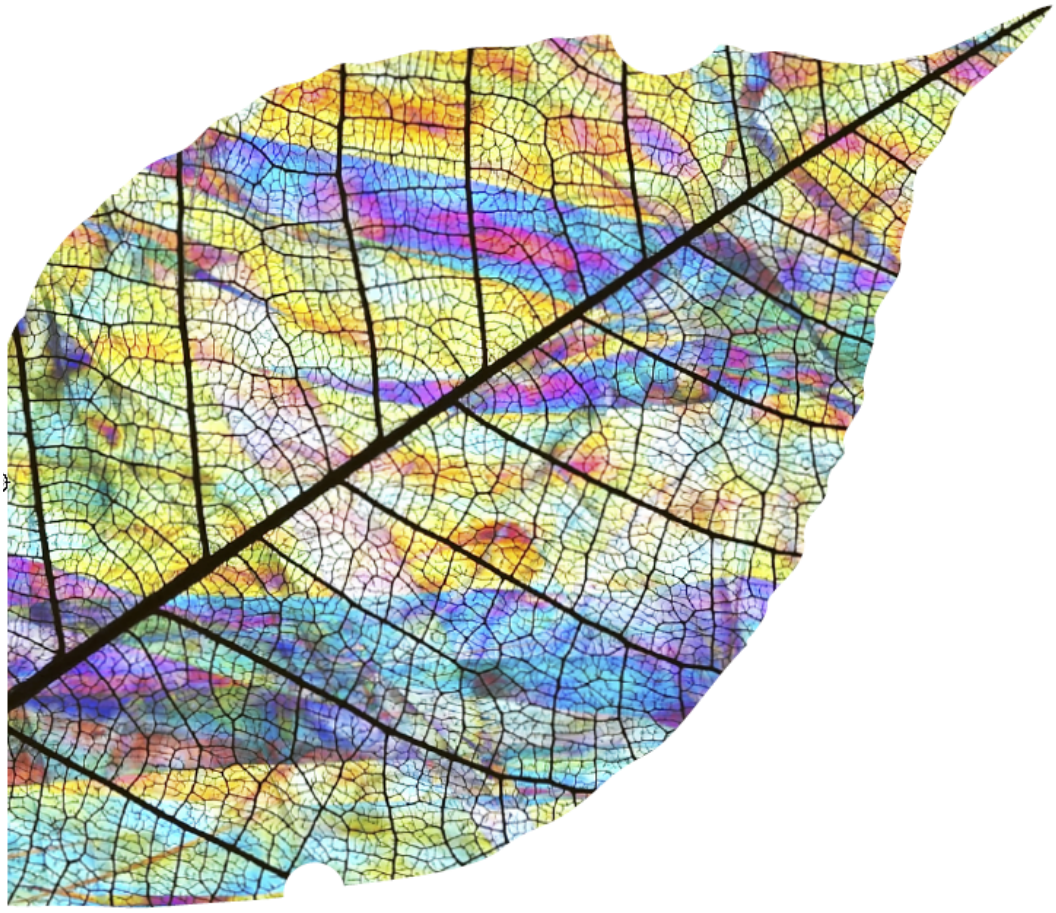
World Universities Comparative Law Project
Legal rating of Republic of Macedonia

carried out by students from the Faculty of Law “Iustinianus Primus”, University of Ss. Cyril and Methodius, Skopje

A production of the Allen & Overy Global Law Intelligence Unit



May, 2017

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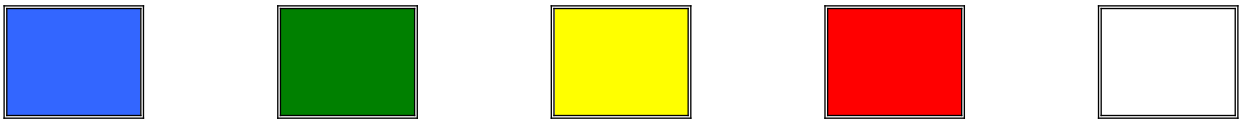


Produced by the Allen & Overy Global Law Intelligence Unit

World Universities Comparative Law Project

The World Universities Comparative Law Project is a set of legal ratings of selected jurisdictions in the world carried out by students at leading universities in the relevant jurisdictions. This legal rating of the Republic of Macedonia was carried out by students from the Faculty of Law 'Iustinianus Primus", at the University of Ss. Cyril and Methodius, Skopje, Macedonia.

The members of the Faculty of Law at the University of Ss. Cyril and Methodius who assisted the students and coordinated the project were:

Professor Dimitar Gelev, PhD

Assistant Professor Biljana Petrevska, PhD

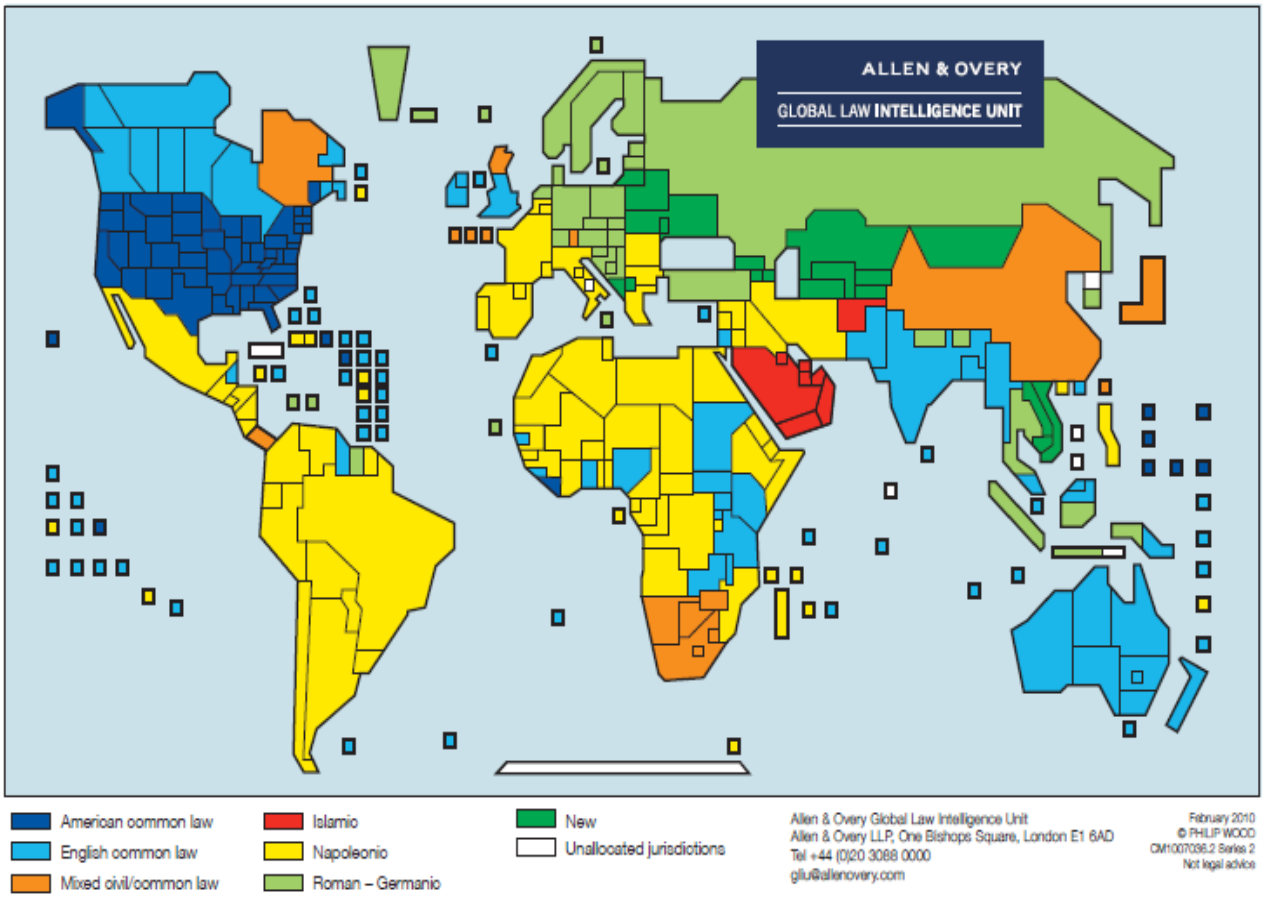
The member of the Practitioner Expert Panel with whom the students could discuss the questions in the survey was:

Ljupka Noveska (L.L.M), Attorney at law in cooperation with Karanović & Nikolić

The Allen & Overy Global Law Intelligence Unit produced this survey and is most grateful to the above for the work they did in bringing the survey to fruition.

All of those involved congratulate the students who carried out the work.

Families of law



Foreword

The Faculty of Law "Iustinianus Primus" at the University Ss. Cyril and Methodius, Skopje, Macedonia, strives to promote a strong research environment in order to support its goal of conducting excellent scholarly work with an international impact. In all its core activities, the Faculty aims at being completely up to date with respect to important legal aspects of the rapidly developing globalisation.

The Faculty of Law "Iustinianus Primus" wishes to engage in a comprehensive and dynamic dialogue with the outside world. Among other specific initiatives, this is accomplished by arranging conferences and seminars, where Faculty staff disseminates their scholarly achievements. The Faculty's scientific staff members are involved in numerous relations with fellow researchers from other institutions as well as a vast variety of private enterprise and public institutions. The professors contribute significantly to the strengthening of a fruitful interaction with the students, thereby also furthering the students' insights concerning work requirements and potential opportunities after graduation.

The Faculty of Law "Iustinianus Primus" is constantly improving and upgrading the educational curriculum for prospective legal practitioners and vests a great deal of resources into ensuring that students acquire the optimal competences to meet the current as well as future exigencies of the labour market and the surrounding society. Thus, the Faculty encourages its researchers and educators to interact with relevant segments and stake holders outside the University in order to establish and maintain mutually rewarding co-operation with private business and public institutions, including other Universities.

The World Universities Comparative Law Project is perfectly in line with the Faculty's strategy of expanding students' international and practical experiences, thereby advancing their approach to solving legal issues. Consequently, it is an honour for the Faculty of Law "Iustinianus Primus" at the University Ss. Cyril and Methodius, Skopje, Macedonia to have been selected as a contributor to this project. I profoundly acknowledge the need for focusing on transnational legal issues and enhancing transparency and mutual understanding concerning the many differences among various jurisdictions of the world. Therefore, I am happy to hereby express my full support for this project.

May, 2017

Goran Koevski, PhD

Dean of the Faculty of Law "Iustinianus Primus",

University Ss. Cyril and Methodius, Skopje, Macedonia

Foreword by the students

As an introduction to the legal analysis of Macedonian law set forth below, we shall provide readers with an introduction to Macedonian law in a European and international perspective.

The Macedonian legal system belongs to the civil law system and is highly inspired by both Roman-Germanic law and in part by the French Code Civil. In accordance with the Civil Law traditions all of the laws that are applicable are in a written form. The Macedonian law is codified, which means that there is a comprehensive compilation of legal rules and statutes. The legal codes are amended on continuously basis (whenever there is a need for such action) and they specify all matters that capable of being brought in front of the courts; the applicable procedures; and the appropriate punishment for each unlawful act. The codes distinguish between different categories of law, thus: the substantive laws prescribe which acts are subject to criminal or civil prosecution; and the procedural laws prescribe the actions that should be undertaken and the consequences as a result of (not) undertaking those actions.

The main role of the judges is to establish the facts of the case and to apply the appropriate provisions of the relevant applicable law. The judges work within a framework established by a comprehensive, codified set of laws. Each of the brought verdicts regulates the relations between the parties of the case and cannot be used as a basis for solving another case which has similar or same facts and evidences as the one that has been acted upon. Thus, “the verdict is law between the parties” (*iudicatum est ius inter partes*).

Republic of Macedonia is one of the successor states of Yugoslavia and after its independence all of the laws remained in force. However, later on most of them were amended or new laws were adopted.

Since Republic of Macedonia is not member of the European Union, but intends to become a member, it follows the trends in the EU law.

May 2017

Description of the legal rating method

Introduction

This paper assesses aspects of the law in the Republic of Macedonia with a view to rating the law in the relevant areas. The survey is concerned primarily with wholesale financial and corporate law and transactions, not with retail law.

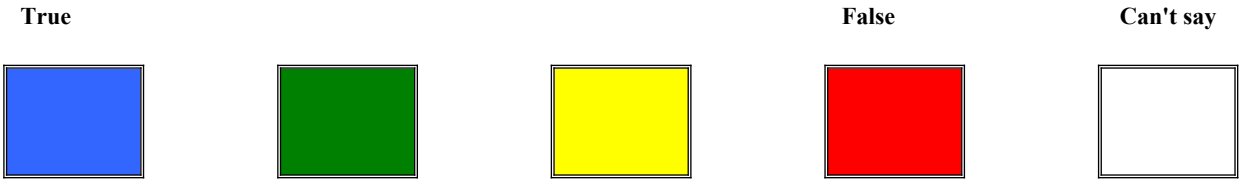
Legal risk has increased globally because of the enormous growth of law; because of its intensity; because many businesses are global but the law is national; because nearly all countries are now part of the world economy; and because the law is considered to play a very significant role in the fortunes of our societies. Liabilities can be very large and reputational losses severe.

The survey was carried out by students from the Faculty of Law "Iustinianus Primus" at the University of Ss. Cyril and Methodius in Skopje, Macedonia. The survey was designed by the Allen & Overy Global Law Intelligence Unit.

The students were requested to express their views freely and in their own way. The views expressed are their views, not necessarily those of the University of Ss. Cyril and Methodius in Skopje, the members of the Practitioner Expert Panel or the Global Law Intelligence Unit, the members of Allen & Overy.

Methodology

The survey uses colour-coding as follows:



Blue generally means that the law does not intervene and the parties are free, ie the law is liberal and open.

Red generally means that there is intense legal intervention, usually in the form of a prohibition.

Green and **yellow** are in-between.

The purpose of this colour-coding is to synthesise and distil information in a dramatic way, rather than a legal treatise. The colours correspond to a rating of 1, 2, 3 or 4, or A, B, C or D.

The cross in the relevant box signifies the view of the students carrying out this assessment of the position of the Republic of Macedonia. This is followed by a brief comment, e.g. pointing out qualifications or expanding the point. These comments were written by the students.

The colour-coding does not usually express a view about what is good or bad. Whether the law should intervene in a particular arena is a matter of opinion. The scale is from low legal intervention to intense legal intervention or control. This is not a policy or value judgment as to whether or not the law should or should not intervene. Jurisdictions often disagree on whether the law should intervene and how much. So one of the main purposes of this survey is to endeavour to identify some of the points of difference so as to promote fruitful debate.

Black letter law and how it is applied

This survey measures two aspects of law. The first is black letter law, i.e. what the law says or the written law or law in the books.

The second measure is how the law is applied in practice, regardless of what it says. Thus, the law of Congo Kinshasa and Belgium has similar roots but its application is different.

Although there is a continuum, these two measures have to be kept separate. Otherwise we may end up with just a blur or noise or some bland platitude, e.g. that the law depends upon GDP per capita.

In fact, only the last two questions deal with legal infrastructure and how the law is applied. All of the others deal with the written law, without regard to enforcement or application.

Key indicators

The survey uses key indicators to carry out the assessment. It is not feasible to measure all the laws or even a tiny fraction of them. The law of most jurisdictions is vast and fills whole libraries.

The key indicators are intended to be symptomatic or symbolic of the general approach of the jurisdiction. To qualify as useful, the indicator must usually be (1) important in economic terms, (2) representative or symbolic and (3) measurable. In addition, the indicators seek to measure topics where jurisdictions are in conflict. There is less need for measuring topics where everybody agrees.

An important question is whether this method is useful or not, and, if it is, whether the indicators are relevant.

Legal families of the world

Most of the 320 jurisdictions in the world, spread just under 200 sovereign states, can be grouped into legal families. The three most important of these are: (1) the common law group, originally championed by England; (2) the Napoleonic group, originally championed by France; and (3) the Roman-Germanic group, originally championed by Germany, with major contributions from other countries.

The balance of jurisdictions is made up of mixed, Islamic, new and unallocated jurisdictions.

Many aspects of private law are determined primarily by the family group, but this is not true of regulatory or economic law.

Excluded topics

This survey does not cover:

- transactions involving individuals
- personal law, such as family law or succession
- competition or antitrust law
- intellectual property
- auditing
- general taxation
- macroeconomic conditions, such as inflation, government debt, credit rating or savings rates
- human development, such as education, public health or life expectancy
- infrastructure, such as roads, ports, water supply, electricity supply
- personal security, such as crime rates, civil disorder or terrorism.

Banking and finance

Introduction

Banks and bondholders (typically also banks, but also insurance companies, pension funds and mutual funds) provide credit or capital. Their main risk is the insolvency of the debtor and therefore the key indicators intended to measure whether the law supports those habitual creditors or debtors, such as large corporations

as borrowers, when it matters, ie on bankruptcy. This is when commercial law is at its most ruthless in deciding who survives and who drowns.

This debtor or creditor decision is implemented mainly through the bankruptcy ladder of priorities. A feature of common law systems is the presence of super-priority creditors who are paid before anyone else - creditors with a set-off or a security interest and beneficiaries under a trust. For example, if a bank has universal security over all the assets of a company, the bank is paid before all other creditors, including employees and trade creditors. This regime therefore protects significant creditors who such as banks.

Jurisdictions based on the English common law model give super-priority to all three claimants. Traditional Napoleonic jurisdictions typically do not allow insolvency set-off, have narrower security interests and do not recognise the trust. Their bankruptcy ladder favours greater equality of creditors. Most traditional Roman-Germanic jurisdictions are in-between. They allow insolvency set-off and have quite wide security but most do not recognise the trust. There are wide exceptions to these generalisations.

Insolvency set-off

Generally If set-off of mutual debts is allowed on insolvency, the creditor is paid. If it is not allowed, then effectively the creditor is not paid. Very large amounts are involved in markets for foreign exchange, securities, derivatives, commodities and the like, so that the question of whether exposures should be gross or net is a matter of policy as to who the law should protect.

Q1 In **the Republic of Macedonia**, creditors can set off mutual debts on the insolvency of a debtor if they are incurred before notice of the insolvency.

True			False	Can't say
	X			

Comment:

Set-off is permissible against companies and individuals through section 152 of the Macedonian Insolvency Law. The section states that if by force of law or on the basis of an agreement an insolvency creditor had a right to set off a claim on the date when the insolvency proceedings were opened, such right shall remain unaffected by the proceedings. Furthermore, according to the Macedonian Law on Insolvency, if on the date when the insolvency proceedings were opened one or more of the claims to be set off against each other were conditioned, were immature or did not cover similar types of performance, such set-off may not be effected before its conditions are met. Set off shall be excluded if the claim against which a set-off is to be effected will be unconditioned and mature before it may be set off.

The Law on Insolvency contains certain provisions restricting access to set-off claims. This law prohibits set off in these particular cases:

1) An insolvency creditor has become an obligor to the credit of the insolvency estate only after the opening of the insolvency proceedings;
2) An insolvency creditor acquired his claim from another creditor only after the opening of the insolvency proceedings;
3) An insolvency creditor acquired the claim with means of assignment during the last year before the opening of the insolvency proceedings, and who was or had to be aware of the fact that his debtor is insolvent or the fact that there is a submitted proposal for opening of insolvency proceeding against

him. As an exception, the set off will be permitted in case when the claim is withdrawn in relation to the performance of unperformed contracts, or claim that has been revived with the successful set off of legal transaction by the debtor;

4) An insolvency creditor has acquired the ability to set off with legal transaction that can be set off and
5) An insolvency creditor whose claim should be settled from the assets of the individual debtor which are not part of the insolvency estate but the debtor owes it to the insolvency estate.

Security interests

Generally Security interests give priority to the creditor with security - typically banks - who are the main providers of credit in most countries.

In traditional common law jurisdictions, a company can create universal security over all its present and future assets to secure all present and future debt owed to a bank. Once registered, the security is valid against all creditors, except that the floating collateral ranks after preferred creditors - typically wages and taxes. The security can be granted to a trustee for creditors. On a default there are no mandatory grace periods and the creditor can enforce out-of-court by appointing a receiver (a type of possessory manager) or by private sale. But in some common law jurisdictions there are freezes on enforcement in the event of a judicial rescue of the debtor. Also, in some of these jurisdictions there are stamp duties.

On the other hand, in many traditional Napoleonic jurisdictions, universal security is not possible, neither is security for all future debt. There is no trustee to hold the security. On enforcement, there are grace periods and no receiver. Sale is through the court and a public auction. Preferential creditors rank ahead. Some countries have a freeze on enforcement under a judicial rescue statute.

The main policy issue is therefore whether security should be encouraged or whether the law should intervene to impose greater equality.

The main tests are (1) scope of eligible assets, (2) debt secured, (3) trustee, (4) priority over preferred creditors, (5) private enforcement and receiver, (6) no rescue freezes and (7) low costs.

Q2 In **the Republic of Macedonia**, the law offers a security interest which is highly protective of the secured creditor.

True		X	False	Can't say

Comment:

The Macedonian Law on Contractual Pledge regulates the manner, conditions and procedure for establishment, existence, realization and termination of the contractual pledge right over movable property, securities, claims and other rights (pledge on movables) and immovable property (mortgage). In general, the properly established security interest is protective of the secured creditor. In order to secure the interests arising out of the pledge contract, Macedonian law uses the Roman clause: *'Qui prior es tempore, potior est jure'*, i.e. the creditor who registers its security interest first is granted priority.

The pledge over movable assets can be established by transfer of the subject into possession (possessory pledge) or without its transfer (non-possessory pledge), while mortgage can be established only as a non-possessory pledge. Article 10 of the Law on Contractual Pledge, prescribes that the subject of the pledge should be property owned by the debtor. As an exemption, a debtor could establish a pledge over an asset which the debtor has pledge over (i.e. sub-pledge). The sub-pledge cannot be established in cases of possessory pledge.

Both pledge and mortgage agreements have to be concluded in written form and duly verified by a public notary. Depending on the value of the secured receivable, these contracts have to be prepared by competent attorneys at law. The pledge over movable assets is registered at the Pledge Registry administered by the Central Registry of the Republic of Macedonia, while the mortgage right is registered at the Cadastre Agency. The registration of the pledge/mortgage right in the public registries has a constitutive character.

It is important to note that the Macedonian system recognizes the concept of *Auctio Pauliana*, under which any agreement which establishes a security interest that could be damaging to other creditors, could be challenged before the competent courts within three years since its conclusion. Furthermore, in the event of bankruptcy of the debtor, the bankruptcy manager has the authority to challenge all agreements which could be deemed as damaging to the company in the last ten years since the opening of a bankruptcy procedure.

Universal trusts

Under a trust, one person, called the trustee, holds title to the assets of another person, called the beneficiary, on terms that, if the trustee becomes insolvent, the assets go to the beneficiary and are not used to pay the trustee's private creditors. The assets are immune and therefore taken away from the debtor-trustee's bankrupt estate.

The main examples of trusts are custodianship of securities, pension funds, securities settlement systems and trustees of security for bondholders and syndicate banks. The amounts involved are enormous.

All jurisdictions have an effective trust of goods (called bailment or deposit). The common law group has a universal trust for all other assets (land and intangible property). Most members of the civil code group do not have a universal trust, subject to wide exceptions, especially for custodianship of securities. A few countries in this group have a universal trust by statute, e.g. France and China.

Q3 **The Republic of Macedonia** has a universal trust for all assets.

True			False	Can't say
			X	

Comment:

Trust as known from common law jurisdictions are generally not a recognised legal concept under Macedonian law, nor does an equivalent of this institute exists within our legal system.

Macedonia is not a party to The Hague Trust Convention of 1 July 1985. Therefore, the relevant legal framework for recognition of foreign trusts is not established.

Other indicators

Other bankruptcy indicators not measured here include freezes on the termination of contracts, fraudulent preferences, the priority of rescue new money, the presence and intensity of corporate rescue proceedings and recognition of foreign insolvencies. Director liability for deepening the insolvency is dealt with below.

Other financial law topics not covered in this survey include the regulatory regime, especially capital, liquidity, authorisation of financial business, conduct of business, control of prospectuses, control of market abuse and frauds, such as insider dealing, and the insolvency regime for banks. Financial regulation is a very large field.

Corporations

Introduction

Financial law involves competition between debtors and creditors so that jurisdictions can be positioned on a straight line. Corporate law however involves three main competitors: (1) shareholders, (2) creditors and (3) managers - a triangle. If the key indicators show that a jurisdiction strongly favours one or other of the parties at the points of the triangle, whether creditors, shareholders or management, then one can begin to build up a picture of the choices which the jurisdiction habitually makes in resolving the conflicting interests of the parties.

For example, a very tough prohibition on financial assistance (which is protective of creditors against shareholders) tends also to support an attitude to other principles of the maintenance of capital or to support the proposition that mergers by fusion are difficult (because they can prejudice creditors). This would be true of the English regime in 1948. Similarly, a view which easily imposes personal liability on directors for deepening an insolvency might also show a legal approach which is not supportive of the veil of incorporation in other areas, e.g. shareholder liability and substantive consolidation on insolvency.

The two extreme corporate law models are the Delaware model and the traditional English model, exemplified by the English Companies Act 1948 (now superseded). Napoleonic and Roman-Germanic models are in-between to varying degrees.

The Delaware regime is highly protective of management in the key areas. The traditional English regime favours creditors on most of the key contests and, where creditor interests are not involved, it tends to favour shareholders as opposed to managers.

Director liability for deepening an insolvency

Generally If the law imposes personal liability on directors for deepening an insolvency, eg carrying on business and incurring debts where there is no reasonable prospect of paying them, then the regime is hostile to the interests of management. The legal risks of management are increased.

There are basically four regimes internationally: (1) directors are hardly ever liable for deepening the insolvency, e.g. Delaware and most US jurisdictions, plus some traditional English jurisdictions which only punish fraudulent trading; (2) directors are liable for serious negligence (England, Singapore, Australia, Ireland); (3) directors are liable for mere business misjudgements deepening the insolvency (France); and (4) directors are liable if they fail to file for an insolvency proceeding after the company becomes insolvent (France, Germany and others).

Q4 In the Republic of Macedonia, the law rarely imposes personal liability on directors for deepening the insolvency and there is no rule that the directors must file for insolvency when the company is insolvent.

True			False	Can't say
			X	

Comment:

Macedonian law recognises the legal standard "Prudence of a meticulous and conscientious commercial entity" aimed at determining the liability of the persons responsible for management and supervision of the companies, by which the prudence of the persons performing the entrusted tasks in the companies is determined. Therefore, it is expected that directors should act with a prudence of a skilful and (in the company's operation) competent person (professional), wherefore they are responsible for ordinary negligence during the performance of the entrusted activities, unless another law specifies that they are liable only for gross negligence.

The personal liability of the directors and management is regulated in the Law on Trade Companies. The liability is owed both to the company as a legal entity and to its shareholders. Furthermore, in Article 241 of the Law on Trade Companies it is stipulated that the director shall be personally and unlimitedly liable, and if the company has two or more directors, they will be held jointly liable towards the company and towards third parties for the activities conducted contrary to law and other regulations, as well as for failing to adhere to the articles of association. The director shall also be personally liable for the damage caused to the company with the legal activity he/she has concluded with the company in his/her name or in the name of a third party, but for his/her own behalf, if he/she did not receive a prior approval thereof by the supervisory board or by the other directors.

According to the Macedonian Law on Insolvency the person or the boards authorized for governing and supervision of the trade companies will be personally jointly and unlimitedly liable for the damages caused on behalf of the creditors of the trade company or another legal entity- debtor if they did not file a request for the opening of proceedings, although they were or had to be aware of the over indebtedness by the trade company or another legal entity.

Where a legal person becomes illiquid or over indebted, the members of the board of directors or the liquidators shall file a request for the opening of proceedings without culpable delay, at the latest, however, twenty-one days after the commencement of insolvency or over indebtedness.

Financial assistance to buy own shares

Generally Many jurisdictions prohibit a company from giving financial assistance to buy its own shares. The typical example would be where a bidder finances the acquisition of a target company by a loan and after the takeover arranges for the target to guarantee the loan and charge its assets to secure the guarantee. The commercial effect is similar to the repayment of the share capital of the target before its creditors are paid. Shareholders should be subordinated to creditors.

The prohibition therefore favours creditors against shareholders of the target.

The Delaware regime does not prohibit financial assistance. The traditional English regime has a wide prohibition (not England any more). Most Roman-Germanic regimes are against it, with Napoleonic regimes hesitant. The EU has a prohibition against financial assistance by public companies. Some countries allow financial assistance by private companies if solvency is established.

A contravening transaction is usually a criminal offence and void.

Q5 **The Republic of Macedonia** permits a company to grant financial assistance for the purchase of its own shares.

True			False	Can't say
		X		

Comment:

The Law on Trade Companies of the Republic of Macedonia prescribes that ownership of a companies' own shares is possible either by a private limited company which has been established by two or more people (DOO) or a public limited company (joint stock company; *abbreviation in Macedonian: AD*). Ownership of own shares is not possible in cases when the private limited liability company has been established by only one person (*abbreviation in Macedonian: DOOEL*), nor in cases the company is any form of a partnership (private unlimited liability forms of companies – *abbreviation in Macedonia: JTD, KD, KDA*).

In accordance with Article 340, paragraph 1 from the Law on Trade companies, any legal action by which a company grants financial assistance to some other person i.e. provides some third party with an advance payment, loan, credit, or other type of security, for the purpose of acquiring stocks in that company, **shall be considered null and void.** However, banks, as well as the other financial institutions, unless otherwise determined by a separate law, or in case when the company acquires personal stocks in order to distribute them among its employees, are excluded from this prohibition.

When it comes to private limited company established by two or more persons (DOO), there are no provisions by which it can be concluded that such financial assistance is forbidden or will be considered as void or null.

Public takeover regime

Generally A public takeover regime which is free and open tends to favour managers who can guard against takeovers by poison pills and the like and who have relative freedom to acquire other companies. An example is the Delaware regime. A restrictive regime on the lines of the British system tends to favour shareholders.

The chief features of a restrictive regime are: (1) the bidder must make a mandatory bid in cash when a threshold of shares in the target is reached, eg 30%; (2) the bidder must pay the same price to all shareholders (sharing the control premium); (3) no partial bids (getting control on the cheap); (4) proof of certain funds to implement the offer; (5) compulsory acquisition of dissenting minorities (squeeze-out); (6) fixed timetable; (7) no ability of the managers to frustrate a bid by poison pills without shareholder approval; and (8) control of the content of circulars, especially forecasts.

Q6 Apart from exchange controls and restrictions on foreign direct investments, the public takeover regime in Republic of Macedonia is open and has few restrictions.

True			False	Can't say
		X		

Comment:

The public takeover regime in Macedonia is strictly regulated. The regime recognizes an obligation for the bidder to give a notification about its intention to take over the targeted company and to announce the same. After fulfilling this step, prior to announcement of the takeover bid the bidder shall be obliged, to receive a permission for a takeover bid. The regime recognizes submitting a mandatory takeover bid when it comes to acquiring more than 25% of the voting shares. This kind of mandatory bid has to be provided as a so-called prospectus (i.e. a document containing all relevant information). The bidder may take a takeover bid only after fully providing the monetary funds or another type of compensation for payment of the securities. The bidder shall deposit the monetary amount necessary for the payment of all securities which are subject of the takeover bid in a separate account of the authorized depository. Also, there is a possibility for the bidder to provide the authorized depository with a first demand bank guarantee instead of deposing the monetary funds. All of the shareholders of the targeted company shall be treated equally in the takeover regime. Furthermore, the law prescribes special treatment of minority shareholders. Therefore, if the bidder has acquired at least 95% of the securities, it shall be entitled to buy the securities of the rest of the shareholders which have not accepted the takeover bid (forced sale) or the bidder shall be obliged to also purchase the securities of the rest of the shareholders which have not accepted the takeover bid upon their request. The regime has strictly defined restrictions regarding the actions that may be taken by the governing body of the targeted company.

Other indicators

Other important indicators are corporate governance (difficult to measure), free ability to merge companies by fusion, the one-share-one-vote rule, and, to a lesser extent, minority protections. Other indicators relate to quick and cheap incorporation, the *ultra vires* rule, maintenance of capital, no par value shares, shareholder liability, substantive consolidation on insolvency and disclosure. These are not measured here.

Commercial contracts

Introduction

Contract is at the heart of commercial life, and is everywhere. In fact, the main tenets of contract law across the main families of jurisdictions are consistent - it is in the fields of insolvency and property law where the main differences emerge. It is true that there are contract differences, for example, between writing requirements, open offers, the time of acceptance and specific performance, but often these differences are of lesser significance in practice in the business field.

The key indicators the survey chooses all tend to symbolise whether the approach of the jurisdiction to contract is hard or soft. If the approach is hard, then the jurisdiction tends to support predictability in business contracts so that certainty and freedom of contract are valued more than mitigating the risk of

occasionally abusive behaviour and unfair results, especially for weaker parties. A soft jurisdiction tends to give greater primacy to notions of good faith and the like.

Exclusion of contract formation

Generally Commercial parties often wish to be able to negotiate heads of terms commercially without being bound by a contract. In some jurisdictions, the courts are ready to infer that the parties are bound if the terms are sufficiently clear, even if they have said expressly that they do not intend to be bound.

Q7 In **the Republic of Macedonia**, parties are not bound to heads of terms if they expressly state that the terms are "subject to contract" or some such clear phrase.

True			False	Can't say
		X		

Comment:

Commercial contracts are a part of the legal frame which regulates contractual obligations, based mainly on the Law on Obligations and customary commercial practises and the usual contractual obligations between commercial entities.

The concept of heads of terms in the Macedonian legislative does not specifically exist as such. However, an institute of a very similar nature to the "heads of terms" is the so-called pre-contract.

In accordance with Article 37 from the Law on obligations, when the contractual parties have entered into a pre-contract, they are bound to a future obligation i.e. to conclude a main contract. For the same purpose, the parties have the option to conclude a letter of intent, as well.

In accordance with Article 37 paragraph 3, a pre-contract is obligatory to perform in case when it contains the essential elements of the main contract i.e. terms and conditions of the main contract.

However, if a pre-contract does not contain the essential elements of the main contract, it is considered as of a non-obligatory nature. In such case it has the same legal force as contractual negotiations. In accordance with Article 22 paragraph 2 and 3 from the Law on Obligations, when a party either negotiates with no intent to conclude a contract or terminates the negotiations for no justified reason, the damaged party has the right to seek damage compensation/reimbursement. Accordingly, if a party concludes a pre-contract with no intent to perform the main contract or does not perform the main contract without a justified reason, the damaged party has the right to seek compensation of damages.

Termination clauses

Generally Many contracts, especially loan contracts, leases of goods and long-term sales contracts, contain events of default on the occurrence of which one party can terminate the contract. Jurisdictions which uphold freedom of contract and the literal interpretation of contract give effect to these clauses and do not rewrite the contract according to the court's notions of what is fair. Other jurisdictions prefer good faith. We ignore consumer contracts - where there may be consumer protections.

Q8 In **the Republic of Macedonia**, a termination clause in a loan or sale of goods contract between sophisticated companies (not individuals) providing for the termination of the contract immediately on certain events is usually upheld, even if the event concerned is relatively trivial.

True			False	Can't say
X				

Comment:

Termination clauses are set in Chapter 4 of the Law on Obligations which prescribes that an obligation shall be terminated after being fulfilled as well as in other cases provided by the law. By termination of the principal obligation, the pledge, mortgage and other accessory rights shall be excluded. If the obligation cannot be fulfilled by the debtor, it can be fulfilled by a third party.

Taking in consideration the fact that the main principle of the Law on Obligations is the freedom of contract, both parties can terminate the contract according to prescribed ways in the Law on Obligations such as: fulfillment; debtor's or creditor's delay; compensation; remission of debt; substitution (innovation); integration (merger); impossibility of fulfillment; flow of time, notice; death, or in another way agreed between the parties that is not contrary to the law.

The law permits modifications of the contracts in whole or in part if it is in accordance with the principles of good faith to enforce it. All contracts concluded with fraud, coercion or invalid declaration of intention may be deemed invalid.

Termination clauses are important because they are one of the elements of every contract, except if the parties agreed the contract to be non-terminable.

Exclusion clauses

Generally Contracting parties often seek to exclude their liability for defective performance of the contract. So the issue is whether these exclusion clauses are generally upheld if they are clear and whether freedom of contract is allowed in this area.

Q9 In **the Republic of Macedonia**, exclusions of liability in most commercial contracts between sophisticated companies, such as a sale of goods contract, are generally upheld if they are clear.

True			False	Can't say
	X			

Comment:

There is no general provision that either allows or prohibits the exclusion of liability in commercial contracts between sophisticated companies that applies to all of the commercial contracts. Exclusion of liability is not possible in event of damages caused by fault or by gross negligence.

However, the Law on Obligations contains the following specific provisions regarding this matter:

Purchase Contracts - The contracting parties may limit or completely exclude the liability of the seller regarding the legal and material defects of the product. However, the previously mentioned does not apply and such clause will be deemed as void if the court finds out that one of these events has occurred: 1) the seller has been familiar with the defects of the product and has not disclosed such information to the buyer (applies for both legal and material defects); or 2) the producer by way of using its monopoly position has made influence for such provision (exclusion of liability) to be part of the contract (applies only for material defects).

Lease Contracts – The liability of the lessor for the material deficiencies of the leased object may be limited or completely excluded by way of inserting a clause in the contract. Regardless the agreed, such provision will be deemed as void if: 1) the lessor has been familiar with those material deficiencies and has not disclosed them to the lessee; 2) if the deficiency makes the usage of the leased object impossible; and 3) if the lessor by way of using its monopoly position has made influence for such provision (exclusion of liability) to be part of the contract.

Since the law does not prescribe a general provision that can be applied to all of the commercial contracts, we can conclude that the exclusion of liability is possible, but the contractual freedom is limited in particular cases. Exclusion of liability is not possible for damages caused by fault or by gross negligence.

Other indicators

Other contract indicators not assessed here include writing formalities, open offers, mistake, frustration, damages, penalties, specific performance and whether notice of assignment of the contract to the debtor is mandatory if the assignment is to be valid on the insolvency of the assignor.

Litigation

Introduction

The first three key indicators of governing law, jurisdiction and arbitration tend to show whether the jurisdiction does or does not place a high value on international comity and freedom of contract as opposed to national primacy.

The indicator on class actions tends to show whether or not the jurisdiction's litigation system is orientated towards plaintiffs, especially mass plaintiffs in product liability cases. This indicator may also show the attitude of the jurisdiction to the protection of individual parties as against business parties, both in terms of the incidence of costs and enforcement.

Governing law clauses

Generally Most countries apply a foreign governing law of a contract even if there is no connection between the contract and the jurisdiction. If the courts do not uphold the governing law, the effect is that the contract obligations may be different.

Q10 The **Macedonian courts** will apply an express choice of a foreign law in a loan or sale of goods contract between sophisticated companies, even though the contract has no connection with the foreign jurisdiction, but subject to **Macedonian** public policy and mandatory statutes.

True			False	Can't say
X				

Comment:

When the Macedonian courts are presented with a case, they always look for indications of an applicable law to be chosen. In situations, such as a loan or sale of goods contract between sophisticated companies, the contract parties have the right to choose a foreign law, which the Macedonian courts will rule the case upon, even though the contract has no connection with the foreign jurisdiction. Per the Private International Law Act of Republic of Macedonia, Article 21 paragraph 1, a contract shall be governed by the law chosen by the contract parties, unless otherwise provided by this law or an international agreement. This clearly states that the Macedonian court will apply the contract parties' choice of a foreign law. Furthermore, when it comes to the choice of a law, per Article 21 paragraph 2 "*The parties' choice may be either expressed or clearly demonstrated by the terms of the contract or other circumstances*." This states that no connection between the contract and the foreign jurisdiction is needed, to apply a foreign law. Solely an expressed or clearly demonstrated choice is enough to apply a foreign law on contracts presented at the Macedonian Courts. Additionally, per Article 21 paragraph 4 "*The validity of the contract on the choice of law shall be subject to the chosen law*" which envisages that the chosen foreign law determines the validity of the contract. However, when the contracting parties are Macedonian companies and a foreign element is absent, the courts will always choose the Macedonian law.

Apart from the parties' choice of foreign law, after the Macedonian courts have determined the applicable law of the parties' choice, but before applying it to the case, the Court should check if the law is per the Macedonian public policy as in Article 5 "*The law of a foreign state determined as applicable shall not apply if the effects of the application thereof would be contrary to the public policy of the Republic of Macedonia*." There is also an exception in cases of consumer contracts (sale of goods) as stated in Article 25 para. 4: "*Notwithstanding other provisions of this Act, the consumer contract shall be governed by the law of the State in which the consumer has his domicile if:*

1. *the contract was concluded because of offer or advertisement in that State and if the consumer has performed in that State the acts necessary for conclusion of such contract; or*
2. *the contracting party of the consumer or his agent obtained the consumer's order in that State; or*
3. *the contract of sale was concluded in another State, or if the consumer placed the order in another State if the travel was organized by the seller with the purpose to promote conclusion of such contract."*

and Article 25 para. 5 "*In case of the paragraph (4) of this Article, the parties may not, by an agreement of the choice of law, exclude the mandatory rules on protection of the consumer's rights contained in the law of the State in which the consumer has his domicile.*"

Foreign jurisdiction clauses

Generally Many contracts confer jurisdiction, sometimes exclusive, on the courts of a foreign jurisdiction, usually accompanied by a choice of foreign governing law.

Q11 The **Macedonian courts** will generally uphold a clear submission in a loan or sale of goods contract between sophisticated companies to the exclusive jurisdiction of the courts of a foreign country, even if there is no connection between that country and the contract.

True			False	Can't say
			X	

Comment:

There is a contractual possibility that the parties include a foreign jurisdiction clause within the contract by which an exclusive jurisdiction of a foreign court is agreed. However, the contractual freedom is limited and such clause will be deemed as valid only if:

1) one of the contracting parties is a resident, that has been registered in the competent trade registry bodies in the foreign country; and

2) if the subject of the contract is not deemed as subject to exclusive jurisdiction of the Republic of Macedonia.

Both of the conditions should be fulfilled for the clause to be deemed as valid.

The exclusive jurisdiction of the Republic of Macedonia is prescribed in the Law on International Private Law and the same is prescribed in the following cases:

1) disputes regarding the foundation, termination and status changes of a legal entity that has registered office in the Republic of Macedonia;

2) disputes regarding the validity of the registrations in the registries maintained on the territory of the Republic of Macedonia;

3) disputes regarding the registration and validity of the intellectual property rights if the application has been submitted in the Republic of Macedonia;

4) enforcement on the territory of the Republic of Macedonia;

5) disputes regarding ownership and other real property rights;

6) in cases where the defendant is a spouse that is resident and has address of living in the Republic of Macedonia;

7) and other cases as prescribed by law.

The contracting parties may agree to exclusive jurisdiction of the courts of the Republic of Macedonia only if one of the parties has its registered office, that has been registered in the Trade Registry maintained by the Central Registry of the Republic of Macedonia.

In conclusion, the case or the parties must have connection with the forum of choice.

Arbitration recognition

Generally Contracting parties, especially in trading and construction contracts, but less so in loan contracts, wish to submit disputes to arbitration, sometimes in a foreign country. The resulting award is often enforceable locally under the New York Arbitration Convention of 1958, to which most countries have adhered.

Q12 In **the Republic of Macedonia**, the courts allow sophisticated contracting parties to submit contract disputes to a foreign arbitral tribunal to the exclusion of the Macedonian courts.

True			False	Can't say
X				

Comment:

Republic of Macedonia is a member of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted by the United Nations diplomatic conference on 10 June 1958 in New York, NY, therefore known as the "New York Convention" (NY Convention). In Macedonia under the NY Convention, the sophisticated contracting parties can submit contract disputes to a foreign arbitral tribunal with the exclusion of the Macedonian courts and moreover, to give full effect to arbitration agreements, the courts of parties are required to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.

Apart from the NY Convention, this matter is regulated with the Law on International Commercial Arbitration of the Republic of Macedonia, whereas under the Article 1 para. 2 "*The international commercial arbitration, resolves disputes concerning matters in respect of which the parties may reach a settlement*", which means that the parties have the right to choose to resolve their disputes in front of the international commercial arbitration, as a foreign arbitral tribunal, and therefore exclude the Macedonian courts. An exception of this norm, is provided in Article 1 para. 5 which states that this law *"shall not affect any other law of Republic of Macedonia by virtue of which certain disputes may be subject only to the jurisdiction of a court in the Republic of Macedonia*.". However, the law clearly states that, the parties may agree arbitration whose place is outside the territory of the Republic of Macedonia, only if at least one of the parties at the time agreed to subject disputes to arbitration, a person with permanent place of residence outside the territory of the Republic of Macedonia, or a legal person whose seat is outside the territory of the Republic of Macedonia.

When it comes to recognition and enforcement of foreign arbitral awards, Article 37 para.3 of the Law on International Commercial Arbitration of the Republic of Macedonia directly calls for application of the NY Convention. The NY Convention ensures the foreign and non-domestic arbitral awards are recognized and capable of enforcement in its member States jurisdiction the same way as domestic awards

Class actions

Generally In some countries, such as the United States, a plaintiff can be authorised by the court to sue on behalf of all claimants who are similarly situated. Claimants have to opt out or they are bound.

Q13 In **the Republic of Macedonia**, class actions where the class is bound if they do not opt out are generally not allowed.

True		False		Can't say
	X			

Comment:

The Macedonian law does not recognize the opt-out model of class actions, but the opt-in model of class actions. According to the Law on Litigation Procedure, the group action includes the members of the group that have opted in. Thus, the group actions are based on the opt-in model.

It is important that the members of the group action must meet the following criteria:

1) regarding the subject of the dispute – the members of the group should be in legal connection or their rights, that is obligations should arise out of same factual and legal grounds; and
2) if the subject of the dispute are claims, that is obligations that substantially have the same factual and legal grounds and legal basis, only if by the rules of the jurisdiction the same court is authorized for each of the claims and for each of the plaintiffs.

There is a time-limitation by which a participant of the group (only if the previously mentioned conditions are met) can opt-in, that is until the end of the main hearing of the court procedure.

Other indicators

Other indicators not covered by this survey include contingent costs, loser pays the costs of the winner, prejudgment freezes or arrests, appeals, scope of disclosure (discovery of documents), efficacy of waivers of sovereign immunity and the enforceability of foreign judgments.

Real property

Ownership of land

Generally In most countries, nationals can own land absolutely and are not restricted simply to leases for a limited term or simple rights of occupancy. However, in some jurisdictions, absolute ownership of land is not available to nationals or local corporations. If this is so, then the jurisdiction would be coloured green if citizens can lease land for a very long term without material restrictions, such as 999 years, and can also mortgage or sell the land or give it away or bequeath it under their wills without official consent because the ownership is a close proximate of absolute ownership. If on the other hand citizens are entitled only to a lease of, say, 70 years or less, or to similar rights of occupancy, and if there are limitations on dealing with the land without official consent, such as mortgaging, selling or bequeathing it, then the jurisdiction would be red.

Q14 In **the Republic of Macedonia** nationals and local corporations are entitled to own land absolutely.

True			False	Can't say
X				

Comment:

Macedonian citizens and corporations may acquire the right of ownership of real estate property in Macedonia by law, on the basis of legal act, by inheritance and on the basis of a decision of a competent state body. The construction land, forests and agricultural land are things of general interest for the Republic and which on the basis of the Constitution or under special laws may be the subject of ownership of natural persons and legal entities. Cadastre registration is necessary because the registration is the legal ground for getting ownership over the real estate according to the Law on Real Estate Cadastre. The registration in the Cadastre is obligatory and it has constitutive effect. The right of ownership enters upon the registration and expire with the deleting from the cadastral public books.

The type of ownership in Macedonia is absolute and according to the Law on Ownership and Other Real Rights every person and legal entity can acquire right of ownership on real estate property and shall have the right to hold, fully use, or have at disposal, according to his own will, the land in possession, unless it is contrary to law or the right of another person. The manner and the conditions under which certain things of general interests in state ownership may be ceded for use to natural persons and legal entities (concession) shall be determined by law.

The real estate gives its owner rights to the land, and above and below it, if it is deemed to be of importance to the private economy of using your property. If the owner of the land find hidden treasure (money, gold, silver, jewellery and other valuables) or cultural good which have lain hidden for such a long time that it cannot be determined with certainty who their owner is, is obliged to immediately report it and hand it over in possession to the competent service and for that have the right to an adequate reward from Republic of Macedonia but the hidden treasure and the cultural good shall become the ownership of the Republic of Macedonia (state ownership).

Security of land title and land registers

Generally Many jurisdictions improve the security of title to land by a registration system which, although not necessarily state-guaranteed, has high reliability. An example is the Torrens system developed in Australia and used in many other countries, eg Canada and England.

Most countries in the civil code groups do not have a title register but instead require documents concerning land to be notarised and filed at the registry so that they can be searched. The United States does not generally have title registers for land although there may be mortgage registers. They rely on title registration companies which provide title insurance.

Q15 Most land in **the Republic of Macedonia** is registered in a land register which records most major interests in land, e.g. ownership, mortgages and longer-term leases.

True		False		Can't say
	X			

Comment:

The "Real Estate Cadastre" is a public book which records the right to ownership and sub-forms of the ownership right (co-ownership and joint ownership), as well as records of other real property rights (easement right, collateral right (mortgage), real encumbrance right and the right to a real long-term lease on construction land in compliance with the Law on construction land).

The Real Estate Cadastre is established and maintained on the entire territory of the Republic of Macedonia, as a part of a centralized GCIS database and comprises real property data, real property right holders' data as well as spatial and descriptive real property data.

The Cadastre is administered by the Agency for Real Estate Cadastre of the Republic of Macedonia and is fully digitalized.

The registration of the right to ownership and other real property rights in the Real Estate Cadastre is obligatory, while the registration of other real property rights, temporary registration as well as conditional registration of facts of influence to the real property can be performed in cases prescribed by law. The registration of the right in the Cadastre is of a constitutive nature. Therefore, right to ownership and other real property rights can be acquired only upon their registration in and can be terminated by deleting the registration.

The data registered in the Real Estate Cadastre are public and can be used by all parties, under the conditions stipulated by law.

Land development restrictions

Generally Many countries restrict development and the change of use of land and require permits to be obtained for any development or change of use.

Q16 In **the Republic of Macedonia**, apart from environmental controls (dealt with later), the control of commercial development and the change of use of land is very light and, where required, permits are quick and cheap to obtain.

True		False		Can't say
			X	

Comment:

The Ministry of Environment and Physical Planning controls both the environmental and special planning. The physical planning is carried out with physical plan of the territory of the Republic of Macedonia and

urban plans such as: 1) general urban plan; 2) detailed urban plan; 3) urban countryside plan; and 4) urban plan for inhabited areas. The urban plans must be in accordance with the physical plan of the Republic of Macedonia.

For the preparation of the urban plans, except for the detailed urban plan, the carrier of the plan should ask the competent authority for the required conditions that should be fulfilled.

Regarding the preparation of the state and local urban plan documentation, urban – plan documentation for zone for tourism development and urban – plan for auto-camp documentation the investor should ask the competent authority for the conditions that should be fulfilled. The investor should submit the following documents to the competent authority:

1) drawn topographic card of the borders of the project;
2) graphical attachment with plan for the purpose of the space;
3) textual attachment with program of the project; and
4) notification by the municipality on whose territory the project will take place which states that the land that is subject to the proposal of the investor is not planned under any existing urban plan or plan that is in proceeding to be adopted.

In conclusion, the development of the plan is strict and the criteria are not light.

Other indicators

Other indicators not surveyed include transfer costs, stamp duties and lessee protections.

Employment law

Generally The indicator here is whether it is easy or hard to hire and fire employees. The measures include high minimum wages, maximum hours, minimum holidays, maternity rights, equal pay for equal work (non-discrimination) and severance costs.

Q17 In **the Republic of Macedonia**, there are few controls on hiring and firing employees or on the terms of employment.

True			False	Can't say
	X			

Comment:

The involvement of the employees in the working process is ensured with an uninterrupted flow and flexibility. According to the Law on labor relation besides the aforementioned insurance, the main objective is providing the necessary protection regarding the employee's right to freedom of labor, dignity and interests deriving from the labor relation.

The Macedonian legislative relies upon four regulations: the Law on Labour Relations, the general collective agreement, collective agreements concluded within a specific branch and collective agreement as an individual at employer level. Therefore, the termination of the employment contract can solely be done in the manner and under the conditions defined by the law and the collective agreements. The law provides that the employer can terminate the agreement only if there is a justified reason for dismissal related to the conduct of the employee (personal reason of the employee), due to violation of the working order and

discipline or working tasks (reason of fault), or if the reason is based on the employer's operational needs (business reason/redundancy).

Furthermore, the law is very strict in the application of the equal treatment principal when hiring and firing employees, as well as the direct and indirect discrimination which are prohibited. In regard to the minimum wages, in comparison to the standard and quality of life it can be said that the level of the minimum wage is low, with certain expectations of increase in the following period.

As a general rule, the duration of the working week is five working days for the employees who work full time, or in other words the working hours cannot exceed 40 hours a week. Overtime work can last eight hours a week at the most and maximum 190 hours a year, except for works which cannot be terminated due to specific process of operation or for works for which there are no conditions and possibilities to be organized in shifts. The overtime work for a period of three months cannot be more than eight hours a week on average. That being said, the objective here is to ensure there is no abuse of the workforce.

In regard to maternity rights, the Law provides a continuous nine-month paid leave in the period of the pregnancy, childbirth and maternity and the absence of the employee for such reasons cannot be used as a way to terminate the agreement. Moreover, the employee is entitled to go back to the same position, or if it is not available, to go to a corresponding position within the terms of the employment contract.

In conclusion, the indicators show that the national legislation satisfies the terms of flexibility, instituting restrictions in the areas which are important for both individual and social needs.

Environmental restrictions

Q18 In **the Republic of Macedonia** the rules governing the environment and liability for clean-up are very light and relaxed.

True			False	Can't say
			X	

Comment:

Rules for protection of the environment and liability for clean-up are very strict and numerous.

Several laws such as Environmental Law, Law on Waste Management, Law on Nature Protection, Law on the Management of Batteries and Accumulators and Waste Management of Batteries and Accumulators, Law on Drinking Water Supply and Urban Waste Water Drainage, Law on Management of Electrical and Electronic Equipment and Waste of Electrical and Electronic Equipment, Law on Packaging and Waste of Packaging are the basis of the legal frame for the protection of the environment and a large number of rules have been prescribed in order to keep the environment clean and healthy.

As an example, in accordance with these laws, penalties starting from EUR 1,000 in MKD counter value, up to EUR 100,000 in MKD counter value may be imposed by the State Inspectorate by the Ministry of Environment and Physical Planning which is responsible for surveillance of the application of these numerous laws.

However, the abovementioned laws are not fully implemented and are not practised by the market operators.

Openness to foreign business

Generally These indicators measure the degree to which the country is open to foreign businesses. The indicators are quite generic and therefore subjective.

Foreign direct investment

Q19 In **the Republic of Macedonia** foreigners may freely own and control local companies outside protected industries, such as media, banks and defence.

True			False	Can't say
X				

Comment:

Macedonia does not have any regulatory or defensive measures directed against foreign investment. The country has enacted legislation that provides equal footing for foreign investors as compared to their domestic counterparts. Besides the numerous incentives for attracting foreign capital, a special agency "Invest in Macedonia" has been established.

The Constitution of the Republic of Macedonia, as well as the Company Law guarantees equal position for all entities in the market and same treatment of the national and foreign investors. Therefore, foreign investments are not subject to any special approvals or procedures beyond what applies to Macedonian nationals.

However, foreign investments classified as "direct investments" in accordance to the Law on Foreign Exchange Operations shall be reported in Central Registry, within 60 days from the date of conclusion of the capital transactions, which is a legal basis for acquiring a direct investment in the Republic of Macedonia.

The transfer of profit, transfer of proceeds from alienation and sale of ownership share in direct investments and the transfer of the remainder of a liquidation estate are free, under the condition that the direct investment is registered as described above and all the legal liabilities arising from taxes and fees in the Republic of Macedonia are settled.

Exchange controls

Q20 In **the Republic of Macedonia**, there are no exchange controls. Businesses may therefore have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency.

True			False	Can't say
	X			

Comment:

In accordance with the Law on Foreign Exchange, foreign exchange operations and transfers are mainly free and no restrictions, except otherwise regulated with the Law on Foreign Exchange or any other law.

However, resident natural or legal persons may have foreign bank deposit accounts in foreign currency, borrow in foreign currency and repatriate profits to foreign shareholders in foreign currency, only under

special conditions prescribed by the Central Bank of the Republic of Macedonia (National Bank of the Republic of Macedonia - NBRM).

Namely, resident legal persons may have foreign bank deposit accounts in foreign currency only in case of a prior approval issued by the NBRM and only for performance of certain commercial affairs. Such prior approval is given only for a limited duration. In spite of the fact that there are restrictions for legal persons opening deposit bank accounts, such restrictions do not apply to banks and other financial institutions. Therefore, banks and other financial institutions have no restrictions or whatsoever for holding foreign bank deposit accounts. When it comes to crediting and borrowing, only banks authorized for foreign payment operations are allowed to lend in foreign currency. Repatriation of profits to foreign non-resident shareholders is free, provided that non-residents have registered such investments in accordance with the Law on Foreign exchange and have settled all legal obligations on the basis of taxes and other contributions in the Republic of Macedonia.

On the other hand, in accordance with article 34 of the Law on Foreign Exchange, the NBRM has a significant impact of the foreign exchange market by the way of indirect instruments. For that purpose, the NBRM operates in the foreign exchange market and has a significant share of it, in order to achieve the objectives set out in the monetary and foreign exchange policies of the Government of the Republic of Macedonia. Additionally, in accordance with article 37 of the Law of Foreign Exchange, the NBRM may introduce special protective measures on the foreign exchange market in case of threat of significant distortions in the balance of payments and of destabilization of the financial system, which may last up to 6 months.

Alien ownership of land

Q21 In **the Republic of Macedonia**, foreign-controlled companies have the same rights as nationals or residents to own or lease land without a permit.

True			False	Can't say
	X			

Comment:

The Constitution of Republic of Macedonia contains a general provision in which it is stipulated that foreign natural persons and legal entities may acquire the right to property under conditions determined by law.

Foreign legal entities may, under the conditions of reciprocity, acquire the rights of ownership of real estate in the territory of the Republic of Macedonia by inheritance on the basis of a will. As it matters for apartments, residential buildings and business premises in the territory of the Republic of Macedonia, legal entities, residents of the member states of the European Union and OECD may acquire the right of ownership in the same manner as the citizens of the Republic Macedonia. Legal entities, residents of the non-member states of the European Union and OECD may acquire such type of right of ownership under the same conditions of reciprocity.

Acquisition of real rights (right of ownership and the right to a long-term lease) over construction land for legal entities, residents of the member states of the European Union and OECD is the same as for domestic legal entities.

However, there are restrictions on foreigners' right to own agricultural land in the territory of the Republic of Macedonia and the right of ownership for foreign legal entities and natural persons for this type of land is forbidden. Foreign legal entities only may, under the conditions of reciprocity, acquire the right to a long-term lease of agricultural land in the territory of the Republic of Macedonia, on the basis of a consent of the minister of justice, upon previously acquired opinion of the minister of agriculture, forestry and water resource management and the minister of finance.

Application of the law

Generally These indicators deal with the application of the law, as opposed to what the law actually says. They are bound to be generic and subjective, a matter of impression.

Q22 In **the Republic of Macedonia**, the higher courts usually treat big businesses as fairly as they treat individuals and do not favour local interests over foreigners.

True			False	Can't say
X				

Comment:

According to the Constitution of the Republic of Macedonia, one of the fundamental values of the constitutional order is the rule of law. All of the citizens in Macedonia are equal before the Constitution and the laws. Furthermore, everyone may invoke the protection of their freedoms and rights before the regular courts, through a legal procedure. The courts shall protect the human and citizens' freedoms and rights and the rights of the other legal entities. Among others, the goals and functions of the judicial power are impartial application of law, regardless of the position and capacity of the parties and provision of equity, equality, no discrimination on any ground. Therefore, the judges in the primary, higher and the other courts are expected to apply the law and provide equal position for the parties. In disputes with an international element, the courts will not apply the law of a foreign country if the consequences of its use would be contrary to the public order of Macedonia. However, this is a question about the application of the law by the higher courts and not to what the law actually says. In addition to all above mentioned and in absence of empirical data showing the opposite, there is no reason to assume that the higher courts in Macedonia will treat big businesses less fairly than individuals or that they will favour local interests over foreigners when applying the law.

Costs and delays of commercial litigation

Q23 The costs and delays of commercial litigation in the higher courts in **the Republic of Macedonia** are not considered materially greater than in other comparable countries.

True			False	Can't say
		X		

Comment:

The Republic of Macedonia as a signatory state to the European Convention on Human Rights has adopted the legal standard providing “the right to a hearing within a reasonable time”. As a legal standard that indicates the time that is sufficient to determine the merits of the dispute, it can be stated that it is increasingly accepted in the domestic case law. The emphasis is not on speed in handling, but the time needed to decide on the merits. In other words, the standard affirm speed, to the extent that excludes unnecessary delays. As a general rule it is also applicable to the higher courts: Courts of Appeal and the Supreme Court.

According to the governing laws in Macedonia, there is not a firm timetable for reaching a decision in commercial litigation. There are several relevant criteria which influence the efficiency of the legal proceedings such as the complexity of the case, the merits of the dispute, the conduct of the authorities, the conduct of the plaintiff etc.

Notwithstanding the foregoing, the Macedonian court system is subjected to many delays which result in additional costs in the legal proceedings. The foremost rule is that the losing party will bear the costs of the case. Therefore, the costs are contingent to the delays which cannot be particularly defined because of the abovementioned influential criteria.

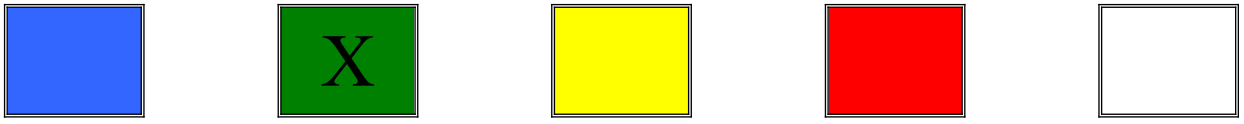
Furthermore, it is difficult to make a clear comparison on the material impact regarding the costs and delays mainly because of the delicacy and diversity of each particular case. Although, it can be said that the neighbouring countries such as: Serbia, Montenegro, Bulgaria, Bosnia & Herzegovina share a similar pattern.

Overall ranking

This overall ranking is achieved by a survey of all the rankings as shown in this table:

	Question	Rating
1.	Insolvency set-off	
2.	Security interest	
3.	Universal trusts	
4.	Director liability for deepening insolvency	
5.	Financial assistance to buy own shares	
6.	Public takeover regime	
7.	Exclusion of contract formation	
8.	Termination clauses	
9.	Exclusion clauses	
10.	Governing law clauses	
11.	Foreign jurisdiction clauses	
12.	Arbitration recognition	
13.	Class action	
14.	Ownership of land	
15.	Security of land title and land registers	
16.	Land development restrictions	
17.	Employment law	
18.	Environmental restrictions	
19.	Foreign direct investment	
20.	Exchange controls	
21.	Alien ownership of land	
22.	Court treatment of foreign big business	
23.	Costs and delays of commercial litigation	

True **False** **Can't say**



Commentary and suggestions for change

In recent years there has been a trend of adopting laws and regulations in a so called “expedited procedure for adoption” in the Republic of Macedonia. Almost all regulation adopted via this expedited procedure have been introduced without the necessary consultations with the academic or business community, and without the necessary public debate.

This often results in the adoption of regulation which is difficult to implement in practice. It has been announced that in the near future this principle of the adoption of laws in an expedited procedure would become an exception, and not as till now.

Profiles

The survey was carried out by the following students:

Vildan Drpljanin

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Vaska Bojadzi

Vaska Bojadji has recently finalized her postgraduate studies at the Faculty of Law, "Iustinianus Primus", by defending her master thesis on the topic "The significance of the legal due diligence in mergers, acquisitions and share purchase transactions". Business law, Corporate law, as well as Labor law are among her main areas of interest. During her two-year term as the Students' Ombudsman at the University "Ss. Cyril and Methodius", she was responsible for providing effective protection of the rights of thousands of students. For her outstanding academic results, in the year 2014 she has been awarded with the annual award "Frank Maning". Bojadji has enriched her professional experience by attending numerous national, as well as international competitions, seminars, conferences and other educational events. Vaska can be reached at vaskabojadzi@yahoo.com.

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Monika Zdravkova is a student in second year, undergraduate studies at the Faculty of Law "Iustinianus Primus" – Skopje within the University "Ss. Cyril and Methodius". She has participated in a TLA Big Deal Competition in 2016 and won the second place together with the other members of the team of the Faculty of Law "Iustinianus Primus". Her main areas of interest are Corporate Law and Legal Due Diligence. Monika can be reached at monikazdr@yahoo.com.

Maja Veljanova

Maja Veljanova is currently writing her master thesis at Faculty of Law "Iustinianus Primus" – Skopje on the following topic: "Comparative legal aspects of the standard terms and conditions of contracts in the digital area". During the studies, she has been a dedicated student, as a result of which she has been awarded with the "26 July Award" by the Frank Manning Foundation – London in September 2015; and Acknowledgement for best student in her generation given by the University "Ss. Cyril and Methodius" in March 2017. During the period from 2014 - 2016 she has been a member of the Editorial Board of the Iustinianus Primus Students' Law Review. She is a member of the European Students' Law Association of the Republic of Macedonia for 5 (five) years and currently she is running her second term as President. Her main areas of interest are Corporate Law, M&A, Antitrust and Competition, Contracts and Intellectual Property. Maja can be reached on the following e-mail address: maja.veljanova@live.com.

The Faculty of Law "Iustinianus Primus"

Fundamentally, the Faculty of Law "Iustinianus Primus" works towards creating greater knowledge of national and international law. Traditionally, the legal research has been focused on the study of Macedonian law, but concurrently with the internationalisation the faculty has adapted its research. Today, the researchers are also highly involved in with the interaction between Macedonian law and other legal orders.

The Faculty of Law "Iustinianus Primus" is part of the oldest University in the Republic of Macedonia i.e. the University Ss, Cyril and Methodius. Ever since the faculty has educated skilled graduates for a brand and diverse labour market. Through a research-based education the faculty ensures today that the legal graduates have the skills to analyse and contribute to interdisciplinary and problem-oriented skills in both the private and the public sector at home and abroad.

The Faculty adds importance to a proactive dialogue with the outside world. Among others this is achieved through conferences and seminars, where faculty researchers make their skills available. The Faculty is constantly improving and upgrading the education of future lawyers and ensures that they stand strong on the future labour market. Therefore, both researchers and education are in touch with reality, and the focus is on constantly creating good and valuable co-operation with public and private institutions.

The Faculty members managing this project

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Allen & Overy Global Law Intelligence Unit

The Allen & Overy Global Law Intelligence Unit is part of the international firm of Allen & Overy and produces papers, surveys and other works on cross-border and international law within the field of its practice. Allen & Overy is one of the largest legal practices in the world with approximately 5,000 people, including some 512 partners, working in 40 offices worldwide. For further information, please contact Philip Wood, philip.wood@allenovery.com or Melissa Hunt, melissa.hunt@allenovery.com.

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Philip Wood is one of the world's leading comparative lawyers and practitioners. He has written about 18 books on financial law. He was formerly a partner and head of the banking department of Allen & Overy. For many years he has been developing innovative and pioneering methodologies for assessing legal jurisdictions and has produced a book of maps of world financial law. His university textbook on the Law and Practice of International Finance has been translated into Chinese and a Japanese version is forthcoming.

Melissa Hunt is project director of the Intelligence Unit and is responsible for the management of the project. She carries out other work for the Intelligence Unit, including the preparation of tables covering rule of law and legal infrastructure risks in the jurisdictions of the world.

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