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Legal and Economic Aspects of the Macedonian Model of Franchising

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Abstract

Franchising is done by global regulatory framework and has an impact to the national legal sources. This article aims to emphasize the importance and functionality of the legal and economic aspects of the Macedonian franchising module and practice. In respect of Macedonian case, the franchising mechanism is getting direct consequences of the national trade in the small and still developing Macedonian economy. The envisaged paper explores various options for national regulation in light of existing EU legal instruments, the substantive nature of franchising and the extent to which that competence has been utilized so far. Special attention is given to the options for undertaking future steps in creation essential preconditions for promoting of further investments in the Macedonian trade market. In that context, some specific elements have been researched as well as the attractiveness, information sources of franchising and conditions for implementation of franchising.

The main point of researching is related to the Legal framework of franchising, statistics and Macedonian regulatory system, included the Agreement for franchising and adequate module of practicing.

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Key words: Franchising; legal framework; Agreement for franchising.

1. Introduction

In the legal system of the Republic of Macedonia franchising as an activity and the Franchise agreement for franchising are not regulated by a special law provisions. Within the Macedonian legal system, Franchising is regulated under:

- Decree squeezing on Vertical agreements for Exclusive right to distribution, selective right of distribution and the right to exclusively purchase and franchising;
- Franchise agreement in the Regulation is described as a Vertical agreement [1] by which one company provider of the franchise, granted to another undertaking, recipient of franchising, in exchange for direct or indirect cash compensation, the right to use the franchising the package of Intellectual property rights.

The legal basis by which regulate the general exemption on certain vertical Agreements in the Republic of Macedonia is the Law on Protection of Competition and Regulation for general exemption on Vertical agreements.

At the Macedonian legislation the Agreement for franchising is mentioned at the Low for protection of competition [2].

This law composition provides strict definition of the Agreement of franchising.

The Agreement of franchising is contractual concept in which the beneficiary of franchising is a put himself under an obligation that permanently on behalf of his name and his account will sell the products or services that he produced or developed as a presenter of franchising and in accordance with that will use exclusive rides of using of no how, stand and services which will be resigned by the giver of the franchising for certain compensation.

The law for protection of competition provides strict provisions related to the agreement of franchising from the view of abusing of competition at the market.

The main question is whether the agreement provides limited provision in respect of the theory, price, supplying and other internal relations among the subjects. The provisions of the Law are very strict with determination of conditions for group exclusion of vertical agreements. The taxation system is important factor for the necessary data for calculation of profit.

The Macedonian companies are depending on the base of the following obligation from the taxation system:

- The Taxation for additional value,
- Income Taxation;
- Taxation of property;

- Taxation for excise;
- Personal taxation on income.

Some of those taxes are connected with the companies and activities performed by them. The other taxations are related to the companies and their employees, equipment and resources that belonging to the companies [3].

2. Franchise Agreement

Franchise agreements are described as vertical agreements whereby one undertaking, the franchisor, grants the other, the franchisee, in exchange for direct or indirect financial consideration, the right to exploit a franchise, i.e. a package of intellectual property rights for the purposes of marketing specified types of goods and /or services, i.e. for the resale of goods or the provision of services to end-users. The franchisor is the owner of a franchise and has the know-how, experience in producing and marketing certain goods or services. Behind it is the idea of a specific business system and the possibility to have a ubiquity and widespread presence in many territories.

This franchise system is often protected by property rights and labels to guarantee the same look and presentation anywhere.

The franchisee could either buy the complete system to operate it on his own risk and responsibility or he can pay a monthly rent or other financial contribution for the franchise. Franchising is a very important, modern and fast growing marketing and distribution instrument. The franchisee has to buy specified kitchen equipment, and in return, he gets the precise receipt for the production of hamburgers. The unique outlook of the shop and staff is part of the agreement, as well as the use of the famous trademark.

Due to European competition law, price-fixing within a franchise system is allowed. A well-known example for a successful franchise system worldwide was the restaurant chain of “Mac Donalds” [4].

With the Franchise Agreement, the provider of franchising gives the recipient of franchising a right to sell certain goods (clothes, shoes, fast food, toys, etc.), or to provide certain services (consulting services in connection with computer software, hotel services, rent-a -car and other services, available on the market).

Also, the provider of franchising gives the right to the recipient of franchising to use the commercial formula (working and technical methods and model of Management).

This includes standardized, uniforms and part in the workshop system in the placement of goods and services, including know-how, protected mark, trademark and all other symbols, together with the accompanying services and other assistance. This has been developed by the provider of the franchising as tested, tried and used in a continuous improvement of the process.

The system of placement of goods and services on the market is standardized by means of appropriate operational programs for the division of tasks between the different partners according to the system of

instructions, guidelines and controls, which ensure unity and uniformity of the system, that is achieved recipients to franchise to become part of a coordinated system.

The recipients of the franchising that is followed by fully and continuously repeated use of commercial policy and recognizable image that is owned by the provider of the franchising, which includes the common interests of the parties and consumers.

The recipients of the franchising afforded continuous commercial and technical assistance in the performance of activities that are subject to the deductible and they generate a reliable and continuous profit at the expense of their own financial or other investments and the prize that is paid to the provider of franchising.

3. Attractiveness and information sources

The attractiveness of franchising in the global economic frameworks is unadoptable big especially in the part of starting a small business. The franchising in the Republic of Macedonia is characterized with some specifics. The results from the researching within the domestic market mostly are similar with the results at the global level.

Namely, in the Macedonian economy exists high level of attractiveness of franchising as a business model for starting so-called small businesses.

In order to create a real overview of the existing situation, the attractiveness and information sources are taken into deep and very serious consideration, especially from the regulatory and economical aspects [5].

The relevance and effectiveness of the regulatory regime are assessed against several related criteria:

- whether regulations adequately promote and protect the public interest;
- whether regulations adequately promote investment and sustainable socio-economic development; and
- whether the methods employed are effective and well-administered, given their public interest and development objectives and the legitimate concerns of investors that rules and procedures do not unduly burden their competitiveness. International benchmarks and best policy practices.

The results of the anonymous enquiry show that around 70% of targets are in line that franchising business model is more attractive for opening small business. On the other side, only 10% stated that franchising is a non-attractive business model.

The biggest part of equalities franchises at the period when the decision has been taken of using this business model were contractors who recognized the advantages of franchising but in this sense the results of the way for obtaining these information necessary for making decision, remain unclear.

At the next Figure 2 are presented the results of the answers at the question how and from where is the information for franchising and applied conditions for business process.

From the results it is visible that the biggest percent of respondents 73% of the necessary information for potential franchises are found in the foreign business environment. In this research the already established business relations with the foreign partners are essential elements for getting such statistics. This way of getting information is very useful because the level of security will be increased due to the already known source of information. Besides 20% of respondents got information through the direct offers from franchisors. But in this case already established foreign business relations are essential.

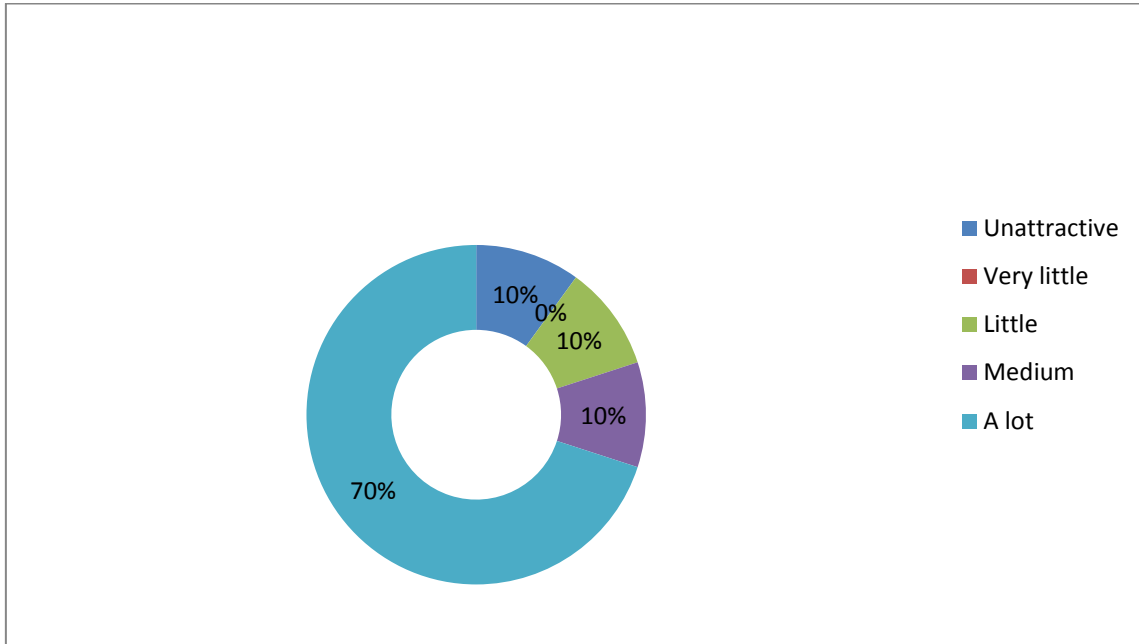


Figure 1: Attractiveness of franchising in the Republic of Macedonia

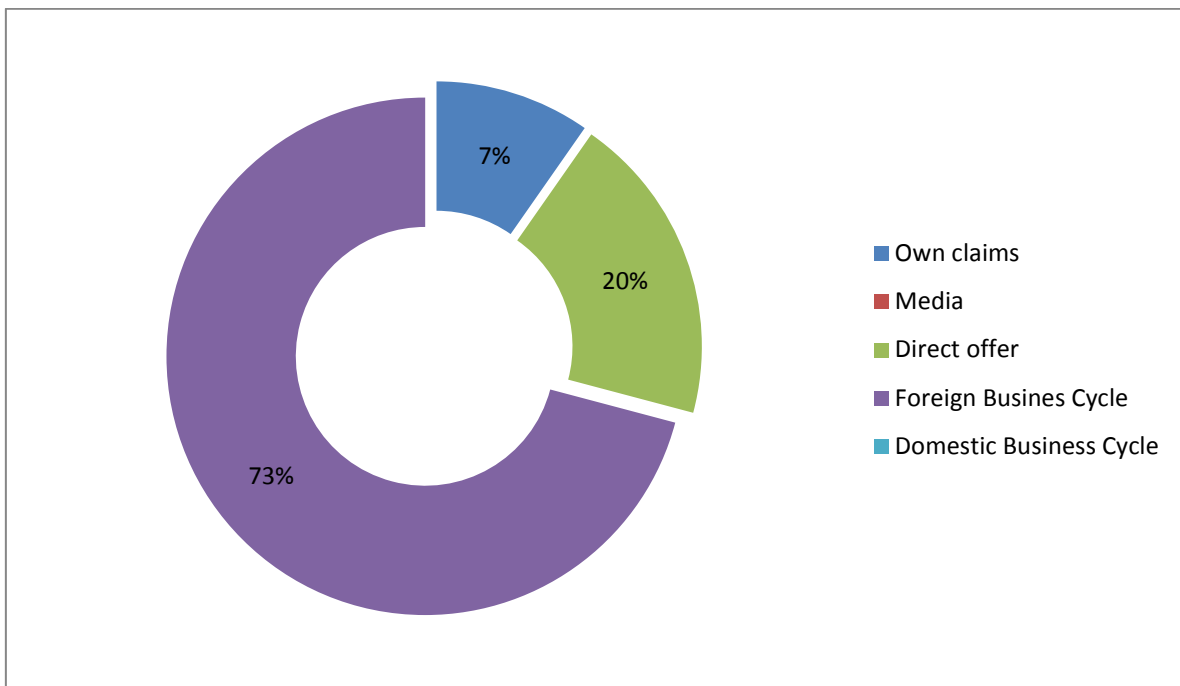


Figure 2: Sources of information for franchising

The rest 7% of the respondents got the information through the process of research on different medium sources with intention to find out proper franchising which is more interested. Analyzing the results it might be conclude that in the Republic of Macedonia doesn't exist established information system related to the franchising as a capability for starting business. Obtaining the information is depending from business profile of the future franchising, with simple words the basic point is related to the question weather and at what stage the company is involved at the export-import transactions and weather what relation has with the foreign partners.

According to the database information from the franchises in the Republic of Macedonia doesn't exist officially the association of franchising, neither exists any sort of chamber for exchanging the information among interested potential domestic franchises and foreign franchisers. The lack of adequate sources of information enables to be promoted the attractiveness of franchising as a business model. The future oriented franchises are facing the difficulties in order to get more knowledge with the concept of franchising and their advantages.

4. Conditions for implementation of franchising

The presented results at the Figure 3 show that biggest percent from the inquired franchisees within the implementation of franchising in the Macedonian trade market hasn't faced bigger difficulties.

From the total number of inquired franchises, 13 % were facing legal difficulties and 7% had human resources difficulties, 20 % were not declared oneself for the related issues for implementation of franchising in the Republic of Macedonia. In this content is interesting to be mentioned that none of inquired did not declare that faced financial difficulties.

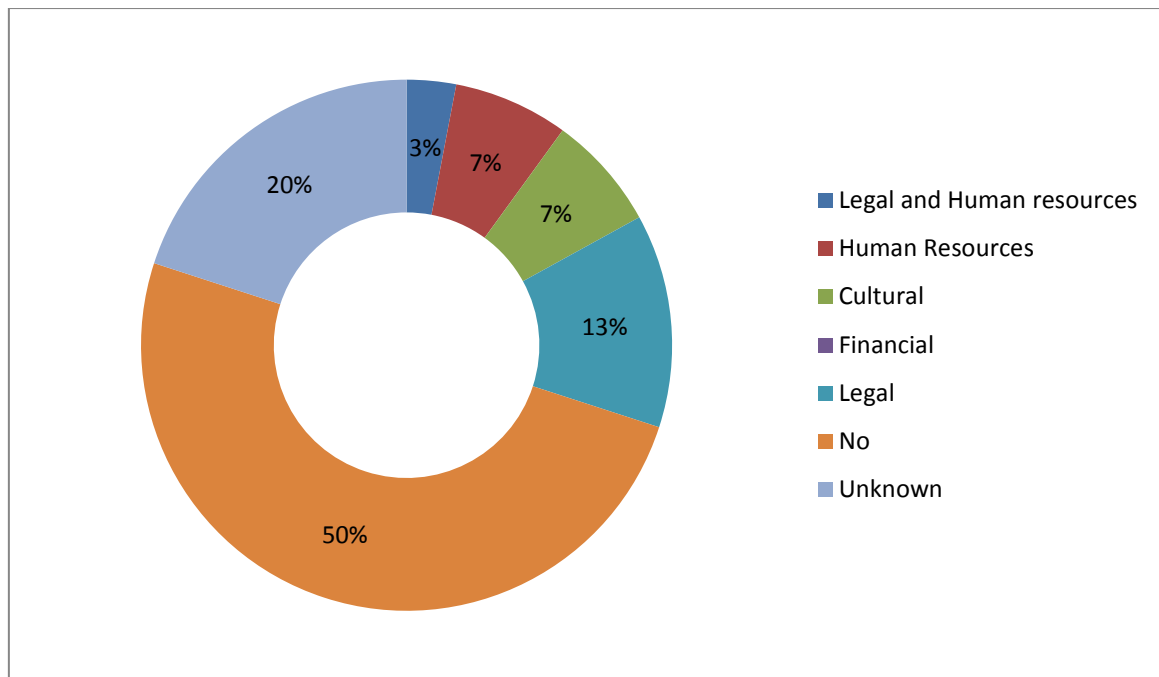


Figure 3: Difficulties at implementation of franchising

Besides obstacles for implementing for franchising, the advantages have been investigated in order to get more

and wider advantages for implementation of franchising. The biggest part of the inquired franchisees (90%) didn't answer on this issue and only 7% of the respondents answer that faced human resources advantage. The inquired emphasized that objectively didn't recognize some of those advantages (except human resources) which helped during the phase of franchising implementation.

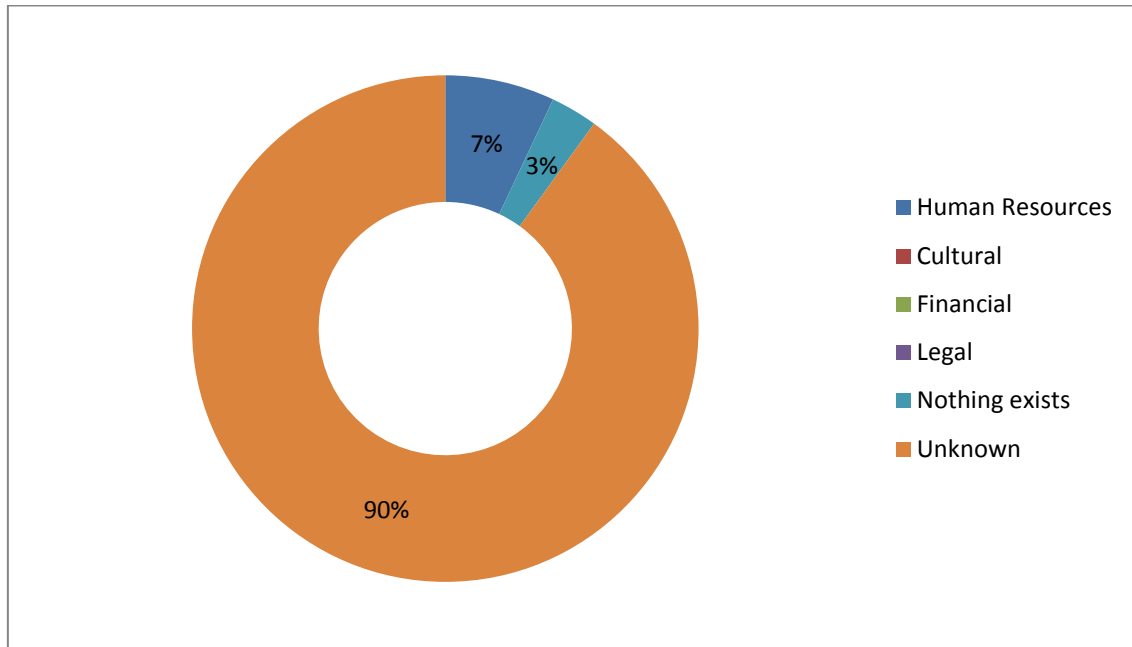


Figure 4: Advantages for implementation of franchising

All Franciscans have been using legal aid from the beginning with franchising: 66% of the inquired have been advised from domestic lawyers and 27% of the enquired used other domestic expertise and legal consultancies. The foreign legal consultancies have been used from 7% of enquired, only.

From the above mentioned it might be concluded that implementation of franchising in Macedonia creates a solid framework for doing business especially for opening small business as a business model. The Macedonian legislation [19] is facing permanently changes on the existing model in order to improve more effectiveness in the field of competition [6].

5. Financial possibilities

On the Figure 6 are presenting the data for financial which has been used during the establishing of franchising. 7% of the inquirers used their own capacities combined with institutional financial aids, 30% of the enquired used the assistance from the financial institutions only, 30% of inquirers used their own capacity and the rest of 7% of the inquirers used the financial aid from co-investors and partners.

The statement of their inquirers is that on an easy way they came up to the franchising financial aid due to the fact that the biggest part of them already established its own business (already created companies at the market). This situation allowed access to the financial instruments and objectively they have bigger advantages

in the process of applying to the financial institutions for getting additional sources and loans.

In practice, in the Macedonian market and trade does not exist specialized loans as a support such a business model as well as franchising module. One of the essential elements related to the function of the franchising fact that the banking system did not recognize the real importance and attractively of franchising. The decreased risks as a new business model is not seen at the full capacity in the Macedonian market for starting new small business.

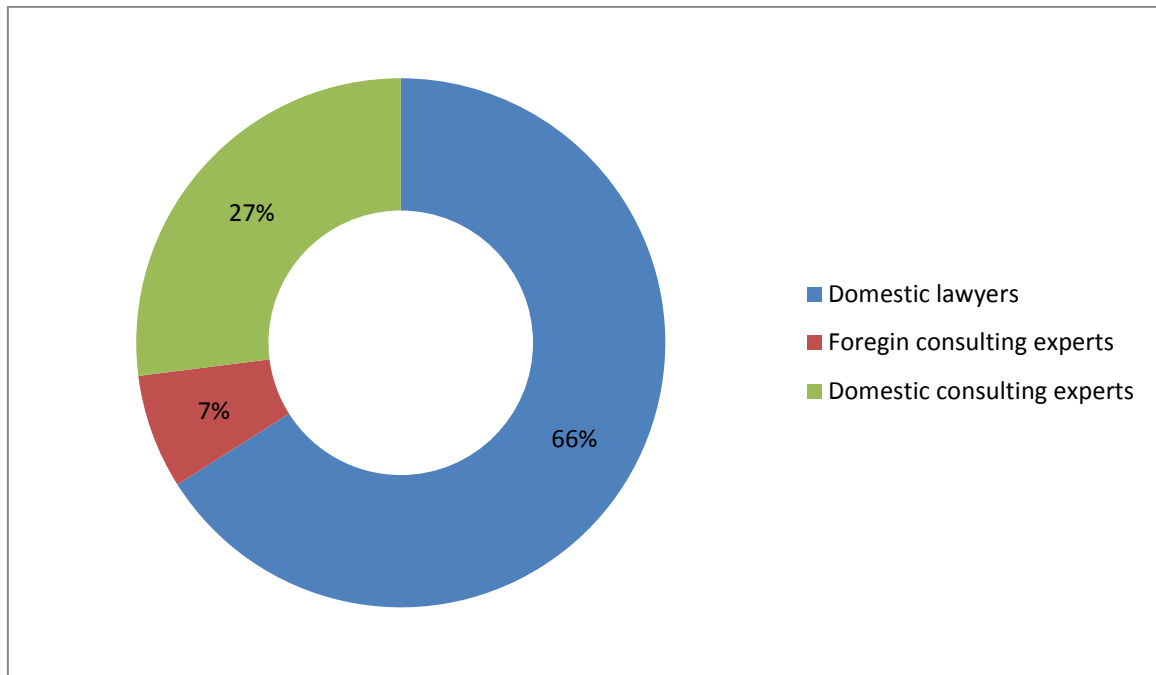


Figure 5: Using the legal aid for implementation of franchising

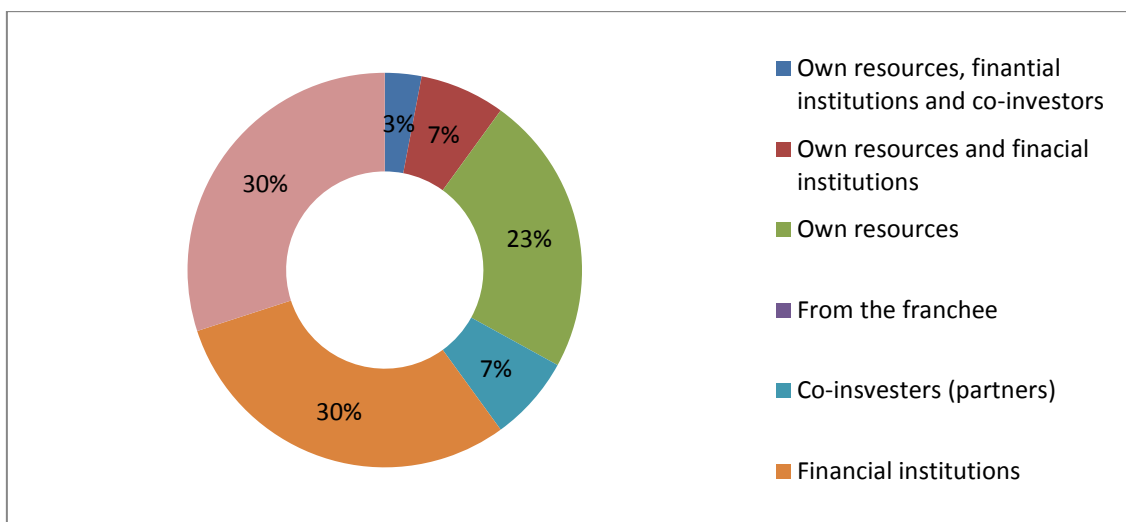


Figure 6: Sources of financing for starting of franchising

Objectively the potential franchises are facing lack of financial possibilities that would be used for starting own

business with franchising.

Namely, besides private financial funds, savings or family funds, loans, the future oriented franchises do not have a big choice of sources of additional startup potential.

As it has been mentioned, the banks are not offering favorable loans and for startup business. In a fact banking policy does not stipulate the starting of small business on the desired way from potential actors due to high interest and small grays periods for repayment. In respect of being partner on franchising, the banks need to promote special programs or products that will recognize the essence of franchising and security which can be offered in order to attract the new potential for employers and new clients at the market.

In the last few years the sector of Macedonian macro financing system especially the banks make progress in promotion of direct competition on loans offered to the small and middle entrepreneurs.

Namely, there are few banks and financial institutions which provide microloans system. Besides rates are high and the loans are limited value there is very short timing until 24 hours for approval of loans. In the very limited conditions this is useful when the company is facing liquidity and is not in capacity to continuing daily activities due to lack of finance.

The National strategy has to be corrected in order to enable more and suitable loans for potential users. The changes are desperately necessity. The promotion of developing of the sector of developing services.

The banks in the Republic of Macedonia have their own sources for providing loans. Some of entrepreneurs might the loans from domestic and foreign financial institutions that can be useful from entrepreneurs in small business.

One of the main difficulties in the area of franchising is still the process of not recognizing the infrastructure and Macedonian potential from foreign investors. The new Macedonian National Investment Strategy offers solid tax facilitation for potential foreign investments.

6. Franchising in the small companies

In spite of its small size and modest domestic market, the Republic of Macedonia presents a number of truly remarkable advantages for potential investors:

- Macedonia has developed a highly-liberalised foreign trade policy and has signed various bilateral agreements;
- Macedonia offers a stable monetary environment with one of the lowest inflation rates in the region and a stable currency;
- Investors in Macedonia benefit from a very favourable tax environment with one of the lowest corporate income tax rates in Europe. In addition, Macedonia has several Investment Zones with up to 10 years tax holidays for corporate profits, employment income, VAT, customs duties and others;

- Macedonia has a highly qualified workforce and one of the most competitive labour costs in Europe;
- Macedonia applies the highest standards in its corporate reporting and corporate governance and it already applies a significant number of the European Union standards on public procurement, competition, state aid, etc [7].

The issue of number of franchising systems in Macedonian market is more visible from the data that provide essential and detailed in respect of the areas in which franchising appears.

Figure 7 shows the data provided from total number of 30 inquiries subject. Additionally, it is known that in Macedonian market exist at least 2 areas more when the franchising is applicable (post and bakery services).

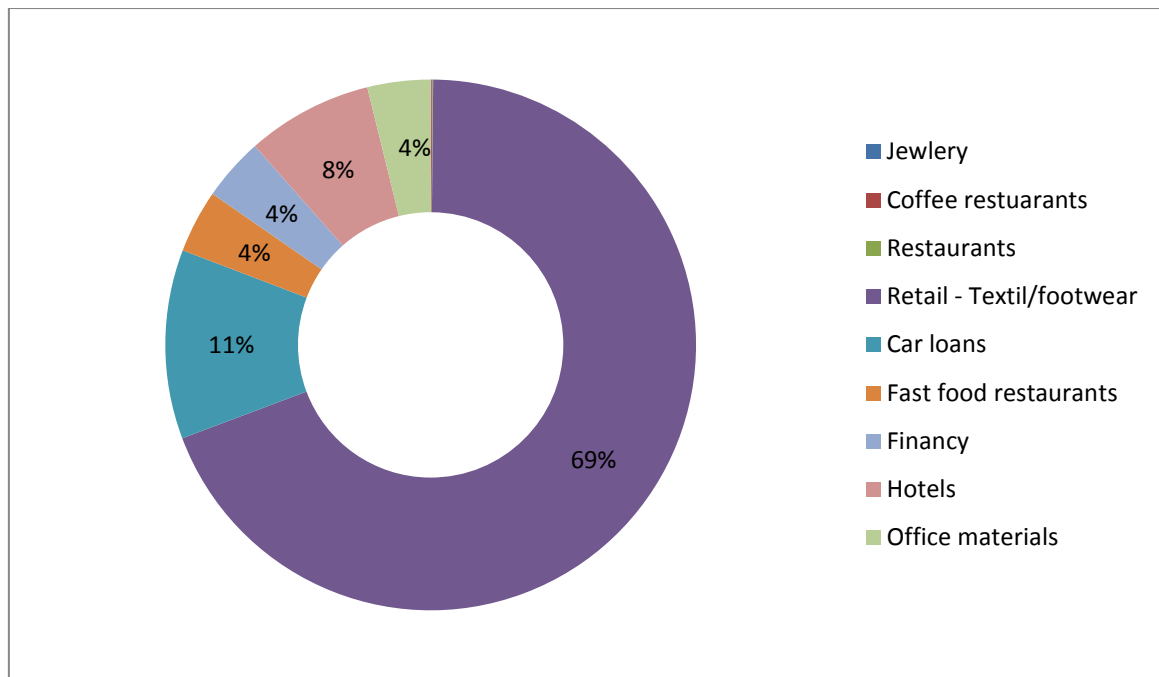


Figure 7: Areas of applicability of franchising

The number of franchising units as to franchising system in the Republic of Macedonia is shown on the Figure 8. Analyzing the results as a part of the Figure, it has to be withdrawn that the biggest number of franchises, 59% are represented with one franchising units and in this structure the capital Skopje is a main geographical benchmark. The main reason for such a geographical separation is a fact that the city of Skopje enables more possibilities than the other units in the state for further developing of market shares.

Two franchises units have 29% from franchises, With two franchises units have 29% from franchises, 3% with 3 franchising units, 3 % are with 4 franchising units,% from franchises are having 5 franchising units and only one franchise or 3% is with 10 franchising units.

The researching results for the number of employed in one franchising system are presented at Figure 9. From the data is visible that the biggest numbers of franchises are small enterprises.

The biggest achieved 59% from franchising enterprises are at the category from 6 to 20 employs, so called small enterprises.

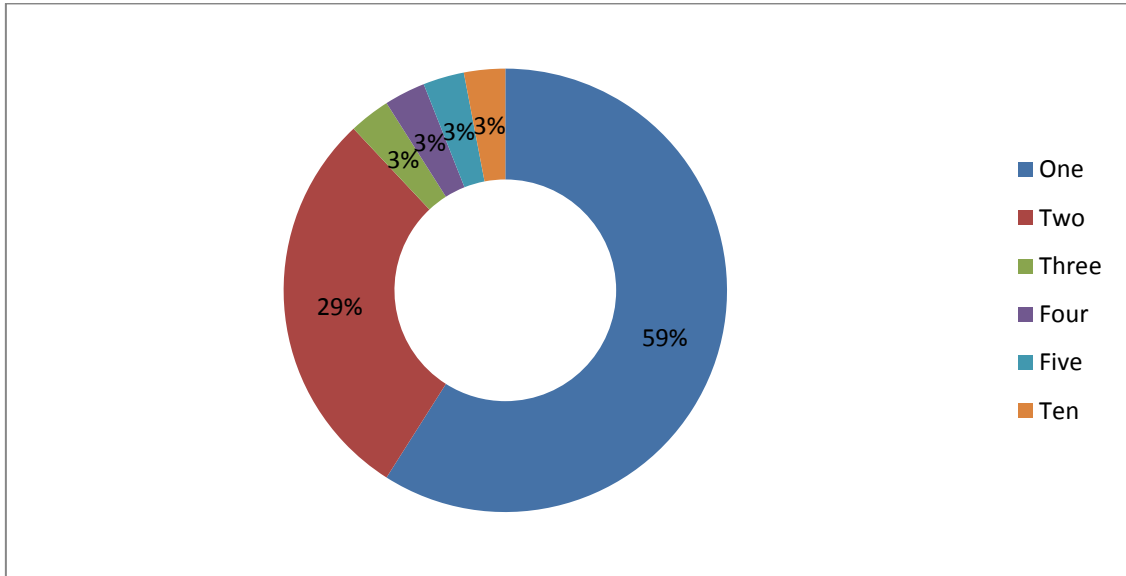


Figure 8: Number of Franchising Units

In the category of so called micro enterprises (from 1 to 5 employs, belonged 19% of the inquiries franchising enterprises. The others are classified at the category of middle enterprise. This is one more confirmation for privileges for this business concept for starting small businesses.

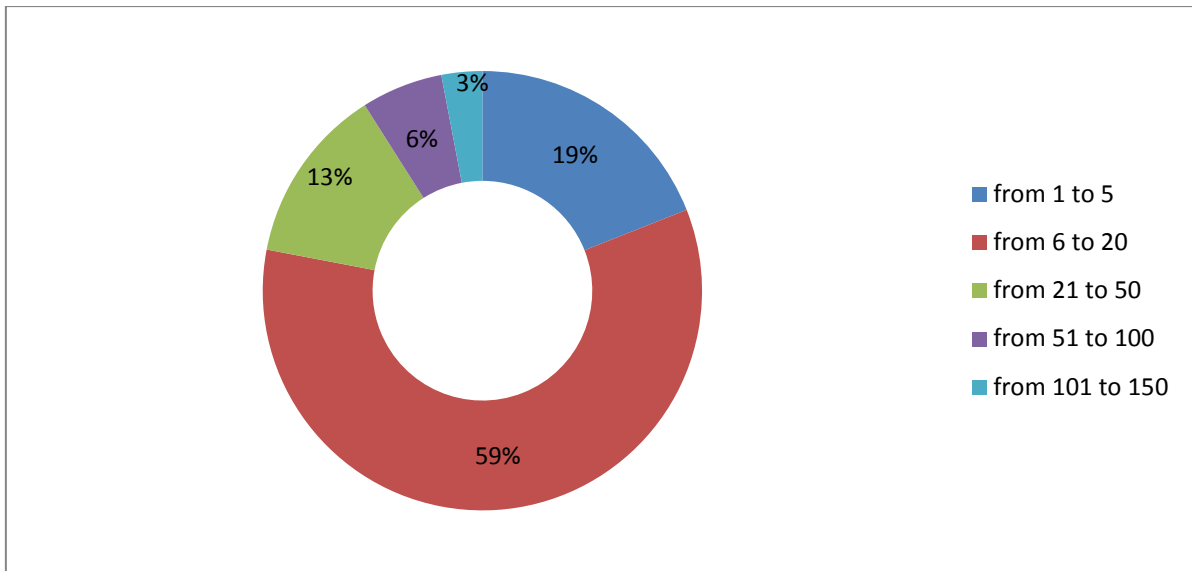


Figure 9: Number of employs

On the question what is the size of turnover that is making from using of franchising, 47% from the inquirers gave the explication that the turnover is from 1 million Euro to 5 million Euro, 30% from the inquirers answered that the turnover is up to 1 million Euro and 23% from inquirers did not provide any explication, estimating that

the answer of this question is business secret.

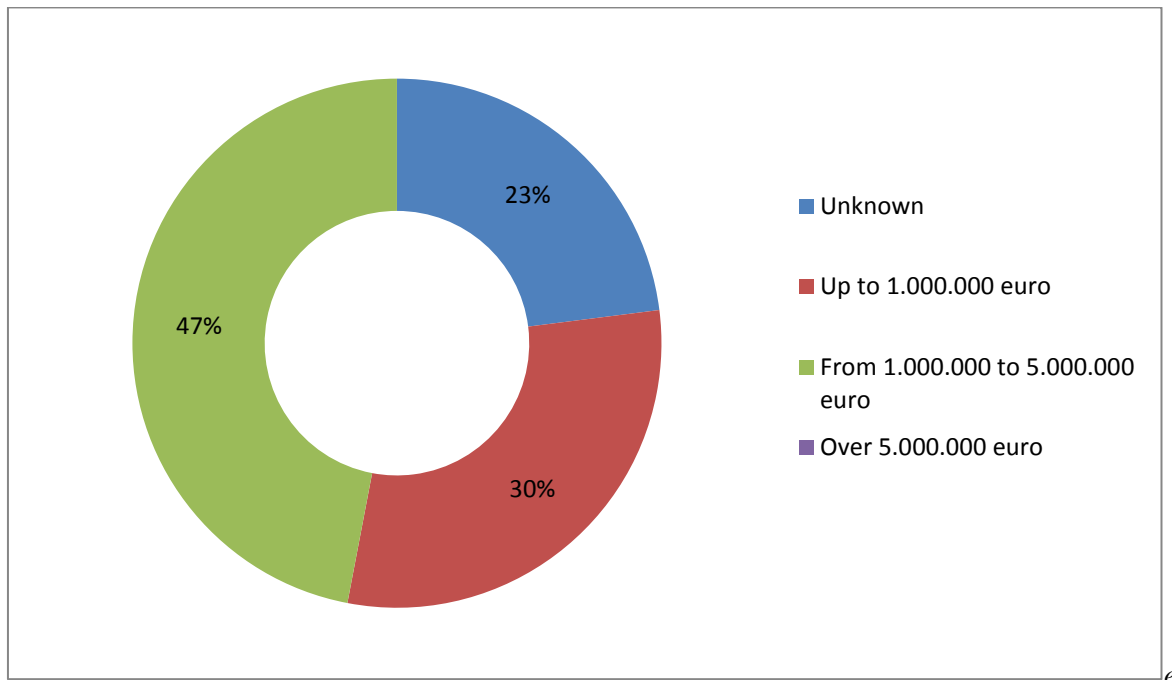


Figure 10: The Turnover size

In respect of payment possibility of compensation towards franchiser, 40% of inquirers explained that are paying compensation as a royalty, 37% answered that are paying both (compensation and royalty). From the inquirers franchises 3% answered that are paying compensation royalty and guarantees and 3% did not answer in respect of the way of payment of compensation because for them this is business secret issue.

In respect of the question for the high of compensation that is paying towards franchisers, 545 from unquireders gave an explanation that high of compensation is good. Only 3% from unquireders have opinion that is paying extremely high compensation. No one from unquireders franchises has answered that the high of compensation is very good (satisfactory).

These results once more confirm that franchising expenses might be reason for starting small business due to their high and the fact that franchising is not at all cheap business model.

8. Conclusion

In the Macedonian market already are established several recognizable users on the franchising as well as Mango, MacDonald's, Diners, Fornetti, La Coste, Speingfield, Germanos, Te mobile, American Express, Coca Cola. Alkaloid AD is unique Macedonian provider of manufacturing franchise who succeeded to "sell" brand kafetin in Russia.

What still needs to be improved?

The development of franchising in the Macedonian market depends on the extent of the further affirmation of the activity and its proper contractual managing. It might be emphasized that the legal framework is the basis for the further implementation of projects financed by the state, International foundations and business associations, as well.

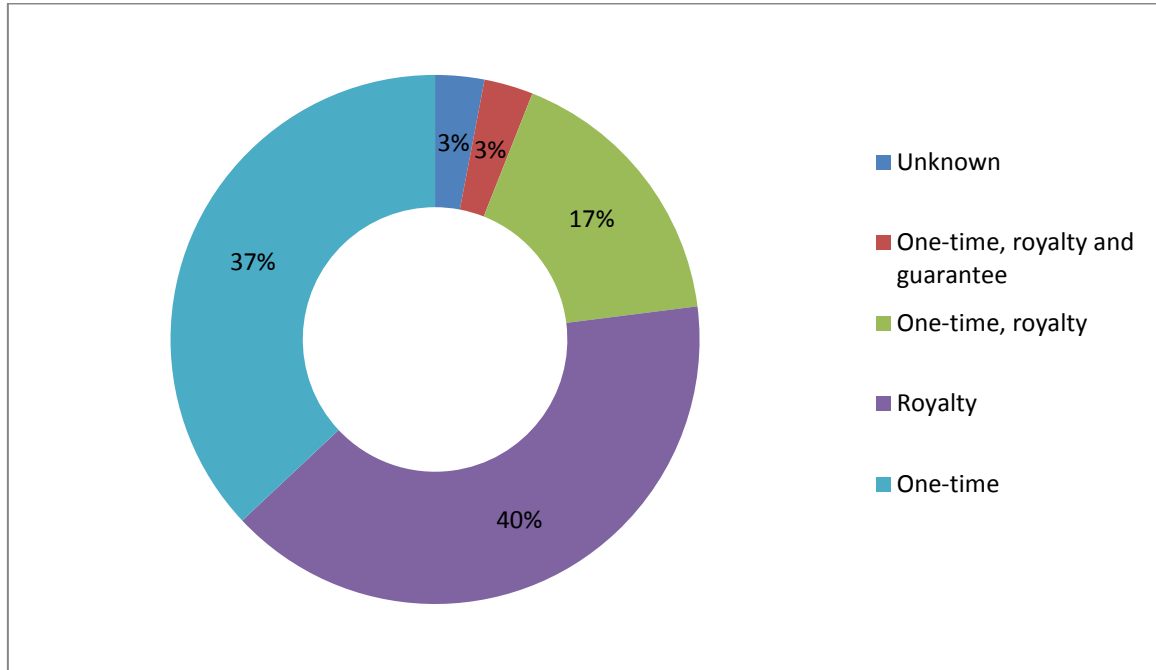


Figure 11: Ways of payments

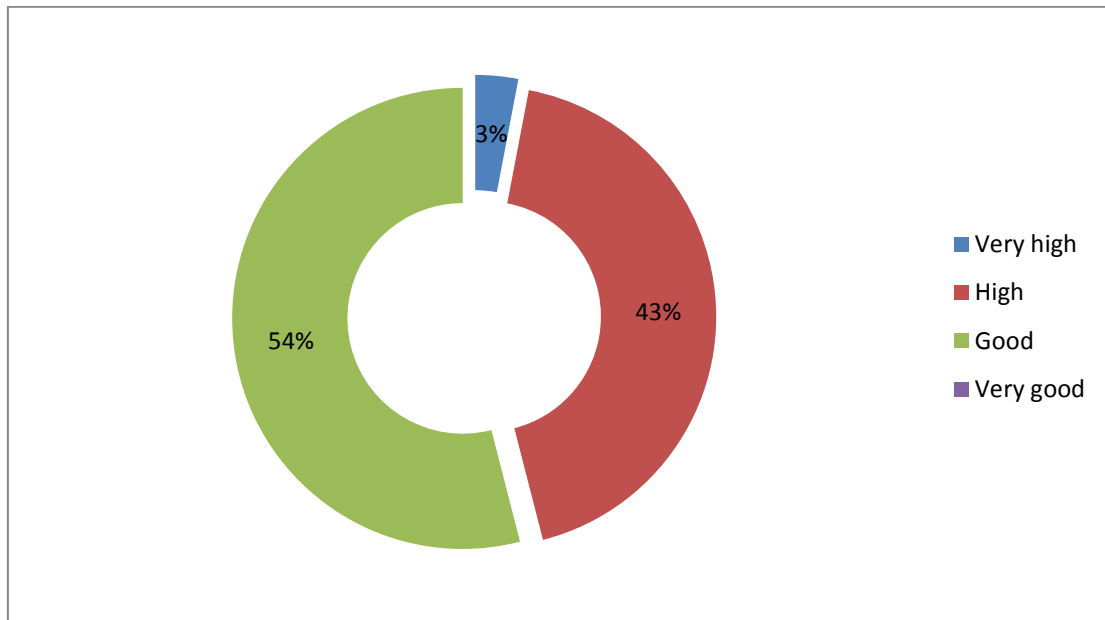


Figure 12: High of compensations

Particularly, the small Macedonian market is facing transition and with full dedication is trying to accommodate

itself with in the strong EU business requirements including a very intensive and ambitious investment champagne. In this environment, the crucial point is the further development and improvement of franchising system with proper legal structure and business functionality of the modern franchizing elements.

In this context, there is a need of activities for the connection of the universities and the business community on the plan of education and application of the results of scientific researching. Further action is focusing to the solid and real role of franchising associations and their linkage in an already established Regional and International network dealing with franchising.

Additionally, there is extension to higher education to develop Business strategy in order to respond to the changes in financing and to Governmental expectations regarding an increase in the national level of participation in higher education. Although institutional rationales for franchising vary, the quality assurance of franchise operations can be conducted under a general set of principles [8].

Necessarily, the banking system can be one of a major inducer related to the further affirmation and practice of franchising. In that sense, banks should show more interest and emotion in support of the business activities with direct provision of favorable credit lines for franchising of business ventures.

The banking system can effect on the further affirmation and practicing on franchising. In that sense, banks should show more interest in support of the business activities with direct provision of favorable credit lines for franchising of business ventures.

7. Recommendations

The Global market and free movement of people, goods, services and capital is desirable of further development of the national economies of developing countries, especially the type of Macedonian economy.

Theoretical and practical experience with franchising as an activity and Franchising Agreement for the global market is creating the need of constantly analyzing the legal, economic and sociological aspects that create a contemporary approach with opening new markets insights and managements with powerful companies.

What is extremely important to point out and extremely necessary, is the fact that the human capital capacity and intangible goods reach a value much greater than the value of their goods.

Additionally, in the small Macedonian business environment and its specifics as a young and promising economy moving towards Single EU market, there is a need of establishing solidarity in practice is one crucial point. In order to accommodate modern requirements in the field of franchising, step forward is to spinning off organizations to create sustainable jobs and meet social needs.

The solidarity franchising approach has three main goals:

- fast sustainable job creation;

- the development of ethical and sustainable economic sectors and
- the improvement of quality public services.

In this respect, the concept of solidarity franchising represents a pragmatic solution. Following the model of commercial franchises, a successful organization spins out sister organizations to carry on its work in other regions. This is where the similarity ends, however. Based on a legally binding franchising agreement and compliance with an ethical system of references, the franchisor supports franchisees, whatever their legal status, to achieve *asocial* purpose and not purely financial goals as followed in a commercial franchise.

This model allows social businesses to quickly expand their structure and further the development of effective activities. Solidarity franchising also enables ethical and sustainable economic sectors to develop more quickly in order to effectively meet unfulfilled social needs on a systemic scale [9].

The general recommendation of the Macedonian franchisees is to identify the right brand that would succeed in Macedonian market, and to be patient because the effects of working with franchise are not coming right away. It takes time, investment capital, private education and most importantly, investing in staff.

Recommendation and areas in which there are opportunities for further research:

- increasing the number of professional consultants and organizations that work on market research,
- franchising legislative introduction in Republic of Macedonia,
- regulation of certain market segments and introduce standards,
- creation of Macedonian franchise products or services [10].

Nevertheless, it is advantage to work with well-known trademarks regardless of whether it is a product or service. Choosing to start a business with a franchise reduces the risk of failure, because everything that should be known for the business is given by the franchisor. Therefore business format franchising is the most widespread. In business format franchise, the franchisor gives the franchisee licenses of business format, operating system and trademark

It might be a good solution for further improvement of small and developing franchising system in Macedonian economy. In the Republic of Macedonia more attention should be paid to promoting franchising activity [11].

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