

MANAGING INVESTMENT CONDITIONS: THE CASE OF MACEDONIA

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1. Introduction

According to the International Monetary Fund definition, the foreign direct investments (FDI's) are investments which aim is to gain permanent interest in the enterprises, which operate out of the investor's country and by that the essential intention of the investor is to enable and achieve effective management with the enterprise where he invests in [1: 9]. This is connected to certain minimal share in the ownership capital (equity) in the company (most frequently 10%) so as this investment to be able to be treated as foreign direct investment and which enables effective participation in the management. It is similar definition of OECD according to which a company with foreign direct investment is such company where one investor owns 10% or more of the regular shares or votes of an enterprise, or a company where the foreign investor owns less than 10% of common shares or votes but still there is possibility effectively to influence on the company management [1: 9].

The basic motive for attraction of foreign direct investments for each country is securing means which are missing for work and development that enables realization of projects and programs in conditions when own means are not sufficient (domestic savings/accumulation) or when the conditions for its engagement are inconvenient. It is obvious that on the macro level, with the help of FDI one country could stabilize and make sustainable the balance of payments, but also it could improve the conditions on the domestic market, it could decrease the level of unemployment, and the last but not least, to transfer a technology and know-how. All of the previous has its positive impact on the economic growth.

The economy of Macedonia which at the beginning of the 1990s to the beginning of the new millennium passed through the process of transition, has been transferred into market oriented economy and the investor's interest is increased for it from all over the world. Namely, the national treatment of the foreign investors, the protection of the ownership, the stabile legal and business surrounding influence the economic and before all the political stabilization of Macedonia, which represents a basic precondition for the increase of investors' interest. The improvement of the investment climate, the capable and qualified labor, the fertile tax policy transformed into lowest tax rates in Europe, influences the investors to take into consideration Macedonia as a potential country for investments of their capital.

The legal system in Macedonia has been constantly improved in the direction of continuous encouragement and support of the economic progress of the country, the globalization flows and the political development. It is significant to mention the adjustment of the domestic legislature towards the legislature of EU, which goes

according to the confirmed dynamics of Macedonia with the Agreement for stabilization and association. That means that many legal decisions are closer or identical to the corresponding in the developed European countries. In the passed period there has been implemented regulatory guillotine, which enabled confirmation of the boundaries and the drawbacks which influenced the management procedures connected to the realization of the necessary steps for investments and the development of entrepreneurship in Macedonia. After statements, the observations and findings from the made guillotines the government of Macedonia took steps for the removal of the boundaries and drawbacks which resulted with the increase of the efficiency and the effectiveness of the management procedures. In that direction many of the Government measurements are in the direction of faster realization of the business plans and project of the investors. The tax policy, the human potential, the enforcement of the service, obtaining process as well the simplification of the management procedures, but also the development in the field of the protection of intellectual and industrial property, they all are considered as advantages in the direction of attraction of investments and also taking into consideration that such parameters and fields are most frequently the crucial preconditions for entrance of foreign investors in one country.

Aware of the importance of the multilateral and bilateral agreements signed by the Republic of Macedonia and other countries, this paper presents some of them. It is certainly important because in that way the investor can clearly notice whether the country he comes from has signed an agreement for avoidance of double taxation, agreement for free trading or an agreement for support and mutual investments protection in Macedonia.

2. Constitutional basis for FDI

With the independence and the adoption of the Constitution in November 1991 R. of Macedonia found the constitutional legal frames for the new social order and establishment of new economic system. One of the key value in Macedonia's Constitution is market freedom and entrepreneurship freedom towards establishing market based economy principles. Furthermore, the Constitution additionally confirmed the market principles on which new economic regulations are based, planning guarantees and limitations of the same. Namely, according to the Constitution the freedom of market and the entrepreneurship is guaranteed. The Government supplies equal legal status of all subjects on the market. The Government takes measures against the monopolistic status and the monopolistic behavior on the market. Freedom of the market and the entrepreneurship can be limited with law solely for defense of the country, environmental and nature protection, or people's health.

Having in mind the capacities of the national economy and the economic subjects in Macedonia the Constitution additionally gives support for entrance of foreign investors through the guarantee of the safety for taking (export) of the invested equity and the equity that they invested in Macedonia. That is in Article 59 and it has been planned to foreign investors the right of free exports and the invested equity and gain are guaranteed. The right gained on bases of the invested capital cannot be reduced by law or other provision.

3. The main legislative determinants for investments

The most significant fields for the foreign direct investments are represented in one common cycle starting from: registration of the business, employing adequate labor,

starting with the business, tax burdening, agreement, obligations for trading, reinvestment, protection of the investors, and closing of the business.

Initiation of business - This part covers the possibilities for registration of a commercial company and the most important fields that could be the subject of interest for the investors such as the concessions and public-private partnership, mineral raw materials, energetic, commerce with securities, funds, stock markets etc. So, this part covers all that is important before the beginning of the business. When initiating a business in Macedonia, there are several key institutions. Namely, the authorized institution for initial registration of the business is the Central register where for only four hours and without the necessity for initial capital, one could open the several types of commercial companies: trader-individual, public commercial company, company with limited liability - DOO, company with limited liability of one person - DOOEL, joint stock company, limited company and limited company with stocks. In the frames of the Central register, technical offices are formed as well which prepare the overall documentation for initiation of a company, which additionally reduces the expenses and the time necessary for registration of a company. To the investors it is on their disposal the Agency of foreign investments of Macedonia in any phase of the investment process. For the necessities of the entrepreneurs and the support of their business, the Agency for the support of the entrepreneurship of Macedonia has been formed. The commission for securities is liable for efficient and legal functioning of the market of long term securities and protection of investors' rights. This institution is liable for implementation of The Law on securities, The Law on investment funds and the Law for taking over of the joint stock companies.

The key laws for initiation of business in Macedonia are: the Law on commercial companies (28/2004, 84/05, 25/2007; 87/2008), the Law on single desk system, and leading of commercial register and the register of legal entities (84/2005, 150/2007; 140/2008), the Law on Central register (50/2001, 49/03, 109/05, 88/2008), the Law on concession and other types of public-private partnership (7/2008; 139/2008), the Law on mineral raw materials (24/2007, 88/2008, 52/2009), the Law on energetic (63/2006, 36/2007, 106/2008), the Law on securities (95/2005, 25/2007, 7/2008), Law on the investment funds (9/2000, 29/2007, 12/2009), the Law on foreign exchange operations (34/2001, 81/2008), the Law for establishment of Foreign Investments Agency of Macedonia (37/2004, 81/2008), the Law on establishment of Entrepreneurship Agency of Macedonia (60/2003), etc.

Labor/employment - Qualification of the labor, the legal provisions of this sphere are certainly in the focus of investors' attention because without workers it is impossible to enter in serious investments. In this area the most important laws and provisions have been covered that are interesting for the investors. In the employment part the provisions are covered that regulate the labor market. The most important state institution of this sphere is the Employment agency which frameworks cover the procedure for registration of employed people which is simplified with shortening of terms, reduction of benefits and the documentation that is asked from the companies. Still, the biggest news represents the introduction of system for contracting the calculation and payment of gross salary of workers since January 2009 [2, 3]. Simultaneously as a compositional part of this system is the integrated payment of all social transfers and the personal income tax by the Department of Public Incomes. With the adoption of the Law for peaceful solution of the labor lawsuits (87/2007) out of court procedure through mediation by which the terms of the procedures themselves are shortened, the expenses have been reduced and the workers are returned on the labor market faster. Regarding the employment procedures the most important laws are as follow: the Law on labor

relations (62/2005, 106/2008, 161/2008), the Law on compulsory contributions from the social insurance (142/2008), the Law for peaceful mediation of labor lawsuits (87/2007), the Law on employment and work of foreigners (70/2007, 5/2009), the Law on pension and disable insurance (80/1993, 153/2007, 152/2008, 161/2009), the Law on initiation of employment (62/2006), the Law on disable persons (87/2005, 88/2008, 161/2009), the Law on employment and insurance in case of unemployment (37/1997, 102/2008, 161/2009), the Law on agencies for temporary employments (49/2006), etc.

Initiation of business/work. At the start of its business, each investor is interested for the possibilities of crediting and financing of business plans, obtaining of different permits and licenses, the obligations that result from taking account for the environment, different advantages that technological industrial zones offer and certainly the ownership relations as fundament of the civilization. The releasing of the procedures for business initiation is just the first pillar of the regulation reforms that are implemented in Macedonia. In that direction with the project regulation guillotine, hundreds of laws have been simplified and their sub legal acts and the obtaining of licenses and permits for business running is released and cheaper. Also, the introduction of the rule “the silence is an approval” represents a powerful instrument for pressure towards the administration to reply on the citizens’ requests and businessmen in the prescribed term, because on the contrary it will be considered that the answer is positive [4].

The documentation and the terms for obtaining licenses and permits is considerably reduced with new changes of the Law on construction land and the Law for construction. The procedures for construction permits are simplified but also the foreign legal and physical entities will be able to gain the ownership on construction land. The fees and compensations at the land registry office, the Customs and the Bureau of meteorology are reduced. With the new Law on Banks which enabled departments of well known foreign banks in Macedonia to be opened and by that the approach to capital necessary for financing of new investments projects is released. The credit registers in the frameworks of the Central (National) bank is additionally upgraded and there is a procedure at the moment for foundation of new investment projects.

In order to achieve larger efficiency in the registration of the ownership rights and its overall functionality and digitalization to the end of 2008, large reforms are taken over the Land registry department. With the strengthening of human resources and introduction of ITC technology, the process and the work procedures of the land registry have been improved.

For business initiation it is essential to emphasize the laws that refer to the possibilities for crediting, ownership, the environmental protection and certainly the free economic zones. Also, connected to credits there should be mentioned: the Law on banks (67/2007), the Leasing law (4/2002, 49/2003, 88/2008) and the Law on contractual pledge (5/2003). For the ownership regulation the most important are the following: the Law on ownership and other property rights (18/2001, 92/2008), the Law on land registry of real estates (40/2008), the Construction law (51/2005, 82/2008), the Law on construction land (82/2008, 143/2008) and the Law on privatization and rent of construction land in state ownership (4/2005, 13/2007, 165/2008).

During the last 10-15 years, the environmental protection has been gaining more and more importance for the business running. From the point of view of the investor the most important are the following laws: the Law for the environment (53/2005, 24/2007), the Law on nature protection (67/2004, 84/2007), and the Law for waste management (68/2004, 107/2007, 102/2008, 143/2009). The free economic zones are regulated by the Law for technological industrial zones (14/2007, 103/2008, 130/2008).

The tax burden is maybe the most essential part in the investment decision, but

also during the period of business running. That is why the most important legal decisions in the area of taxes have been covered as well as the contracts for avoidance of double taxation in Macedonia that it ratified with other countries. The laws in this area confirm the most important tax burden which would be interesting for the investors. In that direction the implementation of policy for larger economic freedom of business flat rate income tax has been introduced and flat rate personal income tax which rates are only 10% and by that Macedonia has the lowest package of taxes in Europe. It is essential to emphasize that the reinvested income is completely exempted from taxation. In that area there should be taken into consideration: the Law on income tax (74/2006, 160/2007), the Law on personal income tax (74/2006, 160/2007), the Law on value added tax (44/1999, 114/2007, 103/2008), the Law on property taxes (61/2004, 102/2008), the Law on the amount of default interest rate (65/1992), the Law on communal fees (61/2004; 92/2007), etc.

When taxes are in question it is important to mention that in the frames of the Department of Public Incomes separate offices have been established for small and medium sized companies and by that an attempt has been made for adjustment and releasing of the administration procedures for tax payments of this type as tax payers. Large tax payers can send by Internet tax forms and opinions to the office for large tax payers and by that the processing has been considerably fastened and also the time for tax payment.

The contract for avoidance of double taxation promotes the economic cooperation between Macedonia and other countries especially in the domain of stock exchange, services and common investments and by that stimulation and intensifying of the economic financial relations between the countries is enabled. Macedonia has ratified 30 contracts for avoidance of double taxation, generally with these contracts the avoidance of double taxation of the resident of one or the other country has been regulated referring to income taxes (personal income tax and income tax) and property tax. In that way the residents of one state gains the same tax treatment in the other state. Correspondingly, the rights of the state are regulated where there are cases which will make the taxation and which will not, as well as which state is entitled to make payment of certain tax obligation. Also, with the contracts the dividends, interests and the incomes of copyrights are also treated and etc. Macedonia has concluded contracts for avoidance of double taxation with the followings states: Croatia 17/953, Turkey 45/95, Poland 17/97, Italy 34/97, China 49/97, Russia 7/98, Albania 16/98, Sweden 21/98, Ukraine 21/98, Slovenia 31/98, Netherlands 13/99, Bulgaria 23/99, France 23/99, Taiwan 44/99, Egypt 7/2000, Denmark 48/2000, Switzerland 55/2000, Romania 7/2002, Czech Republic 7/2002, Iran 7/2002, Finland 7/2002, Hungary 12/2002, Belorussia 96/2005, Spain 96/2005, Moldavia 130/2006, United Kingdom and Northern Ireland 47/2007, Latvia 47/2007, Germany 86/2007 and Austria 152/2007.

Contractual obligations/commercial conditions. When the investor runs its business in Macedonia it is of exceptional importance the fields such as commerce, export/import, customs, contractual relations, the freedom on market and the completion as well the contract of free commerce with EU and other states that is, all areas that influence the running of business commerce and obligation relations. These fields are regulated by the Law on commerce (15/2004, 129/2006 и 63/2007, 88/2008), the Law on e-trade/e-commerce (133/2007), the Law on competition protection (4/2005, 70/2006, 22/2007), the Law on taking over of joint stocks companies (4/2002, 36/2007), the Law on customers protection (38/2004, 77/2007, 103/2008), the Law on customs (39/2005), etc.

Sufficient improvement has been reached in the releasing of the export and

import. Namely at the Customs procedures for goods transit more efficiently and faster are implemented. With the introduction of single desk system the procedures have been considerably shortened as well as the documents which are necessary at export import. R. of Macedonia has concluded three multilateral contracts for free market: 1. The Stabilization and Association Agreement, 2. EFTA and 3. CEFTA.

With the Stabilization and association agreement, Macedonia took over the obligations for liberalization of the market with the European union, signing of contracts for free trading with states from the region and etc.

With joining to EFTA asymmetrical approach in the commercial running has been secured with the industrial and the agricultural nutrition products on behalf of Macedonia. By that the Macedonian industrial products are exported freely without customs on EFTA states markets for the necessities of 12 million people.

The Central European contract for free trading (CEFTA 2006) represents important step in the efforts for economic integration of the countries from the South East Europe (region) From the economic aspect the increase that is the possibility for creation of a single zone for free trading will be especially acceptable for the countries with small sized market such as Macedonia. This contract beside the liberalization of the stock commerce for the first time opens space for increased cooperation between its members and in the following areas: services, trading, public supplies, investments, and protection of the intellectual property. Macedonia has concluded bilateral contracts for free trading with Turkey and Ukraine.

Reinvestment is the area of exceptional importance for Macedonia because the gained capital of the investor is essential to be invested here and that purpose large tax relives and advantages are on his disposal. In the part of investment and reinvestment the Government offers special advantages, planned as tax relives that are through supportive tax policy in the part of reinvestment. By exempt that is the reduction of tax rates the investors and the businessmen can reinvest their income that they earned in Macedonia. The provisions that support the reinvestment are mainly included in the Law on value added tax (44/1999, 114/2007, 103/2008), the Law on income tax (27/2006, 159/2008), the Law on personal income tax (74/2006, 160/2007, 159/2009) etc.

Protection of investors. Wide spectrum of legal regulations manages this material which includes the contracts for investments protection as well. For the protection of the investors' rights and improvement of cooperative operating, the Law on commercial companies is fully applied. At the same time, the Commission of securities adopted new sub legal acts by which the provisions for information announcement of joint stock companies have been strengthen and measures have been introduced by which it is sanctioned the use of inside information. Special attention has been dedicated to the protection of the minority share holders, who in the past used to be blackmailed and interrupted freely to operate with their capital. Regarding the foreign investors the legislature in Macedonia guarantees free transfer and repartition of capital and income.

In 2006 Law on International commercial arbitration has been adopted securing that all foreign arbitration decisions are under direct authority of the Arbitrage court. Also the Republic of Macedonia has signed and ratified the New York convention for recognition and execution of foreign arbitration decisions(1958) and Washington convention for solution of investment lawsuits between the states and the citizens of others state (ICSID, 1965). In this field key are: the Law on International Commercial Arbitrage (39/2006), the Law on Industrial Ownership (47/2002, 42/2003, 9/2004, 39/2006 и 79/2007), the Law on Commercial companies (28/2004, 84/05, 25/2007, 87/20085), the Criminal law (19/2004, 7/2008) and the Law on Corruption Prevention (28/2002, 126/2006).

In this part laws are also included which cover the inspection, surveillance, the Law on Labor Inspection (35/97), the Law on Department of Public Incomes (81/2005), the Law on Living Environment (53/2005, 24/2007), the Law on Food Safety, Products and Materials that are in contact with the food (54/2002, 84/2007), the Law on Market Inspectorate (24/2007), the Law on Sanitary and Health Inspection (71/2006), the Law on Construction (51/2005, 82/2008).

In order to avoid double taxation and large mutual protection of investments bilateral agreements have been concluded to guarantee the same. Namely, the agreements for support and mutual protection of investments are concluded in order to attract foreign investments and in the frames of efforts and activities of the Government for promotion of the cooperation with other countries. Usually these types of agreements are signed in terms of legal protection of investments made by investors of one country to another. Republic of Macedonia and the states that signed and ratified these agreements are obliged to deliver treatment to other country's investors which are no less of the treatment they deliver to their own investors. These agreements usually regulate the manner of resolving eventual disputes between the investor and Contracting Party, as well as eventual disputes between two Contracting Parties. Macedonia has concluded such types of agreements with Croatia (17/95), Turkey 5/97, Slovenia 55/96, the former United Republic of Yugoslavia 69/96, Germany 8/97, Switzerland 8/97, Poland 17/97, Italy 34/97, Russia 7/98, Malaysia 7/99, Albania 15/98, Korea 15/98, France 16/98, Ukraine 21/98, Sweden 31/98, Netherland 13/99, Belgium 23/99, Bulgaria 23/99, China 44/99, Romania 7/02, Finland 7/02, Bosnia and Herzegovina 7/02, Austria 7/02, Hungary 12/02, Czech Republic 7/02 and Spain 110/05.

Closing of a business. The bankruptcy and the liquidation, the duration and the way of leading of these procedures are of essential importance for the investors and they circle this process. The financial means and the time that is necessary for liquidation or closing of a commercial company mainly represent the essential elements referring to this field. Namely, with regards to Macedonia and the procedures for closing of a business, the Law on bankruptcy (34/2006, 126/2006 and 84/2007) allows cheaper and faster implementation of the bankruptcy procedures in average of nine months.

4. Tax reforms

Generally, economic performances of Macedonia are manifested through the stable growth of GDP which is about 4-5%, the low inflation rate the average of which is 2-3%, the fiscal discipline confirmed by the international financial institutions as well as the coordination between the fiscal and the monetary policy.

With the appropriate legislation, Macedonia undertook economic reforms, and by doing so it offered the most attractive tax package in Europe. Namely, the income (profit) tax rates and the personal income tax are 10% (the profit tax was decreased for 15% and the personal income tax was decreased for 15%, 18% and 24%). Regarding the value added tax, the general tax rate is 18% whereas the preferential/privileged tax rate is 5% (including computer software and hardware, food etc.) [5].

The property tax rate amounts 0.1-0.2% and the inheritance tax is in the range between 2-3% for the tax payers that are second in the row of inheritance and 4-5% for the tax payer who is third in the row of inheritance or the one who is not in any relation with the person leaving the inheritance. For the purpose of stimulating additional foreign and domestic investments, the corporate tax on undistributed profit is 0%.

The introduction of the flat rate tax was made for the purpose of simplifying the tax system which is expected to further stimulate the successful companies to improve

their operation and to increase their profitability. The intention is to also make the companies use the money they “saved” from taxes for the purpose of increasing their competitiveness. The flat rate system enables having transparent and efficient administrative procedures, simple calculation and fast filling in of the tax forms.

Special tax relief is offered to companies that operate in technological industrial development zones. This covers relief from both profit tax and personal income tax payment during the first 10 years. Each company is relieved from paying the undistributed profit tax. Companies can pay tax via Internet, and this saves their time and money. There are no restrictions on transfer accounts i.e. on the current account payments. The profit and the dividends from the investments can freely be transferred abroad, after the payment of corporate profit tax.

There are no regulatory restrictions for foreign direct investments made by non-residents in Macedonia. Credit transactions between residents and non-residents can freely be made as long as they are registered in the Central Bank. Certain legal entities that operate abroad can hold their deposits in foreign banks, only if being given permission for this by the Central Bank. Non-residents are free to open non-resident accounts in Macedonian banks. The Law on foreign exchange operations enables liberal regime regarding capital transactions, to a great extent.

According to legislation, foreign companies and foreign citizens may own construction land in Macedonia. Construction site is offered with public tender procedure. The minimum price offer is determined by the Ministry of Transport and Communications, in compliance with the Construction Land Price Determination Methodology.

Macedonia introduced one-counter system that enables investors to register their business in 4 hours. An individual can register a company by visiting one office, getting information at one place and engaging only one administration officer. This significantly reduces the administrative barriers and the business start-up costs. Decrease was made of the pension and health insurance. According to the above mentioned, and according to the Doing Business Report 2010 of the World Bank, Macedonia was ranked third among the ten top reformers for year 2008/2009. In addition, out of 183 economies, Macedonia was ranked as 32nd on the list “Ease of Doing Business”.

5. Conclusions

The so far worldwide experiences have undoubtedly affirmed the fact that FDI is one of the fundamentals that enables and accelerates the economic development of a national economy. Consequently, every national economy must have adequate legislation that will enable smooth attracting of foreign capital.

The analysis of the legislation in Macedonia during the last decade has approved the fact that the legal aspects are of great importance for attracting the FDI. However, to some extent the institutional mechanisms that profiled the framework for doing business are important too.

The results of research done lead to the conclusion that the legal framework, as a significant factor of the business environment in a country, has a strong influence on the FDI in Macedonia. Over the last decade Macedonia has achieved significant results in this field. Still, having in mind the insufficient volume of FDI, there is a need for continuous improvement of the relevant legislation. That could be done with further research and analysis, not only over the legislation, but the influence of some other socio and economic factors should be taken into account.

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