

# **Debenture the new security instrument soon to be introduced in Macedonia**



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## ★ **Who are we?**

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Our team is divided departmentally into groups of lawyers specialized in certain areas of law. Led by Lawyer Marija Filipovska Jelcic our team of 5 internationally trained lawyers ensures that we combine the best of both international and local practice and clients respect our pro business and active approach. Further information on the firm and its success in the region can be seen at our site [www.karanovic-nikolic.com](http://www.karanovic-nikolic.com).

## ★ **The Solvency Problem**

A number of companies in Macedonia are having problems with maintaining their solvency at a desirable level in order to carry out their ordinary course of business. Apart from reasons which may be attributed to the fragile nature of the Macedonian economy, another reason for this occurrence is the lack of financial discipline amongst Macedonian companies and statecontrolled entities, often resulting with their failure of making timely payments of their due financial obligations. This has significant impact on the increase of the number of enforcement procedures for collection of debts, resulting with more than 100.000 Macedonian companies with blocked bank

accounts, according to the most recent reports. Nevertheless, the companies' options for securing their claims, thus enabling them to enforce their receivables against their debtor's assets efficiently and effectively, are rather time consuming and costly. This remains a fact, notwithstanding the recent judicial reforms transferring the competence for procedures for collection of debts from the court's arena in the hands of the notary public service and the available security instruments.

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## ★ *Available Security Instruments*

The current legislation caters for a number of security instruments readily available to Macedonian companies, such as bank and ordinary guarantees, promissory notes, pledges on movable and immovable assets, equipment, securities etc., but in practice none of these have proven sufficiently time and cost effective. The main weakness of these security instruments is that they have to be notarized in the form of an enforceable document in order to provide a certain degree of comfort to the respective creditors, and the notarization and the enforcement thereof is often a time consuming and costly procedure that does not meet the dynamic nature of the business. As a result, more and more Macedonian companies are unable to secure and/or collect their receivables from their debtors. The Macedonian Government's answer to this problem is the introduction of a so-called 'debenture' as a new security instrument, that should enable (i) efficient protection of the creditors, (ii) swift collection of debts and (iii) decrease of the overall debt between the Macedonian companies. The draft of the Law on Debenture is currently in parliament procedure and, if enacted, it will be applicable from September 2012.

## ★ *The Pros and Cons of the Debenture*

By definition, a debenture is a written document issued and signed by the debtor (before a notary public), providing its consent for the creditor to collect its receivables directly from the debtors' bank account(s) available funds, in the event the debtor does not make timely payments of its due financial obligations. The debenture is a convenient security instrument since the creditor is able to enforce its receivables in the first instance directly from the debtor's bank account(s) funds. Namely, creditors should be able to collect their receivables without the assistance from a court or an enforcement agent, by simply filing an application for enforcement to the debtor's bank. In the event the creditor is not able to collect the total amount of its receivables from the 2 debtor's bank account(s), the creditor is entitled to initiate an enforcement procedure before an enforcement agent against the overall debtor's assets, since the debenture has the quality of an enforceable document (Macedonian: *Извршна исцрава*).

Although, the issuance of the debenture requires notarization in the form of an enforceable document, same as other currently available security instruments, the main advantage of the debenture is that the notary public will be able to determine, through the use of the electronic Register of debtors to be established within the Central Registrar of the Republic of Macedonia, whether an individual debtor may issue this security instrument. Namely, the draft Law on Debenture prescribes that a debtor may not issue a debenture if the total number of issued debentures thereof exceeds the amount of 30% of the total debtor's income in the previous year. An additional advantage is that the debenture will be issued in a predetermined form requiring predetermined details, thus the issuance procedure should be swift. These advantages seem to advocate the debenture as the most efficient security instrument available to Macedonian companies yet established. However, it is very important to underline that the draft Law on Debenture limits the right for issuance of debentures exclusively to trade companies and excludes the possibility for state authorities and public agencies to issue debentures. Considering that state authorities and public agencies often fail to timely pay off their financial obligations to Macedonian companies and reportedly their debts to the latter are substantial, the introduction of the debenture will not improve this side of the solvency problem whatsoever. Additionally, the draft Law on Debenture does not provide the possibility for the issuance of a blank debenture (common in countries that are already using this security instrument, e.g. Croatia), and moreover, it prohibits the assignment of the rights and obligations thereof. In practice this would prevent creditors to transfer their receivables secured with issued debentures together with the security, meaning that the debenture is not a flexible security instrument.

## ★ *The Debenture in Practice*

The draft Law on Debenture seems to be a relatively good legal solution for the collection of debts problem that Macedonian companies have endured for some time now. However, it remains to be seen how the Macedonian companies will accept, as well as, to which extent they will use this security instrument in their business relations. The use of the debenture in practice by the Macedonian companies is planned to start from September 2012, and the initial experiences should indicate whether the debenture will serve its purpose and constitute 'the best available security instrument' for securing companies' receivables, as announced.