

Banking Regulation

Third Edition

Contributing Editors: Peter Hsu & Rashid Bahar
Published by Global Legal Group

Global Legal Insights

Banking Regulation

Third Edition

Contributing Editors: Peter Hsu & Rashid Bahar

Published by Global Legal Group

GLOBAL LEGAL INSIGHTS - BANKING REGULATION

THIRD EDITION

Contributing Editors
Peter Hsu & Rashid Bahar, Bär & Karrer AG

Editor
Sam Friend

Senior Editor
Rachel Williams

Group Consulting Editor
Alan Falach

Group Publisher
Richard Firth

*We are extremely grateful for all contributions to this edition.
Special thanks are reserved for Peter Hsu & Rashid Bahar for all of their assistance.*

Published by Global Legal Group Ltd.
59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 207 367 0720 / URL: www.glgroup.co.uk

Copyright © 2016
Global Legal Group Ltd. All rights reserved
No photocopying

ISBN 978-1-910083-96-3
ISSN 2051-9621

This publication is for general information purposes only. It does not purport to provide comprehensive full legal or other advice. Global Legal Group Ltd. and the contributors accept no responsibility for losses that may arise from reliance upon information contained in this publication. This publication is intended to give an indication of legal issues upon which you may need advice. Full legal advice should be taken from a qualified professional when dealing with specific situations. The information contained herein is accurate as of the date of publication.

Printed and bound by CPI Group (UK) Ltd, Croydon, CR0 4YY
May 2016

CONTENTS

Preface	Peter Hsu & Rashid Bahar, <i>Bär & Karrer AG</i>	
Albania	Aida Maho, <i>Frost & Fire Consulting</i>	1
Andorra	Miguel Cases & Laura Nieto, <i>Cases & Lacambra</i>	12
Argentina	Javier L. Magnasco & Daniel Levi, <i>Estudio Beccar Varela</i>	24
Bosnia & Herzegovina	Sanja Voloder & Emina Mameledžija, <i>CMS Reich-Rohrwig Hainz</i>	30
Canada	Pat Forgione, Darcy Ammerman & Sean Brandreth, <i>McMillan LLP</i>	37
China	Dongyue Chen & Xingyu Wu, <i>Zhong Lun Law Firm</i>	46
Congo – D.R.	Liliane Mubanga Wetungani & Blaise Lunda Masudi, <i>Thambwe-Mwamba & Associates Law Firm</i>	53
Ecuador	Dr. Boanerges Rodríguez Freire & Boanerges Rodríguez Velásquez, <i>Coronel & Pérez</i>	60
Egypt	Hossam Gramon & Nadia Abdallah, <i>Matouk Bassiouny</i>	66
Finland	Niina Nuottimäki & Janni Hiltunen, <i>Borenius Attorneys Ltd</i>	71
France	Jean L’Homme & Gaël Rousseau, <i>Fidal</i>	80
Germany	Sebastian Tusch & Dr. Benjamin Herz, <i>Gleiss Lutz</i>	89
Ghana	Ekua Hayfron-Benjamin, Johnnie Klutse & Helena Ayensu-Maikido, <i>Ashong Benjamin & Associates</i>	99
Greece	George Bersis & Smaragda Rigakou, <i>Potamitis Vekris</i>	108
India	Shuchi Sinha, Pallavi Meena & Pragya Sood, <i>AZB & Partners</i>	118
Italy	Emanuele Grippo & Andrea Banfi, <i>Gianni, Origoni, Grippo, Cappelli & Partners</i>	128
Japan	Koichi Miyamoto, <i>Anderson Mori & Tomotsune</i>	140
Macedonia	Dragan Dameski & Ana Hadzieva Angelovska, <i>Debarliev, Dameski & Kelesoska, Attorneys at Law</i>	149
Malta	Louis de Gabriele, Andrei Vella & Stephanie Soler, <i>Camilleri Preziosi</i>	158
Netherlands	Roderik Vrolijk & Rogier Raas, <i>Stibbe</i>	166
Singapore	Regina Liew & Larry Lim, <i>Rajah & Tann Singapore LLP</i>	175
Spain	Fernando Mínguez Hernández, Íñigo de Luisa Maíz & Rafael Mínguez Prieto, <i>Cuatrecasas, Gonçalves Pereira</i>	184
Switzerland	Peter Hsu, <i>Bär & Karrer AG</i>	198
Ukraine	Oleksandr Zavadetskyi, <i>Zavadetskyi Advocates Bureau</i>	208
United Kingdom	Peter Snowden, Simon Lovegrove & Matthew Gregory, <i>Norton Rose Fulbright LLP</i>	213
USA	Reena Agrawal Sahni & Timothy J. Byrne, <i>Shearman & Sterling LLP</i>	226

PREFACE

Banking has long had a global reach. It is also a heavily regulated industry. In the wake of the financial crisis of 2008, it has become the object of a number of regulatory initiatives which are being rolled out at a stunning rate across the globe. Simply staying abreast of these ongoing developments is a challenge even for the most dedicated specialist.

This is where this book comes in. It provides general counsels, regulators and lawyers with a comprehensive insight into banking regulation in 26 countries around the world. The chapters have been written by leading practitioners in each jurisdiction, who provide their analysis and views on the current state of regulation and ongoing developments. To facilitate comparisons, the structure of each chapter is the same: it starts by introducing the readers to the architecture of banking regulation, covering both regulations that are applicable to banks and the regulators in charge of supervising and enforcing them in each jurisdiction. It describes the key requirements for governance of the board of directors and senior management, as well as the internal control environment of the entire institution. It carries on with an overview of new trends in regulation and legal developments in the area. Furthermore, it presents regulatory capital requirements, analysing the role of national and international standards in defining these requirements, as well as the impact of international initiatives to improve capital and liquidity requirements in the jurisdictions that are surveyed. The chapters then extend to rules protecting clients, covering not only rules that apply to the conduct of banks when dealing with clients, but also rules on cross-border services and anti-money laundering initiatives. Overall, our hope is that this book will prove a stimulating and insightful read, which will prepare banks and their advisers not only to overcome but to master the challenges they and their clients are facing at a global level.

Peter Hsu & Rashid Bahar
Bär & Karrer AG

Macedonia

Dragan Dameski & Ana Hadzieva Angelovska
Debarliev, Dameski & Kelesoska, Attorneys at Law

Introduction

The banking system of the Republic of Macedonia contains financial institutions that are part of the institutional framework and legal regulations that constitute the legal framework. The institutional framework is comprised of the National Bank of the Republic of Macedonia (hereinafter: “NBRM”), commercial banks (hereinafter: “Banks”) savings banks and the Deposit Insurance Fund. The Banks hold a central role in the banking system and are regulated under the Law on the National Bank of Macedonia, while commercial banks accomplish their activities based on general law, the Banking Law and other laws and regulations.

Nowadays, the Macedonian banking system consists of 15 commercial banks and three savings banks. The banking system of the Republic of Macedonia comprises widespread foreign capital more than domestic capital, thus 75% of the total share capital is from foreign shareholders.

On the other hand, the shares of individual banks, as well as the three banks with the greatest number of total assets in the banking system, still indicate a high concentration in the banking system. The three largest banks account for almost 60% of total assets.

According to the latest statistics of the NBRM, despite all the challenges, the banking system has retained its stability, proving its resistance to shocks both from the domestic and external environment. Due to the financial crisis deeply biting the global economy, it was obvious that the consequence would be delayed recovery of the global economy. The environment in which the banks were working was strongly influenced by non-economic factors: the domestic political situation; and the debt crisis in Greece.

The liquidity of the banking system is considered as satisfactory. Credit risk (as the most significant risk inherent in banks’ balance sheets) does not indicate a growing concern. In addition, banks’ exposure to other risks is not significant. Considering the fact that the euro is the most common foreign currency in banks’ balance sheets, it minimises the importance of currency risk for banks. This is due to the dominance of the euro and banks’ strategy of maintaining a stable nominal exchange rate in relation to Macedonian Denars vs the euro.

Despite this, all banks respect the limit on aggregate foreign currency (30% of the bank’s own funds).¹ The growth rate of the US dollar, Swiss Franc and British pound in relation to Macedonian Denars did not affect the currency risk of the banks as those currencies have low participation in their balance sheets. Regarding market risks, they are minimal due to the low activity of banks on trading financial instruments.

Banks’ profitability has improved in 2015. The return of assets and capital amounted to 1.1% and 10.4%, respectively (2014: 0.8% and 7.4%).² As has been the case for several years in a row, the improved profitability is based on the reduction in interest expenses. On top of the positive financial result stand major banks with 80% of the total financial result. The solvency of the banking system is high. The capital adequacy ratio at the end of 2015 was 15.5%, meaning there was a slight decrease compared to 2014 due to increased lending activity.³ According to the capital adequacy ratio, there is a continued trend of convergence of domestic banks in the banking system of the Republic of Macedonia. Banks with the higher market share in total assets operate with a lower capital adequacy

ratio. According to the statistics of the National Bank of the Republic of Macedonia, in 2015, the three major banks have improved their capital adequacy ratio.

The overall stability of the banking system, measured by the so-called *son-Index* (Eng.: Z-index) is 38, thus it is relatively high.⁴

Despite the evaluated stability of the banking (financial) system, the NBRM sets the objectives for the upcoming period and all necessary safety measures for the stability of the banking sector in the Strategic Plan of the Central Bank for the period 2016–2018.

The reform of the banking system is directed at approaching EU regulations and standards. For these purposes, the Republic of Macedonia follows international activities and discussions on strengthening the financial supervisory framework and analyses the conditions for their usage.

Regulatory architecture: overview of banking regulators and key regulations

The National Bank is the central bank and the issuing bank of the Republic of Macedonia, a legal entity with administrative, financial and managerial autonomy. It is independent in accomplishing its mission and objectives.

The primary objective of the NBRM is to achieve and maintain price stability. The other objective of the NBRM, subordinate to the primary objective, is to contribute to the maintenance of a stable, competitive and market-based financial system. The NBRM supports the general economic policies without endangering the achievement of the objective stated above, and in conformity with the principle of an open market economy and free competition.

The NBRM is a single regulator responsible for prudential supervision and consumer protection in consumer loans. It is the only body in the banking sector which regulates, licenses and supervises banks, savings banks, companies issuing electronic money and other financial institutions.

Furthermore, NBRM also supervises the application of the regulations that govern foreign currency operations, exchange operations, money transfer services and anti-money laundering systems and customer protection, as further specified in the relevant laws, and acts as a fiscal agent for the Government of the Republic of Macedonia.

The legal framework of the banking system of the Republic of Macedonia is comprised of laws and bylaws. However, the primary laws that directly affect the development of the banking system in the country and provide the basics for the existence and functionality of institutions in the banking sector are as follows:

- Banking Law (“Official Gazette of the Republic of Macedonia” No. 67/2007, 90/2009, 67/2010, 26/2013, 15/2015 and 153/2015).
- Law on the National Bank of Macedonia (“Official Gazette of the Republic of Macedonia” No. 158/2010, 123/2012, 43/2014, 153/2015 and 6/2016).

The Law on the National Bank of Macedonia regulates the organisation and operations of the NBRM, the task and competences of the NBRM as of the date of accession of the Republic of Macedonia to the European Union, and the task and competences of the NBRM after the introduction of the euro as the official currency of the Republic of Macedonia.

The Banking Law regulates the establishment, operation, supervision, and termination of the operation of banks and foreign bank branches in the Republic of Macedonia, as well as the opening and operation of branches of banks from EU Member States, and the direct carrying out of financial activities of banks from EU Member States.

These laws in the banking (financial) sector of the Republic of Macedonia are supplemented by bylaws promulgated by the NBRM in the form of decisions, manuals and strategic plans.

Considering the fact that Macedonia aspires to be a member of the European Union, EU law has an influence on the future trends of development of the banking system in Macedonia. In relation to this, the banking system of the country is subject to changes caused by the need for harmonisation of domestic law with the law, practice and standards of the EU.

One of the biggest challenges at the international level is the implementation of the Capital Accord Basel II and Basel III. Currently there are ongoing activities for adaptation to international capital and liquidity standards prescribed by Basel III, i.e. EU Regulation no. 575/2013 and EU Directive no. 2013/36.

Recent regulatory themes and key regulatory developments in Macedonia

Regarding the financial sector in the Republic of Macedonia, reforms tend to be aimed at strengthening competition in the sector and improving the regulation and supervision of financial institutions. Providing appropriate and attractive conditions for foreign investors and setting certain guarantees for the security of investments will certainly increase the attractiveness of the banking sector for foreign investors.

The NBRM constantly harmonises its legislation with the trends of developed countries, EU regulations and directives and Basel Standards, all in order to develop the banking system.

For the implementation of the Basel Standards, the EU has established the Regulation on prudential requirements for credit institutions and investment firms No. 575/2013 and the Directive on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms No. 36/2013; the NBRM constantly works on finding mechanisms for their implementation and has adopted various decisions, manuals and strategic plans.

Also, even though the Republic of Macedonia is not a Member State of the European Union, in the Ministry of Finance there are ongoing activities for the implementation of Directive No. 2014/59 for establishing a framework for the recovery and resolution of credit institutions and investment firms, because of the significant lack of adequate tools to deal with unsound or failing credit institutions and investment firms.

One of the most significant amendments of the Banking Law refers to the direct performance of financial activities of banks from Member States of the European Union. It shall start to apply as of the day of accession of the Republic of Macedonia to the European Union.

The banking sector in the Republic of Macedonia has started implementing the provisions of the Foreign Account Tax Compliance Act ("FATCA"), in its operations.

Therefore, starting from 1 July 2014, the banking sector in the country started implementing a standardised and uniform procedure of identification of all customers respecting and applying the legislative regulations of the Republic of Macedonia and FATCA.

Bank governance and internal controls

Under the Macedonian Banking Law, it is prescribed that the banks are governed by certain bank bodies, which are: a General Meeting of Shareholders; a Supervisory Board; a Risk Management Committee; an Audit Committee; a Management Board; and other bodies specified by statute (Credit Committee, etc.). The bank's statutes closely prescribe the number, composition, competencies, rights, duties, responsibilities and the manner of operating the bank bodies, as well as the number, the term of office, the competencies, rights, responsibilities and the terms for appointing persons with special rights and responsibilities. The bank's management has to be in conformity with the provisions of the Banking Law and the corporate governance rules prescribed by the National Bank Council in accordance with international standards.

The Banking Law also provides regulations for any person with special rights and responsibilities in the bank, who must have a university degree and knowledge of the regulations for banking and/or finance and has appropriate experience ensuring safe and sound bank management.

General Meeting of Shareholders

This must be convened at least once a year. The annual General Meeting of Shareholders shall be held before the expiration of six months of the calendar year for the previous year. As an exception to this, the General Meeting of Shareholders for the previous year may be held before the expiration of nine months of the calendar year. The bank shall be obliged to submit the report on the held General

Meeting of Shareholders to the NBRM, including the working materials and adopted decisions within 15 days after the General Meeting of Shareholders.

Supervisory Board

The Supervisory Board supervises the operations of the Management Board, approves the policies for conducting financial activities and supervises their implementation. It is responsible for ensuring good practice and management and bank stability, as well as providing timely and accurate financial reports to the National Bank.

Apart from the prior consent of the Governor for appointing a member of the bank's Supervisory Board, a member of a Supervisory Board in a bank may not be an employee of the bank or a net debtor of the bank. At least one fourth of the bank's Supervisory Board members must be independent members (an "independent member" is a natural person and natural persons connected thereto, who: (i) is not employed or a person without special rights and responsibilities in the bank; (ii) is not a shareholder with a qualified holding in the bank or does not represent a shareholder with a qualified holding in the bank; (iii) does not work, or has not been working in an audit company within the last three years, which at that time audited the operations of the bank; and (iv) has no financial interest or business relation with the bank in an amount exceeding 3,000,000 Denars annually, on average, over the last three years).

The mandate of the Supervisory Board members is four years. The Supervisory Board members elect a President from amongst their ranks. The Supervisory Board meets at least once a month.

The Supervisory Board makes a self-assessment of its operations from the perspective of its individual members as well as jointly at least once a year, and shall notify the General Meeting of Shareholders thereon.

The bank's Supervisory Board may not appoint a member of the bank's Management Board without obtaining prior approval from the Governor.

Risk Management Committee

The Risk Management Committee in a bank consists of at least three and a maximum of nine members. The members of the Risk Management Committee are elected from among the persons with special rights and responsibilities employed in the bank. One of the members of the bank's Management Board must be a member of the Risk Management Committee.

The members of the Risk Management Committee, in addition to other general requirements applicable for persons with special rights and responsibilities, must have a minimum of three years' experience in the area of finance or banking.

The Risk Management Committee meets at least once a week. The Risk Management Committee makes a self-assessment of its operations from the perspective of its individual members as well as jointly at least once a year, and submits it to the Supervisory Board.

Audit Committee

The Audit Committee shall consist of at least five and a maximum of nine members. The majority members in the Audit Committee shall be elected from among the members of the Supervisory Board, and the other members shall be independent members. At least one member of the Audit Committee shall be an authorised auditor. The Audit Committee members shall elect a President from among their ranks, who is responsible for the organisation of the work of the Audit Committee.

The Audit Committee members, besides the requirements referred to for any person with special rights and responsibilities, shall also have knowledge of:

1. the bank's operations, its products and services;
2. the risks the bank is exposed to;
3. the internal control system and risk management policies of the bank; and
4. accounting and auditing.

The Audit Committee shall meet at least once quarterly, and on the request of the Supervisory Board. The Audit Committee shall adopt rules of procedure approved by the bank's Supervisory Board.

The Audit Committee shall make a self-assessment of its operations from the perspective of its individual members as well as jointly at least once a year. The Audit Committee shall submit an annual report on its operations to the bank's Supervisory Board and General Assembly of Shareholders.

Management Board

The bank's Management Board shall consist of a minimum of two and a maximum of seven members. A member of a bank's Management Board, besides the requirements referred to for any person with special rights and responsibilities, must have six years of successful work experience in finance or banking or three years of work experience as a person with special rights and responsibilities in a bank with activities corresponding to those in the bank in which they are being appointed.

A member of a bank's Management Board, besides meeting the requirements above and not being connected to a legal entity in which the bank participates, also cannot be a member of the Supervisory Board, Risk Management Committee, Audit Committee and Management Board of the bank, and cannot be a person who is member of a management body of any other domestic or foreign trade company.

The members of the Management Board must be permanently employed with the bank, and at least one of the members must be fluent in Macedonian, understand Cyrillic script and have permanent residence in the Republic of Macedonia. Should the number of members of the Management Board of a bank drop below that prescribed by law, the Supervisory Board shall, from amongst its ranks, appoint an acting member(s) to the Management Board. Acting members of the Management Board shall be subject to entry into the Trade Register in the Central Register of the Republic of Macedonia. An acting member of the Management Board may not participate in decision-making within the competences of the Supervisory Board while carrying out this duty.

The bank's Management Board shall be responsible to the Supervisory Board regarding its operations. The bank's Management Board shall report to the Supervisory Board on its operations at least once a month.

The bank's Management Board shall immediately notify the Supervisory Board on:

1. deteriorated bank liquidity or solvency;
2. reasonable ground for revoking the founding and operating licence or on a ban on performing certain financial activity as specified by law;
3. reduction of own funds below the requirement as specified by law;
4. findings from the supervision and the inspection of the National Bank; and
5. findings by the Public Revenue Office and other controlling bodies.

The remuneration for the members of the Management Board and the Supervisory Board is provided in the Law on trade companies, where it is stipulated that the General Meeting of Shareholders shall by a decision determine the monthly lump sum or the lump sum per meeting of the non-executive members of the Supervisory Board. The non-executive members of the Supervisory Board shall be entitled to reimbursement of all other expenses (travel and other expenses), right of life insurance and other types of insurance, as well as other rights related to the performance of their office (usage of the business premises, equipment necessary for work and similar).

The executive members of the Board of Directors and the members of the Management Board, i.e. the administrator, shall be entitled to monthly compensation, right of life insurance and other types of insurance, reimbursement of travel expenses and other expenses and rights.

The General Meeting of Shareholders may approve the executive members of the Board of Directors and the Management Board, i.e. the administrator, to receive remuneration from the bank's profits. Such remuneration, as a rule, shall consist of a share in the annual profit of the company (payment in cash, stocks, royalty, bonus or in another manner). The approved participation in the annual profit of the company shall be calculated on the basis of the portion of the annual profit of the company that remains after the reduction of the realised profit for the amount of total losses of previous years, and these amounts are set aside as legal and statutory reserves. A decision contrary to this provision shall be null and void.

It is important to mention that the Law on trade companies provides that the annual report of the company shall disclose the earnings of each executive member of the Board of Directors and member of the Management Board (salary, salary allowances, bonuses, insurance and other rights), that being the compensation of the non-executive members of the Board of Directors as well as the members of

the Supervisory Board. Detailed data on the earnings from other companies (salary, salary allowances, membership compensations, bonus, insurances and other rights) for the executive members of the Board of Directors, the members of the Management Board, the non-executive members of the Board of Directors, and the members of the Supervisory Board, provided that they are members of management bodies of other companies, shall be mandatorily published in the annual report of the company.

In reference to the internal controls of a bank, the Banking Law obligates a bank's Supervisory Board to establish an Internal Audit Department as an independent organisational unit in the bank.

The organisation, rights, responsibilities and relationship with other organisational units in the bank, and the responsibilities and requirements for appointing a manager of the Internal Audit Department is regulated by the Supervisory Board.

The Internal Audit Department conducts constant and full-scope audits of the legitimacy, accuracy and promptness of the bank's operations through:

1. assessment of the internal control system's adequacy and efficiency;
2. assessment of the implementation of the risk management policies;
3. assessment of the design of the information system;
4. assessment of the accuracy and reliability of the commercial books and financial statements;
5. verification of the accuracy, reliability and the timeliness of reporting in accordance with the regulations;
6. monitoring of compliance with the regulations, the Code of Conduct, policies and procedures;
7. assessment of the anti-money laundering systems; and
8. assessment of the services the bank obtains from its ancillary service undertakings.

The Internal Audit Department carries out its activities in conformity with the internal audit principles and standards, the bank's Code of Conduct and the operating policy and procedures of the Department.

The Internal Audit Department develops an annual plan of activities of the department, endorsed by the Supervisory Board. The plan indicates what is subject to audit, including the description of the contents of the planned audit in certain areas and the schedule of the audits during the year, including the planned auditing period.

Bank capital requirements

The bank should dispose with an adequate level of its own funds depending on the nature, type and scope of financial activities and the level of risk arising from the conduct of such activities (capital adequacy).

The bank is obliged to operate in a manner that allows it to permanently be able to settle all its liabilities (solvency).

The capital adequacy ratio shall represent the bank's own funds to risk-weighted assets ratio.

The bank's own funds may not be below the amount of the initial capital prescribed by the Banking Law, which is currently 310,000,000.00 Denars. The National Bank Council defines the methodology for calculating the bank's capital adequacy ratio, in accordance with international standards.

Currently, the bank must maintain a capital adequacy ratio which may not be below 8%. The Governor may prescribe a higher rate if necessary, due to the nature, type and scope of the activities the bank carries out and the risks it is exposed to as a result of such activities.

The bank must permanently and adequately manage its risks according to the nature, type and scope of the financial activities it performs. The bank must also specify the criteria, the manner and the methods of its risk management, as well as the capital adequacy assessment, in accordance with its risk level through its general acts and internal procedures. These general acts and internal procedures must be in compliance with the regulations, standards and rules in the banking area, and the methodology prescribed by the National Bank Council.

In accordance with the Banking Law, the bank shall be obliged to maintain its liquidity, i.e. to manage its assets and liabilities in a manner ensuring the settlement of due liabilities at all times.

For the purposes of maintaining liquidity in accordance with the methodology for liquidity risk management, the bank shall manage its liquidity risk by, in particular:

1. the establishment and maintenance of an adequate maturity structure;
2. planning and management of inflows and outflows of funds and providing an adequate amount of liquid assets;
3. tracing the sources of funds and their concentration; and
4. liquidity testing.

For the purposes of proper risk management, the National Bank Council, in accordance with international standards, enacted a Decision on managing banks' liquidity risk, which includes a liquidity risk management system, maintaining an adequate liquidity level, and provisions for the method and contents of reports to the NBRM.

Liquidity risk management, for the purposes of the Decision, shall denote asset and liability management that ensures timely and regular settlement of liabilities of the bank during regular operation or in an emergency.

The bank is obligated to have a liquidity risk management system in place, compatible with the nature, scope and complexity of its financial activities. The system has to consist of at least the following components: 1) an organisational structure for liquidity risk management; 2) steps and procedures for internal control and audit; 3) an information system; 4) stress-testing; and 5) a Liquidity Contingency Plan.

In cases where, in accordance with the Banking Law, the bank is subject to consolidated supervision, the liquidity risk management policy shall also include liquidity risk management at the banking group level. When a bank is part of a group whose parent entity is seated outside the Republic of Macedonia, the liquidity risk management policy shall also take into consideration the restrictions, if any, on the international transfer of liquid funds.

The regulative capital and liquidity regime are prescribed by the national regulatory body in the Republic of Macedonia. Still, as previously mentioned, it is important to stress the fact that the NBRM follows the rules set by the Basel Committee of Banking Supervision and prescribed through the Basel Standards by adopting the amendments of the Basel Capital Accord known as Basel II, and moreover strives to adjust current regulation to adhere to the Basel III principles in order to adapt to international capital and liquidity standards.

Rules governing banks' relationships with their customers and other third parties

The rules applicable to deposit-taking activities, lending activities, investment services and proprietary trading activities are prescribed in Decisions and Instructions enacted by the National Bank Council of the Republic of Macedonia. These rules are binding on all banks established in the Republic of Macedonia.

In the interest of financial policies, the National Bank Council has passed a Decision for a reserve requirement – the basis for calculation of which encompasses banks' liabilities in domestic currency, in domestic currency with an FX clause and in foreign currency for deposits and received loans – for debt securities issued by banks and savings banks and other liabilities. The reserve requirement rate for banks must equal 10% for liabilities in domestic currency, 20% for liabilities in domestic currency with an FX clause and 13% for liabilities in foreign currency.

With reference to banks' relationships with their customers and third parties, it should be noted that a law on the protection of consumers when concluding contracts for consumer loans was passed in order to regulate the protection of consumers in the conclusion and implementation of consumer loan agreements, to the extent and for the purposes stipulated in the law.

Moreover, in order to maintain good relations with its customers, each bank enacts internal acts, i.e. codes for corporate governance in the interests of the principal of transparency and good performance towards its customers.

Further to this, the Association for Banking at the Chamber of Commerce in the Republic of Macedonia enacted a code on the good performance of banks and savings banks in Macedonia to set standards of

good conduct and open communication in order to protect their clients, increase the reliability of and confidence in the banking system, protect the reputation of the financial sector in society and promote responsibility, transparency and professionalism.

The Deposit Insurance Fund insures deposits of individuals. While insuring deposits in banks, foreign bank branches and savings banks, the Fund contributes to stability and public trust in the banking and financial system of the country. From the date of accession of the Republic of Macedonia to the European Union, deposits of small-sized commercial entities shall also be insured.

The Banking Law also regulates the founding, operations, supervision, and termination of operations of branches of foreign banks in the Republic of Macedonia, as well as the opening and operations of branches of banks from European Union Member States.

A foreign bank may open a branch in the Republic of Macedonia if it has a previously obtained licence from the Governor for opening and operating a branch.

The banking activities of banks from European Union Member States and operation of branches of banks from European Union Member States are regulated by specific provisions stipulated in the Banking Law, but they are only applicable once the Republic of Macedonia enters into the European Union.

In accordance with the Banking Law, the banks shall act pursuant to the regulations on anti-money laundering and combating the financing of terrorism. The National Bank conducts supervision on anti-money laundering and combating systems in other banks. Additionally, the National Bank Council has enacted a Decision on the manner and procedures for the establishment and application of banks' programmes for the prevention of money laundering and financing of terrorism, and it contains the minimum standards the banks should apply in order to establish an adequate programme, though each bank must include additional elements in its internal acts, depending on the scope and the nature of the activities it performs.

* * *

Endnotes

1. Report "On The Risks In The Banking System Of The Republic Of Macedonia for 2015" drafted by the National Bank of the Republic of Macedonia Supervision, Banking Regulation and Financial Stability Department.
2. *Ibid.*
3. *Ibid.*
4. *Ibid.*

**Dragan Dameski****Tel: +389 2 313 6530 / Email: dameski@ddklaw.com.mk**

Dragan Dameski is one of the founders and the head of the foreign investments department at Debarliev, Dameski & Kelesoska Attorneys at law. He works mostly for foreign clients and has been involved as legal counsel in practically all important projects in Macedonia, especially in energy, capital markets and real estate. Dragan is a member of the Macedonian Bar Association, Association of Mediators, the International Union of Lawyers (UIA), and the International Bar Association (IBA). His areas of expertise include M&A, foreign investments, real estate, energy, securities and finance.

**Ana Hadzieva Angelovska****Tel: +389 2 321 5471 / Email: hadzieva-angelovska@ddklaw.com.mk**

Ana Hadzieva Angelovska is an attorney at law at Debarliev, Dameski & Kelesoska Attorneys at Law, having joined the firm in May 2015.

She has nine years of professional experience working as an attorney at law in a law firm and as head of department for legal affairs in a production company in the mining sector, both located in Skopje, Republic of Macedonia.

Ana Hadzieva Angelovska graduated in 2006 from the Faculty of Law “Iustinianus Primus”, in Skopje, Republic of Macedonia.

She speaks English fluently and has an intermediate knowledge of Greek and Serbian.

Debarliev, Dameski & Kelesoska, Attorneys at Law

Str. Mirce Acev 2nd/3rd Floor, 1000 Skopje, Macedonia

Tel: +389 2 3215 471 / Fax: +389 2 3215 470 / URL: <http://www.ddklaw.com.mk>

Other titles in the *Global Legal Insights* series include:

- Bribery & Corruption
- Cartels
- Commercial Real Estate
- Corporate Tax
- Employment & Labour Law
- Energy
- International Arbitration
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions

Strategic partners:



www.globallegalinsights.com