INVESTinADR

Promoting Mechanisms for ADR and Mediation in North Macedonia

Policy Recommendations

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Introduction

Arbitration and mediation are widely used in international trade and investment relations as an alternative to national court proceedings. Mechanisms of Alternative Dispute Resolution (ADR), such as arbitration and mediation, offer numerous advantages to internationally operating companies. Those mechanisms allow companies to solve their disputes following a tailor-made procedure and a high degree of neutrality, flexibility, efficiency, and specialization where needed. Given these advantages, ADR mechanisms are very popular in the international business community.

Due to this popularity, the promotion of ADR mechanisms is crucial to attract foreign businesses to the Republic of North Macedonia. A broad and well-functioning offer of ADR mechanisms can lead to an increase in foreign investment, which is essential for the further development of the country. In addition, a well-established practice of ADR often has spill-over effects on the national judiciary, and thus, may lead to higher rule of law standards in the country. This final aspect is particularly crucial for North Macedonia's accession process to the European Union.

Against this background, the research project "Promoting Mechanisms for ADR and Mediation in North Macedonia" (INVESTinADR) is aimed at guiding how to enhance the national offer of ADR for international businesses. To that purpose, the project team first assessed the national legal framework in the light of international standards and the ADR practice followed in Germany, which was selected as a counterpart for this comparative analysis. In addition, the project team surveyed relevant stakeholders in the Republic of North Macedonia, including judges, arbitrators and lawyers, to assess the practical implementation of the national legal framework on ADR.

Based on the results obtained from both the analysis of the national legal framework and the survey, the project team elaborated a set of policy recommendations for mediation, commercial arbitration, and investment arbitration. At a conference in December 2023 in Skopje, these recommendations were presented to national stakeholders, from whom we received valuable feedback. The close collaboration with national stakeholders and international experts is essential for this project to be as inclusive as possible. The final policy recommendations reflect the different perspectives of the ADR community, and thus, lead to practicable results for the Republic of North Macedonia.

Executive Summary

The project team's policy recommendations for each field (mediation, commercial arbitration, and investment arbitration) can be summarized as follows:

Mediation

- Improving the implementation of the 2021 Mediation Act in relation to the licensing of mediators and the quality of the licensed mediators;
- Obtaining reliable statistics on the use and effectiveness of the mediation practice in North Macedonia;
- Promoting mediation by encouraging the establishment of mediation centres;
- Providing an English translation of the 2021 Mediation Act by the relevant national authorities and making it publicly available.

Commercial Arbitration

- Amending the Law on International Commercial Arbitration (LICA) with regard to interim measures and preliminary orders and the designated Court for arbitration assistance and supervision.
- Streamlining the procedure for recognition and enforcement of foreign awards in the Private International Law Act or regulating the procedure in the LICA.
- Modernizing the rules on domestic arbitration in the Civil Procedure Act and aligning them with the rules contained in the LICA, or introducing a single arbitration act by extending the application of the LICA to domestic arbitration with minor amendments.
- Providing an English translation of the legal texts related to arbitration and making them publicly available.
- Increasing the number of functioning arbitration institutions. This can be achieved through the operationalization of arbitral institutions that are envisaged in the statues of economic chambers in the country.

- Amending the Rules of the Permanent Court of Arbitration (PCA) of North Macedonia by introducing rules on expedited proceedings, online arbitration, virtual hearings and the appointing authority. Moreover, the possibility to publish arbitral awards should be given and the decision to lower arbitrators' fees should be revaluated.

- Introducing different courses on arbitrations at the university level, for practitioners and for judges. In addition, promotional activities for ADR should be conducted within the business community.

Investment Arbitration

- Signing and ratifying the UN Convention on Transparency in Treaty-based Investor-State Arbitration (2014).

- Delegating competences aimed at the prevention of investment disputes to a separate expert body.

- Negotiating further bilateral investment treaties (BITs), especially with capital exporting countries.

- Terminating bilateral investment treaties with Member States of the European Union upon EU accession – not earlier.

- Renegotiating North Macedonia's current bilateral investment treaties following modern approaches towards international investment law and arbitration.

- Adopting a new Model BIT that is aligned with the investment policy of the European Union.

Policy Recommendations for Mediation

Topic	The 2021 Mediation Act
Goal	Improving the implementation of the 2021 Mediation Act in relation to the licensing of the mediators and the quality of the licensed mediators.
Recommendation	North Macedonia should adopt amendments for improvement of the 2021 Mediation Act to ensure better implementation of its primary aims. In this sense, amendments are needed in the provisions pertaining to the constitution of the National Council on Mediation (Council), and (or) its competencies. **Option 1:** To increase the number of members of the Council, and to amend the structure of the members of the Council, that is, to follow a similar approach to the previous Mediation Act (2013) and include more members in the body. Such members should be elected by their function upon the suggestion of the stakeholders instead of a public call. In this sense, the Council's number of members should be extended, and should include a mediator, suggested by the Chamber of Mediators; a judge, suggested by the Judicial Council of North Macedonia; an attorney at law, suggested by the Lawyers' Association of North Macedonia; a professor, suggested by the Inter-university conference; a psychologist – suggested by the Chamber of Psychologists; a public prosecutor – suggested by the Association of Public Prosecutors, an employee at the Ministry of Justice – suggested by the ministry; an employee at the Ministry of Labour and Social Policy – suggested by the ministry; an employee at the Ministry of Economy – suggested by the ministry; a member suggested by the commerce chambers; a member suggested by the Association of Consumers. **Option 2:** To follow the approach of the licensing of the lawyers (attorneys at law) and to provide part of the current competencies of the National Council on Mediation to the Chamber of Mediators (pertaining to licensing and education of the mediators). The rest of the competencies of the National Council on Mediation would be left to a different body (it could still be named the National Council

	on Mediation), which would be constituted in the manner as provided in Option 1.
Rationale	As part of the strategy to provide a better legal framework for mediation practice, a new Mediation Act (MA) was enacted in December 2021, which has been in force since January 2022. The novel MA was enacted with the purpose of improving the legal conditions for the implementation of the mediation practice, ensuring equal application of the provisions by the mediators, and providing better solutions for the promotion of mediation as dispute resolution mechanism and its results. The MA is the third novel law regulating mediation. It is harmonized with Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. The novel MA provides for the establishment of a new body – National Council on Mediation (Council). The Council has the competence to provide, follow, and assess the quality of the mediation practice. According to the MA, this body is constituted of: a National Coordinator for Mediation; four members, and a Secretary. The National Coordinator, the members, and the Secretary are all appointed by the Government. Regarding the criteria for appointment of the National Coordinator and the members, besides the nationality, education and working experience criteria, the MA provides for a prerequisite that the person „must have shown results in the field of mediation in the last 5 years". The members are elected by a public call. The number of members of the Council (a National Coordinator, four members, and a Secretary) is too low, that is, bearing in mind the competencies of this body and the fact that mediation is a practice in development and rising (especially since an obligatory attempt for mediation is prescribed by law in certain cases). Hence, increasing the number is necessary. In addition, the precondition for being appointment a member of the Council, that is, that the person „must have shown results in the field of mediation in the last 5 years" is vague and provides difficulties in assessing the expertise of the person. Moreover, the concept of the election of the persons by a public call excludes the possibility to encompass all relevant stakeholders in the body. The first Council was formed in July 2022, seven months after the new MA entered into force. No new mediator license has been

	issued by now.

Topic	Statistical Data of the Mediation Practice
Goal	Obtaining reliable statistics on the use and effectiveness of mediation practice.
Recommendation	1. To establish a mechanism for monitoring the mediators in complying with the obligation to feed data in the e-Registry of Requests for Mediation. 2. To establish a platform for the transfer of data between the courts and the e-Registry of Requests for Mediation.
Rationale	At the moment, there is strong inconsistency in the statistical data of the mediation practice in North Macedonia for the past years. The number of reported and registered cases in the Registry of Mediation Procedures of the Ministry of Justice does not coincide with the number of cases recorded in the individual registries of the mediators. To overcome such inconsistency and keep relevant track of the mediation practice, an e-Registry of Requests for Mediation kept by the Ministry of Justice was formed in 2020. The novel MA explicitly provides for an obligation of the mediators to report the request for mediation in the e-Registry within three days after receipt of such request and to report each conduct of the mediation procedure until the completion of the procedure. However, these numbers may not be adequately assessed from the aspect of the use and the effectiveness of the mediation practice, as there is no information on the mediable disputes which were referred to mediation by Courts. Hence, a mechanism/platform which provides transfer of data kept by the courts is necessary to obtain relevant statistical data concerning the use and quality of mediation. In addition, although the MA provides for disciplinary measures against the mediator who fails to comply with the obligation for registering the mediation requests in the registry, it fails to provide a monitoring mechanism for assessing the fulfillment of this obligation.

Topic	Introduction of Mediation Centres in North Macedonia
Goal	Promoting mediation by encouraging the establishment of mediation centres
Recommendation	Establishing independent mediation centres or mediation centres at the economic chambers in the country.
Rationale	Currently, there are no mediation centres in North Macedonia. The mediators work independently and follow no special rules besides the ones prescribed by law. Institutionalized mediation practice through a functioning mediation centre would aid the mediators in the administering the process of mediation. In addition, the concept of an institutionalized mediation practice would aid in the promotion of the dispute resolution mechanism to companies and other users.

Topic	Promotional Activities in the Business Community
Goal	Familiarizing owners and management of companies with the benefits of mediation and ADR.
Recommendation	Introduction of workshops and seminars promoting the advantages of ADR and mediation to the owners and management of companies.
Rationale	Companies and other enterprises, as disputing parties are the end users of alternative dispute resolution mechanisms, and as such it is necessary that they become familiar with mediation and recognize it as a suitable alternative for the resolution of their disputes. Lawyers and in-house counsel have an important influence on the choice of mechanisms for the resolution of disputes, and as they receive more education and training in ADR they will recognize its advantages, however, it is also important that owners and management of large companies understand the benefits of ADR.

Topic	Official English Translation of the novel MA
Goal	Increasing the public availability of the MA
Recommendation	The adoption an official English translation of the novel MA that would be publicly available on the websites of relevant ministries and institutions.
Rationale	Considering Article 5 of MA, this law also applies to cross-border commercial and civil disputes, unless exclusive jurisdiction of a court or other body is provided. Currently, no official translation of the legal text of the MA is available in English. The promotion of mediation (and ADR in general) cannot be achieved if there is a lack of availability of information pertaining to the legal framework of these mechanisms. Foreign companies would be reluctant to choose mediation if they cannot obtain access to the legal framework. These acts must be officially translated and be publicly available on as many portals as possible, including the websites of all relevant ministries, institutions, and state and administrative bodies, as well as the websites of arbitral institutions.

Topic	University Legal Clinics for Mediation
Goal	Advancing the knowledge for mediation and developing the practical skills of students in providing aid in real-life mediation cases.
Recommendation	Formation of university legal clinics for mediation.
Rationale	Exposing students to the advantages and concepts of mediation during their study at the faculty level will have a significant impact on the promotion of mediation when they become practitioners after the completion of their studies. With the formation of legal clinics at the university, students may receive in-depth knowledge for mediation as well as gain practical skills while aiding in real-life mediation cases.

Topic	Interim Measures and Preliminary Orders
Goal	Improving the existing Law on International Commercial Arbitration from 2006
Recommendation	Introduction of precise rules related to interim measures and preliminary orders, in particular rules related to the conditions for granting interim measures and preliminary orders, the types of interim measures and preliminary orders, modification, suspension, or termination of the interim measures and preliminary orders, disclosure, costs, and damages, as well as the recognition and enforcement of interim measures and grounds for the refusal of their recognition and enforcement.
Rationale	The current Law on International Commercial Arbitration (LICA) is based on the UNCITRAL Model Law on International Commercial Arbitration from 1985. While the LICA is a modern law that follows the trends in international commercial arbitration, a drawback is that the amendments of the Model Law from 2006 have not yet been implemented. Given that the current legislation lacks more precise provisions related to interim measures, the amendments to the UNCITRAL Model Law from 2006 must be implemented soon.

Topic	Designated Court for Arbitration Assistance and Supervision
Goal	Improving the existing Law on International Commercial Arbitration from 2006
Recommendation	Amendment of Article 6 of the LICA so as to reflect the current jurisdiction of the courts.
Rationale	At the time of the adoption of the LICA, the Basic Court in Skopje was split into Court of First Instance Skopje I, and Court of First

	Instance Skopje II, with their jurisdiction being tied to municipalities within the city of Skopje. Both courts dealt with criminal and civil matters. Afterwards the Court of First Instance Skopje I only dealt with criminal matters and was subsequently renamed to Basic Criminal Court Skopje. The Court of First Instance Skopje II only dealt with civil matters and was subsequently renamed to Basic Civil Court Skopje. This shift in the naming and jurisdictions of the courts has to be implemented in the LICA.

Topic	Recognition and Enforcement of Arbitral Awards
Goal	Rendering the Recognition and Enforcement of Arbitral Awards more Effective
Recommendation	Option 1: Streamlining the procedure for the recognition and enforcement of foreign arbitral awards in the Private International Law Act, by abolishing the right of an appeal, or through the introduction of a mandatory period in which a final decision has to be rendered (period of 3 months from the submission of the request to the issuing of a final decision that would include the right to objection and the right to an appeal). Option 2: Regulating the procedure for recognition and enforcement of a foreign arbitral award in the LICA, and again streamlining the procedure either through abolishing the right of an appeal or through the introduction of a mandatory period in which a final decision has to be rendered (period of 3 months from the submission of the request to the issuing of a final decision that would include the right to objection and the right to an appeal).
Rationale	In North Macedonia, the New York Convention which contains the rules for recognition and enforcement of arbitral awards applies by virtue of referral contained in Article 37 of the LICA. However, the procedure for recognition and enforcement of a foreign arbitral award is not contained in the LICA, but in the Private International Law Act. The same rules regulating the recognition of foreign judgments also apply to the recognition and enforcement of foreign arbitral awards. The main problem is that the procedure can be quite lengthy since, aside from the

	standard possibility for objection, when the request for the recognition and enforcement of the awards has been made in front of a competent court, the unsatisfied party also has the right to appeal, and it can take years for the process to be completed. This, combined with the lack of clarity in the rules on interim measures puts into question the efficiency of the mechanism for the recognition and enforcement of arbitral awards, and by extension, the attractiveness of arbitration as a method for dispute resolution.

Topic	Domestic Arbitration
Goal	Modernizing the rules on domestic arbitration/ unifying the legal framework applicable to domestic and international arbitration.
Recommendation	Option 1: Amendment of the existing rules on domestic arbitration in the Civil Procedure Act, and their alignment with the rules and concepts contained in the LICA. Option 2: Introduction of a single arbitration act, by extending the application of the LICA to domestic arbitration with minor amendments.
Rationale	Modernization of the rules in the Civil Procedure Act that pertain to domestic arbitration is necessary since the current legal framework is based on the old provisions of the CPA of 1976 and has been waiting to be revised for quite a long time. The rules are outdated, placing significant limitations that may deter many domestic economic operators from choosing arbitration. Currently, *ad hoc* arbitration is not possible for domestic disputes. Also, in domestic arbitration, the seat has to be on the territory of the Republic of North Macedonia. In the alternative, the introduction of a single arbitration act that would regulate both international and domestic arbitration would be in line with the most current approaches adopted by many countries in the world. This can be achieved by extending the application of the LICA to domestic arbitrations, with minor amendments, and at the same time it would subrogate the outdated rules in the CPA. With this approach, the limitations that exist in domestic arbitration would be abolished and both

	international and domestic arbitration would be subjected to the same rules.

Topic	English Language Translation of Legal Texts Related to Commercial Arbitration
Goal	Increasing the public availability of relevant legal acts relating to commercial arbitration in English
Recommendation	Provision of an English translation of relevant legal texts related to arbitration by competent national authorities that would be publicly available on the websites of relevant ministries and other relevant institutions.
Rationale	Currently, only unofficial, and partial translations of the legal acts relating to commercial arbitration are available in English. However, the promotion of arbitration (and ADR in general) cannot be achieved if there is a lack of availability of information on the legal framework of these mechanisms. Foreign companies would be reluctant to choose arbitration seated in North Macedonia or arbitral institutions in North Macedonia if they must engage local counsel simply to obtain access to the legal framework. These acts have to be translated by the competent authorities and be publicly available on as many portals as possible, including the websites of all relevant ministries, institutions, and state and administrative bodies, as well as the websites of arbitral institutions.

Topic	Arbitral Institutions in North Macedonia
Goal	Promoting arbitration by offering larger choices of arbitral institutions to companies
Recommendation	Increasing the number of functioning arbitral institutions. This can be achieved through operationalization and putting into function arbitral institutions that are envisaged in the statutes of economic

	chambers in the country.
Rationale	An increase in the number of functioning arbitral institutions is important for the promotion of arbitration and offering larger choices to companies This would also spur competition among the institutions and would increase their efforts to attract companies to resolve their disputes. Currently, there is only one functional arbitral institution in the country the Permanent Court of Arbitration (PCA) attached to the Economic Chamber of North Macedonia, although two other economic chambers have also envisaged the establishment of a functional arbitral institution in their statutes.

Topic	Institutional Rules of the North Macedonian Permanent Court of Arbitration (PCA)
Goal	Improving the quality of arbitration procedures conducted by the PCA, rendering them more transparent and attractive
Recommendation	Implementation of rules on expedited proceedings, rules on online arbitration/virtual arbitration hearings, and rules on appointing authority. Option for the publishing of the arbitral awards (with redactions). Reevaluate the decision on lowering the arbitrators' fees.
Rationale	The PCA has been functioning for a long period of time; however, the results remain modest considering the low number of conducted arbitral proceedings. Significant efforts have been made to make arbitration more attractive through the adoption of new institutional rules in 2021 and rules for an emergency arbitrator, however many novelties adopted by prominent arbitral institutions such as rules on expedited procedures, online arbitration, and virtual hearings, or appointing authority have not been implemented yet. An additional step is the introduction of the possibility to publish the arbitral awards. Further activities should be undertaken for implementing the general rule for publication of all arbitral awards,

	unless the parties explicitly require full confidentiality. Arbitral awards can be redacted to safeguard the confidential character of arbitration (substituting names, subject matter or value of dispute). Implementation of this option would be a significant step to increase the trust in the institution and arbitration in general, as it would enable them to have direct insight in the method of operation of the arbitral proceedings. Finally, the decision from 2022 to significantly decrease the costs is aimed at attracting the resolution of more disputes, although it can be a double-edged sword. Arbitrators' fees are fixed regardless of the nature of the dispute (international or domestic) or its value. The fee for a sole arbitrator is 500 EUR, and the fee for an arbitral tribunal is 1.000 EUR (of which the president of the tribunal receives 40% and the other arbitrators 30%). While lower costs are attractive for companies, significantly lower arbitrator fees might deter qualified and experienced arbitrators and hinder the quality of the institution. The recommendation would be to determine the arbitrator's fees on the amount in dispute, increasing the fee the higher the amount in dispute is, with a possible upper limit of fees that would not place significant burden on clients but would recognize the effort and expertise of arbitrators.

Topic	Education & Training at Universities
Goal	Capacity-building in ADR at the university level (undergraduate and graduate)
Recommendation	Introduction of a standard course on arbitration, or ADR in general, at the undergraduate level.
Rationale	Arbitration should become a standard course taught at the university level. Currently, at the level of first-cycle studies, arbitration, and ADR in general, are part of the curriculum of only a few Law faculties in the country, and are taught in a limited scope. The situation is similar on the level of second-cycle studies, where arbitration and ADR in general, are compulsory courses only in some programs and are also offered as electives in several others. Exposing students to the advantages and concepts of arbitration during their study at the faculty level will have a

	significant impact on the promotion of arbitration when they become practitioners after the completion of their studies.

Topic	Education & Training for Practitioners
Goal	Capacity-building in ADR for practitioners
Recommendation	Introduction of a standardized and certified course on arbitration aimed at practitioners and arbitrators.
Rationale	Arbitration is a relatively new trend in North Macedonia, and many current practitioners do not have any prior education at the university level. Consequently, an increase in the available courses and training in commercial arbitration at the practitioner level is necessary. The Economic Chamber of North Macedonia and the Permanent Court of Arbitration attached to it are the rare institutions that organize events on arbitration; however, these events are occasional and not widely promoted. Aside from conferences that include presentations on popular topics in arbitration, continuous training, and practical courses are necessary. The course can be aimed at various groups, including novice and experienced counsel, companies and in-house counsel, and even arbitrators. The introduction of a standardized course on ADR offered on an annual basis offering a blend of academic and practical contents would be beneficial to all stakeholders.

Topic	Education & Training for Judges
Goal	Training judges for their assisting and supervisory function in arbitration
Recommendation	Introduction of a course on ADR at the Academy of Judges and Public Prosecutors to candidates for judges as part of their initial training and to elected judges as part of their continuous training.
Rationale	Standard training on arbitration should also be offered to

	candidates for judges as well as already elected judges. Judges have a very significant supporting and supervisory role in arbitral proceedings. Consequently, they have to be familiar with and have knowledge in this area. Otherwise, they can undercut the advantages and attractiveness of arbitration.

Topic	Promotional Activities in the Business Community
Goal	Familiarizing owners and management of companies with arbitration and ADR.
Recommendation	Introduction of workshops and seminars promoting the advantages of ADR and arbitration to the management of companies.
Rationale	Companies and other enterprises are the end users of arbitration and the alternative dispute resolution mechanisms, and as such it is necessary that they become familiar with arbitration and recognize it as a suitable alternative for the resolution of their disputes. Lawyers and in-house counsel have an important influence on the choice of mechanisms for the resolution of disputes, and as they receive more education and training in ADR they will recognize its advantages, however, it is also important that owners and management of large companies understand the benefits of arbitration and ADR. Arbitral institutions are attached to commercial chambers to offer faster, confidential, and more suitable methods for dispute resolution to their members. Consequently, it is expected that the members of the economic chambers would be the primary users of the services of those arbitral institutions. While this is hindered in North Macedonia due to the existence of only a single arbitral institution, the low number of cases resolved in front of the PCA in the past years indicates that companies are still reluctant to use arbitration as a dispute resolution mechanism in North Macedonia. As a result, parallel to the process of training practitioners in ADR, more promotional activities aimed toward the business community are necessary.

Topic	**Transparency**
Goal	Increasing transparency in investor-State arbitration
Recommendation	North Macedonia should sign and ratify the UN Convention on Transparency in Treaty-based Investor-State Arbitration (2014)
Rationale	North Macedonia is well embedded in the international legal framework for investor-State arbitration. It has signed all major conventions, including the New York Convention and the ICSID Convention. To even improve its integration into the international legal framework, North Macedonia should sign the UN Convention on Transparency in Treaty-based Investor-State Arbitration ("Mauritius Convention"). The Mauritius Convention is an instrument by which parties to investment treaties concluded before 1 April 2014 express their consent to apply the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Rules on Transparency"). The Rules on Transparency were adopted in 2013 to enhance transparency in investor-State arbitration. In the past, investor-State arbitration was often conducted behind closed doors, lacking transparency and public scrutiny. The lack of transparency led to concerns regarding accountability, legitimacy and fairness of the arbitration process. The Rules on Transparency were designed to address these concerns by providing a framework for greater openness in investor-State arbitration. Only 23 States have so far signed, and 9 States also ratified, the Mauritius Convention. Still, it would be regarded as a positive sign if North Macedonia would equally sign (and ratify) the Convention to show the country's commitment to enhanced transparency and public scrutiny in investor-State arbitration. Furthermore, North Macedonia can directly integrate the Rules on Transparency in future investment treaties.

Topic	Enforcement
Goal	Rendering enforcement of awards more effective in North Macedonia
Recommendation	North Macedonia should revise and improve the national enforcement mechanism
Rationale	A functioning national court system is essential for the context of international investment arbitration. It is particularly relevant at the enforcement stage of investment arbitration proceedings. Investors are more likely to invest in a country that follows high rule of law standards in the national judiciary. A functioning court system constitutes a guarantee for investors that awards rendered in their favor can be enforced in the host State of their investment. The project's study of the legal framework for ADR in North Macedonia has shown that the effectiveness of enforcement of debts has been gradually decreasing in the past few years. In line with the project team's recommendations for the context of international commercial arbitration, the overall effectiveness of the national enforcement mechanism should be revised. An effective enforcement mechanism is important both in the context of international commercial and investment arbitration.

Topic	Dispute Prevention
Goal	Avoiding costly investment arbitration, where possible, at an early stage
Recommendation	North Macedonia should delegate competencies aimed at the prevention of investment disputes to a separate expert body
Rationale	North Macedonia does not have a specialized institution for handling (potential) investment disputes against North Macedonia. Notices of disputes are directly sent to the government, which then handles these cases along with appointed legal counsel. In 2017, North Macedonia created the Coordination Body for Monitoring Arbitration Proceedings Arising from International

	Treaties ("Coordination Body"). The Coordination Body is an institution within the government that is responsible for monitoring all arbitration proceedings in which North Macedonia appears as a respondent. The Coordination Body is comprised of State officials and experts. It is presided by the Deputy President of the Government in charge of Economic Affairs. The Coordination Body is tasked with briefing the government on all matters of relevance regarding pending arbitration proceedings, communicating with the legal representatives of the State, and coordinating the communication between the State authorities and the legal representatives. It is, however, not explicitly tasked with identifying potential disputes against the country arising from government actions and policies and analyzing their effects on investors' treaty rights. Therefore, a new expert body tasked with dispute prevention should be created, or alternatively, new competencies may be given to the Coordination Body. In case the competencies of the Coordination Body are extended, it is recommended that its personnel and institutional capacities be strengthened so that it may effectively perform such expanded competencies. Through the delegation of specific competencies aimed at dispute prevention, possible tensions leading to costly investor-State arbitration could be alleviated in certain cases before the initiation of any arbitral proceedings. Such a new focus on dispute prevention could improve the overall investment climate in the country, and consequently, attract further investment.

Topic	Bilateral Investment Treaties (BITs)
Goal	Improving North Macedonia's Investment Treaty network
Recommendation	North Macedonia should negotiate further BITs, especially with capital exporting countries.
Rationale	BITs are international agreements made between two countries to promote and protect investments made by individuals and companies from one country in the territory of the other. These treaties aim to encourage and facilitate foreign investment by providing certain key protections (e.g. against unlawful

	expropriation or unfair and inequitable treatment) to investors. So far, North Macedonia has concluded 43 BITs, of which 38 are currently in force. Even though this number is already considerable, North Macedonia should negotiate further BITs to have an even wider treaty network. A wide investment treaty network is particularly relevant for an economy that is largely reliant on foreign investment, such as North Macedonia. Therefore, it is recommended that the country aims at negotiations with capital exporting countries.

Topic	BITs with EU Member States
Goal	Aligning North Macedonia's investment policy with EU law with a view towards EU accession
Recommendation	North Macedonia should terminate its BITs with EU Member States
Rationale	In the past, North Macedonia has concluded 19 BITs with EU Member States, of which 18 are still in force (Croatia, Slovenia, Slovakia, Germany, Poland, France, Sweden, Netherlands, Belgium-Luxembourg Economic Union, Bulgaria, Romania, Finland, Austria, Hungary, Czech Republic, Spain, Lithuania, and Denmark). Since North Macedonia aspires to become an EU Member State, it should follow EU investment protection policy. In accordance with that policy, EU Member States cannot conclude investment agreements among each other (so-called intra-EU BITs) to safeguard the autonomy of the EU legal order. As a result, any investment agreement concluded between North Macedonia and an EU Member State has to be terminated upon accession of North Macedonia to the EU (or beforehand). In addition, North Macedonia should refrain from concluding any new BITs with EU Member States.

Topic	Content of BITs
Goal	Modernizing the content of North Macedonia's BITs
Recommendation	North Macedonia should renegotiate its current BITs following modern approaches
Rationale	North Macedonia's BITs largely reflect the traditional approach towards international investment law and arbitration. The traditional approach solely focussed on investment protection without considering any other policy concerns related to the protection of foreign investment. In addition, traditional BITs included very broad and vague terms that led to unpredictable decision-making and an overall unstable investment protection regime. Therefore, the current trend is to include balanced investment protection standards and a more sophisticated procedural framework. An updated BIT network would be crucial for North Macedonia to (i) attract more foreign investment and (ii) to safeguard its own regulatory autonomy. Foreign investments could be attracted through a more predictable and stable framework, which is created through more precise treaty language. At the same time, more precise treaty language may effectively narrow down the scope of North Macedonia's international liability by specifying the cases in which a treaty violation occurs. When modernizing its investment policy, North Macedonia should equally make sure that its new approach is aligned with EU investment policy. This is best achieved through the adoption of a new Model BIT, which is addressed in the ensuing recommendation.

Topic	Model BIT
Goal	Improving North Macedonia's negotiation position Aligning North Macedonia's investment policy with EU law with a view towards EU accession

Recommendation	North Macedonia should adopt a new Model BIT that is aligned with EU investment policy
Rationale	Countries often use a Model BIT for the negotiation of new agreements and the renegotiation of older ones. The experience has shown that countries that bring a Model BIT to the negotiation table are in a better position to include their pre-defined policy options in the final treaty text. North Macedonia's Model BIT is from 2009 and should be urgently updated to be used in future (re)negotiations. The new Model BIT should follow a modern approach towards international investment law and arbitration, as outlined above. In addition, the new Model BIT should be aligned with EU investment policy. For EU accession, it is not only important that BITs with EU Member States are terminated, but also that North Macedonia's investment policy reflects EU standards. A harmonized investment policy of the EU and its Member States is a requirement of the EU's common commercial policy. To that purpose, the Commission has issued certain guidelines for EU Member States to follow in their own BIT negotiations. The table below in the Annex contains a few examples of provisions that should be changed to be in accordance with EU investment policy. More detailed guidance can be provided by the project team to accompany the drafting process of the new Model BIT.

Annex

Proposed Changes to the North Macedonian Model BIT (Selected Examples)

Subject Matter	Current Model BIT	Proposed Changes
Preamble	Only focussed on the protection of investments	Emphasizing the importance of non-investment interests, such as sustainable development, labor protection, and the respect for human rights. If North Macedonia wants to (re)negotiate a BIT with an EU Member State, while still having the status of an EU candidate country, it is recommended that the following phrase is included in the preamble: "BEARING IN MIND that, in light of the judgment of the Court of Justice of the European Union in *Achmea* (C-284/16), this Agreement should be terminated in the event of the accession of the Republic of North Macedonia to the European Union."
Definition of "Investment"	Broad definition ("any kind of asset") with a non-exhaustive list of examples	A broad definition should be maintained to cover the wide variety of different forms of investment. It should be clarified, however, that claims to money that arise solely from commercial transactions for the sale of goods and services do not constitute a covered investment. It should be further clarified that an order or judgment entered in a judicial or administrative action or an arbitral award shall not in itself constitute an investment.
Definition of "Investor"	When it comes to legal entities, the "seat theory" is followed. Such a broad definition could facilitate undesired forum shopping.	Investors should be required to have "substantive business operations" in their home State to exclude so-called "mailbox companies", which are no genuine investors, from the protection under the treaty.

Right to Regulate	No clause included	Following an established practice of new generation BITs, a clause should be included that reaffirms the host State's right to regulate to achieve legitimate policy objectives. A non-exhaustive list of non-investment policy objectives should be included, referring *inter alia* to the protection of the environment, public health, public education, consumer protection, privacy and data protection, and the promotion and protection of cultural diversity.
Fair and Equitable Treatment	Broad and unqualified clause	A list of treatments considered to be unfair and inequitable should be included. Examples: denial of justice, fundamental breach of due process, manifest arbitrariness, targeted discrimination, and coercion. Through an exhaustive list, the host State effectively lowers the interpretive discretion of arbitrators and may effectively avoid international responsibility.
Most-Favoured-Nation (MFN) Treatment	Broad and unqualified clause	A new clause should specify that substantive provisions included in other international agreements do not constitute by themselves "treatment" that may give rise to a breach of the MFN treatment standard, thus preventing undesired treaty shopping. Exceptions could be included to further restrict the scope of the MFN clause. Possible exceptions: • Public procurement procedures • Subsidies, grants, and government-supported loans, guarantees and insurance • Dispute settlement procedures provided in other international agreements • Benefits deriving from double taxation agreements.
Expropriation	Broad clause including both direct and indirect expropriation	In accordance with EU practice, an annex should be included specifying that indirect expropriation occurs "where a measure or series of measures by a Party has an effect equivalent to direct expropriation, in that

		it substantially deprives the investor of the fundamental attributes of property in its investment". For the assessment of whether a measure constitutes an indirect expropriation, the annex could further specify that certain actors, such as the economic impact on the investment, the duration, and the purpose of the measure, are considered.
Multilateral Investment Court (MIC)	No clause	In line with EU investment policy, North Macedonia should include a clause providing that "[t]he Parties shall pursue with each other and interested trading partners the establishment of a permanent multilateral investment court which includes an appellate mechanism". Upon the entry into force of an agreement for an MIC, the provisions regulating *ad hoc* arbitration would cease to apply.