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## CURRENT LEGAL SETTING AND FUTURE MARKET REGULATORY CHALLENGES OF SECURITIES MARKET IN THE REPUBLIC OF MACEDONIA

### Abstract

The legal setting of the Macedonian capital market primarily reflects the Law on Securities and all the relevant bylaws. The aforementioned law was enacted in November 2005 and amended on several occasions. It is largely harmonized with the relevant EU Directives, as well as the standards and principles of the International Commissions on Securities (IOSCO). One objective of the paper is to depict and analyze the current legal and institutional setting of the domestic capital market. In this regard, all the significant aspects of the relevant regulations will be highlighted. At the same time, we will review the latest regulatory challenges in this area resulting from the development of two newly drafted laws, which are expected to shed a new positive momentum on the Macedonian legislation in this field following their adoption and to contribute to the dynamic development of the domestic capital market. In this way, the paper will determine the degree of compliance of the said draft legis-

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lation with the relevant EU directives and regulations. We will finally draw conclusions from the legal analysis displayed in the paper.

**Keywords:** capital market, securities, regulation

**JEL classification:** K22

## **Introduction**

When it comes to the Macedonian market of securities, it seems that in the relatively short period of twenty years a significant progress was made in terms of creating a legal framework which allows businesses to reorganize, consolidate and increase their competitiveness in the domestic and foreign markets. Undoubtedly, the legal framework for securities (hereinafter S) to a high degree complies with the relevant regulations in the European Union, and it also includes the principles and standards accepted by the wider international community. Besides the Law on Securities (hereinafter LS), the legal framework in the field of securities in Macedonia consists of the Law on Takeovers, Law on Investment Funds and Company Law, Banking Law, the Foreign Exchange Law, the Law on prevention of money laundering and terrorist financing, the Regulation in the area of taxation of securities, and others.

The basic law regulating operations with securities in the Republic of Macedonia is the Law on Securities and the bylaws that arise from it. The Law on Securities dates from November 2005 and has been repeatedly amended. The law is harmonized with the relevant EU Directives, as well as the standards and principles of the International Organization of Securities Commissions (IOSCO), whose full member since 1994 is the Macedonian Commission for Securities. The Law on Securities regulates: the manner and requirements for the issuance and trading of securities; the manner and conditions for requirements for securities clearing and settlement of commercial transactions and non-trading security transfers, and restrictions on the rights of ownership of securities; and the manner and requirements for the functioning of the market of securities and its authorized participants.<sup>1</sup>

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<sup>1</sup> Law on Securities (unofficial consolidated text) (Official Gazette No.95 / 2005, 25/2007, 7/2008, 57/2010, 135/2011, 13/2013, 188/2013, 43/2014, 15/2015, 154/2015 and 192/2015)

The Law on Securities is based on the principles of legality, transparency, non-discrimination, competition, protection of owners of securities and investors, thus strengthening and increasing legal certainty and stability of securities market in general.

## **1. ISSUANCE, OFFER AND SALE OF SECURITIES**

This section concerns the procedures and actions to be taken regarding the issuing, offering and sale of securities. It defines and regulates who can issue securities and in what form, the procedures for public offer (requesting approval to issue, the documentation to be submitted, the institution that reviews the application and the submitted documentation, time frame for deciding, procedure for registration and payment of securities as well as implementation and (un)successfulness of the public offer, private offer, purchasing own shares, as well as exemptions from giving approval to issue securities. Hence, it is important to know that in Macedonia, securities may be issued by: the Ministry of Finance on behalf of the Republic of Macedonia, the National Bank of Macedonia, the municipalities, the City of Skopje, joint stock and limited partnerships companies with shares and other domestic and foreign legal entities. The securities are issued and considered to be a dematerialized form. The shares have a nominal value, which can be expressed in MKD or in foreign currency. No matter how the nominal value is expressed, commercial transactions in the country are carried out in MKD.<sup>2</sup>

The issuance of securities in the primary market, including the sale of own shares, is made after a prior approval by the Commission, except in exceptional cases defined by law. The issuance of securities may be by public or private offering.

### **A) Public offer**

The issue, offer and sale of securities through a public offer is made after prior authorization from the Commission at the request of the issuer. A Commission approval for the issue of securities is not required

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<sup>2</sup> Manual for training and taking the exam for working with Securities, Commission for Securities, Skopje, 2015, p.27

for the issue of securities through a public or private offering whose total amount does not exceed 25, 000 EUR in MKD. The Commission, on the basis of the obligatory documentation, makes a decision on approving or refusing the application for issuance of securities through a public offer within 60 calendar days from the date of submission of the application to the Commission. The issuer is obliged to start the procedure of registration and payment of the offered securities within 30 calendar days from the receipt of the approval by the Commission. The deadline for the public offer cannot be longer than 12 months from the date of commencement of registration and payment of the securities<sup>3</sup>.

The public offer of securities shall be considered successfully completed if within the determined legal deadline at least 60% of the securities offered in the Prospectus are registered and paid, unless the issuer has not provided in the Prospectus a higher percentage of registration and payment of securities for the emission to be successful. Upon completion of the public offer, all securities that are not paid cannot be subject to sale. After successful completion of the public offer of securities, the issuer shall register the securities at an authorized depository.

## **B) Private offer**

Private offer is an offer for registration and payment of securities which is addressed to no more than 20 people, individually referred to in the act of issuing securities, which are not shareholders in the corporation and are not related with the shareholders or the shareholders' company, unless stipulated otherwise by another law or the obligation of the shareholder to increase their participation in the share capital is requested by an authority or institution responsible for oversight or supervision of the operations of the companies based on LS or other law and:

- Which is addressed only to institutional investors,
- In the case of increase of the principal assets of the company,
- In the case of a conditional increase of the core capital, and
- In the case of a loan that was transformed into a deposit in the company in the process of increasing the company's equity when the loan is given by a single company shareholder.

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<sup>3</sup> Ibid, p.29

## **2. DEPOSITORY FOR SECURITIES, REGISTRATION OF SECURITIES, NON-TRADE TRANSFERS**

For registration of securities, settlement of trade transactions and performing non-commercial transfers of securities, a depository for securities was founded. The Depository functions as a self-regulatory organization. The functions of the depository are:<sup>4</sup>

- a) Registering the issuance and transfer of securities in the Republic of Macedonia in electronic form (keeping a register of securities);
- b) The issuance of international identification number of securities (ISIN) for all issues of securities;
- c) Registration of owners of securities;
- d) Settlement of trade transactions under the principle delivery versus payment;
- e) Performance of non-trade transfers;
- f) Providing conditions for lending securities;
- e) Monitoring the financial health of its members in order to manage the risk associated with a possible settlement of trade transactions, and
- h) Performing additional services to issuers of securities.

The rights of ownership of the securities result from the registration of securities at the expense of the owner in the depository and are transferred by registering the securities on the account of the new owner in the depository. In this context it is important to note that the rights of the securities are acquired, restricted or transferred by a corresponding entry on the account of the new owner in the securities depository, unless the law stipulates otherwise.<sup>5</sup>

In depository all commercial and non-commercial transfers made with securities in the country are recorded. Permitted non-commercial transfers provided by the LS are:

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<sup>4</sup> Law on Securities (unofficial consolidated text) (Official Gazette No. 95/2005, 25/2007, 7/2008, 57/2010, 135/2011, 13/2013, 188/2013, 43/2014, 15/2015, 154/2015 and 192/2015)

<sup>5</sup> Ibid

- 1) Contract as a gift;
- 2) Realization of a contract for loan of securities,
- 3) Inheritance, and
- 4) Court decision.

The settlement of all trading transactions with securities shall be made in the depository. Republic of Macedonia accepted the principle of settlement “Delivery versus payment”. Namely, it means that the obligations to transfer securities arising from the trade transactions are settled with simultaneous change of the entitlement of securities from the seller’s account to the buyer’s and payment of the amount of money for purchased securities. The settlement of trade transactions with securities can be performed immediately, but no later than three working days after the conclusion of the transaction. The Depository supervises the settlement of trade transactions of its members in order to detect any violation of the regulations of the depository or other offenses by members of the Depository.

### **3. TRADING SECURITIES - STOCK EXCHANGE**

In Macedonia there is an obligation that all commercial transactions take place through an organized market for securities, i.e. the Stock Exchange, which was commissioned by the Commission for Securities (CS). Trade transactions that are not made by an authorized Stock Exchange are void. The fact that stock market as an institution of securities in the country has a long tradition reflects the appropriate legal treatment of its operations viewed from several aspects. The Law on Securities is in line with the strengthening of the institutional placement of stock market securities. In that sense, similar to the depository, the stock also explicitly acquires the status of a self-regulatory organization and adopts rules of conduct and discipline in order to enforce their own laws.<sup>6</sup>

The law defines and regulates the establishment (license to establish, because more Exchange markets can be set up), the functions of the stock market, who may be a shareholder in the stock market, the management bodies, internal regulations, operational rules, trading with securities,

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<sup>6</sup> Петковски, М. (2009) Финансиски пазари и институции –второ изменето и дополнето издание, Универзитет „Св. Кирил и Методиј“ – Економски факултет – Скопје, p.133

conditions and restrictions in relation to the listing of a stock exchange, supervision over the operations of the stock exchange, reports and work program to be submitted to the CS.<sup>7</sup> It is important to note that the Stock Exchange of Securities has adopted rules for trading.

The Stock Exchange shall require the Commission to agree on: a) the Statute and any amendments; b) membership rules, rules for trading, listing rules, rules of arbitration, rules of conduct and discipline measures and any amendments thereto; c) tariff and all its amendments, and d) the various forms of connecting and merging with other stock exchanges.<sup>8</sup>

The Commission shall also approve the appointment of Director of the Stock Exchange at the request of the stock exchange. In terms of documentation relating to trading, we would like to emphasize that the original is kept at least five years and on an appropriate electronic media. The Commission supervises the overall operation of the Exchange and its members.

#### **4. THE SECURITIES AND EXCHANGE COMMISSION**

In most countries with developed market economy, the Securities and Exchange Commissions (SEC) are founded for regulation of the market of securities. Some are set up as independent legal entities. The main role of the Commission is maintaining the integrity of the capital market and increasing investor confidence, which is necessary for the accumulation and concentration of capital, providing standards of supervision of all other self-regulating market participants and imposing sanctions on those who do not respect the norms and rules set by regulators in order to protect the interests of investors.<sup>9</sup>

The SEC is the institution responsible for legal and efficient functioning of the capital market in the country, which cares for the protection of investors' rights in order to strengthen the public trust in the institutions

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<sup>7</sup> Беличанец, Т. (2010) Банки, инвестициски фондови, берзи, Универзитет „Св. Кирил и Методиј“ - Скопје, Правен факултет- Скопје, p. 87

<sup>8</sup> Law on Securities (unofficial consolidated text) (Official Gazette No. 95/2005, 25/2007, 7/2008, 57/2010, 135/2011, 13/2013, 188/2013, 43/2014, 15/2015, 154/2015 and 192/2015)

<sup>9</sup> Беличанец, Т. (2010) Банки, инвестициски фондови, берзи, Универзитет „Св. Кирил и Методиј“ - Скопје, Правен факултет- Скопје, p. 90

of the market of long-term securities in the country. Also there are provisions that the SEC is given powers to conduct investigations, control, take measures and impose sanctions against participants on the security market. In this section it is important to emphasize once again that the SEC is an autonomous and independent regulatory body with public authorizations within LS.<sup>10</sup>

In terms of LS, the Commission controls the operations of the authorized participants with securities due to the application of LS, regulations adopted on the basis of LS and rules of self-regulatory organizations.

## **5. FUTURE REGULATORY CHALLENGES ON THE MACEDONIAN MARKET OF SECURITIES**

In the upcoming period, one of the main challenges of the Macedonian market for securities will be further harmonization of national legislation with the relevant EU directives and regulations. This is a process which is currently underway and which primarily means enacting two new laws for regulating the market of securities in the country.

As a result of reforms, investors and professionals in the capital markets will apply the same rules that apply in all EU Member States, and the same level of protection of their rights. The amendments are expected to strengthen and enhance the area of transparency of investment companies by obtaining more information on the transactions themselves, which will be of great importance for investors. Many more details will be developed regarding investment companies and their rights and obligations. Furthermore, the novelties will clarify the procedure for cooperation when an investment company from Macedonia wants to cooperate with such a company from the EU. Part of the planned innovations will enter into force on the date of entry to the EU. Also, one additional way to protect the rights of investors, both administrative and court proceedings. The proposed legislation does not reflect only the EU requirements in this area, but it takes into account the current level and the specifics of the domestic market, which is especially important.

The main legal acts of the EU, such as the Directive and Regulation on Markets in Financial Instruments II, the Regulation on Market Abuse

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<sup>10</sup> Manual for training and taking the exam for working with Securities, Commission for Securities, Skopje, 2008. p. 58

II, part of the Directive on Regulation of Capital Requirements IV, the Prospectus Directive, the Transparency Directive and the Directive on the admission of securities value of the official listing on a stock exchange, will soon become part of the Macedonian legislation.

The current Law on Securities, which was elaborated above, will be replaced by two new regulations: **Law on Financial Instruments and the Law on Prospectuses for Securities and obligations of issuers to transparency.**

## **6. BASIC CONCEPT OF THE DRAFT LAW ON FINANCIAL INSTRUMENTS**

The Law on financial instruments will regulate the entire process of trading in financial instruments, including the infrastructure of the capital markets. The scope of the law includes investment companies, providers of trade data and market operators, places of trading, a central depository for securities and investment guarantee fund. Among other things, the law gives definitions of securities, financial services, market abuse, etc. Capital requirements for investment companies are also included in this law. In addition, part of this law is the insolvency regime for investment firms.<sup>11</sup>

It could be pointed out that the general conditions laid down in the current legal regime for the Central Depository of Securities, the compensation scheme for investors and guarantee fund and the insolvency of investment companies remain unchanged. Also, it is important to mention that in the Draft Law there is a new comprehensive list of financial instruments, consisting of different types of transferable securities, instruments on the money market, shares in collective investment funds and other types of financial derivatives.

The novelty is that the law introduces an entirely new nomenclature for intermediaries in the market, which in the current law are referred to as brokerage houses. The draft law contains the term “investment company”. It is important to point out that in the draft law on financial instruments the internal organization for investment companies is also determined. In relation to the stock market, it should be kept in mind that

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<sup>11</sup> “Introducing of the relevant EU Directives in the new regulatory framework of the Financial Market in the Republic of Macedonia” – manual, Alternative Consulting, PWC, Skopje, 2016, p.7

the term “market” is not used in the draft. Instead, in accordance with the provisions of MIFID II, three so called “Trading Places” are introduced. It is the concept of a regulated market, multilateral trading platform (MPT) and organized trading platform (OTP).

The initial capital (minimum licensing capital) of the investment companies is set at a level of MKD equivalent of EUR 730, 000. However, this amount is required for the award of so-called “full” or “large” license to companies that would like to offer the entire range of investment services, including operations for own account or registering transactions based on company commitments. Investment companies that have no intention of working for their own account or enroll cross sanctions based on company commitments, but want to keep money or security customers, should have a minimum initial capital of EUR 125, 000. Finally, those who do not intend to work for their own account or record transactions based on company commitments and who will never keep money and securities customers should have a minimum initial capital of EUR 50, 000<sup>12</sup>.

The draft law on financial instruments has integrated the EU framework for market abuse, in particular the Regulation on market abuse, which comes into force in June 2016. Some of the proposed changes will take effect on the country’s accession to the EU. Generally, new conditions provide a wider scope to include all financial instruments traded on the regulated market or MTP/OTP in the country.

Regarding the position of the regulatory body - (SEC), it should be emphasized that the overall concept is not changed. The status, composition, operation and powers of the Commission for Securities is in accordance with international standards of those government officials and will not be changed. The draft Law merely makes clear distinction between the functions, tasks, powers of the SEC and supervisory measures and sanctions.

The draft law introduces the concept of prudential supervision and prudential requirements which features the international standard term for supervision of compliance with the conditions for financial well-being for investment firms and credit institutions. Prudential supervision of the stakeholders of the capital market will be divided as it is now divided between the CS and banks. Prudential supervision of investment companies will be implemented by the CS, while supervision of credit institutions (banks) will be implemented by the Central Bank.

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<sup>12</sup> Ibid, p. 15

## **7. BASIC CONCEPT OF THE DRAFT LAW ON PROSPECTUSES FOR SECURITIES AND OBLIGATIONS OF ISSUERS TO TRANSPARENCY**

The main purpose of the Law is to ensure investor confidence and market stability by creating the conditions necessary for investor protection and the development of transparent, fair and efficient capital market. The approach used in the preparation of the draft law is the implementation of the conditions stipulated in the relevant EU legislation, taking into account the specificities and the level of development of the domestic market.

Regarding the content of the Prospectus, it should contain information on the issuer and the securities which are offered as well as a summary. The information should be of such quality and quantity that will allow investors to make realistic estimates based on reliable information, assets and liabilities, financial position, profits and losses and prospectuses of the issuer and any guarantor, and the rights associated with such securities.

The Commission decides on public offer of securities in the territory of the country, and admission for trading on regulated markets. There are general requirements such as compliance of the issuer and the securities to domestic legislation, the securities must be freely transferable and other listed in the draft Law. The information on who might have control over the issuer is extremely important for investors because they can have a significant impact on the decision, storage, sale or purchase. For this reason, in the EU legislation there are clear rules for disclosure of such information. The directive on transparency lists detailed requirements for shareholders rights, as well as entitled neutral entities or financial instruments that affect the specific rights. The conditions are listed in the draft Law. The new regime, according to the draft law provides that, where the interest of a person for certain stocks, measured by the control of the right to vote (through acquisition or sale of shares listed on the regulated market and other financial instruments of the shares) exceeds or is less than the established thresholds, such person is obliged to inform the issuer of the changes. The threshold proposed in the Draft Law is 5%, and then at intervals of 5% to 75%.

### **Conclusion**

Undoubtedly, it can be concluded that the current legal framework of the Macedonian capital market in an appropriate way reflects and meets

its needs. Firstly, here we imply the current level of development of the domestic market of securities. However, taking into account the integration processes of RM itself is a need for further harmonization of national legislation on the subject area with the relevant EU directives and regulations. Hence, it is safe to conclude that with the new legal framework, the Republic of Macedonia will be harmonized with EU legislation in the field of market securities and investment services. The basic idea is to establish a highly efficient system for the development of a strong, stable and transparent capital market with high standards of investor protection, which will mean a positive movement in the domestic market of securities, while improving the overall business environment in the country.

### **References:**

1. Barbic, J., (2010) *Pravo drustava, knjiga druga, drustva kapitala, Organzaitor Zagreb.*
2. Mishkin, F. S. & Eakins, S.G. (2005) *Financijska tržišta i institucije, Mate, Zagreb.*
3. Недков, М., Беличанец, Т. и Градишки-Лазаревска, Е. (2009) *Право на друштвата, Правен факултет „Јустинијан Први“, Скопје.*
4. Беличанец, Т. (2010) *Банки, инвестициски фондови, берзи, Универзитет „Св. Кирил и Методиј“ - Скопје, Правен факултет-Скопје.*
5. Петковски, М. (2009) *Финансиски пазари и институции – второ изменето и дополнето издание, Универзитет „Св. Кирил и Методиј“ – Економски факултет – Скопје, Скопје.*
6. Ferran, E. (2008) *Principles of Corporate Finance Law (Феран, Е., Начела на корпоративно финансво право, Просветно дело АД, Скопје, превод на македонски 2009)*
7. *Прирачник за обука и полагање на стручен испит за работа со хартии од вредност, Комисија за хартии од вредност, Скопје, 2015 год*
8. *“Introducing of the relevant EU Directives in the new regulatory framework of the Financial Market in the Republic of Macedonia” – manual, Alternative Consulting, PWC, Skopje, 2016*