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Practical cross-border insights into private equity law

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North 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?

Given the size and structure of the Macedonian private equity (PE) market, traditional transactions consisting of purchasing the share capital or assets of a local target continue to prevail over transactions that involve public takeovers of listed companies, which are not particularly common in North Macedonia. Recently, transactions that include minority investments and joint ventures have also become popular. Following the COVID-19 pandemic and economic slowdown, 2021 marks a significant increase in recorded investments in North Macedonia. The foreign direct investments in particular have marked significant growth, reaching EUR 512 million in 2021, which is a huge increase compared to the EUR 201 million in 2020. The IT industry has been notably dynamic and has been continuously growing the past few years, particularly since the start of the COVID-19 pandemic.

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

One significant factor encouraging PE transactions is the fact that North Macedonia has a fairly simple, fast and efficient administrative environment for business; namely, a combination of conducting equity transactions efficiently and administrative costs being relatively low. The corporate taxation system offers a flat rate tax of 10%. Also, the legal treatment of foreign investors is equal to residents in every field.

The Macedonian market is due to become attractive in the near future, as in July 2022, North Macedonia officially began the membership negotiation to join the EU and will therefore be able to offer the EU standards and environment for doing business once it has become a member.

1.3 Have you observed any long-term effects for private equity in your jurisdiction as a result of the COVID-19 pandemic? If there has been government intervention in the economy, how has that influenced private equity activity?

The COVID-19 pandemic initially caused disturbance in the economy in every sector. The state has adopted several packages of measures, generally with short-term effects and as strictly emergency aid for the sectors affected the most, rather than as an investment type. The results of 2021 showed growth compared to 2020; however, after some general relief of global COVID-19 restrictions during 2022, COVID-19 unfortunately returned at full force in mid-2022, making it difficult to estimate the long-term effects of the pandemic on the North Macedonia PE market at this time.

1.4 Are you seeing any types of investors other than traditional private equity firms executing private equity-style transactions in your jurisdiction? If so, please explain which investors, and briefly identify any significant points of difference between the deal terms offered, or approach taken, by this type of investor and that of traditional private equity firms.

With the exception of traditional PE and venture capital investors, no other types of investors executing PE-style transactions are notable on the Macedonian market.

2 Structuring Matters

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

Investors can acquire shares in local companies either directly or by creation of an investment vehicle in a jurisdiction that has a stable and flexible corporate regime, but also has a double taxation avoidance agreement with the Republic of North Macedonia. Usually, one of the parties in the transaction is a foreign entity and they prefer to complete a deal by creating a special purpose vehicle (SPV), which will hold the shares in the Macedonian target and close the deal outside of North Macedonia, rather than acquiring the shares directly in the Macedonian target. This structure is especially useful 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.

In cases where the transaction is financed by a bank loan, the target company usually accedes the financial documents and provides security instruments or guarantees to secure the acquisition debt, on or post closing.

2.2 What are the main drivers for these acquisition structures?

There are few types of reasons why such structures are preferred. One of them is for tax purposes. On the other hand, as the Macedonian law and courts have exclusive jurisdiction in transactions

related to the acquisition of shares in local companies and their registration in public registers, the parties (non-residents) thus usually prefer to avoid Macedonian law as governing law and Macedonian courts' jurisdiction. Another driver is the fact that the local corporate law regulations are fairly strict and investors prefer to have more freedom in potential sales, pledges or other activities involving the shares.

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

The most common form of equity in North Macedonia is a limited liability company, which is known as "ДОО" in the local language.

When the transactions allow management investment, managers are usually offered an opportunity to participate with minority shares in the mother company of the local target, as including management in the local company's shareholder structure is not common in North Macedonia. The participation in the mother company shareholder structure by the management of the local company is associated with achieving results in the local company.

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

When acquiring minority share interest that is not sufficient to block the decisions of the majority investor, the minorities usually tend to have some "veto" rights in respect to certain business decisions or dilution in case of capital increases, and all such protections of minorities shall be properly included in the shareholders' agreement before closing.

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 varies from case to case; however, the majority would prefer to not grant more than 5–10% of the shares to the management, as by such portion the management could not block the decisions of the majority shareholder(s). Practising management incentive plans, where local management attain shares in the foreign mother company, are becoming more common in North Macedonia, although there is still no specific regulation on these matters, and local companies simply follow EU practice or share bonus plans of their international mother companies. Vesting periods can vary, depending on the terms and thresholds for exercising the share options.

With regard to compulsory acquisitions, provisions may be in the form of exclusion of the management equity holder. The method for completion is at the discretion 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.

It should be noted that, if the manager refuses to voluntarily accept a compulsory acquisition, the matter must be resolved by the courts and therefore the enforcement of the 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?

Good and bad leaver scenarios are generally defined in the context of the management rights to exercise share options or the shareholders' rights to buy out the management shares, including to determine the share price in case of the exit of the management.

A good leaver scenario would involve the death of the management or losing business capability, while a bad leaver scenario is when a manager leaves a company without a justified reason or is dismissed due to bad performance.

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 arrangements can be made with inter-shareholders' agreements without the need to include such arrangement in the articles of association of the company, which are public; 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?

Unless the shareholders have not agreed otherwise and stipulated a specific majority threshold in the articles of association, the decisions are adopted by simple majority. Specific majority thresholds are compulsory for transactions considered to be significant for the company in comparison to the company's assets and transactions with interested parties.

Minority investors and their director nominees would usually negotiate and seek veto rights for major corporate decisions such as related party transactions, changes to the articles of association, liquidation of the company, deals involving a significant amount of share capital and other similar situations, on the basis of the law itself.

Veto rights must be clearly defined within the articles of association of the company and as such will have an *erga omnes* effect, or within a separate shareholders' agreement that have *inter partes* effect only.

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, at either the shareholder level or at director nominee level. For the shareholders' 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 deemed 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 specific statutory duties owed by a PE investor to minority shareholders.

Minorities who hold at least 10% of the shares have the right to appoint an authorised auditor to perform a special audit of the last annual account and financial statements, which majorities are obligated to permit.

Majority shareholders are not allowed to make decisions under which only they will benefit, or resolve PE transactions with the shareholder; otherwise, the minority may challenge such decisions.

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 shareholders' 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 that has a legal interest, may submit to the court a request for a judicial revaluation of the content of the articles of association and any other general acts or corporate decisions.

Macedonian law is the exclusive governing law and the courts of North Macedonia have exclusive jurisdiction in the case of disputes arising from the establishment, termination and status changes of trade companies, whose registered seat is within the local jurisdiction.

Non-compete clauses are enforceable, as both elements of the articles of association, but also on the basis of statutory provisions themselves. In general, they are binding for 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 members of a managing or supervisory body of a company whose bank accounts have been blocked or are under a 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 qualifications in order to be able to hold those positions. The risks and liabilities of directors are the same no matter if they are nominated by a PE investor or other shareholder. The managers are: (i) responsible for the compliance of the company with the applicable laws; (ii) obliged to act with due diligence in the best interest of the company and in accordance with their authorisations provided in the articles of association and shareholder resolutions; (iii) restricted from being involved in activities that are computing the business of the company, without shareholders' approval; and (iv) not to act in a way that would be a conflict of interest with the company.

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 shareholders holding more than 20% of the shares or persons holding managerial or supervisory positions must inform the managerial or supervisory organs and shareholders 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.

Each transaction involving any of the parties described above shall be subject to approval in a special procedure prescribed by the Macedonian law.

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, foreign direct investment and other regulatory approval requirements, disclosure obligations and financing issues?

In general, once the share purchase terms are agreed by the parties, the implementation of equity transactions is fairly simple and quick to complete in 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, in some fields, prior approval is needed in order to change the owner of the shares, while for others, only a notification will suffice.

In terms of antitrust regulations, there might be an obligation to notify the authorities and seek a concentration clearance if the merger filing thresholds under the local law are met with the transaction. However, the legal term of issuance of a merger clearance after filing a complete application is 25 business days, which is relatively short term, and the competition authorities in North Macedonia are quite efficient in respect of timing.

Foreign direct investment regimes provide an obligation to register the investment within the FDI Registry after the closing of the transaction; however, it simply involves filing a notification in prescribed form and no approval is required.

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

North Macedonia is following the trends of the neighbouring countries and wider EU jurisdictions; however, considering the size of the market, the economy level of the country and the number of transactions executed on local market, it is difficult to recognise specific trends. Local lawyers are moving away from the traditional local law forms of contracts and ways of conducting transactions and being increasingly encouraged to implement approaches and practices that are common in EU jurisdictions.

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 uncommon and difficult to spot in this jurisdiction. However, there is a Law on the Takeover of Joint Stock Companies, which regulates such transactions.

It should be noted that when one entity, either alone or together with other entities with which it acts, acquires 25% of the voting-rights-stocks in publicly listed company, it is obliged to provide a public offer to buy out the remaining stock. There are, however, some exceptions to this obligation listed in the law.

It should also be noted that when an offeror has acquired 95% of the voting rights stocks, it may give a public offer to buy out the rest of the stocks and the minority shareholders must sell their stocks (squeeze-out option).

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

Public acquisitions are strictly regulated and there are few options for manoeuvring. In cases of voluntary and mandatory takeover offers, the price is set by the offeror. However, there are mechanisms established by the law used for determining the minimum price per stock, which aim to protect the interests of minority shareholders. It should be noted 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 closing and signing, necessary approvals and the business field. PE sellers would prefer a locked-box structure, which enables fixing the sale price on the signing, while buyers would prefer an adjustment on closing, particularly if it is agreed to happen some time after signing.

6.2 What is the typical package of warranties / indemnities offered by (i) a private equity seller, and (ii) the management team to a buyer?

Negotiating warranties and indemnities is usually the most time-consuming matter in M&A transactions. Sellers are always intending to limit the warranties to good standing and facts that may be easily verified by public registries or specific documents, while the buyers intend to have as wide a scope of warranties as possible, such as compliance with all applicable laws. A standard list of warranties relates to good standing, licences, real estate ownership, IP, material contracts, taxes, employees and litigations. Ultimately, irrespective of the package of the warranties, the indemnities are of importance, namely the cap indemnity and the minimum threshold to be met in order for the indemnities clause to be activated.

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?

The parties may agree to pre-closing as well post-closing covenants. The most common sellers' post-closing covenants and undertakings are non-competition and non-solicitation for limited time of period, while the buyers' covenants usually depend on the type of business; sometimes, post-closing buyers' covenants may relate to rebranding, termination of certain IP rights or entering into transitional service agreements, etc.

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 yet common on the Macedonian insurance market. Complex and substantial investments for equity in North Macedonia, which incorporate representations or warranties insurance, are usually 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 limitations for warranties, covenants, indemnities and undertakings of the seller and management team usually relate to: (i) the time limitation to bring claims; (ii) the cap of the total indemnities; (iii) the minimum threshold for bringing claims; (iv) the exclusion of claims caused by acts or omissions of the buyer post-closing; and (v) no liability for amounts covered by insurance, etc.

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)?

Sellers would normally resist from providing security for the established warranties and liabilities and, if such is still required, would prefer to give corporate guarantee instead of cash on

escrow accounts, especially if the time limitation of the indemnities is longer. On the other hand, the buyers would insist on having such security and bank guarantee or escrow accounts would be the favourable type of security. Still, if the bank guarantee or escrow account is provided by the seller, the terms and procedure of enforcing such security will be very narrowly negotiated.

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 buyer (e.g., equity underwrite of debt funding, right to specific performance of obligations under an equity commitment letter, damages, etc.)?

PE buyers usually provide a comfort letter or commitment letter by the sponsor of the buyer if it is an SPV, on the availability of the funds for the purchase price, while, in the case of debt financing, a confirmation letter of the banks on the availability of a loan can be required. In the case of absence of compliance by the buyer, the seller may claim for damages.

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 North Macedonia might come in the form of a contractual penalty. If the buyer fails to pay the price and withdraw from the deal, the seller will be entitled to claim the agreed penalty for breaking the deal if such is agreed within the SPA. The same types of fees are applicable to the sell-side in case the seller leaves the deal.

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 initial public offering (IPO) exit is only applicable in cases of joint-stock companies (JSCs). However, other forms of companies may undergo a transformation process and become a JSC. The applicable laws allow for a limited liability company to be transformed in a JSC through an IPO.

The IPOs are regulated with the Law on Securities. Issuance, offers and sales of publicly traded securities are done after a prior approval of the Securities and Exchange Commission, in accordance with the Law on Securities.

The IPO is deemed successful if 60% of the stocks offered by the prospectus are registered to a holder's name and paid for within the relevant offering term, which cannot be longer than 12 months.

It should be noted that, in the entire history of the Republic of North Macedonia, there have been barely 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?

Due to the lack of such transactions, used lock-ups cannot be provided for North Macedonia.

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?

Based on our knowledge and taking into consideration the local situation (please see question 7.2), there is no implemented dual-track exit process.

7.4 Do private equity sellers seek potential mergers with SPAC entities as an alternative to an IPO exit? What are the potential market and legal challenges when considering a "de-SPAC" transaction?

Technically, it is possible for a merger to happen between a shareholder (legal entity) and a special purpose acquisition company (SPAC), which by virtue of law can mean the possible dissolution of the seller, while the SPAC will continue to exist, with all the assets of the seller now acquired, including the relevant shares it previously held. However, taking into consideration of the development of the stock exchange market and the number of stock companies (*circa* 100), it cannot be stated that there is extensive practice of this type of transaction in 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).

Both private debt financing and third-party financing can be seen in different financing constructs, as well as a combination of both.

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?

Under Macedonian law, a JSC is not allowed to finance the purchase of its own shares. Such limitation does not extend further to other forms of legal entities.

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 recent trends in the debt-financing market in North Macedonia have been 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 the 10% corporate tax rate imposed on locally incorporated or locally active companies. There is also a profit repatriation withholding 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, as part of a state aid scheme in accordance with relevant local laws.

Off-shore structures/companies are present in North Macedonia; however, the obligation to determine and identify the beneficial owner of such off-shore jurisdiction companies under the local AML regulations (Law on prevention of money laundering and financing of terrorism) can considerably affect the conduct of the transaction, if there are no right actions undertaken in due course.

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)?

Share plans or similar models have become more common in practice in recent years, although they are not specifically regulated by Macedonian laws. As there are a significant number of subsidiaries of foreign companies, it is not uncommon for management to be granted shares or provided with some other form of a package directly by the parent company or another subsidiary further up the ownership chain. However, still capital gains tax obligations could be triggered.

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 are no significant tax considerations for management when it comes to selling or transferring shares, save for the 15% personal income tax (PIT) (capital gains tax).

As an exception to the above, in cases of capital gains from the sale of securities and shares issued by investment funds, a tax rate of 15% applies if the equity was held in the seller's ownership for up to one year, while a tax rate of 10% applies if it was owned for a period between one and 10 years (full exemption if owned for more than 10 years).

In accordance with the Law on PIT, a general exemption exists when it comes to capital gains tax, i.e. capital gains tax is not subject to payment on the capital gains that resulted through the realisation of an IPO.

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?

During the COVID-19 pandemic, the Government provided several different forms of aid, including PIT tax relief to employers, although this measure had terms of application. As the initial measures were implemented quickly as a result of the increasing difficulties caused by the pandemic, depending on how the general economic situation will develop, the return of similar measures cannot be ruled out.

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?

Potential changes to the Law on Trade Companies were published in May 2022, which are envisioned to provide for the possibility of the majority shareholder, holding at least 95% of the issued share capital, forcing a squeeze-out procedure, which to date has only been possible in public takeover procedures, subject to the satisfaction of certain thresholds. However, the proposed amendments, as they currently are provided, also envision the possibility for the minority shareholder (holding the remaining >5% of the shares) to request for their shares to be bought by the majority shareholder.

If enforced, it can be expected that majority shareholders will utilise this provision, squeeze out the remaining shareholders, and proceed as a single shareholder company, which might represent a more attractive target to investors.

There are no other significant changes or developments that can affect the general M&A market.

Another novelty from 2021 worth mentioning was the anticipated establishment of the registry of ultimate beneficial owners, in accordance with the local AML law, which, after three years, made it possible for companies to register their beneficial owner in the registry. Local AML regulations were further updated, with the adoption of the new AML law in June 2022, as part of the process of harmonisation with the EU's 5th AML Directive.

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

Merger control can be triggered if the transaction and the parties involved meet the certain thresholds for mandatory merger fillings, as defined by Macedonian Law on Protection of Competition. Furthermore, if the company is involved in performing activities in a specific sector (e.g., insurance, management of investment funds, military equipment production, etc.), for which specific pre-approval is required in order for a change in the ownership structure to occur (directly or indirectly, as the case might be), the competent authority may need to grant such approval.

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.)?

There is no strict approach adopted locally. However, there is a general trend of red-flag due diligence for small-scale transactions (two to three weeks), and excessive, full-scale due diligence for larger transactions (one to two months). Save for the traditional areas of review (corporate, assets and property, managerial and general employment matters, specific regulatory aspects depending on the company's activity, IP, data protection) for small-scale transactions, narrowing the scope of analysis to few specific review areas is more common at present.

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 are not a major issue for PE or other investors in North Macedonia.

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?

The liability of PE investors is generally determined by the form of the portfolio company. As it can be concluded that there are no forms of companies used in practice other than limited liability companies and JSCs, in both legal forms the PE investors are not liable for the liabilities of the underlying portfolio companies. The Law on Trade Companies provides that a PE shareholder may be held liable for the obligations of the company if they:

(1) misuse the company as a legal entity to achieve goals prohibited for themselves as individuals;
(2) misuse the company as a legal entity to cause damage to its creditors;
(3) contrary to the law, dispose of the company's property as it is their own property; or
(4) reduce the assets of the company for their own benefit or for the benefit of any other person, and know (or should know) that the company is unable to fulfil its obligations towards third parties.

Of course, the liability might be invoked as a result of a contractual arrangement; for example, between the PE investor and a third, secured party (guarantee, pledge, etc.); however, the likeliness of such occurrence is low, taking all circumstances in consideration.

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?

There were no significant changes in recent period that could adversely affect PE investors and their decision to invest in North Macedonia. Favourable terms for investment, especially in free economic zones, still remain a great motive for foreign investors.

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Since 2015, she has been a younger partner at DDK Attorneys at Law and acts as lead lawyer in many M&A projects, as well as projects involving cross-border business transfers, cross-clearance process and advising a significant number of foreign and domestic companies in competition matters that concern their businesses in North Macedonia.

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