, it can be a direct or an indirect one. The indirect inspection is performed by submitting documents by an authorised participant, and the direct inspection is performed by way of direct examination of data related to the regular work in the overseen company's premises. Based on the

area of operations (scope of control) of authorised participants, the inspection may be partial or complete.

The Commission conducts the supervision of securities issuing companies through an inspection of periodical and annual reports and the business books and other documents. The Securities Commission may conduct supervision of other companies whose securities have been listed on the stock market related to securities issuing, trading and listing. In cases when the Commission finds irregularities, it can issue a decision on temporary de-listing of the company.

The Commission inspects the following: documents on the legal performance of long term securities operations; whether the long-term securities issuer acts in line with the provisions of the law, i.e. the act on issuance of securities; compliance with the long term securities exchange regulations; whether the stock market and the brokers comply with the laws and regulations related to the securities operations, as well as their own regulations, statute and other acts based on which the permission to work on the stock market is issued; whether there is trade of securities meeting the legal requirements, i.e. whether the operations are performed by authorised brokers; the financial audit of the stock market members and the way of providing the performance of obligations of buying and selling contracts signed in the stock market trade of securities.

The Securities and Exchange Commission has adopted Rules on the Procedure and Supervision of Companies and Participants on the Stock Market published in the Official Gazette of the Republic of Macedonia No. 77/02 and Rulebook on the Procedure for Conducting Supervision of Investment Fund Operations, the Investment Fund and Deposit Bank Management, published in the Official Gazette of the Republic of Macedonia No. 85/00.

The Securities and Exchange Commission has regular contact with regulators of securities markets (commissions) of countries from Europe countries and the world, particularly with those from the region. As a result of this cooperation, the Securities and Exchange Commission has signed bilateral memoranda for cooperation with Slovenia (2002), Romania, Croatia, Montenegro, Bosnia and Herzegovina Federation and Bulgaria (2004).

**Are supervisory authorities bound to secrecy as to information received from third countries competent authorities in particular?**

In line with the memoranda for cooperation which the Securities and Exchange Commission of the Republic of Macedonia has signed with regulatory bodies in other countries, it is agreed that confidential information which is exchanged on reciprocal basis may only be used in the procedures by the Securities and Exchange Commission or other responsible bodies.

**How many people are employed by these supervisory authorities?**

In line with the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), the Securities and Exchange Commission, as a supervisory and regulatory body of the securities market, in addition to the members and president of the Commission which are officials elected by the Assembly of the Republic of Macedonia, has an expert staff managed by a director. The expert staff has a total staff of 9, 7 experts and 2 technical support.

**What are the professional qualifications required?**

The president and the members of the Commission must have university qualifications and be outstanding experts in the field of finance and corporate law.

The expert staff includes four departments: control of capital markets; licensing; capital market research and development and international cooperation; and general and legal affairs.

The work of the expert staff within the Securities and Exchange Commission is performed by university degree lawyers and economists (experts).

**18. Which annual accounting prudential and statistical information are investment firms and listed companies required to give to the supervisory authority in respect of their businesses? Which information are collective investment undertakings and/or their management companies required to submit? What powers does the supervisory authority have to require supplementary information?**

**Which annual accounting prudential and statistical information are investment firms and listed companies required to give to the supervisory authority in respect of their businesses?**

Pursuant to the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), a brokerage house is obliged to regularly inform the Securities and Exchange Commission about its financial status, statute changes, changes in the ownership structure of the principal capital, as well as about any case of payment inability.

The brokerage house firm submits monthly reports on its work to the Securities and Exchange Commission, at the latest by the 10<sup>th</sup> day of every month, which refers to the previous month.

The form and content of monthly reports are prescribed in the Rulebook adopted by the Securities and Exchange Commission and published in the Official Gazette of the Republic of Macedonia No.82/01).

According to the Rulebook, the monthly report on the work of authorised participant on the stock market submitted to the Securities and Exchange Commission needs to contain the following:

1. Title of the authorised participant on the stock market that submits the monthly report;
2. Realised turnover of the participant of the stock market:
  - total realised turnover in denars;
  - total turnover of bonds in denars and number of bonds;
  - total turnover of shares in denars and number of transactions
  - total turnover of state owned shares in denars and number of transactions;
  - realised block transactions in denars and number of transactions;
  - realised block transactions according to the type of securities (shares, bonds, and state owned shares).
3. Realised revenue per type of activities performed by the authorised participant, in accordance with the Court Registration and Decision for establishment and operation of the authorised participant, issued by the Securities and Exchange Commission:
  - a. Realised revenue on the basis of execution of clients' orders:
    - realised revenue from purchasing and selling of bonds and
    - realised revenue from purchasing and selling of shares;
  - b. Realised revenue on the basis of quotation on official markets on the stock market;
  - c. Realised revenue from management of the financial property of clients;
  - d. Realised revenue on the basis of organising, preparing and buy-out of newly issued long-term securities;
  - e. Realised revenue on the basis of counseling of clients in the course of issuance and trading with long-term securities;
  - Data on the sellers and buyers of securities, realised as block transactions;
  - Number of concluded contracts for stock market mediation during the reporting period;
  - Number of received orders from clients during the month for which the report is submitted, in accordance with the book of orders of authorised participants on the stock market;
  - Number of realised orders during the reporting period;

The aforementioned data of this Rulebook are presented in a table, which is a constituent part thereof.

Moreover, the brokerage house is obliged to submit to the Securities and Exchange Commission a regular annual financial report for the previous year, confirmed by an authorised auditor, not later than the end of May of the current year.

According to the Rulebook for Quotation on the “Macedonian Stock Market for Long-Term Securities” JSC Skopje, permanent obligations are expected as of May 2004, that are to be fulfilled by the issuers upon receipt of securities for quotation.

Chapter VI of this Rulebook stipulates general publication of data and information with the purpose of not creating a false picture of the securities market, the listed company is obliged to publish all information essential for estimation of the standing of the company for the shareholders and the public in general.

The company submits to the stock market a sample of the audited annual financial reports (profit balance sheet, income statement, report on the cash flows and report on changes in the capital) within 3 three months upon compiling it, i.e. within one week upon its adoption by the Assembly.

The company submits to the stock market quarterly and semiannual unaudited profit balance sheet within one month upon the expiration of the period that the profit balance sheet refers to. The accounting policy applying to quarterly and semiannual profit balance sheets must be consistent with the policy applying to annual reports.

The listed company is obliged to submit the following information relating to its capital without any delay:

- a) increase or reduction of the principal capital;
- b) changes in the structure of the capital;
- c) any new indebtedness, in particular the eventual guarantees, provided that the trade company has listed debt securities;
- d) all changes in the rights belonging to any type of listed securities;
- e) decision for buy-out of own shares, according to the provisions of the Company Law (quantity, prices, subsequent purchasing/selling)
- f) any purchasing of own shares by members of management board, supervisory board and persons on managing positions.

The listed company is obliged to submit the following information relating to the changes in the financial status without any delay:

- a) unanticipated significant reductions in the profit, great losses or significant increases of the profit;
- b) informatio relating to the profit, i.e. notification that the projected profit does not correspond to the current trends;
- c) purchasing or selling of property;
- d) new credits loan.

If the managers of the company have knowledge about changes that are related to the financial status or the effective operation of the company, or to outcomes that the company expects from its activity, and if such knowledge may lead to significant changes in the prices of listed securities, the company must immediately inform the stock market about all relevant data relating to such change.

The issuer must inform the stock market once a year (by submitting audited financial reports) about changes in the ownership structure of the management capital and of the members of managing bodies of the company.

In accordance with the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04), the Rulebook on content of separate accounts

in the chart of accounts for pension funds ("Official Gazette of the Republic of Macedonia' No. 44/04) and Rulebook on the chart of accounts, form and content of basic financial reports and additional reports for pension funds (Official Gazette of the Republic of Macedonia No.44/04), pension fund management companies shall have an obligation to submit to the Agency for Supervision of Fully Funded Pension Insurance, once a year or more frequently, audited annual financial reports; data on the shareholders of the company; names of members of management boards and amount of their remuneration and other data upon request by the Agency.

Companies should, on a monthly basis, submit information to the Agency that includes the status of certain accounts from their chart of accounts. They are the accounts of revenues (payments that the company collects from the pension fund), certain expenditure accounts (payments to the Agency, asset custodian and the Fund for Retirement and Disability Insurance of the Republic of Macedonia, for remuneration of selling agents) and capital accounts (equity of the company) for the purpose of following their work and fulfillment of the requirements for maintaining the capital.

Pension fund management companies submit to the Agency financial reports about the pension fund they manage, annually or more frequently, upon request of the Agency. Also, companies should submit a report to the Agency on a daily basis that covers the operations on all accounts from the chart of accounts of the pension fund they manage, as well as reports on the structure of pension fund assets.

The asset custodian submits reports to the Agency regarding its activities every six months or in shorter time intervals. The asset custodian is obliged to immediately inform the Agency, orally, and then in writing, in case of: existence of grounds for suspicion or for not honouring the contract for asset custody (where the custodian appears as a contractual party); not obeying the law; or an act that is contrary to the interests of pension fund members.

#### **Which information are collective investment undertakings and/or their management companies required to submit?**

According to the Law on Investment Funds (Official Gazette of the Republic of Macedonia No.09/00), a fund management company prepares and submits audited annual financial reports for each fund it manages, within three months from the adoption of the closing account of the fund.

One auditor or an auditing company may prepare four subsequent financial reports for one investment fund. One auditor or an auditing company, during one calendar year may prepare financial reports only for three funds.

A fund management company prepares quarterly financial reports for each fund it manages, and it submits them to the Securities and Exchange Commission and investors in the fund within two months upon the expiration of the quarter.

The Securities and Exchange Commission prepares a list of authorised auditors who can conduct audit of financial reports of the investment fund and the fund management company.

Financial reports of the fund contain data on:

##### **1. Status of fund assets:**

- securities
- monetary deposits
- other assets
- total assets
- liabilities, and
- net value of the assets;

##### **2. Number of share documents, i.e. shares;**

3. Value of single share;
4. Structure of the portfolio of securities;
  - securities listed on stock market of securities
  - securities traded on some other regulated market
  - new issue of securities, if the conditions for their issuance contain an obligations for filing a request for including the securities on some stock market, money market or some other regulated market;
5. Participation in the total assets of the fund, as well as data on the changes in the portfolio of securities for the reporting period are stated for any type of security;
6. changes in revenues and expenditures of the fund for the reporting period;
  - revenues from investments
  - other revenues
  - managing expenses
  - expenses for the deposit bank
  - other expenses and expenditures
  - net revenue
  - payments of profit to owners of share certificates or dividend to shareholders, as well as re-investment of the profit and
  - other changes referring to the assets and liabilities of the fund;
7. Comparative analysis of the work during the last three years, where for the end of each business year the following should be stated:
  - total net value of the portfolio
  - net value of a single portion
  - market value of shares of the closed fund;
8. Other data and information enabling the investors to have a complete insight in the real status, development of the activity and results of the fund.

Annual financial reports are prepared in compliance with the international accounting standards. Securities and Exchange Commission has prescribed in the greater detail the manner and conditions for submission of information to the Securities and Exchange Commission by the fund management companies in a separate Rulebook (Official Gazette of the Republic of Macedonia No.85/00), which stipulated that the fund management company (hereinafter: the company) submits to the Securities and

Exchange Commission the following:

- regular reports and
- reports upon occurrence of changes.

The following reports are considered as regular reports: annual financial reports of the company, annual financial reports of the funds the company manages and quarterly financial reports of the funds the company manages.

The company submits to the Securities and Exchange Commission quarterly financial reports for each fund it manages, within two months upon the expiration of the quarter.

Pursuant to Article 10 of the Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 09/00), a fund management company submits a report to the Commission about any change that might have a significant influence on the investor's decision for investment, within three days upon the occurrence of the change. The report needs to be submitted to the investors of the fund at the same time when it is submitted to the Securities and Exchange Commission.

According to the aforementioned Rulebook, reasons for submitting reports upon the occurred changes to the Securities and Exchange Commission by the company shall be the following:

1. changes in the statute of the fund management company;
2. if the capital of the company has fallen below the amount prescribed in Article 44, paragraph 1, indent 1 of the Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 09/00);
3. investment of own capital in other legal entities, if the amount of the investment is more than 10% of the capital of the company;
4. changes in the management bodies of the company, such as:
  - changes in the structure of the management bodies;
  - changes of personal data of a member of the management board: name and surname, or alike;
  - initiation of infringement or criminal procedure of financial nature against a member of management bodies and alike;
5. changes of founders of the company, i.e. changes in the ownership structure of the company;
6. new issue of securities;
7. difficulties with the current liquidity;
8. issue of prospectus of investment funds the company manages with their changes;
9. any change that might have a significant influence on the investor's decision for investing in a fund the company manages with;
10. cancellation of audit by an authorised and appointed auditor of the company and the fund;
11. other changes that are important for the operation of the company.

The company fulfills the requirements for notification of the Securities and Exchange Commission according to indent 2 of this Rulebook, by submitting information about the amount of the capital of the company, amount of the minimum necessary capital for performing the activity in compliance with the Law on Investment Funds (Official Gazette of the Republic of Macedonia No.09/00) and the reasons for reduction of the capital below the minimum prescribed level of capital in the Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 09/00). The information is submitted to the Securities and Exchange Commission within three days from the date of reduction of the capital below the minimum level.

The company fulfills the requirements for notification of the Securities and Exchange Commission according to indent 3 of this Rulebook, by submitting notification to the Securities and Exchange Commission within three days from the date of investment.

The company fulfills the requirements for notification of the Securities and Exchange Commission according to indent 4 and 5 of this Rulebook, by submitting information about the occurred changes within 3 days from the date of occurrence of the change.

The company fulfills the requirements for notification of the Securities and Exchange Commission according to indent 6 of this Rulebook, by submitting notification to the Securities and Exchange Commission about the realisation of the approved issue of securities in a manner and under conditions set forth in the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04).

The company fulfills the requirements for notification of the Securities and Exchange Commission according to indent 7 of this Rulebook, by submitting notification to the Securities and Exchange Commission within three days from the date of determining the difficulties regarding the current liquidity.

The company fulfills the requirements for notification of the Securities and Exchange Commission according to indent 8 of this Rulebook, by submitting a copy of the prospectus of investment funds it manages and a copy of changes thereof, within three days of the date of the first publication of the prospectus or the date of the first publication of the changes thereof.

The company fulfills the requirements for notification of the Securities and Exchange Commission according to indent 9 of this Rulebook, by submitting information about any change that might have a



significant influence on the investor's decision for investing in the fund the company manages within three days from the date of occurrence of the change.

The company fulfills the requirements for notification of the Securities and Exchange Commission according to indent 10 of this Rulebook, by submitting information about the cancellation of audit by the authorised and appointed auditor and statement of the auditor about the reasons for cancellation of the audit within three days from the date of cancellation.

The pension fund management company is obliged to submit to the Agency for Supervision of Fully Funded Pension Insurance the following information:

- report on the status of assets, liabilities, revenues and expenditures of the company and pension fund it manages, signed by an authorised accountant and audited by an independent accounting firm;
- closing accounts of the company and pension fund signed by the general manager and head of the accounting unit, audited by an external authorised auditor;
- detailed data for acquisition and transfer of assets of the pension fund stating the date and price of the transaction and the broker firm for each asset separately;
- costs such as broker commission, remuneration for funds' asset custodians, commission for marketing agents, and other costs according to this Law;
- data about the shareholders of the company, including their names and addresses;
- names of members of management bodies and amount of remuneration for their work;
- copy of the brochure;
- data about the value and participation of pension fund assets invested in a certain instrument, including data about the issuer of the instrument;
- detailed data about the number of pension fund members, number of pension fund members that became members during the current year, number of members who transferred to other pension funds, number of deceased members and number of retired members;
- other data upon request of the Agency.

#### **What powers does the supervisory authority have to require supplementary information?**

According to the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), the Securities and Exchange Commission supervises the work of brokers, brokerage houses and banks. The Securities and Exchange Commission may check the books, acts and other documents of brokerage houses and banks referring to the operations with securities.

In conducting the supervision, the Securities and Exchange Commission may request:

- reports and information about business tasks of brokerage houses and banks;
- auditing reports and additional information about conducted audit of the brokerage house or bank, and
- other documents relating to the supervision.

Pursuant to the Law on Investment Funds (Official Gazette of the Republic of Macedonia No.9/00), the Securities and Exchange Commission may without any limitation check the business books and other documents of fund management companies, investment funds and deposit banks relating to the operation of investment funds.

The agency shall have authorisation to request additional information from the companies in addition to the ones prescribed with the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04).

### **19. What are the powers of intervention of the supervisory authority in cases of investment firms in difficulties?**

According to the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), the Securities and Exchange Commission (hereinafter 'Commission') is responsible for brokers, brokerage houses, banks and participants in the stock market, trading and investment advisors. It is authorised to undertake measures and activities of supervision and sanctioning the operations of aforementioned subjects.

The Securities Law and the Law on Investment Funds (Official Gazette of the Republic of Macedonia No. 09/00) do not provide authorisation for the Commission to intervene in cases when investment companies face difficulties in their work.

When the Commission's supervision of the authorised participants in the stock market identifies irregularities and illegal securities operations or irregularities in book-keeping, the Commission reaches a decision for eliminating the identified irregularities within a certain period.

The authorised participants on the stock market are obliged to eliminate the identified irregularities and submit a report to the Commission, which will describe the measures undertaken to eliminate irregularities. The report is accompanied by documents and other evidence which will substantiate that the identified irregularities have been eliminated.

If the supervision determines that the authorised participants have violated the securities operations rules, the Commission reaches a decision on the complete or partial injunction on the work of the authorised participant which he was authorised to perform on the bases of the Commission decision, permanent or temporary injunction on the brokerage house to perform certain operations which it was authorised to perform with the Commission decision, public announcement by the Commission that the authorised participant has violated the rules of long-term securities operation, or cancellation of the consent concerning the appointment of the relevant brokerage house director.

The Commission's decision may be appealed against to the Government of the Republic of Macedonia within 15 days from the delivery of the decision, whereas the appeal against the decision does not delay its execution.

The Securities and Exchange Commission reaches a decision for withdrawing the license for long-term securities operations in the following cases: the authorised participant has committed a severe violation of long-term securities operations rules, the authorised participant has failed to begin operation within six months from the day the license was issued or suspends operations for a period longer than six months, the license was issued on the basis of false evidence and the authorised participant does not meet the conditions for further operations.

Prior to reaching the decision, the Securities Commission provides an opportunity for the authorised participant to elaborate the reasons which may lead to suspension of his/her license.

The authorised participant may file an appeal to the Government of the Republic of Macedonia within 15 days from the day the decision on suspension of license was delivered.

The Securities and Exchange Commission supervises the Investment Consultants and investment consulting companies (the work of the Investment Consultant may be performed by an investment consulting company, and the operations may be performed by authorised agents who have passed a particular expert examination on investment consulting (Investment Consultants))

The Commission reaches a decision to withdraw the license for Investment Consultants in the following cases: the Investment Consultant violates the regulations on long-term securities operations, the license was issued on the basis of false evidence and the Investment Consultant does not meet the conditions for further operations.

The Investment Consultant may appeal against the Commission's decision with the Government of the Republic of Macedonia within 15 days.

Besides the listed measures, the Securities and Exchange Commission, in line with the Securities Law and the extent of its powers, may file a complaint with the relevant court for the mentioned violations by the legal or natural entity, i.e. bring criminal charges against them to the public prosecution office.

The Supervision Agency of Capital Finance Pension Insurance is authorised to withdraw or cancel the license for the pension fund management in the following cases: if the company fails to maintain the share capital at the legally required level; if it fails to meet the legal conditions for establishing the company; upon request of the company, or due to severe violations of provisions in the Law on Mandatory Fully Funded Pension Insurance (Official Gazette of the Republic of Macedonia Nos. 29/02, 85/03 and 40/04); if the Agency determines irregularities in the company operations or bookkeeping and if the company has been found guilty for the loss of funds in the pension fund. In cases when the Agency believes that the interests of the pension fund members have been jeopardised or may be jeopardised, it may carry out supervision of the fund.

## **20. Is there a right of appeal to the Courts against any decisions taken by the supervisory authority?**

Under the Constitution of the Republic of Macedonia, the right to appeal in the public administration and before judicial bodies is guaranteed.

In addition to the laws referring to its responsibility, the Securities and Exchange Commission also applies the Law on General Administrative Procedure (Official Gazette of the Republic of Macedonia Nos. 47/86-consolidated text and 44/02), which is applicable to all public administration bodies and institutions in the Republic of Macedonia.

Under the Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04), clients are entitled to file an appeal against the decisions brought by the Securities and Exchange Commission, as the supervisory body for the capital market. An especially established Committee at the Government of the Republic of Macedonia decides in a second instance procedure.

In cases when clients are dissatisfied with the second instance decision reached by the Committee established by the Government, they can invoke their right and within certain deadlines start a public administration procedure at the Supreme Court of the Republic of Macedonia.

In all other cases, clients have the right to bring a legal action to the Court based on grounded evidence, for determining the responsibility of the body or individuals who were involved in reaching the decision.

A public administration dispute or another procedure filed to the competent court may be initiated against the acts of the Agency for Supervising Mandatory Fully Funded Pension Insurance, depending on the contents of the subject.

## **21. How is the supervisory authority's operational independence ensured?**

The Securities Law (Official Gazette of the Republic of Macedonia Nos. 63/00, 103/00, 34/01, 04/02, 37/02, 31/03, 85/03, and 96/04) defines the Securities and Exchange Commission as an independent organisation with the status of a legal entity responsible to implement laws and by-laws related to this field.

A person who meets the following conditions can be nominated for a president or a member of the Securities and Exchange Commission: the person must be a citizen of the Republic of Macedonia, hold at least a university degree, be an outstanding expert in the field of finance and corporate law, must not be member of any bodies and political parties, must not be a management person or Management Board member of a company over which the Securities and Exchange Commission or the National Bank of the Republic of Macedonia performs supervision, must not be a shareholder with over 25% stake in a joint stock company which issues securities and must not be an official who manages a state body.

In addition, the president or members of the Securities and Exchange Commission cannot make decisions on legal entities they are in contract relations with; nor be shareholders in companies which are subject to control and approval by the Securities and Exchange Commission; and must treat the information they have received during the work at the Securities and Exchange Commission as confidential.

The term of office of the president and the members of the Securities and Exchange Commission can terminate in cases of unjustified absence from work at the Securities and Exchange Commission over a period of six months or more; submission of their resignation in writing; a loss of working ability for performing regular activities; revelation of a business secret while performing work for the Securities and Exchange Commission; execution of duties in a dishonest and irresponsible manner; becoming members of state bodies or political parties, managers or members of a company's Management Board which is subject to supervision by the Securities and Exchange Commission; acquisition of over 25% shares of the total number of shares in a company which issues securities, or becoming an official of a public administration body.

In order to ensure higher independence of the Securities and Exchange Commission, its Statute is confirmed by the Assembly of the Republic of Macedonia and its annual accounts are audited and evaluated by an auditing company in line with the international audit standards and an audit report is prepared in line with the audit regulations.

To ensure its independence, the Securities and Exchange Commission provides resources for its operations from its own funds, i.e. does not use budgetary funds. In cases of shortage of funds, in line with the Securities Law, funds are provided from the budget of the Republic of Macedonia.

The new Securities Law will allow for a greater independence of the Securities and Exchange Commission regarding the funds of its operations. The funds will be provided via fees that the Securities and Exchange Commission will be charging based on a price list for services. This means that, with the new Securities Law, the funds for the operations of the Securities and Exchange Commission will not be provided from the budget of the Republic of Macedonia.

The Agency for Supervision of a Mandatory Fully Funded Pension Insurance is an independent legal entity, and not a body within a certain institution. It is responsible for its work to the Government of the Republic of Macedonia. The work of the Agency is funded by fees which it charges to companies for pension fund management, and the fees are determined by the Agency upon approval from the Government of the Republic of Macedonia.

## **Legal framework - Market structure information**

### **22. What is the number of (broken down by type of product/market):**

- a) broker-dealers on regulated markets;**
- b) credit institutions providing investment services;**
- c) portfolio managers;**
- d) collective investment undertakings (number of undertakings as well as total amount of assets under management)**
  - i) total, of which:**
  - ii) domestic;**

- iii) **non-domestic EU;**
- iv) **non-domestic non-EU.**

**a) broker-dealers on regulated markets;**  
– 8 brokerage houses.

**b) credit institutions providing investment services;**  
– 6 banks

**c) portfolio managers;**  
– None

**d) collective investment undertakings (number of undertakings as well as total amount of assets under management)**  
– None  
i) None  
ii) None  
iii) None  
iv) None

Out of the total of 14 certified participants on the stock market, 8 work as brokerage houses and 6 as banks. The total number of staff is 43 people working as brokers on the stock market. They have been certified by the Securities and Exchange Commission and have passed an examination to be able to work with securities.

### III. PERSONAL DATA PROTECTION

#### *Legal framework*

#### **1. Does existing legislation foresee sanctions in case of infringement of its provisions?**

In Chapter 7 of the Law on Personal Data Protection (Official Gazette of the Republic of Macedonia Nos. 12/94 and 04/02), the provisions regulating violations for non-compliance with the existing provisions and the fines for the violation determined as follows:

- A fine of 20 to 35 salaries for violation performed by a data processing administrator if he/she:
  1. has collected, processed, kept, used and distributed personal data for which he was not authorised by law or by a written consent of the person to whom the data pertains;
  2. has failed to identify and implement a regulation for the procedures and measures for safety of personal data;
  3. has revealed facts related to collecting, processing, keeping and distributing personal data to other legal or natural entities which are not authorised for performing such activities;
  4. has failed to delete from the data collection the personal data after they were collected, processed, kept and used in the necessary activity;
  5. has distributed personal data to an unauthorised user or has not kept an internal register on the distribution of personal data or submitted personal data of the client in a form which enabled the identification of the person's identity;
  6. has failed to ensure that the data collection catalogue contains the data prescribed by the law or has failed to provide data required for the collective catalogue;
  7. has failed to enable the person or a proxy to review the data which refer to him/her and get a copy of the data from the collection;

8. has failed to make additions, amendments and deletions of the data as advised by the person pointing to incorrect and out of date evidence;
  9. has failed to make changes of data for which the person has received instructions in writing;
  10. has worked in contradiction to the provisions in this Law and transferred data out of the Republic of Macedonia.
- A fine of two to five salaries is prescribed for the listed violations for the person responsible for the supervisor of the data processing administrator.
  - A fine of five to ten salaries is prescribed for the listed violations for a self-employed person or professional, and a fine of one to two salaries for the listed violations for a natural entity.

In line with the aforementioned Law, a fine of 20 to 35 salaries is prescribed for the user of a data collection for distributing personal data which he/she received from the data collection manager, or they were used for purposes which are not in compliance with the Law.

- A fine of two to five salaries is prescribed for the listed violations in line with the Law for the user, and a fine of five to ten salaries for the listed violations is prescribed for self-employed person or professional. A fine of one to two salaries for the listed violations is prescribed for a natural person.

In line with the provisions of the aforementioned Law, a fine of 20 to 35 salaries for a violation of a contracted service provider is prescribed if he/she has acted beyond the limits of his/her authorisations as initially allowed to by the customer, or has made unauthorised use of the data or transferred it to another entity.

- A fine of two to five salaries for the listed violations is prescribed for the responsible person of the contracted service provider, and a fine of five to ten salaries for the listed violations is prescribed for the freelance individual.
- A fine of one to two salaries is prescribed for the listed violations for a natural entity, the contractor of the service provider.

## **2. How does existing legislation reconcile the right to privacy with the rules governing freedom of expression?**

The freedom of expression is guaranteed by the Constitution of the Republic of Macedonia. Article 16 of the Constitution of the Republic of Macedonia guarantees the freedom of personal conviction, conscience, thought and public expression of thought, as well as the freedom of speech, public address, public information and establishment of institutions for public information. This Article of the Constitution of the Republic of Macedonia guarantees the following: free access to information, freedom of reception and transmission of information, right to reply through the mass media, right to make a correction in the mass media, right to protect a source of information in the mass media, and prohibition of censorship.

On the basis of the aforementioned constitutional and legal guarantee, the Broadcasting Law has been adopted (Official Gazette of the Republic of Macedonia Nos. 20/97 and 70/03), which in compliance with Article 4, paragraph 1, anticipates that the broadcasting ensures the freedom of public expression of opinion, freedom of speech, public performance and public information.

The right to privacy of personal and family life and of dignity and repute, defined in Article 25 of the Constitution of the Republic of Macedonia is guaranteed with the provision of the Broadcasting Law. Article 8, paragraph 1, line 12 stipulates that one of the principles which the broadcasting is based upon is "protection of the privacy and dignity of the personality". Also, in accordance with Article 31, paragraph 2, line 2 pertaining to the content of broadcasting programmes, the following principle should be ensured through the broadcasting programmes – "respect of the freedom and rights of the human beings and citizens, their dignity and reputation".

Articles 62 and 63 of the Broadcasting Law, pertaining to the right to give reply and make correction, provides for one of the mechanisms for protection of the privacy of the personality, by determining the fact that if a person "is concerned with the factual situation or presentation in the programmes on the radio or television, she/he has the right to give reply". Broadcasting companies are obliged to

broadcast the reply within the shortest period of time, i.e. in the subsequent edition of the same programme, free of charge, for the purpose of informing the public about the fact that the person presents regarding the disputed statement. The same rule applies for publication of corrections to published information.

### **3. Does existing legislation provide derogations to the prohibition of processing sensitive data where the processing of such data is required for the purposes of preventive medicine, medical diagnosis, or the management of health care services?**

The Law on Amending and Appending the Law on Personal Data Protection (Official Gazette of the Republic of Macedonia No. 04/02), stipulates that the processing of personal data relating to the race or other origin, political or religious conviction, membership in unions, sexual behaviour, conviction, as well as data on health condition, must be clearly marked and protected.

Taking into consideration the nature, i.e. the sensitivity of such data, it is determined that the same may be transferred through telecommunication network provided they are specially protected with cryptographic methods ensuring that they will not be legible during transfer.

In the light of incorporation of the provisions of the Directive of the European Parliament and European Council for Protection of Individuals in relation to processing of personal data and free circulation of such data 95/46/EC, in the part pertaining to special categories of personal data, in the Law on Personal Data Protection (adopted by the Parliament on 25 January 2005, published in the Official Gazette of the Republic of Macedonia No. 07/05), the special categories of personal data are defined as personal data that reveal the race or national origin, political, religious or other conviction, membership in union, and data pertaining to health conditions or the sexual orientation.

Having in mind the sensitivity of the aforementioned category of personal data, the Law contains a prohibition for processing of special categories of personal data and determines in which cases, by derogation, the processing can be conducted of the aforementioned data. Among the eight clearly defined cases, it is stipulated that by derogation, the processing of special categories of personal data can be conducted if it is necessary for medical prevention, diagnostic purposes, medical treatment or management with public health institution, and if the processing is conducted by a person whose vocation is providing health protection under oath for confidentiality of data that he/she may acquire in performing his/her function.

The newly adopted legal provisions also provide an obligation that the processing of special categories of personal data to be clearly marked and protected, and the transfer through telecommunication network to be carried out only if the special categories of personal data are especially protected with cryptographic methods, ensuring that they will not be legible during the transfer.

The Law on Health Care (Official Gazette of the Republic of Macedonia Nos.38/91, 46/93, 55/95 and 10/04) strictly defines that in providing health care protection, health workers are obliged to take care of the beneficiaries of health services, to respect their dignity, to abide by the medical ethics and keep confidential the professional secrets.

Currently, a Draft Law on Protection of Mental Health is underway, the provisions of which will be harmonised with the provisions of the Law on Personal Data Protection, in particular in the part relating to the exception by derogation for processing of special personal data, if it necessary for medical prevention purposes, medical treatment or management of public health institution, and if the processing is conducted by a person whose vocation is providing health protection under oath for keeping confidential the data he/she has acquired during the performance of his/her functions.

### **4. How does existing legislation cover cross-border transfers of personal data?**

The existing legislation entirely regulates the question of cross-border personal data transfer. In the Law on Personal Data Protection (Official Gazette of the Republic of Macedonia No. 12/94 and 04/02), Chapter 5 titled "Taking personal data out of the Republic of Macedonia" contains provisions which regulate the personal data transfer from the Republic of Macedonia to other countries.

The existing Law provides that personal data transfer and distribution to users out of the Republic of Macedonia is not allowed, unless otherwise prescribed by the Law or based on a written consent by the personal data holder.

While stipulating the provision in the mentioned Law, the importance of the reciprocity principle is emphasised as a relevant principle in the international law, as well as the role of the international agreements, treaties and conventions for scientific, commercial, technical, technology, cultural and other cooperation when transferring and distributing personal data to users out of the Republic of Macedonia. The possibility for a data manager to distribute data to users out of the Republic of Macedonia on the principle of reciprocity and based on international agreements, treaties and conventions for scientific, commercial, technical, technology, cultural and other cooperation is also regulated by the Law.

The sanctions for personal data transfer and distribution out of the Republic of Macedonia, which is in contradiction to the provisions in this Law, refer to the data collection manager who can be fined. The fine depends on the subject which has performed the violation.

With an intention to transpose entirely the provisions in the EU Directive 95/46/EC of 1995 on the protection of individuals regarding personal data processing and free data circulation, particularly regarding the part referring to the personal data transfer to third countries, is provided in the newly adopted Law on Personal Data Protection (adopted by the Parliament on 25 January 2005, published in the Official Gazette of the Republic of Macedonia No. 07/05). The newly adopted Law recommends a regulatory distinction of two separate chapters: personal data transfer to other countries and distributing personal data.

Chapter 7, on the personal data transfer to other countries prescribes that personal data transfer to other countries may be performed only under the condition that the other country ensures a certain degree of personal data protection.

An individual provision in the Law lists the conditions which are assessed by the Directorate for Personal Data Protection for personal data transfer to other countries. Namely, all conditions in which the personal data transfer to another country is performed affect the assessment of the degree of the appropriate personal data protection in the country of destination. In this respect, while assessing the degree of adequacy of personal data protection, there is individual observation of every condition related to the operation(s) of personal data transfer, personal data nature and origin, the objectives and length of processing operations, the country of personal data destination, the legislation regulating personal data protection in that particular country and the regulations referring to profession rules and safety measures.

The adequacy degree for personal data protection of another country is assessed by the Directorate.

In line with the mentioned Law, the Directorate will not allow for the personal data transfer unless the country of personal data destination ensures the necessary level of personal data protection.

The proposed Law regulates the possibilities for personal data transfer to other countries and the cases when the country of destination does not ensure the appropriate degree of personal data protection with the exclusion when:

- the personal data holder has declaratively agreed to the transfer of his/her personal data;
- the transfer is necessary for implementing an agreement between the personal data holder and the Controller or when pre-agreement measures are implemented and undertaken as a response to the requirement of the personal data holder;
- the transfer is required for signing or implementing an agreement in the interest of the personal data holder between the Controller and a third party;
- the transfer is necessary for public interest protection or basic freedom and civil rights protection; and
- the transfer is necessary for the protection of the life or physical and moral integrity of the personal data holder.



In cases when the destination country of the personal data transfer does not ensure the appropriate degree of data protection, the Directorate may allow for the personal data transfer if the Controller points to the existence of certain guarantees for the protection of privacy, essential rights and freedoms of the personal data holder, which entail from valid agreement provisions.

Chapter 8 titled "Providing personal data to users" includes provisions which normatively and legally regulate the use of personal data by domestic users, as well as exchange of personal data among state bodies. It is stipulated that the Controller will allow for another user to use personal data based on a submitted written request by the user, in cases when the data is necessary for performing activities within the legally identified responsibilities of the user. There is also a provision on prohibiting the allowance of personal data use if the use cannot be done in compliance with the provisions of this Law and if the purpose of the personal data use is in contradiction with the concrete, clear and regulated purposes for which personal data is collected.

The Directorate for Personal Data Protection is an independent body which performs supervision of compliance with law in undertaking activities for personal data processing and protection and registers each personal data transfer to another country. The secondary legislation which will regulate the form, contents and procedure of keeping the register of personal data transfer to other countries will be adopted within six months from its establishment.

### ***Administrative capacity***

**1. Is there a Supervisory Authority responsible for monitoring the application of Data Protection provisions? If so, please provide information on the organisation of the Authority, including the number of its staff, notably of inspectors.**

Pursuant to the Law on Personal Data Protection (Official Gazette of the Republic of Macedonia Nos.12/94 and 04/02), supervision over the legality of collection, processing, keeping, use and delivery of personal data in the Republic Macedonia is performed by an authority defined by law that determines the database. The same authority supervises the process of taking personal data outside of the Republic of Macedonia.

As of the entry into force of this Law, such a body has not been established yet.

In the light of full transposition of the Directive of the European Parliament and European Council for Protection of Individuals in relation to processing of personal data and free circulation of such data 95/46/EC, it has been transposed in the new text of the Law on Personal Data Protection (adopted by the Parliament on 25 January 2005, published in the Official Gazette of the Republic of Macedonia No. 07/05).

The newly adopted Law contains a special Chapter "Establishment and Duties of the Directorate for Protection of Personal Data". The provision provides for the establishment of the Directorate as an independent state body in the capacity of a legal entity that supervises the legality of undertaken activities in processing of personal data. The Directorate is managed by a Director, who is appointed for a period of five years with a right to be re-elected for two consecutive terms and dismissed by the Assembly of the Republic of Macedonia upon the proposal of the Government of the Republic of Macedonia. The Director must be a person who meets the following criteria: to be a citizen of the Republic of Macedonia, to be a respected lawyer and not subject to a safety measure – injunction on performance of his/her professional activity or duty. The function of a Director is not compatible with the performance of other public functions or activities. The director shall be independent and autonomous in performing his/her function. The Director shall submit to the Assembly of the Republic of Macedonia the annual report on operations of the Agency. The Law lays down the principles and duties of the Director and employees in the Directorate to keep the data they gained knowledge of during their work as official secrets, both, during mandate, i.e. employment in the Directorate, and after the end of mandate. Thus, the Law entirely implements the basic principle of the Directive 95/46/EC of the European Parliament and European Council relating to supervision of legality of processing of personal data by an independent body.

Grounds for implementation of the new Law will be the establishment of the aforementioned independent body within six months upon its entry into force.

The acts for organisation and systematisation of positions in the Directorate are planned to be adopted within thirty days following the appointment of a Director of the Directorate, and the adoption thereof will contribute to the shaping of the organisation and staffing, i.e. the number of employees in this body.

**2. Does the supervisory Authority have investigative powers, such as powers of access to data forming the subject of processing operations and powers to collect all the information necessary for the performance of its supervisory duties?**

In line with the Law on Personal Data Protection (Official Gazette of the Republic of Macedonia Nos. 12/94 and 04/02), the management body is in charge of the operations related to the personal data information technology and information system of the Republic of Macedonia and has the responsibility to supervise the implementation of organisational and technological procedures and measures of personal data protection and maintaining data collection catalogues.

However, since the day of enactment of this Law, such a body has not been established, which is one of the main impediments in the implementation of this Law.

The mentioned Law provides that in conducting inspection the inspector in-charge is obliged to:

- inspect all acts which regulate personal data protection;
- inspect the contents of the personal data catalogue;
- inspect the premises in which personal data are collected, processed, stored, used and distributed including the computers and other equipment, and
- inspect the functioning of the measures for personal data protection and their execution.

The inspector is obliged to regard the personal data that he/she has collected in the inspection process as professional, state and military secrets...

The responsible inspector is authorised to decide on the following:

1. Undertake measures for eliminating irregularities determined in implementing provisions of this Law related to the implementation of the organisation and technology procedures and measures, as well as to obligation to maintain personal collection catalogues;
2. Prohibit the collection, processing, storing, distribution and use of personal data collections, or their deletion, if their complete protection is not ensured or the provisions for undertaking organisation and technology measures provided in this Law are not implemented accordingly.

In the newly adopted Law on Personal Data Protection (adopted by the Parliament on 25 January 2005, published in the Official Gazette of the Republic of Macedonia No. 07/05), there is a separate Chapter 9 entitled “Establishment and Assignments of the Directorate for Personal Data Protection”, legal provisions are recommended to establish the Directorate as an independent state body having the status of a legal entity which supervises the legality of the undertaken activities of personal data processing and protection. The Directorate is managed by a director appointed and dismissed by the Assembly of the Republic of Macedonia upon recommendation of the Government of the Republic of Macedonia for the period of five years, who can be re-elected, not more than twice. A person can be appointed Director under the following conditions: he/she must be a citizen of the Republic of Macedonia, an outstanding lawyer, and not be subject to safety measures which prohibit activities in his/her profession, activity or duty. The position of Director is incompatible with other public functions or professions. The Director is independent and autonomous in performing his/her function. The Director submits an annual report on the work of the Directorate to the Assembly of the Republic of Macedonia. The proposed Law regulates the responsibility of the Directorate’s Director and employees related to the requirement that they regard the data which they have come across in their work during their terms in office, as well as after them, as professional secrets

Aiming at regular and efficient performance of the work in the Directorate, the proposal for adopting a new Law on Personal Data Protection includes provisions which require that the Personal Data Protection Directorate’s Director and employees are allowed to:

- enter any premises where the registered personal data collection system is processed, after the presentation of a document of official identification by a proxy and review the personal data collection;
- request a written or oral explanation and summon and investigate individuals related to the personal data collection which is being inspected;
- request presentation of documentation and other data related to the subject of control;
- inspect the equipment used for personal data processing and preserving, and
- order an expert analysis and opinion related to the work of the Controller.

After the performed control the minutes are prepared. In line with newly adopted Law, a copy of the minutes is submitted to the Controller who was subject of control. In cases when the Controller refuses to sign the minutes, the Directorate's employee notes this down in the minutes and within 7 days of the last day of inspection, submits his/her notes on the performed inspection in writing to the Director.

In cases when actions in breach of this Law have been identified related to personal data processing, the employee who has performed the inspection informs the Director to initiate further proceedings. If the performed inspection determines violations of the provisions in this Law, the Controller is required, within 30 days from the day when the violation has been identified, to bring its work in compliance with the provisions of this Law, and in particular:

- eliminate the reasons behind it;
- complete, update, correct, discover and keep the confidentiality of personal data;
- undertake additional measures of personal data protection;
- prevent the personal data transfer to other countries;
- ensure the data and their transfer to other subjects; and
- delete personal data.

When he/she has eliminated the irregularities, the Controller may require from the Directorate a fresh review of his/her case. An administrative dispute can also be initiated against the Directorate.

### **3. Does the Supervisory Authority have effective powers of intervention such as the following:**

**a) delivering opinions before data processing operations are carried out?**

**b) ordering the blocking, erasure or destruction of data?**

**c) imposing a temporary or definitive ban on processing?**

**d) imposing sanctions on controllers?**

**a)**

The government body responsible for the information system operations in the Republic of Macedonia, i.e. the supervisory body which performs supervision of the implementation of organisational and technological procedures and measures for personal data protection and catalogue, is in charge of giving opinion on the procedure of personal data processing.

Besides the supervision body, the supervision of the legal personal database, processing, storing, using and distribution in the Republic of Macedonia is performed by the body specified in the Law which sets out the procedures of personal database. However, this body is not authorised to give opinion prior to the performed procedure of personal data processing, in line with the provisions in the existing Law on Personal Data Protection (Official Gazette of the Republic of Macedonia No. 12/94 and 04/02).

However, in line with the existing legislation, an obligation is provided for the database operator to deliver data to the administrative body responsible for information technology and system in the Republic of Macedonia, within 15 days from the establishment of the collection, i.e. 15 days after the change of data in the catalogue.

A particular provision in the Law provides information which the database operator is obliged to submit to the supervision body. Namely, the database operator provides information on the:

- Name of database;
- Name and seat of the database operator
- name and surname of the responsible person;
- categories of personal data holders;
- database description;
- database procedure;
- collection purpose;
- collection duration;
- restrictions of the rights of legal entities regarding the data in the collection and legal grounds for restriction;
- name and address of collection users in the country and abroad and legal ground for its use; and
- name and address of the permanent contracted operator.

Having in mind the contents in Article 18 of Directive 95/46/EC of the European Parliament and the European Council, i.e. the obligation of the Controller or his/her representative to inform the supervisory body prior to performing any operation of complete or partial automated processing, or a sequence of the listed operations intended to achieve one or several related aims, the new Law on Personal Data Protection (adopted by the Parliament on 25 January 2005, published in the Official Gazette of the Republic of Macedonia No. 07/05) regulates a similar obligation for each Controller.

The new Law regulates the obligation of the Controller to submit information to the Directorate of Personal Data Protection as a supervisory body, prior to performing an operation of a complete or partial automated personal data processing, and the processing aims to achieve one or several related goals.

The information is required to include the following data:

1. Name or personal name of the Collection Controller and seat;
2. Aim or aims of processing;
3. Category(s) of personal data holders and categories of personal data related to him/her;
4. Users or categories of users allowed to use the personal data;
5. Personal data transfer to other countries; and
6. Description of undertaken measures for personal data protection.

In line with the new Law, the Controller is not obliged to submit information to the Directorate on already established personal databases equivalent to the processing aim, processed data and data category, subject to personal data category users or user categories to which data will be revealed as well as the period for which the data will be stored are determined by law. The obligation to inform the Directorate also applies to every change of data which is included in the information.

Also, in line with the new Law, the Controller is obliged to submit the data on the newly established personal database and the change of personal data in the existing collections within 15 days of the day of establishment or change to the Directorate of Personal Data Protection.

Based on the information from the Controller and prior to performing an operation of personal data protection, the Directorate is obliged to grant opinion on whether certain personal data protection operations present a particular risk for the freedom and rights of the personal data holder. In cases of suspicion over the existence of a particular risk for the freedom and rights of the personal data holder, the Controller is obliged to request an opinion from the Directorate.

#### **b)**

The existing Law on Personal Data Protection provides that personal data storage and use terminate when the need for which they were collected, processed and stored ceases or when the legal period for which the collection was established ends, and as soon as this happens, the personal data are deleted from the collection, unless otherwise provided by law.

The inspector in charge of performing inspection is entitled to prohibit the personal database, processing, storing, distribution and use of collections, i.e. their deletion if their complete protection is not ensured or if the provisions and procedures are not properly implemented by the database manager for undertaking organisational and technological procedures and measure.

The existing law provides that the person is entitled, upon his/her personal or his/her proxy's written request, to demand from the database manager to amend, correct or delete the data which the person can prove to be incomplete, incorrect or out of date.

The database manager is obliged to add, correct and delete data within 15 days of the day that he/she has received the request, i.e. has an obligation to inform the person on the reasons behind this.

In line with the new Law on Personal Data Protection (adopted by the Parliament on 25 January 2005, published in the Official Gazette of the Republic of Macedonia No. 07/05), upon request by the personal data holder, the Controller is obliged to add, change, delete or prevent from use the personal data if they are incomplete, incorrect and not updated and if their processing is not in compliance with the provisions in this Law. In cases when the Controller determines that the personal data are incomplete, incorrect and out of date, he/she is obliged to make the additions or changes regardless if the personal data holder has submitted or not for additions or changes in the personal data. The Controller is obliged to inform the personal data holder, the personal data users and third parties who have been given the personal data, about the performed additions or changes within 30 days, unless this is impossible to do.

The newly adopted Law on Personal Data Protection provides that the Directorate of Personal Data Protection intervenes in the procedure of personal data processing, archiving, deleting and annulling the established personal database completely or partially if there is a justified risk of violating the rights of one or more personal data subjects, by assessing the type of personal data or the modalities of their processing.

The newly adopted Law provides the right to any natural entity who believes that his/her legally guaranteed right has been violated to submit a request for determining the violation of the right to the Commission within the Directorate of Personal Data Protection.

Acting in response to the aforementioned request filed by the natural entity, the Commission at the Directorate of Personal Data Protection may issue a temporary decision for prohibiting the further personal data processing related to the request, until the procedure has been resolved accordingly.

The Directorate controls all cases of personal data processing termination regardless of the underlying reasons.

**c)**

The existing Law provides that the inspector in charge of performing supervision is authorised to reach a decision on prohibiting the collection, processing, storing, distribution and use of personal data from the collection, i.e. their deletion if their complete protection is not ensured or if the provisions and procedures related to undertaking organisation and technology procedures and measures are not implemented accordingly.

The decision may be appealed against within eight days from the day the decision was served. The appeal is submitted with the Minister in charge of the administration body responsible for information technology and system operations of the Republic of Macedonia, who is obliged to reach a decision within 15 days from the day of the complaint delivery.

The newly adopted Law on Personal Data Protection, which is in progress, regulates the right of every natural entity who believes that his/her legally guaranteed right is violated. He/she may submit a request for determining the possible extent of violation to the Commission at the Directorate of Personal Data Protection.

Acting on the aforementioned request by the natural entity, the Commission at the Directorate of Personal Data Protection can make a temporary decision for prohibiting further personal data processing until the procedure has ended.

The newly adopted Law on Personal Data Protection provides that the Directorate of Personal Data Protection can impose prohibition on further personal data processing.

**d)**

The inspector in charge of performing the inspection can take a decision on the prohibition of personal database, processing, storing, distribution and use or their deletion, if their complete protection is not ensured or the provisions and procedures related to the obligations of the personal database manager for undertaking organisational and technological changes are not implemented accordingly.

The mentioned decision may be appealed within seven days from the day the decision was delivered. The complaint is submitted to the Minister in charge of the administration body responsible for the operation of the information technology and system in the Republic of Macedonia, who reaches a decision within 15 days of the day the complaint was delivered.

The existing Law provides fines of 20 to 35 salaries for any violation by the personal database manager if he/she:

1. Collects, processes, stores, uses and distributes personal data with no authorisation by the law or by the personal data holder in writing;
2. Fails to identify the regulation to determine and implement the procedures and measures for personal data protection;
3. Transfers information in relation to personal database, processing, storing and distributing to other legal or natural entities which are not authorised to perform such activities;
4. Fails to delete from the personal database the data after termination of the need for which they were collected, processed, used and stored;
5. Distributes personal data to unauthorised users or does not have internal register of distributing or distributes personal data to users in the form which may reveal the identity of the personal data holders;
6. Fails to ensure that the catalogue of the personal databases include data provided by the law (Article 15) or fails to submit data on the needs of the collections catalogue;
7. Fails to enable the personal data holder or his/her proxy access to and a copy of the data related to him/her;
8. Fails to make additions, corrections and deletions of data which the personal data holder can prove are incomplete, incorrect and out of date;
9. Fails to make corrections in the data in respect of which the holder has withdrawn the written consent ;
10. Presents personal data out of the Republic of Macedonia in contradiction to the provisions in this Law. The fine of one to five salaries for the listed violations applies also to the person supervising the database manager.

A fine of five to ten salaries is provided for the listed violations for a person performing an activity or profession on a self-employed basis, and a fine of one to two salaries for the listed violations for natural entities.

In line with the newly adopted Law on Personal Data Protection, which is in progress, a fine of 40.000 to 50.000 MKD is determined for the violation of the Controller if he/she:

- collects and processes personal data in contradiction to this Law regarding the quality of the personal data which are being processed;
- performs personal data processing in contradiction to the provisions in this Law, regarding the prior consent of the personal data holder being the necessary condition for the personal data processing, as well as exclusions from the stated rule;

- performs personal data processing in contradiction to the provisions in this Law related to the personal data processing in relation to criminal acts, punishment and safety measures against criminal acts committed;
- performs special category personal data processing in contradiction to the provisions in this Law;
- performs processing of the personal ID number of the citizen contrary to the provisions in this Law;
- acts in contradiction to the provisions in this Law regarding personal data holder's rights when the data is collected from the personal data holder;
- acts in contradiction to the provisions in this Law regarding personal data holder's rights when the data is not collected from the personal data holder;
- acts in contradiction to the provisions in this Law regarding obligations of the Controller to present for control the personal database urgently and with no delay within 5 days;
- acts in contradiction to the provisions in this Law regarding the right of the Controller to refuse to respond to the same or similar requirement of the personal data holder in cases when he/she responded to the personal data holder if in the meantime there is no change in the personal data, except when 6 months have passed from the previous to the new request;
- acts in contradiction to the provisions in this Law regarding the obligation and type of information which the Controller is obliged to submit within 30 days to the personal data holder, in response to their written request;
- acts in contradiction to the provisions in this Law regarding the Controller's obligation to add, change, delete or prevent the use of personal data, a response in accordance with the request of the personal data holder when the data are incomplete, incorrect and out of date and when their processing is not in compliance with the provisions in this Law;
- enables use of the personal data for advertising purposes in contradiction with the request of the personal data holder;
- acts in contradiction to the provisions in this Law regarding the Controller's obligation to undertake adequate organisational and technical measures in order to ensure the personal data confidence and protection;
- transfers activities included in his/her working operations to the data processor with no prior contract;
- fails to make record of the undertaken technical and organisational measures, i.e. evidence of signed contracts;
- fails to make record of the personal databases;
- fails to submit information to the Directorate about any complete or partial personal data processing or changes of data in the information;
- acts in contradiction to the provisions in this Law regarding the Directorate of Personal Data Protection on the degree of adequacy of personal data protection
- gives personal data to users against which there is prohibition to process or use;

A fine of 200.000 to 300.000 MKD for the listed violations also applies to the legal entity – the Personal Data Controller.

In order to ensure regular and efficient work in the Directorate, the Director and employees in the Directorate of Personal Data Protection are authorised to: enter any premises where a registered personal data processing system is installed, request a written or oral explanation and summon for investigation individuals related to the personal database which is being investigated, request presentation of documentation and other evidence related to the subject of control, control the equipment used for personal database processing and storing and order an expert analysis and opinion on the Controller's work.

Minutes are prepared on the performed control and a copy is submitted to the Controller who was subject of control. The minutes are signed by the employee at the Directorate who performed the control and the Controller who was subject of control. In cases when the Controller refuses to sign the minutes, the employee at the Directorate notes this down in the minutes and is entitled within seven days from the day of control to submit the notes in writing to the Director.

If during the control of personal data processing violations of provisions in this Law have been determined, the Controller is obliged to bring his/her work in compliance with the provisions in this Law within 30 days from the day when violations have been discovered, and particularly regarding:

- the elimination of the reasons behind the violations;
- completion, updating, correction, revealing or protecting the confidentiality of the personal data;
- adoption of additional measures for personal database protection;
- terminating the transfer of personal data to other countries;
- providing data or their transfer to other subjects; or
- deletion of personal data.

The Controller can request from the Directorate to re-consider his/her case, whereas the decision of the Director may be appealed.

#### **4. Does the Supervisory Authority have powers to engage in legal proceedings in case of violation of data protection provisions?**

In accordance with the Law on Personal Data Protection (Official Gazette of the Republic of Macedonia Nos. 12/94 and 04/02), the supervision of the legal procedure in collecting, processing, storing, using and distributing personal data in the Republic of Macedonia is performed by the body determined by law which provides the establishment of data collections.

Inspection of the performance of organisational and technological procedures and measures for personal data protection and maintaining data collection catalogues are performed by the administration body responsible for the information technology activities and the information system in the Republic of Macedonia.

The inspector in-charge who performs the inspection is authorised to decide on the prohibition to collect, process, store, distribute and use personal data from collections, i.e. to delete them when their complete protection is not ensured, or the provisions and measures related to undertaking organisational and technological procedures and measures are not implemented accordingly.

The above stated decision may be appealed within eight days from the day of on which the decision is served. The appeal is submitted to the Minister in charge of the administrative body in the field of information technology and information system of the Republic of Macedonia.

Having in mind that a particular independent body, in line with the existing law, has not been established yet, the newly adopted Law on Personal Data Protection (adopted by the Parliament on 25 January 2005, published in the Official Gazette of the Republic of Macedonia No. 07/05) suggests that the supervision of the undertaken activities for personal data processing and protection on the territory of the Republic of Macedonia is performed by the Directorate of Personal Data Protection, an independent and autonomous state body with the status of legal entity.

One of the basic responsibilities of this Directorate is its authorisation to evaluate the legality of personal data processing.

The new Law regulates the right of every natural person who believes that his/her right guaranteed by this Law has been violated, to submit a request for determining the violation to the Commission at the Directorate of Personal Data Protection.

The mentioned Commission includes three members nominated by the Directorate's Director. The Commission reaches a decision on the violation, which is an administrative act, which may be appealed against to the Director. The Director's decision on the appeal can be challenged in an administrative procedure.



Acting upon the request of the natural entity stated above, the Commission at the Directorate of Personal Data Protection can reach an interim decision on prohibiting further personal data processing of the relevant data, until the procedure is resolved accordingly.

The appeal against the temporary decision is submitted to the Directorate's Director.

The Director's decision entails the right to court protection, i.e. the right to initiate an administrative dispute.

The provisions recommended in the newly adopted Law involve the Directorate of Personal Data Protection as a party in the administration and court procedure.

The newly adopted Law also provides that in cases when an employee of the Directorate who performed the control has determined violations of provisions in this Law related to personal data processing, he/she is obliged to inform the Director in order to initiate a procedure against it.

In cases when during control, violations of the provisions in this Law related to personal data processing are identified, the Controller is obliged to comply with the provisions of this law within 30 days, and in particular to:

- eliminate the reasons behind the violation;
- complete, update, correct, reveal or keep the confidentiality of the personal data;
- adopt additional measures on personal data collection protection;
- terminate the transfer of personal data to other countries;
- provide the data or their transfer to other subjects; and
- delete personal data.

The Controller may require from the Directorate to have his case re-considered, whereas an administrative dispute may be initiated against the Director's decision.

**5. Does the Supervisory Authority have powers to bring to the attention of judicial authorities the violations of data protection provisions? Can the decisions taken by the Supervisory Authority which give rise to complaints be appealed against through the courts?**

According to the Law on Personal Data Protection (Official Gazette of the Republic of Macedonia Nos. 12/94 and 04/02), the inspector from the supervisory body, i.e. the administration body responsible for the operations in information and the information system of the Republic of Macedonia performing the inspection of organisational and technological procedures and measures for personal data protection and maintaining personal data collections, is given the right to:

1. Undertake measures to eliminate the inappropriate activities for implementing provisions in this Law related to the implementation of organisational and technological procedures and measures, and the obligation to maintain personal data collection catalogues;
2. Prohibit the collection, processing, storing, distributing and using personal data from collections, i.e. deleting in cases when their complete protection is not ensured or the provisions and procedures of this Law for undertaking organisational and technological measures provided in the Law are implemented inaccordingly.

The decision may be appealed within eight days from the day the decision was served.

The contents in the appeal are reviewed and decided by the Minister in charge of the administrative body responsible for the operations in information and the information system in the Republic of Macedonia. The decision on the appeal is reached by the Minister within 15 days of its delivery.

Having in mind that the adopted act is administrative, or reached as a result of an administrative procedure, the provisions of the Law on Administrative Disputes are implemented (Official Gazette of the Republic of Macedonia Nos. 04/77 and 44/02), in order to ensure court protection. The final administrative act can be challenged in the responsible court.

In addition to the previously guaranteed court protection, the Law on Personal Data Protection also provides court protection guarantee. Namely, it provides that any person who believes that his/her rights determined by this law have been violated may require court decision by the court of competent jurisdiction.

In cases when a person suffered damage by the use of data in the manner and for the purpose which is not in compliance with this Law, the Law provides the person with the possibility to require compensation for the damage.

The newly adopted Law on Personal Data Protection (adopted by the Parliament on 25 January 2005, published in the Official Gazette of the Republic of Macedonia No. 07/05) provides that any natural entity who believes that any of his/her rights guaranteed by this Law have been violated, may submit a request for determining the violation to the Commission at the Directorate of Personal Data Protection which is composed of three members appointed by the Directorate's Director.

The violation of the right, in line with the mentioned Law, is considered by the Commission and a decision is reached. It is an administrative act, appealed against with the Directorate's Director, whereas the Director's decision may be challenged before the responsible court.

Acting on the request from the natural entity for determining the violation of rights, the Commission may issue an interim decision to prohibit the further processing of the personal data in question, until the procedure has been resolved accordingly.

Regarding the damage to the natural entity performed by the personal data processing or based on other violations performed in contradiction to the provisions in this Law, the Controller of the personal data collection is held responsible; unless he/she is able to prove that the damage was not caused as a result of his/her fault.

Damage compensation from the Collection Controller may be requested in cases of unauthorised use, or unauthorised access to use of the personal data to other users and natural and legal entities.

## IV. INFORMATION SOCIETY SERVICES

### *General – e-commerce*

**1. Is there legislation or other requirements specific to the provision of information society services (defined as any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services)? If so, please give details.**

For the time being there is no particular legislation to regulate information society services. However some of the areas of providing information society services are regulated partially in certain laws.

Namely, in line with Article 7 of the amendments to the existing Telecommunications Law (Official Gazette of the Republic of Macedonia No. 04/02) regarding services in the domain of information society which include information transport by telecommunications network by the service recipient or by providing access to the telecommunications network, the provider of transport and access to telecommunications network information society are not held responsible for the transported information, under the condition that the provider of transport and access to the telecommunications network:

- has not initiated the transport;

- has not selected the transported information recipient; and
- has not selected or changed the information which information society transported.

Providing transport and access stipulated in paragraph 1 of this Article include automatic, intermediary and transition period of storing transport information for the sole purpose of transport into the communications network, under the condition that it is not stored for longer than the reasonable transport period.

According to Article 7-b, while providing services in the domain of information society which includes telecommunications network transport for service recipients and temporary information storage, performed for the sole purpose of efficient information transport to other service recipients upon their request, under the condition that the provider of the transport and access to telecommunications network:

- does not change the information
- acts in accordance with the conditions for access to information;
- acts in accordance with the regulations for information update, determined in the manner broadly accepted and implemented in telecommunications activities;
- does not violate the legal implementation of technology, broadly accepted and implemented in telecommunications, when receiving data for using the information;
- acts immediately to eliminate and restrict the access to stored information upon being informed that the information in transport has been eliminated from the communications network or access to it has been restricted, or that a court or administrative body has ordered such elimination or restriction.

In line with Article 7-c, while providing services in the domain of information society which include storing information provided by the service recipient, the service provider of access and transport on the Telecommunications Network is not responsible for the information stored upon request of the service recipient, under the condition that the service provider of access and transport on the telecommunications network:

- Is not informed about the illegal activity or information and, regarding requests for damage compensation, is not informed about the facts or conditions which render the illegal activity or information obvious; or
- After receiving such knowledge or information acts immediately to eliminate or restrict access to information.

Paragraph 1 of this Article does not apply when the service recipient acts under authority or control of the service provider for access and transport on the Telecommunications Network.

In line with Article 7-d, services in the domain of information society can be provided for rapid information of relevant public institutions on alleged illegal activities undertaken, on information provided by the service recipients or obligations for transport of information which enable identification of service recipients of their information to relevant institutions upon their request and with which they have signed an agreement for storing.

The Draft Law on Electronic Communications, which information society currently in parliamentary procedure and prepared to terminate the implementation of the existing Telecommunications Law, will be based on five EU Directives:

- Directive 2002/77/EU on market competitiveness of electronic communications networks and services;
- Directive 2002/58/EU referring to personal data processing and protection of privacy in the sector of electronic communications;
- Directive 2002/22/EU on the universal use and rights of service recipients in the field of electronic communications networks and services (Directive on Universal Services);
- Directive 2002/20/EU on authorising electronic communications networks and services (Directive on Authorisation);
- Directive 2002/19/EU on access and interconnection of electronic communications networks and additional facilities (Directive on Access).

In this respect the Draft Law on Electronic Communications will include a separate chapter on secrecy and confidentiality protection in communication and provisions on protection measures for securing networks and services, communication confidentiality, identification of callers or connected lines, data on locating which are not transport data, legal interception of communications, automatic call redirection etc. It is expected that the Draft Law on Electronic Communications is adopted by the end of the first quarter of 2005.

The Law on Electronic Data and Electronic Signature (Official Gazette of the Republic of Macedonia Nos. 34/01 and 06/02) regulates the electronic operations which include the use of information and communication technology, the use of electronic data, the use of electronic signature in courts, administrative procedures and payments.

The Law on Classified Information (Official Gazette of the Republic of Macedonia No. 09/04) regulates the classification of information, conditions, criteria, measures and activities undertaken for their protection, rights, obligations and responsibilities of the producers and users of classified information, international exchange and other issues related to the use of classified information. (Article 1)

Under Article 2, the objective of this Law on Classified Information is to ensure the legal use of classified information and restrict any kind of illegal access to information. While according to Article 3, the Law is implemented for the protection of classified information received by foreign countries and international organisations or produced in mutual cooperation, unless otherwise regulated by ratified international agreements or international agreements accessed by the Republic of Macedonia.

The Law on Ratification of the Convention on Cybercrime (Official Gazette of the Republic of Macedonia No. 41/04), ratifies the Convention on Computer Crime adopted by the Council of Europe on 23 November 2001.

### ***Electronic pay-services (conditional access – Directive 98/84/EC)***

#### **2. Has your country ratified Convention 185 of the Council of Europe on cybercrime? What kind of protection is currently provided to protect the remuneration of providers of services protected by conditional access?**

The Law on Ratifying the Convention on Computer Crime (Official Gazette of the Republic of Macedonia No. 41/04) ratifies the Convention on Computer Crime adopted by the Council of Europe on 23 November 2001.

For the time being, there is no separate legislative instrument in the Republic of Macedonia that would regulate conditional subscriptions or contract-based subscriptions via a certain information technology security system (CAS – Conditional Access Systems) while services of information society are being provided.

#### **3. Do you consider that this protection conforms to Directive 98/84/EC?**

This question cannot be answered because there is no regulation for the use of services through the CAS –Conditional Access Systems.

## ***Digital signature***

### **4. Have measures been taken to ensure the legality and recognition of digital signatures? Have measures been taken to ensure the legality and recognition of digital signatures?**

The issue of legality and recognition of digital signatures is regulated with the Law on Electronic Data and Electronic Signature (Official Gazette of the Republic of Macedonia Nos. 34/01 and 06/02). Along with the adoption of this Law, 4 (four) out of the total of 7 (seven) secondary legislation items which regulate this sphere have been adopted:

- Rulebook on the Contents and Rules on Issuance of Certificates
- Rulebook on the Methods and Procedures for registering Certificate Issuers
- Rulebook on Methods and Procedures for Accrediting Certificate Issuers and the Format and Shape of the Logo of Accredited Issuer
- Rulebook on the Conditions to be met by Electronic Signature Instruments and the Control of Electronic Signature.

The Rulebooks were published in the Official Gazette of the Republic of Macedonia No. 71/01.

The Law entails (3) three more pieces of secondary legislation which have not been enacted. Two of them are still in draft version. They are secondary legislation acts arising from Articles 29, 30 and 31 of the Law on Electronic Data and Electronic Signature.

The Law on Electronic Data and Electronic Signature is harmonised with the EU Directive 1999/93/EC (Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999).

With the adoption of the Law on Electronic Data and Electronic Signature, amendments and supplements have been made to a large number of laws where the term 'electronic signature' (according to the Law on Electronic Data and Electronic Signature) is equalised with the term 'personal signature'.

## ***Supervisory authorities***

### **5. How do you ensure supervision in this area?**

In accordance with the Law on Electronic Data and Electronic Signature (Official Gazette of the Republic of Macedonia Nos. 34/01 and 06/02) of the Ministry of Finance, an Accreditation Body needs to be established. It will do the registration of electronic signature and certificate issuers and keep a Register of electronic signatures and certificate issuers on the territory of the Republic of Macedonia. The Electronic Register at the Ministry of Finance of the Republic of Macedonia will be signed with a generally accepted electronic signature to be published in the Official Gazette of the Republic of Macedonia.

The Law on Electronic Data and Electronic Signature regulates the protection of electronic certificate holders and undertakes measures in cases when the certificate issuer faces liquidation or bankruptcy, or incapability and obstruction to operate in compliance with the laws and secondary legislation and/or his own rules/policies.

For the time being, due to the partial implementation of the Law on Electronic Data and Electronic Signature, i.e. the lack of the last 3 (three) rulebooks (out of which 2 (two) are in draft version), the Accreditation Body has not been established yet.

The Ministry of Finance will take necessary steps to accelerate the process and prepare and adopt the last 3 (three) rulebooks and establish the Accreditation Body in accordance with the Law on Electronic Data and Electronic Signature.

**6. Has a contact point been appointed to co-operate with authorities in other European countries?**

In the process of implementing this project in the area of supervision, numerous contacts have been established with institutions in the European countries.

Contacts and consultations were established with GCI (Government Centre for Informatics of the Republic of Slovenia). GCI is a certificate and electronic signature issuer (SiGov and SiGen).

The second institution for cooperation on information collection was D-TRUST GmbH (D-TRUST GmbH is a 100% subsidiary of Bundesdruckerei) which is also an electronic signature and certificate issuer in the Federal Republic of Germany.

The established contacts were aimed at collecting experience and providing necessary knowledge and building capacity from already experienced and active electronic signature and certificate issuers. Some of the most important information was the experience and problems faced in the implementation and operations as well as the platform used for issuing electronic signatures and certificates.

The contacts have been established with other countries as well, through seminars and workshops on electronic signature and certification.