

Macedonian law on financial discipline – challenge and benefits

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Abstract

"And they do not pay to me. When they'll pay me - I will pay you! "

This is the motto that realistically demonstrate the mutual payments situation between the companies in Republic of Macedonia. This situation of late obligations payment, causing a chain reaction and disruption liquidity of companies and the economy in general. It is estimated that domestic debt as a result of the financial indiscipline over the years, measured by billions of euros.

In order to overcome this situation, in December 2013, The Law on financial discipline applying from 01.05.2014, the aim was to bring order to the payment of liabilities as the private sector and in state enterprises and institutions. The expectations were that the law will improve the liquidity of companies through the timely obligations payment between private - private and public - private sector. The law defined deadlines for liabilities payment of 30, 60 or 120 days if it has the written consent of the Parties. The penalties provided for in the Act of 1000 to 10,000 euros, was to end unethical operation between companies and break the chain of illiquidity. The adoption of the law was welcomed by the business community and the scientific profession, with a warning that should be taken of the effects and adverse effects that can cause it, and inconsistencies and undefined terms that it has.

Within 18 months of the application, Law of financial discipline has undergone two amendments and adoptions, and were adopted two instructions for timely fulfillment of financial obligations and oversight of business transactions between these economic operators from the private sector in order to overcome gaps and inconsistencies which contained the first version. It seems that the Macedonian economic conditions require a more cautious and studious approach in making such radical legislation for an extended period of adjustment to finally respect thereof.

Keywords:

payment, obligations, liquidity, debt, private and public sector

Introduction

Following the conditions in the business community it can be seen the emergence of deadlines for settling the obligations specified in the contracts between economic entities. Economic operators are faced with problems in the collection of mutual claims leading to disruption of their liquidity and deterioration of overall economic activity.

For better functioning of the economic trends, R. Macedonia is taking measures for the law governing the timely fulfillment of financial obligations arising from the implementation of business transactions between economic operators of the private sector, or between public sector entities and economic operators from the private sector, in accordance with Directive

2011/7 / EU¹ on combating late payment in commercial transactions (from February 16, 2011 year. In he direction prescribes us certain legal solutions (In 2012 and 2014) through the adoption of Law of debenture and the Law on financial discipline, and to improve financial discipline of commercial entities relations.

The purpose of adopting the Law on financial discipline is arranging timely fulfillment of payment commitments that deriving from realization of business agreements between economic operators of the private sector, or between public sector entities and economic operators of the private sector in order to prevent the failure of monetary obligations foreseen deadlines.

Economic operators from the private sector:

- Company or sole proprietor established under the Companies Law
- Physical and legal entities doing profitable activities and registered in accordance with law;
- Public sector entities are:
- Bodies of state administration and local government units,
- Funds, agencies, departments, bureaus and institutions established by the Republic of Macedonia
- Public enterprises and companies established by the Republic of Macedonia, the municipality, the City of Skopje and the municipalities in Skopje and companies on the state or the municipalities, the City of Skopje and municipalities in Skopje have a direct or indirect influence through ownership over them, or hold larger part of the capital over the company, a majority of the shareholders / partners and appoint more than half the members of the management or supervisory board or the management bodies of the Company,
- Public institutions established by the local government units and
- Other institutions established by law;

The application of the financial discipline will improve the functioning of market liquidity and optimal operations of businesses that in final line will generally increase the competitiveness of Macedonia companies.

Law on financial discipline should force entities in private and public sector regularly and deadlines pay liabilities to suppliers. For businesses this is a revolutionary solution that should improve the liquidity of the entire economy and at the same time and will be filter evasion. Expectations th that will purify the business environment of firms not paying their obligations. More annual claims witch creates problems of disciplined companies would become historically. Those who are not able to meet the requirements of the law should seek alternative ways to clear old commitments. Commonly with borrowing bank loans.

Weakened financial condition is considered one of the acute problems of the domestic economy. In trying to brie au liquidity under the initiative of the business sector, Aminu state, first operational debenture instrument was placed in state institutions were excluded on the grounds that it owed. Later to be implemented discharge operation right from the state to the private sector and finally came into force Law on financial discipline.

Law on financial discipline prescribes European rules, under which all debts will have to die on time according to the prescribed deadlines Otherwise you calculate interest for delay and compensation for delays is 3.000 denars no matter what the liability. However, these

¹ The purpose of Directive 2011/7 / EU for combating late payment in commercial transactions is to introduce legislation to address or reduce the established conditions regarding the untimely fulfillment of obligations that EU Member States have an obligation that January implement in their regulations later to 16 March 2013 year.

European limits apply only to private companies, while government institutions will take effect from 1.1.2016, and in the meantime will have flexible terms for repayment of debts.

1. What legislate the law of financial discipline

Law of Financial discipline was adopted in December 2013 in order to prescribe devices timely fulfillment of financial obligations arising from the implementation of these business transactions (EN and provide goods, services or performance of work) between economic operators of private sectors, between public sector entities and economic operators the private sector, to prevent the failure of monetary obligations deadlines by law.

Deadlines for fulfillment cash obligations between economic operators of the private sector prescribed Law on financial discipline are:

- For invoices which don't has listed payment deadline, as prevail within applicable statutory minimum deadline of 30 days.
- For invoices listed within 60 days, as prevail term abovementioned deadline
- For invoices in which it is splay deadline 60 to 120 days to apply agreed deadline, if it exists express written consent of both countries.

The deadline for fulfillment of monetary obligations starts the very next day:

- When the debtor has received the invoice or request for payment from the creditor who has fulfilled its contractual obligation;
- When the creditor has fulfilled its obligation, or committed delivery of the agreed goods, services or works, and thus can not determine the date of receipt of the invoice or other appropriate request for payment;
- When the creditor has fulfilled its obligation, or committed delivery contracted goods, services or works, and the debtor has received the invoice or other appropriate request for payment to the creditor to fulfill his contractual obligation.

Application of the financial discipline started from 01.05.2014 on the economic operators of the private sector. The application of the provisions of the ha: Fund for health insurance means the Macedonia beneficiaries of Health Insurance Fund of Macedonia, public health institutions Public institution of health for public health institutions, university clinics, institute and emergency center, as well as public enterprises and companies established by the Republic of Macedonia, the municipality, the City of Skopje and municipalities in Skopje and companies on the state or the municipalities, the City of Skopje and municipalities in Skopje have a direct or indirect influence through ownership over them, or hold larger capital over the company, a majority of the shareholders / partners and appoint more half the members of the management or supervisory board or the management bodies of the company and the local government units, will apply from January 1, 2016. During the transitional period the deadline for payment of these institutions to December 31, 2014, can not be longer than 120 days and up to December 31, 2015 - the deadline for settlement of monetary obligations can not be longer than 90 days.

For untimely payment of their claims, the entities from the private and public sectors can submit a complaint to the competent court a proposal for the executor or a proposal for a payment order to the notary.

The creditor is entitled to compensation for delay in meeting the payment obligation of the debtor in the amount of 3.000 denars, if the payment obligation is not fulfilled within the time limits established by law from without prior reminder and warning of the debtor. The right to compensation for the delay does not exclude the right compensation costs which the creditor

is entitled to claims under a contract or other regulations, as well as default interest is calculated and paid in accordance with the law.

Supervise the implementation of the provisions of Law on financial discipline between public institution and economic operators from the private sector, the Ministry of Finance through the Financial Inspection and the Public Revenue Office. If appeal to the competent court a proposal for the executor or a proposal for payment order to the notary because exceeded legal time limits for payment of obligations by the entity's court enforcement agent or notary is obliged to notify the Ministry of Finance - Financial inspection in order to determine whether they violated the provisions of the Law on financial discipline. After received written notification, Financial inspection is obliged to act to audit the business transaction, aimed at determining whether the provisions are respected Law on financial discipline. The financial inspection in the public sector and the Public Revenue Office, if a violation of this law, acting in regular or extraordinary supervision and control over the entities that control will initiate criminal proceedings if found to violate the provisions of the law.

For non-compliance of the terms of payment or if payment obligation is not found within the specified deadlines, Law on financial discipline provides fines for the legal entities and responsible persons of legal entities ranging in the amount of 5,000 to 10,000 euros or 750-1500 euros in denars.

2. Experts evaluation of the law on financial discipline

The general assessment of the experts in the business, financial and obligatory law is that the Law of Financial discipline is a good idea, but can cause problems and misunderstandings in practice because some of its provisions are not consistent and accurate terminology, and parts of law contrary to the commitments in the Law on Obligations.

2.1. Legal inconsistency and inaccuracy can cause problems in practice

According to **Prof. Dr. Cyril Chavdar** Law on financial discipline contains notions of some terminology that did not match the terms contained in the Law on Obligations, although its provisions apply to payments for delivery of goods, provision services and performing work for a fee, which mainly stem from contractual relationships established under the provisions of Law on Obligations, so that it can lead to misunderstandings in its practical application, especially considering the misdemeanor liability for non-compliance with its provisions.

The term „business transactions”, used in more members of the Law on financial discipline is not in use in Law on Obligations and requires special explanation, given that, as such, is taken from Directive 2011/7 / EU translation of the term "Commercial transactions". Also, delivery of goods, provision of services and performance of activities subject to regulation in the law regarding the payment, ie giving pecuniary compensation for them, they are not explained in Law on financial discipline, but are not used in any Law on Obligations. "Therefore, the scope of their content should be considered the provisions of the Public Procurement Act, which, in Article 16 explained the public procurement of goods, Article 17 - the public procurement of services, and Article 18 - the public procurement of affaires".

2.2. Public sector entities are privileged

Prof. Dr. Vesna Pendovska and Mr. Alexander Josimovski, analyze that in Law on financial discipline business transactions between economic operators and public sector entities where the economic operator has the monetary obligation. "The reason for First quo decision reflected in the fact that the state has a coercive legal mechanisms to collect its claim and to protect its financial interests. In the Republic of Serbia Law on deadlines for fulfillment of monetary obligations is envisaged to apply the same rules and deadlines for all. The existed preferences within the public sector, which will contribute to the difficult job of economic operators cooperating with public sector entities that apply special rates. "For

example, the economic operator will have monetary obligations towards its suppliers to perform within 30 or 60 days, while his debtors, public sector entities will be able to cash advances paid by longer periods (120 days or 90 days) which will contribute to reduced liquidity and increased costs for the operation of economic operators. "

2.3. Does the Law on financial discipline jeopardizes the principle of freedom of editing Obligations?

For Mr. Orde Gjorgjoski, the initial assessment is that the initial application of the law could expect both positive and negative implications. The question is: does the law affect the principle of freedom of arrangement of Obligations or etc. . "Autonomy of the will." "The participants in the transactions freely determine the obligations in accordance with the Constitution, laws and best practice. With this in mind, obligations participants freely determine the time of fulfillment of obligations. If the deadline is not set, and the purpose of work, the nature of the liability and other circumstances require some turnaround, the creditor may demand immediate fulfillment of the obligation and the debtor in turn may require the creditor immediately names fulfillment " . The question is why the Macedonian Law on financial discipline determines the maximum period of 120 days to fulfill the monetary liabilities of the business transactions between economic operators of the private sector. The Law should be more flexibility in this area, with the possibility of applying collateral payments. Such flexibility is also determined by Directive 2011/7 / EU, which states that Member States shall ensure that the period for payment fixed in the contract does not exceed 60 calendar days, unless otherwise provided in the contract and if it is significantly unfair to creditor, within the meaning of Article 722, which provided member unfair contractual terms and practices. "

3. Amendments to the Law on financial discipline

In practical application of the Law on financial discipline realizing certain ambiguities in the legal provisions. The Law does not stipulate a deadline for submission of written notices for exceeding the time limits for fulfillment of monetary obligations notaries, bailiffs and courts, which are bound to submit to the authorities responsible for overseeing the implementation of the law. The law also stipulates that financial inspection in the public sector and the Public Revenue Office will begin to monitor the January 1, 2015, but did not specify which business transactions will be carried out surveillance. Therefore, there is a need to amend the Law on financial discipline. to overcome the identified deficiencies and to ensure effective implementation of the Act.

After only 8 months from the application of Law on financial discipline, in the Official Gazette of RM no. 201 from 31.12.2014, made the first amendment to it, which made precise deadlines for reporting by the court, notary or executor to the Ministry of Finance - the financial inspection in the public sector or the Public Revenue Office in order to determine whether they violated the provisions of the law by entities in the private and public sector, in cases when you file a complaint to the competent court a proposal for the executor or a proposal for a payment order to the notary.

Same on so is altered specifying the manner of reporting (in written or electronic form where possible) the applicant: a complaint to the competent court a proposal for the executor or a proposal for a payment order to the notary, when not found Law on financial discipline injuries. An amendment to the terminology "if not Mr. Amiri payment obligation within the deadlines set for this horse "with" if you do not fulfill the payment obligations on schedule.

Additional arrangements and provisions relating to supervision over the implementation of Law on financial discipline between public institution and they economic operator and the

private sector, where the public sector appears as a debtor "will apply to business transactions between economic operators from the private sector, between public sector entities and economic operators from the private sector occurred after December 31, 2014". In October 2015 the Parliament and it submitted the draft law amending the Law on financial discipline which has provided radical changes (only 4 articles of the law is amended and proposed many amendments to the existing and adding new articles), which will be in force if adopted and announced in the Official Gazette. It is proposed:

- change the terms "provided terms" with "set / agreed payment terms"
- amending the definition of the term "business transaction" - is every contract and every transaction between the economic operators of the private sector, between public sector entities and economic operators from the private sector, which refers to the delivery of goods, provision of services and performing work for a fee
- pendent defined the term "late payment" - is default of payment obligation within the deadlines stipulated by this law or within the period stipulated in the agreement whose object is a multi-procurement
- change of the term "can't be defined deadline" with "can't be arranged deadline"
- regulates the deadline for payment of obligations by the Health Insurance and beneficiaries of the Health Insurance Fund of Macedonia, public health institutions and public institution in the field of health for public health institutions, university clinics, institute and ER arise when borrowers to settle their creditors while JCI the same within 90 days
- the deadline for submitting the application for payment of outstanding invoices to economic operators from the private sector to the Treasury in the Ministry of Finance or the Treasury Fund for Health Insurance, to submit as of the thirtieth day, if the accounts of the entity are within the treasury account of the Ministry of Finance or the forty-fifth day, if the accounts of the subject within the treasury account of the Health Insurance by public sector entities whose accounts within the treasury account of the Ministry of Finance or Treasury the expense of the Health Insurance,
- the deadline for payment of funds is thirty or forty-five days from the date of filing the application for payment in the vault,
- defined terms and a contract between economic operators of the private sector, between economic operators of the private sector and public sector entity, where the public sector appears as a debtor when the payment obligation is determined to meet the payments
- deletion of the provision for penalty interest for late payment
- Delay the time of financial inspection reporting in the public sector with the deadlines for payment:
 - after received notification from the Court that there is a final judgment,
 - after received notification from the notary that a legally valid and enforceable solution that allows execution based on credible Send occurrence, adopted procedure, enforced collection of monetary obligations arising from business transactions and
 - after received notification from the executor received a request for execution based on a notary document.

Court, notary or executor to us along to submit the notification within 10 days from the date the press or decision, but terms of receiving the request for execution in writing or electronically, when it is possible. The form and content the notice prescribed by Ministry of Finance.

- There is education on offense for the first time by the subject of surveillance. Although, while performing supervision, determine that an offense for the first

time by the entity's supervision, compile minutes which will determine the committed offense and any decision to remove the indication of the offense within the eight days and simultaneously delivered invitation for the education of responsible person of entity with whom it is set offense. Training is organized and conducts financial inspection in the public sector, ie the Public Revenue Office, within a period not exceeding eight days from the date of implementation of oversight. If within 8 days, the subject of surveillance submit proof that it is the established infringement, concludes that stops the procedure of inspection supervision otherwise proposed settlement procedure by issuing a misdemeanor payment order.

- Termination of the procedure of supervision over fulfillment of payment obligation before the inspection.
- Introduction of a settlement procedure in the supervisory procedure,
- initiation of criminal proceedings against entities with blocked accounts for more than 45 days
- Harmonization of Law fines for offences and prescribing new offences.

4. Issues for discussion

With the entry into force of Law on financial discipline policy of a number of business entities is not to pay obligations incurred prior to 30.04.2014 and give priority to the payment obligations falling due to the entry into force of the Law on financial discipline.

The problem of accomplishing the deadlines is prescribed by the law and causing untimely submission of invoices sent by regular post. For example: an invoice dated 30/09/2015, and 10/15/2015 currency year arrives on 10.25.2015, with a regular (non-recommended) post. Automatically payment deadline is missed. The only evidence of the debtor is the postmark on the envelope of the invoice can be sent promptly but late postal delivery.

Law on financial discipline predicts that e overitelot entitled to compensation for delay in meeting the payment obligation of the debtor in the amount of 3.000 denars, if the payment obligation is not fulfilled in terms of the provisions of Law on financial discipline, without prior warning and reminder to the debtor without prescribe :

- how the fee will be charged
- when the fee will be charged
- the amount of unfulfilled financial obligation will be charged (theoretical debt can be 1 denar and compensation for delays in fulfilling the money obligation debtor 3.000 denars).

The draft law stipulates that the supervision over the implementation of the provisions of Law on financial discipline the Ministry of Finance through the Financial Inspection of the Public Sector and the Public Revenue Office:

- after received notification from the Court that there is a final judgment,
- after received notification from the notary that a legally valid and enforceable solution that allows execution based on credible Send occurrence, adopted procedure, enforced collection of monetary obligations arising from business transactions and
- after received notification from the executor received a request for execution based on a notary document.

With this legal resolved IE remains silent space for tolerance agreement on the terms of payment on the part of economic operators in the private sector and by entities in the public sector. Economic operators in the interest of good business cooperation tolerate delays in payment of their claims and action, or a proposal for a proposal for payment order submitted before the deadline expire Enos of the claim under Law on Obligations.

The proposal for amendments to the law is not defined when it is considered committed repeated offenses: if after the date of the inspection or another offense is committed in the period before the inspection.

Conclusion

Adopting the Law on financial discipline has emerged as a necessity due to the more frequent occurrence of irregular payment of obligations between economic operators and the public sector, which impair the liquidity of the economy in general.

Law on financial discipline prescribes European rules, under which all debts will have to be closed on time according to the prescribed deadlines.

Frequent amendments to the Law suggest that the Macedonian economic conditions require a more cautious approach in making such radical legislation for an extended period of adjustment to finally respect thereof.

Taking into account the scope of the amendments to the Law on financial discipline need to adopt a new law to overcome confusion in the interpretation of the same.

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