Macedonia

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1 Overview

1.1 What are the most common types of private equity transactions in your jurisdiction? What is the current state of the market for these transactions? Have you seen any changes in the types of private equity transactions being implemented in the last two to three years?

As in most jurisdictions, the types of equity transactions in the Republic of North Macedonia come in various forms such as capital transactions, private and public M&A, financial instruments buyout, swaps, real estate, etc.

The general trend is a slow but steady increase of investments. However, the mechanisms used for investing and transferring private equity (PE) remain fairly traditional due to the conservative nature of the local market, its small size and the fact that modern financial and corporate trends have not penetrated the business or law community. As a result, most equity transactions are conducted with simple and regular agreements and one can rarely see complex vehicles used for making PE transactions.

1.2 What are the most significant factors encouraging or inhibiting private equity transactions in your jurisdiction?

One significant factor encouraging PE transactions is the fact that the Republic of North Macedonia has a fairly simple, fast and efficient administrative environment for doing business. Namely, conducting equity transactions is efficient and accompanied with relatively low administrative costs. The corporate taxation system offers a flat rate tax of 10%. Also, the legal treatment of foreign investors is almost equal to residents in every field, including the acquisition of real estate.

An inhibiting factor is the fact that the economy is small and not very integrated in global trade chains. Another factor is the restrained nature of debt financing. Until recently, political instability might have discouraged investments, especially of small- and middle-sized companies or investment funds. As a result, there is a limit to the frequency of equity transactions especially more complex ones.

1.3 What trends do you anticipate seeing in (i) the next 12 months and (ii) the longer term for private equity transactions in your jurisdiction?

Every consecutive government in the past has invested energy in attracting foreign investors in the state, by offering competitive tax rates and by presenting the benefits of investing in the state around the globe. This policy has contributed to significant inflow of capital, know-how and the pace of development, domestic consumption and investment; it is likely to continue. In addition, the government has initiated an ambitious start up support programme that might lead to inventive concepts that will attract the interest of PE investors, who are looking for placement of their capital.

Thanks to the final resolution of the so-called "Name Disputed", the next 12 months and longer term are likely to see the pace of these positive trends pick up, as the Republic of North Macedonia enters NATO and opens the EU negotiation process. One most obvious indication is the increased trading rates and index prices of the Macedonian Stock Exchange.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in your jurisdiction?

Investors usually purchase shares in local companies either directly or through an investment vehicle located in a jurisdiction that has stable and flexible corporate regime, but also has a double taxation avoidance agreement with the Republic of North Macedonia. This structure is especially used when there is more than one investor in the investee company, whereby all the investors acquire shares in the investment vehicle company, which in turn wholly owns the investee company.

The foreign PE transactions are usually supported by syndicated bank loans or holding corporate capital, secured by guarantees and other security instruments.

2.2 What are the main drivers for these acquisition structures?

There are few types of reasons why such structures are preferred. One driver is the fact that the local corporate law regulation is a bit rigid and investors would like to have more freedom in potential sales, pledge or other activities involving the shares. Another is the fact that foreign investors do not trust that the local courts would have the competence or the impartiality to solve any potential shareholder disputes.

2.3 How is the equity commonly structured in private equity transactions in your jurisdiction (including institutional, management and carried interests)?

There is no legal regulation of these matters and most of them are left to the contractual freedom of the shareholders to structure the articles of association as it suits them best.

When PE investors invest in an already existing company and do not want to get involved in the management of the company, they retain the management. If the management prior to the acquisition owned the company, the management usually retains a certain amount of shares (minority) and in some cases a guaranteed place in the management or supervisory boards.

Though carried interests are not regulated in any way, there is no limitation to regulate the relations with the articles of association or a separate contract.

2.4 If a private equity investor is taking a minority position, are there different structuring considerations?

An investor would seek to acquire at least 10% of the investee shares due to the fact that this amount of holdings is the threshold for acquiring certain control and blocking rights deriving from the Law on Trade Companies. Investors would also seek to have the articles of association amended in a way that gives them a position of a member of the supervisory or executive board.

2.5 In relation to management equity, what is the typical range of equity allocated to the management, and what are the typical vesting and compulsory acquisition provisions?

The range of equity allocated to management usually vary between 5% and 20%. Vesting periods are rare and therefore it is not possible to state what the typical timeframe would be.

In regards to compulsory acquisitions, provisions may be in the form of exclusion of the manager-equity holder. The way this is to be done is left up to the freedom and creativity of the shareholders. In such a case the articles of association must stipulate the conditions, procedure and consequences of the exclusion, i.e. compulsory acquisition.

Note that, if the manager refuses to voluntarily accept a compulsory acquisition, the matter must be resolved by the courts and therefore any compulsory acquisition would be blocked or postponed.

2.6 For what reasons is a management equity holder usually treated as a good leaver or a bad leaver in your jurisdiction?

Practice for good/bad leaver situations are non-existent in the local practice.

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies? Are such arrangements required to be made publicly available in your jurisdiction?

One EP company is usually governed by the articles of association and internal regulation documents, such as decisions of shareholders and management/supervisory bodies. These prescribe rights to fill management/supervisory positions, rules and procedures for selling shares, grounds for exclusion and reporting rights. Managerial agreements might regulate specific rights, duties and incentives of managers. Of the enumerated documents only the articles of association are publicly accessible to anybody through an excerpt from the Trade Registry.

Governance arrangement can be made with inter-shareholder agreements, without including such arrangement in the corporate documents of the company. However, these would have effect for only the involved shareholders and not any third parties.

3.2 Do private equity investors and/or their director nominees typically enjoy veto rights over major corporate actions (such as acquisitions and disposals, business plans, related party transactions, etc.)? If a private equity investor takes a minority position, what veto rights would they typically enjoy?

Minority investors and their director nominees enjoy veto rights for major corporate decisions such as related party transactions, changing of the articles of association, liquidation of the company, deals that take up a significant amount of share capital and other particular situations, on the basis of the law itself. For this veto right to exist under statutory provisions, the minority shareholder should have a certain amount of share capital or decision-making rights.

However, the veto rights can also be regulated by various corporate acts, whereby the articles of association hold the primacy. In terms of shareholder decisions, the necessary majorities and situations for their usage can be listed. Certainly, veto rights of some investors can also be explicitly stated. In addition, one can also regulate the veto rights of managers nominated by one investor.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

There are no limits to the effectiveness of any veto arrangements, neither on the shareholder's level nor the director nominee level. For the shareholder's level, the law stipulates that there are certain minimum support majorities necessary for certain decisions to be made; however, it is clearly stated that the shareholders can arrange for higher majorities for different situations if they deem appropriate. On the management level, allocation of blocking rights may be done with the articles of association or the decision for appointment of the individual's position holder.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or *vice versa*)? If so, how are these typically addressed?

There are no statutory duties owed by a PE investor to minority shareholders. However, in regards to veto rights, the articles of association can allow for an arrangement between the PE investor and minority shareholders.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including (i) governing law and jurisdiction, and (ii) non-compete and non-solicit provisions)?

Even though the law gives flexibility for regulating the shareholder relations and manager or supervision matters with the articles of association, the mandatory provisions of the law still limit this freedom. The same is relevant for decisions made by the shareholders. Any shareholder, management or supervisory body member, as well as any third party which has a legal interest, may submit to the court a request for a judicial reevaluation of the content of the articles of association and any other general acts or corporate decisions.

Courts of the Republic of North Macedonia have exclusive jurisdiction over the disputes arising from the establishment, termination and status changes of trade companies, which have a seat within the local jurisdiction.

Non-compete clauses are enforceable both as elements of the articles of association, but also on the basis of statutory provisions themselves. In general, they are binding during the duration of the relationship between the parties (company and management). Under the employment law, one can extend the duration of the non-compete clauses for two years after the termination of the relation for any employee.

Non-solicit provisions are generally allowed and enforceable, unless they go against some mandatory regulatory provisions, such as those deriving from competition protection law.

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies?

All nominees for any managerial or supervisory position must fulfil the general criteria from the Law on Trade Companies. The following cannot have the quoted positions: a) founders or a members of managing or supervisory body of a company whose bank accounts have been blocked or are under bankruptcy procedure; b) persons who have a prohibition for conducting an activity, profession or duty; and c) persons convicted by a final judgment that they committed the crime of fake bankruptcy, bankruptcy with dishonest activity, and damaging or preferring creditors.

Nominees for any managerial or supervisory position in some industry branches may be required to have additional education, work experience or other qualification in order to be able to hold those positions.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

All persons holding managerial or supervisory positions must inform the managerial or supervisory organs and shareholder of any potential conflicts of interest by disclosing: (i) the ownership or control of 20% or more the shares/voting rights in any third company; (ii) third companies in which they have a managerial or supervisory position; and (iii) all current and possible deals, in which they might be an interested party.

In addition to such information obligations, the holders of managerial or supervisory positions face prohibitions for competition, i.e. engage in the same activity themselves or are members of management or supervisory bodies in any competitor companies.

Normally, the shareholders or the managerial or supervisory bodies can approve such activities if they do not deem them detrimental to the interests of the company.

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in your jurisdiction, including antitrust and other regulatory approval requirements, disclosure obligations and financing issues?

In general, equity transactions are fairly simple and completed fast in the Republic of North Macedonia. Any extension of the timetable of the transactions will depend on the specifics of some industry or regulated business activity, such as finance, pharmaceutical, energy and similar. Thus, for some fields, prior approval is needed in order to change the ownership of the shares, while for some only a notification will suffice.

In terms of antitrust regulation there might be an obligation to notify the authorities and seek a concentration clearance if the legal geographical or profit/income criteria are fulfilled.

4.2 Have there been any discernible trends in transaction terms over recent years?

Due to the conservative and relatively isolated nature of the economy, there are no new trends that can be discerned in the last few years.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

Public-to-private transactions are very rare to spot within this jurisdiction. However, there is a Law on Takeover of Joint Stock Companies, which regulates some of the relevant issues.

One thing to point out is that when one entity, alone or together with other entities with which it acts together, acquires 25% of the voting-rights-stocks, it is obliged to give an offering to buy out the rest of the stock. Note that there are some exceptions to this obligation listed in the law.

Another point important to mention is that when an offerer has acquired 95% of the voting-rights-stocks it may buy out the rest of the stocks even though the shareholders did not accept its offer.

5.2 What deal protections are available to private equity investors in your jurisdiction in relation to public acquisitions?

In cases of voluntary and mandatory takeover offers the price is set

by the offerer. However, there are mechanisms established by the law used for determining the minimal price of the price per stock, aimed at protecting the interests of minority shareholders. Note that the offered price must be same for all stockholders.

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors (i) on the sell-side, and (ii) on the buy-side, in your jurisdiction?

The particular type of structure PE investors prefer depends on the gap between the closing and signing, necessary approvals and business field. One option EP investors opt for, is a locked-box structure. Another option is closing adjustments, though such arrangements are rare. The parameters used for adjustment are mostly related to working capital, CAPEX and debt.

6.2 What is the typical package of warranties/indemnities offered by a private equity seller and its management team to a buyer?

Investors try to avoid or at least limit the warranties/indemnities when they have the capacity of a seller. Standard warranties and indemnities are simple and basic, thus covering valid title, correctness and completeness of disclosed information, as well as authority to enter the transaction or lack of any restrictions thereof. Other warranties/indemnities are very rare and are included only in big transactions.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

Most usually the PE seller restricts itself to providing pre-completion guarantees such as non-disclosure of the ongoing transaction, managing the business in the regular matter and possibly the obligation to seek approval from buyer for certain actions. Post-completion undertakings are very rare and limited.

6.4 To what extent is representation & warranty insurance used in your jurisdiction? If so, what are the typical (i) excesses / policy limits, and (ii) carve-outs / exclusions from such insurance policies, and what is the typical cost of such insurance?

The insurance market is very conservative and complex insurance products for corporate representations or warranties are not present on the market. Complex and substantial investments for equity in the Republic of North Macedonia, which incorporate representations or warranties insurance, are negotiated outside of this jurisdiction.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

The limitation for a given warranties, covenants, indemnities and undertaking come in a couple of forms. Typically, limitations include: (i) exemption of claims deriving from changes of laws, regulations or administrative practices; (ii) exemption of claims based on issues of which the buyer was aware; (iii) exemption of claims on the basis of time limitations; and (iv) obligation to mitigate losses.

6.6 Do (i) private equity sellers provide security (e.g. escrow accounts) for any warranties / liabilities, and (ii) private equity buyers insist on any security for warranties / liabilities (including any obtained from the management team)?

Security in the form of escrow accounts are present as a guarantee for the established warranties and liabilities. The degree of insistence on security of a buyer depends on the size, condition and market placement of the company, as well as the level of personal trust among the parties. For example, a listed or an established company or a transaction between established partners will be subject to less insistence on security. On the other hand, a start-up or a transaction facilitated by intermediaries or through market research would be subject to more stringent security.

In situations when one manager has strong influence and liberty in conducting the transaction, it may happen for the buyer to ask and the manager to grant security. This is usually in the form of a personal guarantee

6.7 How do private equity buyers typically provide comfort as to the availability of (i) debt finance, and (ii) equity finance? What rights of enforcement do sellers typically obtain in the absence of compliance by the buying entity (e.g. equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

Though rare, banking guarantees or corporate guarantees have been offered as comfort for the availability of debt finance and equity finance. Also, sometimes personal guarantees of physical individuals in charge of the transaction can be used.

A failure of compliance could lead to payment of contractual and statutory damages, as well as returning of all acquired benefits.

6.8 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

Reverse break fees in the Republic of North Macedonia might come in the form of contractual penalty. As a result, if the Buyer fails to pay the price he may withdraw from the contract but must pay the fee. Sometimes, such fees are applicable to the Seller as well in case it chooses to withdraw.

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

The IPO exit is only applicable to stock companies. However, other forms of companies may undergo a transformation process and become a stock company. The law allows for a limited liability company to be transformed with an IPO.

The IPOs are regulated with the Law on Securities. Issuance; offers and sales of public securities are done after a prior approval of the Commission for securities. In attachment to the request for approval the company that wishes to be listed must include a set of documents, including a prospectus.

The IPO is deemed successful if 60% of the stocks offered by the prospectus are written down and paid for, within the public offering period which cannot be longer than 12 months.

Note that, in whole history the Republic of North Macedonia, there have scarcely been any IPOs and most securities transfers are conducted with private offers.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

Given the fact that there has been scarcely any IPO in this jurisdiction it is impossible to say what the practice is in relation to lock-ups.

7.3 Do private equity sellers generally pursue a dual-track exit process? If so, (i) how late in the process are private equity sellers continuing to run the dual-track, and (ii) were more dual-track deals ultimately realised through a sale or IPO?

No dual-track exit process has ever been recorded in the Republic of North Macedonia.

8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in your jurisdiction and provide an overview of the current state of the finance market in your jurisdiction for such debt (particularly the market for high yield bonds).

The local banking sector is quite conservative in its decisions to grant credits to PE investors and would limit their financing to projects of established companies. Also, corporate debt financing – in the forms of corporate bonds or direct loans from third parties – are rare. As a result, most PE investors resort to loans of foreign banks to fund their undertakings, usually syndicated loans. In the rare case when a local bank decides to sponsor a transaction, it would most likely require a high debt-to-equity ratio.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

There are no relevant restrictions or requirements that derive from statutory obligation. The factors inhibiting debt financing derive from the business strategy nature of banks. When the debt financing is from abroad obligations for informing and reporting to the National Bank apply.

8.3 What recent trends have there been in the debt financing market in your jurisdiction?

The financing market in our jurisdiction remains conservative and no development trends are to be noted.

9 Tax Matters

9.1 What are the key tax considerations for private equity investors and transactions in your jurisdiction? Are off-shore structures common?

The key taxation consideration is of course the 10% corporate tax rate imposed on locally incorporated or locally active companies. There is also a profit repatriation withhold tax of 10% that is payable unless there is a double taxation agreement between the jurisdictions, which stipulates something else.

The state offers tax breaks for greenfield investors, which invest in the so-called technological development zones. The typical tax break is a complete exemption to tax for a period of maximum of 10 years. However, there are caps on this break depending on the size of the investment.

Offshore structures are present in our jurisdiction; however, the new Law on the Prevention of Money Laundering and Sponsoring of Terrorism, which imposes controls of ultimate beneficiaries, might burden and inhibit the extent of these structures. In addition, it is unforeseeable what kind of impact the new "Ultimate Beneficiary Register", which was established in spring 2019 and where all ultimate beneficiaries of a company will have to be registered, will have.

9.2 What are the key tax-efficient arrangements that are typically considered by management teams in private equity acquisitions (such as growth shares, incentive shares, deferred / vesting arrangements)?

Exchange of shares or other equity transaction schemes are treated as usual transfer of shares and this triggers capital gain tax obligation. No specific arrangements have been used in order to avoid this.

9.3 What are the key tax considerations for management teams that are selling and/or rolling-over part of their investment into a new acquisition structure?

There is no significant tax consideration for the management when selling or transferring shares due to the fact that, beyond capital gain of 15% tax, no other tax is imposed on such transactions.

One question that has arisen in theory recently, is whether shares or stocks awarded to a manager in the form of a managerial contracts bonus should be treated as income and thus taxed as such. If so, social contribution will have to be paid on top of the capital gains tax. While the law can be read as imposing a tax on such arrangement, in practice these ways of payments are conducted as regular share transfers and are not taxed as an income.

9.4 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors, management teams or private equity transactions and are any anticipated?

There have been no significant changes in the legislation or practice of the tax authorities, aside from the increase of the tax rate from 10% to 15% for personal income tax, above MKD 1 million (*ca.* EUR 16,000) and of all income deriving from industrial property rights, income from ease and sub-lease, capital income, capital gains and gains from games of chance.

In general, it can be said that the local authorities have a lax approach on favourable tax structures of investors as long as they are compliant with the text of the law. Namely, one of the key public policy instruments of the state for attracting foreign investors has been to keep tax levels as low as possible.

10 Legal and Regulatory Matters

10.1 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

The relevant legal framework for PE investments and transactions is given by the Law on Trade Companies and the Law on Investment Funds. However, the presence of such actors is fairly limited and therefore practice remains underdeveloped. No significant changes in these legal instruments have been noted recently and are unlikely to change in the foreseeable time.

10.2 Are private equity investors or particular transactions subject to enhanced regulatory scrutiny in your jurisdiction (e.g. on national security grounds)?

The control of PE funds is conducted by the Commission for securities. However, aside from the basic prudence and responsibility checks this Commission does not pose any additional regulatory scrutiny. This is due to the extremely limited presence of EP investors, interest to facilitate investment and lack of capacities.

The background checks, approvals and guarantees applicable to all kinds of investors are also applicable to PE investors. One of the main concerns would most likely be the fact that, for some type of investment, the ultimate beneficiaries must be disclosed.

10.3 How detailed is the legal due diligence (including compliance) conducted by private equity investors prior to any acquisitions (e.g. typical timeframes, materiality, scope etc.)?

The level of legal due diligence, which PE investors conduct prior to any acquisition varies depending on the size of the investment, the level of regulation of the field of investment and the preferences of the investors. They vary between general review of property rights, financial standing and pending court disputes or administrative fines up to detailed analyses of many aspects of corporate and regulatory activity. Most due diligences, however, are aimed at producing red-flag due issues reports.

The length of the process is usually one month long, though for mayor transactions this timeframe may also be longer.

10.4 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g. diligence, contractual protection, etc.)?

Anti-bribery and anti-corruption legislation and practice for legal entities is not a major issue for PE or other investors in the Republic of North Macedonia. Therefore, it is rarely considered as a risk when entering into PE transactions. However, some investors whose corporate responsibility policy dictates so, include contractual protections to protect themselves. Investors who place due diligence on corruption are mostly motivated to do so by the extraterritorial application of the US Foreign Corruption Practice Act.

10.5 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies (including due to breach of applicable laws by the portfolio companies); and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

Theoretically a PE investor may be held to be liable of the companies in its portfolio, if these companies are of the type that does not limit liability, such as the General Partnership and Limited Partnership. However, these forms of a company are almost never used in the Republic of North Macedonia, at least by PE investors. The preferred forms are the Limited Liability Company and, more rarely, the Joint Stock Company.

Under the Limited Liability Company and Joint Stock Company, the investor is shielded from almost all of the obligations of the investee company. Under this arrangement the investor can be responsible in situations of lifting the corporate veil due to abuse of the limited liability protection in order to damage creditors.

11 Other Useful Facts

11.1 What other factors commonly give rise to concerns for private equity investors in your jurisdiction or should such investors otherwise be aware of in considering an investment in your jurisdiction?

Smaller investment might face difficulties given the fact that the market is fairly conservative and most businesses are family owned. This is why they usually choose to include a local partner in their undertaking. Bigger foreign investors face lesser hurdles due to the fact that the government or local authorities have an interest to facilitate the transaction, which might bring political and rent-seeking benefits. Both types of investors need local trusted advisors which will guide them in the market and through administrative issues, as well as protect their interest by pointing out local practices and loopholes.

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Vladimir Boshnjakovski has been an Associate at DDK since the middle of 2016. In 2012 he graduated at the Faculty of Law Iustiniana Prima in Skopje. At same faculty, on the cathedra for International Law, he concluded his master studies with a thesis in the field of the international legal system for the protection of foreign investments.

During his studies he partook on many international competitions and conferences in the field of law, such as the prestigious competition in the field of international commercial arbitration – Willem C. Vis International Commercial Arbitration Moot – and a competition for the region of former Yugoslavia in the field of the European Convention for Human Rights (ECHR).

He developed his professional experience in an attorney's office in Skopje, in the Economic Chamber of Macedonia and the Republic's Council for Road and Traffic Safety.

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Debarliev, Dameski & Kelesoska, Attorneys at Law (DDK) is the first law company established in the territory of the Republic of Macedonia, distinguishing itself in the market with a clear business and corporate law orientation, complemented by an excellent network of legal experts covering the complete territory of the Republic of Macedonia.

The quality of DDK rests mainly upon the quality of its attorneys, their accessibility and efficiency. DDK's attorneys at law share outstanding academic backgrounds, as well as a strong commitment to legal perfection.

The partners of DDK have more than 15 years' law practice experience and have exceeded clients' expectations by providing sophisticated and efficiently managed legal services.

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