



DOING BUSINESS 
IN BULGARIA

Table of contents

I. GENERAL SECTION

- I.1 BASIC INFORMATION ABOUT BULGARIA
- I.2 COMPARATIVE ADVANTAGES AND INVESTMENT OPPORTUNITIES
- I.3 GOVERNMENT INVESTMENT INCENTIVES
- I.4 EU MEMBERSHIP

II. LEGAL SYSTEM

III. OUTLINE OF SELECTED INVESTMENT RELATED LAWS

- III.1 HOW TO ESTABLISH A NEW BUSINESS IN BULGARIA
- III.2 HOW TO ACQUIRE AN EXISTING BUSINESS
- III.3 RESTRUCTURING AN EXISTING BUSINESS
- III.4 REAL ESTATE AND CONSTRUCTION
- III.5 PROTECTION OF ECONOMIC COMPETITION
- III.6 PUBLIC PROCUREMENT AND TENDERS
- III.7 INSOLVENCY
- III.8 INTELLECTUAL PROPERTY
- III.9 EMPLOYMENT AND LABOUR LAW
- III.10 SOCIAL AND HEALTH INSURANCE SYSTEM
- III.11 IMMIGRATION
- III.12 TAXES

IV. NEWS AND PROSPECTS

I.

GENERAL SECTION

I.1

Basic information about Bulgaria

Bulgaria is situated on the Balkan Peninsula and borders five other countries: Romania to the north, Serbia and the Republic of Macedonia to the west and Greece and Turkey to the South. The Black Sea defines the extent of the country to the east. The official name is the Republic of Bulgaria and its time is GMT +2.

After the Second World War Bulgaria became a communist state and part of the Eastern Bloc. In 1990, after the Communist Party collapsed, Bulgaria transitioned to democracy. A new constitution was adopted in 1991 and Bulgaria moved towards democratic development and market economy. Currently Bulgaria functions as a parliamentary democracy under a unitary constitutional republic. It has a population of approximately 7.67 million people and a total area of 110,993 km². The urban population is almost 70.6 percent.

Bulgaria's capital and largest city is Sofia, with a territory of 1,186 km² and a population of 1.4 million. Other main cities in Bulgaria are Plovdiv (780,000), Varna (496,768) and Blagoevgrad (364,076). Bulgaria's population consists mainly of ethnic Bulgarian (84 percent) with two sizable minorities, Turks and Roma.

Bulgarian is spoken by 96.3 percent of Bulgarians as their mother language. Most Bulgarians (82.6 percent) belong, at least nominally, to the Bulgarian Orthodox Church, the national Eastern Orthodox Church. Other religious denominations include Islam (12.2 percent), various Protestant denominations (0.8 percent) and Roman Catholicism (0.5 percent). Other denominations, atheists and undeclared total approximately 4.1 percent.

Bulgaria has 28 provinces subdivided into 264 municipalities. The municipalities are independent of central government in many aspects such as administration, education, infrastructure and zone planning.

Bulgaria occupies a unique and strategically important geographic location. The country has served as a major crossroads between Europe, Africa and Asia. A network of eight motorways crosses the country, connecting it to Western Europe, Russia, Asia and the Black Sea.

Bulgaria has experienced rapid economic growth. Industry plays a key role in the Bulgarian economy with the largest industrial centres including Sofia, Plovdiv and Varna. Bulgaria formerly ranked as the most important exporter of electricity in the region due to the Kozloduy Nuclear Power Plant and started the Belene Nuclear Power Plant a few years ago. Telecommunications has become one of the country's growing industries. The services sector contributes some 58 percent to the Bulgarian economy.

Bulgaria's foreign policy is oriented to cohesion with European models. The country has been a member of the Council of Europe since 1991. In 2004 Bulgaria joined NATO and in 2007 officially became a member of the European Union. Bulgaria is represented by 18 members in the European Parliament, who were elected in May 2007.

I. 2

Comparative advantages and investment opportunities

Bulgaria is one of the most dynamically developing countries in South Eastern Europe. The country has a stable political system allowing foreign investors to benefit from its strategic geographical position on east-west trade routes.

The Bulgarian economy has demonstrated steady growth in recent years supported by macroeconomic stability. The country operates a currency board and follows strict policy concerning public finances to decrease government debt and create a substantial budget surplus. Bulgaria's GDP growth since 2004 has been steady at levels above 6 percent, reaching 7 percent for the first quarter of 2008. These positive figures are supplemented by the decreasing unemployment rate (under 6 percent in June 2008) and the doubling of household income between 2001 and 2007.

Attracting foreign investments is among the government's top priorities. The volume of FDI has been steadily rising to reach more than €6 billion in 2007 which accounts for around 20 percent of GDP. Bulgaria is ranked third in the *IMD World Competitiveness Yearbook (2008)* according to the amount of direct investment flows measured as a percentage of GDP.

One of the important comparative advantages of the country is its favourable tax system. The 10 percent corporate tax and personal income tax rate is among the most attractive in the EU. In addition, in 2007 social security contributions were decreased by 6 percent to reduce further the financial burden on businesses.

Bulgaria offers a work force on very competitive conditions. The country is ranked first according to the "Remuneration of Management" indicator, fifth according to the "Remuneration in Services Professions" and sixteenth according to the "Labour Force" indicator in *IMD World Competitiveness Yearbook (2008)*. The country's education levels are among Europe's top 5 percent.

The *World Bank's Doing Business Report 2008 (Sept. 2007)* placed Bulgaria as one of the top ten reformers worldwide on reforms aimed at easing payment of taxes, enforcing contracts and dealing with licences. Social sector reforms emphasise the development of human capital to complement investments in physical capital. Bulgaria's better performance is due to improvements with regard to access to credits, protection of investors, hiring work forces and international trade.

Foreign businesses are welcome in Bulgaria. The Constitution accords foreign persons all rights under its provisions except where it is envisaged otherwise in the legislation. Under the Constitution, the investments and economic activity of Bulgarian and foreign citizens are protected by law. The Act on Encouragement of Investment enshrines the principle of equal treatment of local and foreign investors. Bulgaria has concluded 60 international agreements on the mutual protection and encouragement of foreign investments. The country is also party to 61 bilateral agreements on avoiding double taxation.

Investments Promotion Act (IPA)

The main legal provisions establishing the legal framework of government investment incentives are contained in IPA. The act defines the types of investments supported by the state, the applicable thresholds for the amount of the investments to qualify for support, the types of incentives and so on. IPA creates an Investment Agency entrusted with important functions concerning relations with investors such as providing information, investment marketing and individual administrative servicing.

By virtue of the applicability of EU law since 2007 and a general provision contained in IPA the incentives envisaged by the act must be implemented in compliance with the EU and national state aid rules.

Investments which are eligible for support under IPA are initial investments in material and immaterial assets and related new employment linked, as laid down in Commission Regulation (EC) No. 1628/2006. The investments must fulfil certain conditions so that state aids rules are observed, such as:

- they must be related to setting-up a new establishment, extending an existing establishment, diversifying the output of an establishment into new additional products or fundamentally changing the overall production process of an existing establishment;
- they must refer to the following economic activities:
 - in the industrial sector: processing industry or producing electricity from renewable energy sources;
 - in the services sector: high technological activities in computer technologies, research and development, and education and human health care;

Certain sectors are explicitly excluded from the scope of the encouragement measures. Those sectors are: fisheries and aquaculture, shipbuilding, coal, steel, synthetic fibres and activities linked to the primary production of agricultural products listed in Annex I to the EC Treaty;

- At least 80 percent of the future aggregate income must be made up of the economic activities listed above;
- At least 40 percent per cent of the eligible costs of the investment must be financed by the investor's own or borrowed resources free of any element of public support;
- The investment must be maintained for at least five years in the relevant region from the date the investment is implemented;
- The new jobs must be created and maintained for at least three years in the relevant region.

Investments are promoted under IPA if their size is above a certain threshold, and are divided into two classes depending on their amount. The general threshold amounts are as follows:

Class A: **BGN 70 million** (approximately €35 million);

Class B: **BGN 40 million** (approximately €20 million).

Lower thresholds are set for investments in municipalities with a higher rate of unemployment or investments in high technology activities.

Possible forms of support under IPA include:

- shorter time-limits for providing administrative services: Class A and B;
- providing individual administrative services concerning implementation of an investment project: Class A;
- acquiring ownership or limited property rights over state and municipal property without tenders: Class A and B;
- financial support for constructing physical infrastructure elements needed to implement one or more investment projects: Class A or two or more certified investment projects situated in an industrial zone;
- Financial support for training aimed at obtaining a professional qualification by persons aged up to 29 who have occupied the new jobs linked to the investments: Class A and B.

The Rules on Implementing IPA contain detailed conditions and procedures under which investors may benefit from government incentives.

Tax measures

A number of incentives are also established in tax legislation. Some of the most important are:

- Art.177 of the Corporate Income Taxation Act (CITA) contains a general tax relief in favour of taxable persons who hire certain categories of unemployed persons for a period of no less than 12 months. The relief takes the form of a reduction of the taxable base with the amounts of remuneration and compulsory social security and health insurance contributions of the relevant employees paid by the employer for the first 12 months of recruitment;
- Chapter 22, Section 4 of CITA introduces a 100 percent corporate tax rebate to taxable persons on profit resulting from manufacturing activities operated entirely within the boundaries of municipalities with a high unemployment rate. The rebate is dependent on investing the tax saved in material and immaterial assets. The incentive is also subject to state aid rules and may be used in two ways: either in compliance with the regime for minimum aid or in compliance with the regime for regional investment aid.
- Chapter 22, Section 5 of CITA establishes a scheme for employment aid granted on the basis and in accordance with the conditions laid down in Commission Regulation 2204/2002. The incentive is granted for job creation in municipalities with a high rate of unemployment through a reduction of the taxable base in the year of recruitment of new workers with the amount of the compulsory social security contributions of the relevant employees paid by the employer.

Other incentives

In addition to the possibilities listed above support is provided by the Bulgarian authorities under the Employment Promotion Act to employers which hire young unemployed persons or workers in disadvantaged positions, who ensure maintenance and improvement of professional qualifications. Financial incentives are also available through specific instruments such as the National Innovations Fund administered by the executive agency for promoting SMEs.

I. 4

EU membership

Bulgaria has been a full member of the European Union since 1 January, 2007 and for almost two years has enjoyed the business and trade benefits of being part of a large European market

governed by the fundamental principles of free movement of goods, services, capital and persons.

The new EU context for Bulgaria has also brought many positive effects and benefits to foreign investors. The borderless importing and exporting of goods within the European market, no matter where the goods were manufactured, serves as one of the main benefits. Individuals and companies resident or registered permanently outside Bulgaria may even provide certain services without the need to establish any corporate presence in the country on the basis of the free provision of services guaranteed by EU law.

Due to the transposition of major directives issued by the EU into national legislation, a substantial part of the administrative procedures regarding establishing a business and the residence of entrepreneurs, directors, executives or employees, has been significantly speeded up and simplified.

Business opportunities and prospects for existing and future investments have also been improved by the fact that Bulgarian legislation has already adopted a substantial majority of the principles and requirements contained in EU law. In particular, commonly applicable principles of commercial law concerning economic and consumer protection, mergers and acquisitions, intellectual property, energy, tax, communications and so on, have already been incorporated into Bulgarian law. Consequently, EU membership has further contributed, in combination with political, economic and social stability and a motivated and cost-effective workforce, to the improved position and reputation of Bulgaria.

II.

LEGAL SYSTEM

The private civil and commercial law of Bulgaria is based upon continental, civil law principles. The roots of the legal system go back to French civil law which served as the basis for Bulgarian legislation created at the end of the 19th century following the restoration of the Bulgarian state in 1878. The principles of French law have been adopted directly from the Code civil or indirectly through the Italian civil code. The dualistic approach separating civil from commercial law was also accepted at the time.

Compared to common law, of which a substantial binding part is created by judicial decisions, the source of continental law mainly takes the form of written and binding acts, orders, bills and directives to be adopted and issued by legislative bodies, namely parliament, government and municipalities. Judicial rulings serve mainly as a subsidiary and supportive source for the purpose of interpreting the written codified laws.

Since Bulgaria became a full member of the EU on 1 January, 2007, EU regulations have been directly applicable in the country. The transposition of fundamental EU principles and directives into Bulgarian law has been more or less successfully completed.

III. OUTLINE OF SELECTED INVESTMENT RELATED LAWS

III. 1 How to establish a new business in Bulgaria

Foreign persons can do business in Bulgaria through different business organisations, either commercial companies or other business forms.

There are five types of commercial companies in Bulgaria under which foreigners may organise their activity:

- Unlimited Partnership
- Limited Partnership
- Partnership Limited by Shares
- Limited Liability Company
- Joint-Stock Company

There is no limit on the amount of foreign participation in Bulgarian companies. Irrespective of the foreign nationality of its founders, every company incorporated in Bulgaria is considered a Bulgarian entity.

There are also other forms under which foreign persons can organise their business activity in Bulgaria.

- Branch
- Representative Office
- Cooperative
- Sole trader (individual)

III. 1.1. Unlimited partnership

An unlimited partnership is an entity incorporated by two or more partners who are jointly and fully liable for the entity's debts. There is no capital requirement.

The Articles of Association of an unlimited partnership must be notarised. The entity must be registered in the Commercial Register.

III. 1.2. Limited partnership

Limited partnerships include two or more unlimited liability and limited liability partners. The unlimited liability partners are fully liable for the company's debts with their whole property. The limited liability partners are liable for the entity's debts to the amount of their contribution to the partnership.

The Articles of Association of a limited partnership must be notarised. The entity must be registered in the Commercial Register.

III. 1.3. Partnership limited by shares

A partnership limited by shares is formed by at least three limited liability partners whose liability is limited to the amount of their contributions to the company's capital and by unlimited liability partners.

The Articles of Association is prepared by the unlimited liability partners who also summon the incorporation meeting and have the right to choose the limited liability shareholders. The company must be registered in the Commercial Register.

III. 1.4.

Limited Liability Company

A limited liability company (“LLC”) may be incorporated by one or more Bulgarian or foreign nationals or legal entities.

Foundation document

The foundation document is the Constituent Act when the LLC is incorporated by one person and the Articles of Association when the LLC is incorporated by more persons. The foundation document is signed by the incorporators. Notarisation of the Articles of Association is required only when an in-kind contribution of immovable assets is made (real estate).

Minimum registered capital

The minimum required capital for registering an LLC is BGN 5,000 (approximately €2,560). Before a company is registered at least 70 percent of the whole capital must be paid up (that is, BGN 3,500). The outstanding amount must be paid up within a term specified in the company’s Articles of Association but this term cannot exceed two years after the company is incorporated.

Minimum contribution of one shareholder

Before the company is registered each shareholder must pay for at least 1/3 of their shares but not less than BGN 10.

Form of contribution to the registered capital

Monetary and non-monetary (in-kind) contributions are allowed, for example, movable and immovable assets, intangible assets, existing and documented receivables. An in-kind contribution of future labour or services is not allowed. The in-kind contribution is evaluated by three certified experts specified by the official at the Commercial Register at the Registry Agency. The Articles of Association must contain the contributor’s name, the cash evaluation of the contribution and the basis of the contributor’s rights.

Form of shares

A company’s capital is divided into shares (interests) which are subscribed by the company’s shareholders. Each share in the capital cannot be less than BGN 10. The sum of all shares must equal the amount of the company’s capital and each share must be divisible by ten. Partners’ shares may differ in value. Several shareholders may jointly own one share.

Shares in an LLC cannot be traded on the Stock Exchange.

Shareholders

Shareholders can be either individuals or legal entities. Shareholders are not prohibited from participating in more than one company.

Number of shareholders

There is no limitation on the number of shareholders participating in an LLC. An LLC's capital can be held by one shareholder as a Sole Owner Limited Liability Company, or by more shareholders.

Liability of shareholders

The shareholders are liable for a company's debts up to the amount of the contribution they have made to its capital. The company is liable for its obligations with its assets.

Company bodies

The bodies of an LLC are the General Meeting of Shareholders and the Manager or Managers. If the number of employees exceeds 50, they are represented at the General meeting with an advisory vote.

In the case of a Sole Owner LLC the Sole Owner has the powers of the General Meeting and is entitled to represent and manage the company personally, but may also appoint a Manager or Managers.

The Articles of Association of the company may require the appointment of a Controller who monitors the observance of the company's Articles of Association, the keeping of company property and reports findings to the General Meeting.

Personal liability of a manager

A manager is liable to a company for all damage caused to it.

Without the company's consent the Manager is not allowed to:

1. Execute commercial transactions on their own or a third persons' behalf;
2. Participate in unlimited and limited partnerships and in limited liability companies;
3. Occupy a position in the management bodies of other companies.

These limitations apply only if the activity executed is similar to the LLC's activity. The manager must compensate the LLC for damage caused in case of breach of these limitations.

III. 1.5.

Joint-stock company

A Joint-Stock Company ("JSC") can be incorporated by one (Sole Owner JSC) or more Bulgarian or foreign nationals or legal entities.

Foundation document

If a JSC is incorporated by more than one person, the foundation document is the Statute adopted at an incorporation meeting. If the JSC is incorporated by one person, then the Statute is approved by means of an Incorporation Act. No notarisation of the Statute is required.

Minimum registered capital

The minimum required capital is BGN 50,000 (approximately €25,600) divided into shares, each with a minimum nominal value of BGN 1. All the capital must be subscribed and at least 25 percent of it must be paid up before the JSC is registered in the Commercial Register. The remaining part of the capital must be paid up within the terms specified by the Statute, which must not exceed two years from the company's registration.

A higher statutory minimum registered capital is required for banks, investment companies, insurance and health insurance companies.

Minimum contribution of one shareholder

The minimum contribution of a shareholder is subject to the minimum nominal value of BGN 1 per share. When one share belongs to more shareholders, the rights under the share can be exercised only by all shareholders or by an agent appointed by them.

Contributions to the registered capital

Shareholders in a JSC can make either monetary or in-kind contributions. The same rules apply as for in-kind contributions to limited liability companies.

Form of shares

- Materialised shares – paper shares
- Dematerialised book-entry shares – shareholders are registered in the register kept by the Bulgarian Central Depository.

Types of shares

- Registered shares – the name of the shareholder is indicated on the share certificate and is entered into the company's Book of Shareholders. The transfer of these shares binds the company if registered in the Book of Shareholders.
- Bearer shares – anonymous possession. Title over the shares is evidenced by the physical possession of the share certificate.
- Ordinary shares – granting holders the right to vote at the General Meeting, and a right to dividends and liquidation quota.
- Privileged shares – grant the holder other rights such as additional voting rights, a guaranteed or additional dividend or liquidation quota, or special managerial rights such as a veto.

Shares granting equal rights form a separate class of shares.

Shareholders

One or more Bulgarian or foreign nationals or legal entities can subscribe shares in a JSC.

Number of shareholders

There is no limitation.

Liability of shareholders

A company is wholly liable for any breach of its obligations with all its assets. Shareholders are liable for a company's debts to the amount of their participation in the capital.

Company bodies

General meeting – obligatory. Once the number of employees exceeds 50, they are represented at the General Meeting with an advisory vote.

One-tier system of management

Board of Directors – obligatory – minimum three, maximum nine members.

Executive director – voluntary - the members of the Board of Directors can authorise one of its members to represent the company. Otherwise the members of the Board of Directors represent the company jointly.

Two-tier system of management

Management Board – obligatory - minimum three and maximum nine members.

Supervisory Board - obligatory – minimum three and maximum seven members. No direct management powers; represents the company only in relations with the Management Board.

Executive director – voluntary - members of the Management Board with the approval of the Supervisory Board can authorise one of its members to represent the company. Otherwise they represent the company jointly.

Bulgarian or foreign nationals or legal entities can be members of the boards in a JSC with both types of management system.

Personal liability of a member of the Board of Directors

The members of the boards in a JSC provide a guarantee for their management in an amount determined by the General Meeting which must not be less than three gross monthly salaries.

The members of the boards are jointly liable for damage caused to the company.

Public joint-stock companies

Only a JSC can be a Public Company. Public Companies are registered as such with the Financial Supervision Commission. Those companies are subject to special restrictions and reporting requirements. Special rules apply to summoning General Meetings, the majority of decisions, and membership of company management bodies. The activity of such companies is regulated by the Public Offering of Securities Act (POSA).

Special investment purpose companies

Special Investment Purpose Companies are joint-stock companies established to invest funds acquired through issuing shares into real estate or receivables (“securitisation” of real estate or receivables). These companies are regulated by the Special Investment Purpose Companies Act (“SIPCA”).

III. 1.6. Associations of Commercial Companies

Consortium

A consortium is a contractual association of traders which execute commercial activity. A consortium can be organised either as a commercial company (limited liability company or a joint-stock company) or as a joint-venture under civil law.

Holding

A holding can be organised as a joint-stock company, partnership limited by shares or a limited liability company. This company has as a main subject of activity participation in any form in other companies or in their management.

At least 25 percent of its capital is invested directly in subsidiaries. Subsidiaries are companies in which the holding holds or controls directly or indirectly at least 25 percent of the shares or can influence directly or indirectly more than half of the members of the management board.

III. 1.7. Other business forms for doing business in Bulgaria

Branch

Foreign legal entities or unincorporated entities may register branches in Bulgaria if they are entitled to conduct business activities under their national laws. Branches are entered in the Commercial Register. Registered capital is not required to establish a branch.

Branches are not treated as separate legal entities. Nevertheless, they are obliged to keep commercial books and prepare separate financial statements. Commercial transactions between foreign entities through branches in Bulgaria are governed by the rules applicable to locals.

Representative Office

Foreign persons who have the right to execute commercial activity under the laws of their home country can open a Representative Office (“RO”) in Bulgaria after registering with the Bulgarian

Chamber of Commerce and Industry and subsequently with the BULSTAT register. ROs are treated as separate legal entities only for tax purposes and are not entitled to do business in Bulgaria.

ROs may engage in marketing, informational and promotional activities and can have employees and rent offices. Transactions concluded by foreign persons through ROs in Bulgaria are subject to the same rules as transactions between locals.

Cooperative

A cooperative is a voluntary association of at least seven individuals which executes commercial activity. The capital and the number of members may vary. A cooperative is a legal entity and is liable for its debts with its assets. It is managed by a general meeting of cooperators, a management board and a controlling board. The chairman of the cooperative represents it before third parties.

Seven cooperatives can form a Cooperative Union.

Sole Proprietor (Individual)

A sole proprietor may be any legally capable individual who has permanent residence in Bulgaria. A person may register only one trade name as a sole proprietor.

European forms of business associations

European forms of business associations are unions of legal entities, individuals or both, from different member states of the European Union. EU legislation regulates the following forms of business associations: (i) European company, established as European Joint-Stock Company; (ii) European Cooperative Society; (iii) European Economic Interest Grouping.

In Bulgaria these entities are mainly regulated by the Commercial Act, the Cooperatives Act and the Act on the Commercial Register, in conformity with EU legislation.

III. 1.8.

Commercial Register

From 1 January, 2008 all types of commercial companies, branches of foreign entities, sole proprietors and cooperatives are incorporated by way of registration in the commercial register administered by the Registry Agency functioning under the authority of the Ministry of Justice. Civil partnerships, foundations, NGOs, and so on are, however, excluded from this register. The new Commercial Register is available to the public, including via the Internet (www.brba.bg).

The Registry Agency also administers the reservation of company names and the publishing of documents such as annual financial statements, the Articles of Association and invitations to shareholders.

Each newly established entity begins its existence as of its registration in the commercial register and upon registration receives a unique unified identification number. This number serves to identify the legal entity throughout its entire existence and is used for tax, social security and statistical purposes. No other registration is required.

III. 2

How to acquire an existing business

There are no restrictions imposed by Bulgarian law on foreign entities or individuals when acquiring businesses in Bulgaria. Individuals and corporate entities have in this regard the same rights as Bulgarian nationals.

The acquisition of an existing business may occur in several ways. The most frequent is purchasing shares in an existing limited liability company or joint-stock company.

On the other hand, the business of an existing company might also be acquired by purchasing either all or selected assets.

III.2.1

Acquisition of shares

Foreign individuals and legal entities are in no way restricted by Bulgarian law from acquiring, holding or reselling shares in Bulgarian corporations. Depending on the type of company, limited liability or joint-stock, there are different ways to transfer shares.

Limited Liability Company

The transfer of shares (interests) in a limited liability company is made by means of a contract with notarised signatures of the parties. Sales, donations or exchange transactions are possible.

Parties under the contract can be Bulgarian or foreign individuals or legal entities.

The transaction between shareholders is effected by signing a contract before a Notary Public. If the shares are transferred to a third party however, then a special procedure is observed: accepting a new shareholder.

The change of share ownership is registered in the Commercial Register.

Joint-Stock Company

The transfer of shares in a JSC is made in different ways depending on the form and type of the shares to be transferred.

Title over bearer materialised shares is transferred with the physical handing over of the shares. The parties may also conclude an assignment contract.

The transfer of the title over registered shares is made by means of an endorsement. The transfer of those shares is registered in the Book of Shareholders to take effect for the company. Ownership and transfers of dematerialised book-entry shares is registered with the Bulgarian Central Depository.

III.2.2

Acquisition of assets

A business acquisition can also be accomplished by purchasing a whole business (or part of it). The procedure of purchasing a business or part of it means that instead of buying shares

The report and the transformation agreement or plan must be presented to the commercial register of the Registry Agency simultaneously by each company and at least 30 days before the date of the general meeting which will vote on the resolution on transformation.

The transformation agreement or plan, as reviewed and approved by the inspector, must be approved by the General Meeting of Shareholders and in limited liability companies by the General Meeting of Members of each of the companies involved in the transformation. The resolutions must be adopted by a qualified majority of three-quarters of the capital in the case of an OOD, or all voting shares in the capital of an AD.

The transformation enters into force from the date of registration in the commercial register at the Registry Agency.

The Commercial Act provides some simplified transformation procedures, provided that certain conditions are met.

III. 4 Real estate and construction

4.1. Acquisition of properties by foreign persons

In Bulgaria foreign individuals and legal entities can without limitation acquire any types of buildings (office buildings, retail buildings, residential buildings, factories, plants, shops, restaurants, apartments) or parts of them. Besides, foreigners and foreign legal entities can without limitation acquire limited property rights – the right-to-use, the right of construction, the right to extend a building, and so on.

However, they cannot acquire ownership of land, forests, lands from the forests fund and agricultural land. Even in cases of inheritance, foreigners are obliged to transfer their ownership within three years of inheriting.

Special rules are provided for citizens and entities of either EU member states or the European Economic Area (“EEA”). According to the Accession Act of Bulgaria to the EU, Bulgaria, at its discretion, can keep restrictions on acquisitions of land by citizens and entities from member states: (i) for five years starting from 1 January 2007, that is, to 2012, for the land provided for a second home, and (ii) for seven years starting from 1 January 2007, that is, to 2014, for agricultural land, forests and forest land.

On 20 March 2007 changes to the Bulgarian Ownership Act, Forestry Act, Protected Areas Act and Agricultural Land Ownership and Use Act were published in the State Gazette. The changes reflect the provisions of the Accession Act of Bulgaria to the EU into national legislation.

The restrictions on the acquisition of land by foreigners do not apply to Bulgarian legal entities involving foreign participation. Therefore, foreign legal entities and individuals can effectively acquire ownership rights over land through the acquisition of shares or an interest in existing Bulgarian companies, or through establishing such companies under Bulgarian law. There is no limit on the amount of foreign participation in a company.

The acquisition of property in Bulgaria might be effected through the acquisition of the full ownership rights to the real estate, by signing a sale and purchase agreement (Notary Deed). The agreement must be signed before a Notary Public and entered into the Land Register.

In accordance with the particular investment purpose, some investors prefer not to acquire the full ownership of real estate but only the right of construction. In this case the investor can construct a building on the estate, after which they would automatically become the owner of the building, without becoming owner of the land underneath. In this case the owner of the plot must ensure free and unimpeded access to the building for the owner. These agreements are also entered into the Land Register.

Purchase of real estate

The procedure for purchasing real estate normally starts by signing a preliminary agreement. The preliminary agreement does not transfer the ownership of the estate. By signing it the parties agree on all the essential elements of the final agreement. This is not a compulsory stage of the purchase procedure but it is practiced in most cases so that the parties are prepared for signing the final agreement.

However, if signed the preliminary agreement becomes a very important part of the relations between the parties because if any of them refuses to sign the final agreement without having any lawful grounds to do so, the other party might request the court announce the preliminary agreement as a final one and thus the transfer of the ownership is made under the terms and conditions, specified in the preliminary agreement.

At the signing of the preliminary agreement the buyer normally pays the seller a deposit as a part of the sale price, which is usually 10 percent, thus guaranteeing that the seller will not sell the estate to any other buyer within the term specified in the agreement.

The final sale and purchase agreement (the Notary Deed) is made before a Notary Public. The Notary Public is independent and when executing their functions is obliged to observe the rights and interests of both parties. All original ownership documents must be presented by the parties.

On the same day on which the transaction was effected, the Notary Public is obliged to present the Notary Deed for registration in the Land Register. The registrar enters the Notary Deed into the register of real estate in the Land Register for the location of the estate, which is the final step in acquiring the estate. In case of an ownership dispute, Bulgarian law recognises as the owner of the estate the person, whose notary deed on acquiring the estate was entered earlier into the register.

Additional registrations after the purchase

Having acquired ownership of the property, the buyer is obliged to declare the acquisition of the real estate before the local office of the National Revenue Agency at its location within two months of the estate being purchased.

Foreign natural persons and legal entities who have acquired real estate in the country and who are not registered in the BULSTAT Register on any other grounds are obliged to register in that register for statistical purposes. The application for the registration must be submitted within seven days of acquiring the real estate.

Taxes and fees upon the transfer of real estate

When acquiring real estate in Bulgaria certain taxes and fees, which are determined as a percentage of the amount of the transaction, must be paid. As a basis the higher amount between the sale price and the official evaluation of the estate, as prepared by the tax administration in Bulgaria, is used. Usually, evaluations which are made by the tax administration are considerably lower than the sale price.

The taxes and fees on acquiring real estate are as follows:

Local tax - specified by the Municipal Council of the respective municipality, where the real estate is located and may vary between 2 percent and 4 percent over the higher of the purchase price agreed between the parties and the tax evaluation made by the tax office before the transaction. According to the law the transfer tax is paid by the buyer. The parties may agree that the tax is shared by the parties or paid by the seller.

Notary fees – the amount of the fees is determined in accordance with a tariff on the notary fees, but cannot exceed €1,500. The fee is deposited in the Notary Public's account upon the sale. The fee may be paid by the parties on an equal basis or paid by one of them.

Fee for registering the transaction in the Land Register – the amount of the fee is 0.1 percent of the higher amount between the official tax evaluation and the agreed sale price. It is deposited in the account of the Land Register at the location of the real estate, subject to sale. The fee may be paid by the parties on an equal basis or paid by one of them.

4.2. Lease of property

Bulgarian legislation provides the possibility for real estate to be occupied temporarily for use by signing a lease.

There is no minimum term specified for leases, however, there is a maximum term specified by the law of ten years. However, for companies this restriction was abolished in November 2007 meaning they can now sign leases for periods exceeding ten years.

Leases with a term of more than one year can be entered in the Land Register. The tenant should request the lease is registered, since in this way its rights are guaranteed if the estate is sold. In such cases, if the lease is registered in the Land Register, it remains valid for the whole period for which it is registered towards the new owner of the estate.

There is also no requirement for the form of signing a lease. However, if the lease is signed before a Notary Public, it remains valid towards the new owner of the property for one year after the property is transferred by the previous owner.

Types of Property

In terms of the possibilities for construction, properties can be generally classified as follows:

Lands restricted for construction. These are estates which are a part of the agricultural fund, the state forest fund and coastal areas outside residential areas. The possibilities for construction in these areas are very restricted.

Unregulated areas. These are agricultural lands and areas, which are situated in the unregulated residential areas. The construction conditions are also very restricted in those areas. Construction is allowed after passing a special procedure for changing the designation of the land.

Regulated areas. Those are the regulated land plots, which are situated in the construction borders of the residential areas and are included in the town planning schemes by virtue of valid construction and regulation plans. These areas and plots have a stable town planning status and good construction opportunities.

Project development

After acquiring real estate an owner can commence project development, since Bulgarian legislation recognises a land owner or holder of a construction right as an investor.

The main stages of the development process can be divided into:

- regulation and planning,
- environmental impact assessment,
- permitting the construction works, and
- execution the construction works and commencing use.

Regulation and planning

The regulation and planning stage comprises approval of a Detailed Development Plan (“DDP”) or amendment of an existing DDP, applicable when the provisions of the current DDP are not sufficient for the investor. The effective DDP is the first precondition for commencing construction works.

The DDP transforms the unregulated land plot into a regulated land plot through determining its borders and provides access to the land plot from a street. In relation to the future construction the DDP specifies the construction parameters such as type and height of the buildings, the maximum density and intensity allowed, and the minimum green area. Specific requirements to the DDP can be stipulated for leisure and possible land-slide areas, archaeological areas and other similar zones.

The DDP is approved by the municipal authorities, but for construction projects of regional or national significance the DDP is approved by the Regional Governor or by the Minister of Regional Development and Public Works.

Environmental impact assessments

Environmental impact assessments are required for real estate projects in two cases:

- for projects which are presumed to affect the environment, such as chemical factories, oil refineries and thermal power plants, and
- for projects affecting existing protected areas (reserves, national parks, and so on) or existing and potential protected zones (Natura 2000).

The criteria for including the separate land properties in the protected zones of Natura 2000 relate to the region's ecological characteristics and are based on scientific analyses, research and prognoses.

Though the protected zones in Bulgaria are still not fully approved, the legislation requires an assessment of projects affecting the potential protected zones to be completed. The announcement of other protected Natura 2000 zones is still in progress.

Permission for construction works

Construction works are permitted on the basis of an effective DDP.

Chronologically, the process starts with the investor's assignment of a project for execution of an investment design. After that, preliminary contracts between the investor and the utility companies should be concluded and an evaluation of the investment design should be obtained. In some cases coordination with special monitoring authorities, for example, the environmental inspectorate or fire-safety department, are required.

The investment design is subject to approval by the respective administrative bodies and it serves as a ground for the issuance of a construction permit.

A construction permit issued by the municipality's chief architect is announced to interested third parties, who are entitled to appeal against the construction permit before the local department of the National Construction Supervision Directorate ("NCSD"), where the construction project will be situated. The NCSD decision is subject to court appeal. After issuing the court resolution, the construction permit can be deemed valid and the investor can proceed with the preparatory stage of the construction process.

Executing construction works and entering into exploitation

The next development stage is the execution of the construction works. There is no mandatory term for their completion, it is a matter of agreement between the investor and the contractor.

During construction works, a number of standard-form acts and protocols must be compiled. The acts and protocols serve as evidence for the items that are recorded in them and concern the commencement, execution and completion of the construction works. The participants in the development process who sign these acts and protocols are jointly responsible for the authenticity of the facts written in them.

The completion of the construction works is certified by the execution of an Occupancy Order. With it, the participants certify that the works have been executed in compliance with the DDP,

the approved design, the legal requirements to the construction works and the terms of the construction contract.

Depending on the significance of the construction project, its complexity and the associated operational risks, it can be entered into exploitation through:

- a permit for exploitation, issued by the Head of the National Construction Supervision Directorate, if it is a significant construction project; or
- a certificate for exploitation, issued by the municipality's chief architect, if it is not a significant construction project.

A permit for exploitation is based on a complex procedure, which includes a protocol signed by a special committee and a report, issued by the construction supervisor. A certificate for exploitation is issued under a simplified procedure, which involves only a desktop review of the documents for the construction project.

Participants in the development process

During the different stages of the development process the investor enters into relations with other participants, namely: the designer, the contractor, the consultant, the structural engineer, the technical controller and the utility companies. The relations between the participants in the development process must be settled by written contracts.

III. 5 Protection of economic competition

Protection of competition in Bulgaria is regulated by national and EU competition law. National legislation includes the Competition Protection Act and some secondary acts covering issues such as the definition of the relevant market and sanctions policy. National rules have been influenced and inspired by EU competition law and the enforcement practice of the European Commission and EU courts.

The basic provisions governing this area at the level of the foundation treaties are Articles 81 and 82 of the Treaty Establishing the European Community. The most important legislative acts adopted at the institutional level are two regulations issued by the Council: Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the EC Treaty and Regulation EC 139/2003 on the control of concentrations between undertakings (the EC Merger Regulation).

Both national and European legislation aim to ensure a level playing field for businesses so that real competition on the merits takes place on the market which would serve the interests of consumers and contribute to an efficient allocation of resources. This goal is to be achieved through control of different conduct which could lead to prevention, restriction or distortion of competition: (a) prohibited agreements, including cartels, (b) abuse of an individual or a joint dominant position, (c) concentration of undertakings significantly impeding effective competition.

The application of national and EU competition law (as far as Bulgaria is concerned) is within the powers of the Commission on the Protection of Competition (www.cpc.bg). Apart from ruling on possible antitrust infringements and exercising merger control, the Commission on the

Protection of Competition is empowered to enforce the CPA provisions on unfair competition and to carry out competition advocacy including protecting the market from public restrictions of competition (such as legislative and individual administrative acts). Chapter 7, Unfair Competition, contains specific national rules prohibiting behaviour in the course of exercising economic activity which contradicts good faith commercial practice and thus is capable of adversely affecting competitors' interests. Forms of unfair competition include infringements such as imitation, harming the good reputation of competitors and unfairly attracting clients.

Concentration of undertakings (mergers, acquisitions, takeovers)

Under art.21 and 22 of CPA (corresponding to art.3 of Council Regulation 139/2003), a concentration of economic activity is considered to occur:

- in the event of a merger or joining of two or more independent enterprises;
- where one or several persons who already exercise control over an enterprise acquire, by any means, direct or indirect control over other enterprises or parts of them;
- in the event of establishing a joint venture which continuously carries out all functions of an economically independent subject.

Restructuring within economic groups with no change in control is not deemed a concentration under competition law.

Operations constituting a concentration of economic activity can be realised as asset transactions directly in Bulgaria or as transfers of shares in companies active in Bulgaria which might be completely effectuated outside Bulgaria but still have an impact on the Bulgarian market. These transactions may end up in a concentration of business undertakings with a substantial impact on economic competition in Bulgaria.

The execution of these transactions is, under certain conditions, subject to the notification or approval of either the European Commission or the Commission on the Protection of Competition. The European Commission is competent to hear cases if the concentration has a Community dimension. The respective criteria and thresholds for distinguishing whether a specific transaction is subject to notification to the European Commission are contained in Council Regulation 139/2003. Community jurisdiction may also be established if the transaction has no Community dimension, under art. 4 paragraph 5 (where it affects at least three national markets) or art. 22 (where there is a request to the European Commission from the national authority and the transaction affects trade between Member States and threatens to significantly affect competition within Bulgaria) of Council Regulation 139/2003.

A concentration is reviewed by the Bulgarian national competition authority when the transaction at stake has no Community dimension and the relevant national threshold is exceeded. The Commission on protection of competition may also be competent, according to Council Regulation 139/2003, in cases where the concentration is subject to notification to the European Commission but it may significantly affect competition in a market within Bulgaria which has all the characteristics of a distinct market.

According to the CPA the requirement for a notification of a concentration to the Commission on the Protection of Competition is triggered when the total turnover for the preceding year of the undertakings concerned on the territory of the country exceeds BGN 15 million. The turnover taken into consideration is expressed in net terms (without turnover related taxes)

and generally includes the turnover of all companies belonging to the economic groups of the undertakings concerned.

The notification requirement under CPA must be fulfilled before the effective implementation of the transaction. Until a decision has been reached, no further factual or legal actions in relation to the concentration at issue are allowed. Within one month of the submission of the notification the Commission on the Protection of Competition should carry out an assessment and issue a decision. A concentration is cleared where it would not result in creating or strengthening a dominant position which would impede the effective competition on the relevant market. A decision authorising a concentration may include additional binding conditions aimed at protecting competition on the market. The Commission on the Protection of Competition may also issue a decision for additional investigation in cases of serious doubts that the concentration would result in creating or strengthening a dominant position which would impede effective competition. The additional investigation must be accomplished by a decision within three months.

III. 6

Public procurement and tenders

Public procurement

Following the last major amendments in 2006 Bulgarian legislation on public procurement essentially implements and adopts the key principles and requirements of both Directive No. 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ("general directive") and Directive No. 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors ("sectoral directive").

The Bulgarian Public Procurement Act (PPA) enshrines the basic principles to be observed within public procurement procedures: publicity and transparency, fair competition, equality and non-discrimination. The act defines: (a) the range of authorities and persons subject to the obligation to announce and award contracts under the public procurement rules; (b) the types of contracts covered and the relevant thresholds which bring them within the scope of the act; (c) the procedures to be followed for awarding public contracts; and d) supervision and legal review of the awarding procedures.

According to the PPA contracting authorities include state bodies, regional and local authorities, public organisations (persons created to serve public interests and controlled by other contracting authorities or financed primarily through public funds) and groupings of such subjects. Contracting entities include:

- public undertakings involved in certain economic sectors defined by the PPA;
- other persons involved in certain economic sectors defined by the PPA enjoying special or exclusive rights.

The economic sectors covered by the PPA are those identified in Directive No. 2004/17/EC (water, energy, transport and postal services) and:

- exploration and extraction of oil, natural gas, coal and other solid fuels;
- operation of airports, ports or other terminal bases used for transportation by air, sea or internal water ways.

A public contract under the PPA is a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities or entities

and having as its object the execution of works, the supply of products or the provision of services following an award procedure. However not all public works, supply or services contracts are subject to the award procedures arranged by the PPA. Some are explicitly excluded and others are covered only when exceeding the relevant thresholds laid down in the act. The thresholds differ depending on the type of public contract and are lower than those envisaged in the EU Directives. Public contracts not reaching the applicable threshold under the PPA are awarded in accordance with simplified procedures regulated by the Ordinance for awarding small public contracts.

The PPA provides the following award procedures:

- open procedure - any potential supplier may submit a tender;
- restricted procedure - any potential supplier may request to participate but only those selected by the contracting authority or entity may submit a tender;
- competitive dialogue - any potential supplier may request to participate but following a selection phase the contracting authority or entity chooses the operators to open up dialogue with for the purpose of identifying one or more adequate solutions capable of meeting their needs; the candidates with adequate solutions will then be invited to submit their tenders;
- a negotiated procedure (with or without a publication notice) - the conditions of the contract are negotiated between the contracting authority or entity and suppliers chosen by it.

Contracting authorities and entities are also given the possibility to apply framework agreements, dynamic purchasing systems and electronic auctions.

The principle established by the PPA is that contracting authorities or entities follow the open or restricted procedure in all cases where there are no grounds to follow competitive dialogue or negotiated procedures. The latter can be applied under strict conditions defined in the act.

Under the PPA, the criteria used to assess the tenders submitted and to award the contract are lowest price or economically most advantageous tender. The latter is the only criterion applicable to competitive dialogue. If the contracting authority or entity decides to award a public contract on the basis of the most economically advantageous tender, it is obliged to set precisely the relevant indicators, their relative value or weight and the methods for assessing the tenders in detail. This information is in any case part of the tender documents.

Concessions

Concessions are subject to a separate law in Bulgaria (Concessions Act) which regulates the conditions and procedures for granting concessions, concluding, amending and terminating concession contracts.

A concession is defined as the right of the concessionaire to exploit a facility or a service of public interest in return for the obligation to build or manage or maintain the concession object. A concession relationship may involve the concession grantor granting compensation or an obligation for a concession payment by the concessionaire. In both cases the possibility must be laid down in the decision opening the award procedure. Thus, the Concessions Act serves as a legislative basis for public-private partnerships.

The Concessions Act covers not only works concessions but also services and extraction concessions. Extraction concessions concerning underground resources are subject to a special law.

The objects of concession contracts can be exclusive state properties, public state or municipal properties, private state or municipal properties as well as properties of public organisations.

Concession procedures are open to any Bulgarian or foreign individual or legal entity subject to some general limitations laid down in the Concessions Act.

The steps in awarding a concession include:

- preparatory actions - this stage involves carrying out economic, legal, technical and environmental analyses justifying the concession; following amendments to the Concessions Act effective from August 2008 the initiative may come from either the relevant public body or an interested person;
- award procedure - following the latest amendments concessions are awarded solely on the basis of an open procedure;
- concluding a concession contract - the concession contract is a long-term agreement which may be concluded for up to 35 years. The initial duration may be extended within the 35 years. Under certain legislative conditions concession contracts may be amended through written annexes between the parties.

The amendments from the summer of 2008 also introduced the possibility to award the concession to a newly established company (special purpose vehicle) incorporated between a public body or public company and the candidate with the winning tender. This condition must be announced in the decision opening the award procedure which should also contain the rules concerning the participation and the relations in the newly established company.

Both under the Concessions Act and the PPA, the institution in charge of reviewing the legality of award procedures is the Commission on the Protection of Competition. Any interested person may file a complaint with the Commission against any decision, action or lack of action of a contracting authority, entity or concession grantor within ten days. The complaint produces no suspension effects by law. However, suspension can be allowed by the Commission on the Protection of Competition upon a request for an interim measure submitted by the complainant.

III. 7

Insolvency

Bulgarian insolvency legislation contains general and special rules. The general provisions are laid down in the Commercial Act (CA). Special provisions apply with regard to banks, insurance and social insurance companies.

Insolvency proceedings ensure collective execution which must take into consideration the interests of the creditors, the debtor and their employees. The CA provides two different grounds for opening insolvency proceedings. One of them is “insolvency,” understood as the inability of a merchant (a sole trader or a company) to fulfil a pecuniary obligation deriving from a commercial transaction or a public obligation related to their commercial activity or a private state claim. The other legal basis for initiating insolvency proceedings against capital companies is “excessive indebtedness,” which refers to the situation where a company’s property is not sufficient to cover its pecuniary liabilities.

Insolvency proceedings are instituted upon a request to the court by a creditor, by the debtor itself, or by the agency on state claims (where public liabilities are concerned). In fact, the

debtor (its representatives by law) is obliged under the act to file a request with the court within 30 days of becoming insolvent or excessively indebted. Failure to comply with this obligation results in liability for damage caused to creditors.

The decision by which the insolvency court opens proceedings declares insolvency or excessive indebtedness and the date it occurred, designates an acting liquidator (insolvency trustee), allows security measures and determines the date of the first creditors' meeting to be held not later than a month after the date of the decision. The opening decision has a number of important effects: the debtor's activity is subsequently exercised under the supervision of a liquidator. Subject to some exceptions all court, arbitration and individual execution proceedings against the debtor are suspended (and terminated at a later stage provided that the takings concerned are accepted for execution within the framework of the insolvency proceedings), and no security measures may be imposed under the general rules.

During this phase of the proceedings the permanent liquidator (chosen by the creditors' meeting and approved by the court) is supposed to prepare an inventory of the debtor's property and to undertake all necessary actions, including judicial claims, to collect the debtor's takings and to consolidate their property.

Generally, creditors may make claims within one month of the registration of the opening decision in the commercial register and the rights accepted by the liquidator being entered on a list presented to the court. Some categories of rights, such as employment or public takings, are included on the liquidator's list automatically. The court rules on the list of creditors' rights taking into consideration the objections filed against the list by the interested persons.

The announcement in the commercial register of the court order approving the list with accepted claims opens the possibility for a proposal of a recovery plan within a one month period. A recovery plan aims to find an acceptable solution to creditors while the debtor is allowed to continue their activity. The CA gives the right to propose a recovery plan to the debtor, the liquidator, and creditors to more than a third of the secured and non-secured takings, shareholders holding more than a third of the company's capital, a partner with unlimited liability or more than 20 percent of the debtor's employees. The recovery plan may contain deferral of liabilities, total or partial remittance, structural measures and sale of the undertaking or part of it. Following the approval by the creditors the plan must be approved by a court decision which may also appoint a supervisory body to monitor compliance with the plan. A similar but alternative solution which is available throughout insolvency proceedings is the conclusion of an out-of-court agreement between the debtor and its creditors. Both the adoption of the decision approving the recovery plan or the conclusion of an out-of-court agreement results in a termination of the insolvency proceedings which may however be reopened in a case of non-compliance with the plan or agreement.

If no recovery plan has been approved or out-of-court agreement concluded or the insolvency proceedings have been reopened due to non-compliance with the plan or agreement, the court declares the debtor insolvent and orders the termination of its activity. During this second phase of the procedure the selling of a debtor's assets and the distribution of the sold property takes place.

Insolvency proceedings are terminated by a court decision when all the liabilities have been repaid or the debtor's assets have been depleted. In the latter case, the court orders the deletion of the merchant.

Bulgaria has ratified a number of international treaties on intellectual property including the Berne Convention for the Protection of Literary and Artistic Works, the Paris Convention for the Protection of Industrial Property, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP's Agreement), the Patent Cooperation Treaty, European Patent Convention, and the Madrid Agreement Concerning the International Registration of Marks.

National legislation includes a number of acts such as the Copyright and Associated Rights Act, the Patents and Registration of Utility Models Act, the Marks and Geographical Indications Act, the Industrial Design Act, the Topography of Integrated Circuits Act, the Protection of New Plant Varieties and Animal Breeds Act and some secondary legislation arranging the form, filing, expertise for applications, rules on secret patents and industrial property representatives, and so on.

Patents

Patents certify exclusive rights over inventions of all technical areas which are new, involve an inventive step and are capable of industrial application. Protection of an invention in the country requires the issuance of a patent by the Patent Office of the Republic of Bulgaria (<http://www.bpo.bg>). A patent is valid for 20 years from the filing date of the application. To maintain the validity of the patent fees should be paid on an annual basis.

Protection in Bulgaria may also be ensured by a European Patent issued by the European Patent Office in conformity with the European Patent Convention. The application can be filed directly with the European Patent Office or with the national Patent Office.

Another possibility to protect an invention on the territory of the country is to follow the procedure envisaged by the Patent Cooperation Treaty.

Marks

A mark is a sign capable of distinguishing the goods or services of a person from those of another which can be presented graphically. Those signs can be words, including names of persons, letters, numbers, drawings, figures, the shape of products or their packaging, combinations of colours, sounds or any combinations of them. The legislation recognises different types of marks: trademark, services mark, collective mark and certificate mark. The right over a mark is an exclusive right and it is acquired upon a registration with the Patent Office. The protection period is ten years from the date of filing the application and can be renewed for an indefinite number of ten-year periods.

Following the accession of Bulgaria to the EU, from 1 January, 2007 protection for the territory of the country may also be guaranteed through registering a Community trademark with the Office for Harmonisation in the Internal Market (OHIM) in accordance with the provisions of Council Regulation No 40/94. A Community trademark covers the territories of all Member States and it is issued on the basis of a single unified procedure. An application can be filed either with the national Patent Office or directly with OHIM.

Another option is an international registration of a mark by the International Bureau of the World Intellectual Property Organisation under the Madrid Agreement Concerning the International Registration of Marks and the Protocol Related to the Madrid Agreement.

Industrial designs

An industrial design is defined as the appearance of the whole or a part of a product resulting from the features of the form, the lines, the drawing, the ornaments, the colour combination or a combination of them. An industrial design is subject to protection if it is new and original. The exclusive right over an industrial design is acquired upon registration by the Patent Office. The period of protection is ten years from the date of filing the application and may be renewed for three consecutive periods of five years each.

Similarly to trademarks, EU law offers a possibility for a Community-wide protection of industrial designs on the basis of the provisions of Council Regulation No 6/2002.

International registration by the International Bureau of the World Intellectual Property Organisation under the Hague Agreement Concerning the International Deposit of Industrial Designs is also capable of ensuring protection on the territory of the country.

Copyright

Copyright in Bulgaria is protected by the Copyright and Neighbouring Rights Act. The Act protects any work of literature, art or science which is the outcome of the creative activity of the author and expressed in any objectively perceivable manner and form. Copyright subsists automatically in a work and no additional registration is needed. Generally copyright lasts for the whole life of the author and for a further 70 years after their death.

The act also provides for protection of the neighbouring rights of performers, producers of phonograms and audio visual works and broadcasting organisations. Those are protected for 50 years.

Rights of intellectual property created during employment

In general, copyright, the right to a patent or to an industrial design belong to the author or the inventor. There are, however, some special rules in cases of employment or mandate relationships. Copyright over computer programs and data bases created within the framework of an employment contract belongs to the employer unless stipulated otherwise in the contract. Similarly, the right to apply for a patent or to register an industrial design belongs to the employer or assignor unless stipulated otherwise in the contract while the author or inventor is entitled to remuneration.

Confidential information and trade secrets

Special rules for protecting production and trade secrets are contained in the Competition Protection Act. Production and trade secrets are defined as facts, information, decisions or data related to economic activity whose keeping secret is in the interest of the persons concerned who have taken the necessary measures to this end. Chapter 7 (Unfair Competition) of the Competition Protection Act prohibits knowing, using or publicly disseminating production

or trade secrets contrary to good faith commercial practice. Violation of this prohibition may result in administrative sanctions being imposed by the Commission on the Protection of Competition.

In addition, general rules on civil liability would apply in cases of encroachment on a businesses' confidential information or trade secrets resulting in damage to the persons concerned.

III. 9

Employment and labour law

Employment relations in Bulgaria are regulated by a number of national and international legal acts. Since 1920 Bulgaria has been a member of the International Labour Organisation, created in 1919 by the Paris Peace Conference ("ILO") and has ratified a number of its conventions, which have direct application in Bulgaria.

In addition, as a result of EU accession, Bulgaria started harmonising its legislation with European regulations. A number of changes have been implemented into the Bulgarian Labour Code (SG, issue 26/ 1986) ("LC"), which regulates all major aspects of employment relations.

The LC regulates the following major labour issues:

- concluding, amending and terminating employment contracts;
- working hours, absences and holidays;
- employment discipline;
- compensation and the contractual liabilities of the parties to an employment contract;
- special protection for some categories of employees, and so on.

Employment relations are also governed by Acts on Health and Safety at Work, Encouragement of Employment, Protection of Personal Data, and in a number of ordinances adopted on the basis of the LC and the above acts.

III. 9.1.

Beginning of employment

An employment relationship is established under Bulgarian law through an employment contract (mostly) or by special procedures of election and competitive examination, which are applied in a limited number of cases.

Under the Labour Code, an employment contract must be executed in writing, contain information about the parties, and the following basic information:

1. the place of work;
2. designation of the position and nature of the work;
3. the date of conclusion and the starting date of performance;
4. the duration;
5. the amount of basic and extended paid annual leave and additional paid annual leave;
6. an equal length of the period of notice to be observed by both parties upon termination;
7. the basic and supplementary labour remuneration of a permanent nature, and the frequency of their payment;
8. the duration of the working day or week.

Other terms which are not regulated by the mandatory provisions of the law may also be agreed by the employment contract.

An employer is obliged to declare to the National Revenue Agency (“NRA”) that an employment contract has been signed, within three days. The employee cannot start work before they receive a copy of the employment contract together with a copy of the notification to the NRA.

III. 9.2. Types of employment contracts

Bulgaria has the following two types of employment contract:

- employment contract signed for a definite period; and
- employment contract signed for an indefinite period.

The most common type of employment contract used in Bulgaria is that for an indefinite period. It guarantees a stable and a long-term employment relationship and protects the rights of the employees to a high extent. An employment contract concluded for an indefinite period cannot be transformed into a fixed-term contract without the prior written consent of the employee.

An employment contract for a definite period can be signed in limited cases as specified by the LC. If a contract is concluded for a definite period in breach of the relevant provisions of the LC, it is deemed to be a contract for an indefinite period.

A contract for a definite period cannot exceed three years, and automatically transforms into an employment contract for an indefinite period if after the expiry of the fixed term the employee continues to perform their duties for more than five days and the employer does not object in writing.

Bulgarian employment legislation allows employment contracts to be signed with a “probation period” clause. The probation period can be agreed either for the benefit of the employer so that they can assess whether the employee is capable of performing the work required or for the benefit of the employee to provide them with the opportunity to assess whether the work is suitable for them, or agreed for the benefit of both parties. The probation period cannot exceed six months.

The party for the benefit of which the probation period has been agreed has the right to terminate the employment contract within the probation period without prior notice. If not terminated during the probation period, the employment contract becomes a final contract and the general method for terminating employment contracts applies.

III. 9.2. Termination of employment

Termination of employment contracts is done in writing.

The termination procedures and grounds for termination of employment contracts are regulated in detail by the LC.

Employment contracts can be terminated either by the mutual consent of the parties or unilaterally by one party, with or without prior notice. Both the employer and the employee can

initiate the termination of an employment contract. However, the LC provides different procedures and possibilities for termination for the employer and the employee.

Within seven days of terminating an employment contract the employer is obliged to notify the National Revenue Agency.

In view of the harmonisation of Bulgarian legislation with EU law, the LC was amended to cover retention of an employment relationship if there is a change of employer

An employment relationship with a factory or office worker is not terminated in the event of a change of employer as a result of:

1. merger of enterprises by the formation of a new enterprise;
2. merger by the acquisition of one enterprise by another;
3. distribution of the operations of one enterprise among two or more enterprises;
4. passing of a self-contained part of one enterprise to another;
5. change of the legal form of a business organisation;
6. change of ownership or of a self-contained part;
7. cession or transfer of activity from one enterprise to another, including transfer of tangible assets.

The rights and obligations of the transferor-employer arising from employment relationships existing on the date of the change are transferred to the new transferee-employer.

The employment relationship with the employee may not be terminated if the employer changes as a result of renting, leasing or granting under concession the enterprise or part of it. In these cases the rights and obligations of the old employer arising from employment relationships existing on the date of the change are transferred to the new employer. Upon expiry of the contract for rental, lease or concession, the employment relationships with factory and office workers is not terminated but reverts to the old employer.

III. 9.3. Maximum working days, minimum wage and minimum holidays

The length of regular weekly hours may not exceed 40, comprising five working days of eight hours each. The law sets out mandatory limits for working hours within the working day and week, to protect the rights of employees and to prevent an employer from imposing extended working hours.

Overtime may be performed only exceptionally. The prescribed overtime may not exceed 150 hours per year. Overtime work is allowed only in the limited and exceptional cases specified in the LC.

Special regulations cover part-time work, shift work, including night shifts, and overtime. These provisions vary depending on the labour category of the employee and the associated working conditions.

From, 1 January, 2008 the minimum monthly salary set by the Bulgarian government is BGN 220 and the minimum hourly working salary is BGN 1.30.

Full-time employees are entitled to at least 20 days of annual paid holiday. Certain categories of employees, as determined by the Council of Ministers, are entitled to extended holidays or additional holidays.

Official holidays are listed in the Labour Code. The Council of Ministers can designate additional official holidays.

III. 9.4.

Healthy and safety at work

One of an employer's obligations is to provide healthy and safe conditions in the workplace. The law aims to secure greater protection of the employee's life, health and working capacity by holding the employer liable for the conditions under which the employee has to carry out their employment obligations.

The labour legislation imposes strict obligations on the employer in relation to the provision and maintenance of health and safety conditions at work.

Due performance of these obligations by employers is subject to inspection by the authorities, which are entitled to impose fines in the case of non-compliance with the rules and the standards for health and safety at work.

III. 9.5.

Foreign nationals working in Bulgaria

The Bulgarian Labour Code provides no special treatment for expatriate personnel. In most cases, foreign nationals seeking employment in Bulgaria must obtain work permits. Employment contracts executed by foreign nationals working in Bulgaria should contain provisions which regulate accommodation expenses, medical treatment, insurance, transportation costs to and from the country of permanent residence, and so on. For a discussion of work permits, please see Chapter III.11.

III. 10

Social and health insurance system

Social security

The Bulgarian social insurance model is based on three pillars:

- Compulsory social insurance (first pillar);
- Compulsory additional pension insurance (second pillar);
- Voluntary social insurance (third pillar).

The **first pillar** covers social protection against sickness, accidents at work, occupational diseases, maternity, unemployment, old age and death. Insured persons are generally divided into two categories:

- Workers and employees, civil servants, military and police officials, magistrates, and so on - these are insured for all insured contingencies;
- liberal professions, craftsmen, sole traders, shareholders, agricultural producers and other self-employed and persons working under civil contracts - these are compulsorily insured only against certain contingencies (sickness resulting in disability, old age and death). The Social Insurance Code (SIC) allows self-employed persons to insure themselves against all insured contingencies apart from accident at work, occupational diseases and unemployment.

The financial burden within the first pillar of the social security system is shared between the insurer (employer or assignor) and the insured person. Self-employed persons are insured on

their own account while civil servants, military and police officials, magistrates are insured on the state’s account. The distribution of the social security contributions between the insurer and the insured person is in accordance with the following time-table established in the SIC:

	Insurer	Insured person
2008	60%	40%
2009	55%	45%
2010 and subsequent	50%	50%

The total amount of insurance against an accident at work or occupational disease is on the insurer’s account.

The computation base for calculating the social security contributions due is in general equal to the gross amount of income (persons working under civil contracts are allowed to deduct a certain percentage of expenditure fixed in advance by law). The SIC however provides for the application of minimum and maximum amounts of the computation base or social insurance income. The maximum social insurance income is unified for all insured persons and is defined annually with the Social Insurance System Budget Act for the relevant year. The minimum social insurance income is also defined in the Social Insurance System Budget Act for the relevant year but is differentiated for workers and employees (differentiated further according to the economic activity and the profession), the self-employed and agricultural professions.

The **second pillar** of the system covers the compulsory additional pension insurance in universal and professional pension funds which are instituted and managed by social insurance companies which are subject to licensing and monitoring under the SIC. Persons who must be insured in a universal fund are those born after 31 December 1959 and who are subject to insurance under the first pillar. These persons are entitled to an additional life pension for age. Persons who must be insured in a professional fund are those who work in certain labour conditions irrespective of their age. These persons are entitled to a professional pension for early retirement.

Additional pension insurance is personal and each insured person has their own individual social insurance account.

The social security contributions for the universal funds are shared between the insurer and the insured person pursuant to the rules applicable for the first pillar. The social security contributions for professional funds are paid entirely on the account of the insurer.

The **third pillar** of the social insurance system covers voluntary additional pension insurance and voluntary additional insurance for unemployment and professional qualifications. The funds are also established and managed by social insurance companies which are subject to licensing and monitoring under the SIC.

Health Insurance

The Health Insurance Act (HIA) regulates both compulsory and voluntary health insurance in Bulgaria. Compulsory health insurance guarantees access by insured persons to medical services included in a basic package of health services as well as a choice of medical aid provider contracted by the National Health Insurance Fund. As with the first pillar of the social

insurance, the financial burden is shared between the insurer (employer or assignor) and the insured person. The distribution of health insurance contributions between the insurer and the insured person is in accordance with the same time-table as the one applicable to compulsory social security. Self-employed persons are insured on their own account while some categories of persons are insured on the state's account. Again, as a general rule the computation base for calculating the health insurance contributions is equal to the gross amount of income.

Voluntary health insurance is an activity exercised by health insurance companies which are subject to licensing and monitoring under the HIA. As a rule, voluntary health insurance ensures medical services on top of the basic package offered by the compulsory health insurance.

Social Security and Health Insurance (SSHI) upon EU Accession

Following the accession of Bulgaria to the EU, EU Regulations, being directly effective in all EU Member States, apply also to Bulgarian SSHI. Regulations 1408/71/EEC, 574/72/EEC and 859/2003/EC concern social security in the EU and apply to employed and self-employed persons and their families migrating within the EU. The respective national legislation of the particular Member States continues to be effective and the European rules mainly serve to determine the local SSHI jurisdiction applicable to the persons subject to the above Regulations.

The main principles of the Regulations are as follows:

- equality of treatment and prohibition of discrimination regardless of nationality (principle of equal rights and duties);
- application of the legislation of one Member State only;
- taking account of insurance periods acquired in other Member States;
- maintenance of acquired rights (export of benefits).

Under the rules stipulated in EU Regulations, the basic principles of determining the legislation applicable to employed persons are as follows:

- persons employed in one Member State are subject to the legislation of that state, even if they reside in another state or if the registered office or place of business of the undertaking or individual employing them is in another Member State;
- persons normally employed in two or more Member States are subject to the legislation of the state in which:
 - they reside, if they pursue their activity partly in that state or if they are attached to several undertakings or several employers who have their registered offices or places of business in different Member States;
 - the registered office or place of business of the entity employing them is situated, if they do not reside in any of the Member States where they pursue their activity.

Special rules apply to employees normally employed in a Member State and seconded by their employer to do work in another Member State. These employees continue to be subject to the legislation of the first state if all the below conditions are met:

- the reason for seconding the employee is to do work for the original employer and the integral relationship between this employer and employee is preserved,
- the anticipated duration of the secondment does not exceed 12 months;
- the employee is not seconded to replace another seconded employee.

The term of the secondment can be extended under the conditions stipulated by Regulation No. 1408/71/EEC.

III. 11

Immigration

1. Entry and stay of foreigners in Bulgaria

European citizens

Following Bulgaria's accession to the EU on 1 January, 2007, foreigners, that is, citizens of member states of the European Union, the European Economic Area and Switzerland ("European citizens") can enter Bulgaria freely with a passport or identity card. After entering the country these individuals are entitled to stay for three months without a residence permit. If they wish to reside for more than three months they are obliged to apply at the respective "Migration" Directorate at the Police National Office for the issuance of a residence permit for Bulgaria.

Residence permits can be long-term or permanent. A long-term residence permit entitles its holder to stay in the country for up to five years. A permanent residence permit entitles its holder to stay in the country indefinitely. Residence permits contain the full name of the person and the registration date.

The most common grounds for issuing a long-term residence permit are:

- The European citizen is employed or self-employed in Bulgaria;
- The European citizen has medical insurance and enough financial resources to cover the expenses for their residency and that of family members without having recourse to the Bulgarian social security system; and
- The European citizen has enrolled in a school, college or university in Bulgaria for study, including professional training, and has medical insurance and enough financial resources to cover their expenses.

Permanent residence permits are issued to European citizens who have resided continuously in Bulgaria for five years and who meet other special legal requirements.

Special rules are also provided for family members of EU, EEA and Swiss citizens.

Non-EU citizens

Visas

Foreigners who are not EU, EEA or Swiss citizens can enter Bulgaria with a visa unless there is a visa waiver agreement signed with their home country. Following Bulgaria's accession to the EU, EU law and visa agreements signed by the EU with third countries are also taken into consideration when considering the specific visa regime of foreigners entering the country.

Bulgarian legislation recognizes the main visa categories: a) airport transit visa b) transit pass visa; c) short-term stay visa and d) long-term stay visa.

The airport transit visa entitles its holder to pass through or stay in the international transit zone of an airport. The holder is prohibited from leaving the transit hall.

A transit pass visa is issued for travelling through Bulgaria to another country. A transit visa allows the foreigner one, two or, exceptionally, several transit passages of 36 hours each. The validity of this visa could be up to 12 months, though the total stay in Bulgaria of a transit visa holder cannot exceed 90 days every 6 months from the date of the first entry into the country.

A short-term stay visa allows a foreigner single or multiple entries into Bulgaria for up to 90 days within a period of six months. The multiple short-term visa can be valid for up to one year and in exceptional cases up to five years.

A long-term stay visa allows a foreigner to enter Bulgaria and subsequently apply for a long-term or permanent residence permit. The validity of the long-stay visa is six months and allows its holder to stay up to 180 days. For certain categories of foreigners, the validity of the long-stay visa is up to one year and allows the holder to stay up to 360 days (for example, foreigners conducting scientific research, foreigners on business trips on behalf of a foreign employer for performing specific tasks related to controlling and coordinating the implementation of a tourist services contract, and foreigners on business trips on behalf of a foreign employer for making investments in accordance with the Investment Promotion Act).

All visa applications should be made before the Bulgarian diplomatic missions and consular departments or by representations of another EU member state with which Bulgaria has signed an agreement for the issuance of visas, in the applicant's home country. In some exceptional cases foreigners are allowed to submit their visa applications in third countries, different from their home country.

Residence permits

Foreigners wanting to reside in the country for a longer period must obtain a residence permit issued by the "Migration" Directorate at the Police National Office. There are two types of residence permit: long-term - up to one year, and permanent - issued indefinitely.

Only holders of a long-term visa can apply for a residence permit in Bulgaria.

The most common grounds for issuing a long-term residence permit are for foreigners who:

- are members of the management or supervisory body of a Bulgarian company;
- are trade representatives of a representative office of a foreign company registered with the Bulgarian Chamber of Commerce and Industry;
- have been issued a work permit by the Bulgarian Employment Agency; or
- conduct business activities in Bulgaria, provided that they have employed at least ten Bulgarian nationals.

Bulgarian legislation provides specific grounds for foreigners obtaining a long-term residence permit who have been granted a long-term residence permit in an EU member state.

Once the foreigner has been granted a long-term residence permit, they may live, reside and travel in Bulgaria while the permit is valid. The foreigner may freely choose and change their place of residence, or leave the country and enter it again.

Foreigners who have a long-term residence permit have all the rights and obligations granted to or imposed on Bulgarian citizens, with the exception of those for which the law explicitly

requires Bulgarian citizenship. For example, they can be employed by Bulgarian employers, receive social security compensation, health care insurance, and so on. Long-term residency status for a foreign citizen is usually evidenced by the issuance of a Bulgarian ID card for the foreigner.

2. Work of foreigners in Bulgaria

European citizens

Following EU accession, EU, EEA and Swiss citizens can be employed, self-employed or sent to a business trip to Bulgaria without restrictions and without a work permit.

Local employers must, however, register foreigners at the National Revenue Agency within three days of them starting employment.

Non-EU citizens

Work permits required for foreigners should be requested by the local employer and are issued by the Employment Agency. A number of legal terms and conditions must be met for the permit to be issued. Work permits are issued for a maximum duration of one year.

If the terms and conditions for its issuance are still valid, the work permit may be renewed for an additional one-year term.

A mandatory prerequisite for initially obtaining a work permit is that the foreigner is granted a long-stay visa. Foreigners on short-stay visas may not seek employment or apply for work permits in Bulgaria.

Foreigners working in Bulgaria under contracts different from the employment contract do not need a work permit (for example, managers of companies or members of company boards). In addition, foreigners holding a permanent residence permit also do not need a work permit to work in Bulgaria.

A work permit is also not needed for some short-term assignments (for example, assignments not exceeding three months, or training).

III. 12 Taxes

III.12.1. General Features of Corporate Income Taxes

The taxation of corporate income and profits in Bulgaria is governed by the Corporate Income Tax Act (“CITA”). Following EU accession a new CITA was adopted to meet the necessity of harmonising Bulgarian tax law with the requirements of the European directives on direct taxation. Another reason for passing a new act in this field is to make the perception and application of corporate taxation easier for the taxable persons and for the revenue administration.

Corporate Income Tax Rates

From 1 January, 2008 a 10 percent flat rate applies to corporate income. Corporate entities, including subsidiaries of foreign companies incorporated under the Bulgarian Commercial Act are Bulgarian tax residents. Upon registration in Bulgaria, these legal entities are subject to tax on their worldwide income, regardless of whether or not it is remitted to Bulgaria.

Non-resident companies are subject to tax on income and profits derived only from Bulgarian sources.

Determination of the Corporate Income Tax Base

Generally, the tax base is the financial result of the entity according to its Income Statement, further adjusted for corporate income tax purposes. These adjustments represent either items that increase the financial result for tax purposes, usually through an add-back of non-deductible expenses, or items that decrease the financial result for tax purposes.

Tax liable persons should file their annual Corporate Income Tax Return and pay the corporate income tax due for the fiscal year not later than 31 March of the following year.

Sources of income

The profits and income of non-resident taxpayers are taxed in Bulgaria provided they originate or are deemed to originate in Bulgaria. The following types of gains or income derived by foreign entities without a permanent establishment in Bulgaria when accrued by a local tax resident entity are considered to have a Bulgarian source:

- interest including interest relating to finance leases;
- royalties;
- fees for technical services, that is, services of a consultancy nature and services for installation and maintenance of tangible assets;
- franchise and factoring fees;
- rent;
- fees for managing and controlling local legal entities;
- income from securities issued by local legal entities, the state or municipalities.

Gains of foreign entities without a permanent establishment in Bulgaria from trading in shares and securities issued by local legal entities, the state or municipalities as well as from transactions with real estate properties in Bulgaria are also considered to have a Bulgarian source.

Tax Losses

When calculating its tax financial result, tax liable persons are entitled to subtract tax losses incurred in previous periods. Tax losses may be subtracted from the positive financial result over the following five years up to the amount of the positive tax financial result in those future periods.

Losses cannot be carried back and they cannot be offset against the profit of another company within one group.

Related-parties Transactions

Transactions between related parties are completed in compliance with the arms-length principle (under the application of fair market prices). Otherwise the tax administrator may adjust the tax base of the party involved in the transaction by the difference between the price actually charged and the fair market price, assess additional tax and impose related penalties (including interest on late payment of the additionally assessed tax).

There are no specific documentary requirements. However, the taxpayer must prove that the transactions are negotiated at a market price.

Thin Capitalisation Rules

If a company debt to shareholders, third parties or banks from the debtor's group of companies or from bank loans, guaranteed by related parties exceeds three times the company's equity, then capitalisation restrictions are applied.

Permanent Establishment

Under CITA, "permanent establishment" means:

1. a fixed place (whether owned, rented or used on other grounds) where a non-resident carries on business inside the country, wholly or partly, such as a place of management, a branch, a representative office registered in the country, an office, a bureau, a studio, a plant, a workshop (factory), a retail shop, a wholesale storage facility, an after-sales service establishment, an installation project, a building site, a mine, a quarry, a prospecting drill, an oil or gas well, a water spring or any other place of extraction of natural resources;
2. conduct of business inside the country by persons authorised to contract on behalf of non-resident persons, with the exception of the business of agents of independent status as specified in the Bulgaria Commercial Act;
3. sustained effecting of commercial transactions with a place of performance inside the country, even where the non-resident person has no permanent representative or fixed base.

Withholding Taxes

Withholding tax at a rate of 10 percent (5 percent for dividend distributions) is to be deducted by the payer when income with Bulgarian source is accrued by a local tax resident entity to non-resident taxpayers without a permanent establishment in Bulgaria, unless a Double Tax Treaty (DTT) provides for lower withholding tax rates. When foreign entities without a permanent establishment in Bulgaria realise capital gains from trading Bulgarian securities or real estate, withholding tax of 10 percent is levied on the capital gain and remitted to the Bulgarian state budget by the entity realising the gain, unless a DTT provides an exemption or lower withholding tax rates.

Avoidance of Double Taxation

At present Bulgaria has signed more than 60 Double Taxation Treaties with other countries that significantly reduce or eliminate the withholding tax burden upon certain types of income. However, the treaty provisions may not be automatically applied. The foreign person taxable at source should follow an advance tax clearance procedure for the treaty to apply.

One-off taxes

One-off tax at the rate of 10 percent is levied on certain types of expenses accrued by Bulgarian tax resident entities as follows:

- representation expenses related to a company's business activity;
- expenses for in-kind benefits provided to a company's personnel (for example, a subsidised canteen, food allowances, organised holiday, holiday allowances, subsidised vacation facilities, and sports and recreational activities);
- contributions to voluntary insurance exceeding BGN 60 per month for each hired person;
- food vouchers provided in accordance with the law and exceeding the amount of BGN 40 per month for each hired person (there is a list of requirements which should be fulfilled by both the persons entitled to receive food vouchers and the persons acting as operators for issuance and payment with food vouchers);
- expenses related to maintenance, repair and exploitation of transport vehicles when these are used for the company's management activity.

The one-off tax on expenses is recognised as a tax-deductible expense for the company and is accrued and paid on a monthly basis.

Capital gains and losses

Generally, capital gains are included in an entity's profit subject to corporate income tax, except in the following cases:

- capital gains realised by non-resident taxpayers from the sale of real estate situated in Bulgaria or from the sale of shares, securities and other long-term financial assets sourced in Bulgaria, that are in turn subject to 10 percent withholding tax;
- liquidation proceeds attributable to non-resident taxpayers and local individuals exceeding the value of their initial investment, that are taxed at 0 percent for residents of EU member states under certain conditions or 5 percent for all other non-residents; and
- capital gains realised from the sale of shares in public companies traded on the Bulgarian stock exchange which are not subject to tax.

Dividends and liquidation quotas

Dividends and liquidation quotas distributed by local legal entities and unincorporated entities to local individuals, local unincorporated entities, and foreign persons are subject to 5 percent withholding tax, unless an applicable DTT provides for a lower withholding tax rate.

From 1 January, 2007 the provisions of EU Council Directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states ("the Parent-Subsidiary Directive") became part of the Bulgarian CITA. Consequently, no withholding tax is due on dividends when distributed to residents of an EU member state if certain conditions are met.

Foreign tax credits

Domestic tax law provides unilateral relief to taxpayers by which a tax credit may be allowed for taxes paid abroad.

Groups of companies

The concept of a consolidated company return is not accepted under Bulgarian legislation. Companies may not transfer their losses to other companies within a corporate group.

III.12.2.

Personal Income Tax

Scope of the PITA

The Bulgarian PITA regulates the taxation of local individuals' income including income from activity as a Sole Trader, registered in compliance with the Bulgarian Commercial Act, and the income of foreign individuals originating in Bulgaria.

Local individuals must pay tax on their income from sources worldwide. Foreign individuals must pay tax only on their income originating in Bulgaria.

The tax year for personal income tax purposes is the calendar year.

Residence (local individuals)

There are four criteria for determining the residence of an individual in Bulgaria for personal income tax purposes.

Individuals who have a permanent address in Bulgaria, or who are physically present in Bulgaria for more than 183 days for each 12 month period are considered Bulgarian residents for tax purposes. The individual becomes a Bulgarian resident in the calendar year when their stay in the country exceeds 183 days. The days of departure and arrival are treated as separate days of physical presence in Bulgaria.

An additional criterion for tax residence has been set, namely the centre of vital interests. Individuals who have closer economic and personal relations to Bulgaria than to another country would be considered Bulgarian tax residents regardless of the duration of their physical presence in the country. The personal income tax legislation also specifies that the centre of vital interests has priority over the permanent address criterion, that is, if an individual has a permanent address in Bulgaria but their centre of vital interests is abroad, they should not be considered a Bulgarian resident for tax purposes.

Types of Taxable Income

Employment Income

The tax on employment income is withheld by the employer and is remitted to the budget on a monthly basis. The tax on employment income is calculated on the gross amount of the income received for the respective month after certain statutory tax deductions. The tax rate for 2008 on employment income is a 10 percent flat rate.

Non-employment Income

Non-employment income is also subject to a 10 percent flat rate. The due tax is withheld and paid on a monthly basis by the payer of the income if they are a legal entity. Otherwise, the tax is paid by the recipient of the income on a quarterly basis.

Individuals performing economic activity as sole traders are required to adjust their taxable income under the rules stipulated in the Corporate Tax Act. The tax rate on the income of sole traders is a 15 percent flat rate.

A lower withholding tax rate of 5 percent is levied on dividends paid by Bulgarian entities to non-residents. If there is an applicable DTT in force the rate of the withholding tax on the above mentioned types of income may be reduced.

A one-off tax of 5 percent is levied on Bulgarian individuals receiving dividends from foreign entities.

Individuals are obliged to report their income by filing an annual tax return and paying the annual tax according to the return by 30 April the following year. If they have employment income only, there is no obligation to submit a tax return.

Patent Tax

Individuals running small private businesses such as hotels and restaurants, as well as retail trade and different craftsmanship with annual turnover for the previous financial year not exceeding BGN 50,000 and not registered for VAT purposes, except for Intra-Community acquisitions, are liable for a one-off annual patent tax, specified by the Local Councils of the respective municipality where the small business is operated. If during the year the turnover exceeds BGN 50,000, then the individual is taxed under the general regime of the PITA and the patent tax paid is considered a tax credit.

The amount of the patent tax due by each individual is specified by the respective Local Council. At the beginning of the year the payers of patent tax should submit a declaration stating the facts and circumstances needed for the specification of the amount of the tax due in the specific case.

Exemptions

Under the current legislation the following income is exempt from tax: bank interest, state pensions, scholarships and certain state welfare payments, benefits or income received from the Bulgarian social security and health insurance system, an equivalent foreign institution or under a voluntary social security plan.

Capital gains may also be tax-exempt provided certain conditions are met.

Accommodation and daily allowances paid on behalf of an employer or assignor to individuals under employment, management and civil contracts are treated as non-taxable income provided that certain conditions are met.

General Features

Bulgarian value added tax ("VAT") is regulated by the Value Added Tax Act. The Act is based on the principles laid down by the Council Directive 77/388/EEC and Council Directive 67/227/EEC which was replaced by Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (effective from 1 January, 2007).

The following transactions are subject to Bulgarian VAT:

- Supply of goods and services for consideration within Bulgaria by taxable persons;
- Intra-Community acquisition of goods for consideration within Bulgaria from another EU Member State:
 - by a VAT registered person or a person subject to an obligation to register;
 - in cases of acquiring new means of transport;
 - in cases of acquiring excise goods by a taxable person or a non-taxable legal entity which is not registered under the act;
- Importing goods (from third countries or territories).

Rates

The standard VAT rate in Bulgaria is 20 percent. A reduced rate of 7 percent applies to accommodation provided by a hotel operator if it is part of an organised journey.

In addition to supplies that are subject to VAT, there are certain supplies which are VAT exempt such as supplies of medical, social, educational, financial, insurance, postal services, supplies related to culture and some supplies related to the transfer of ownership or limited property rights and leasing land or buildings.

Other categories of supplies are taxed with a zero tax rate which entitles the taxable persons concerned to claim the related input VAT deduction. Those include exporting goods (outside the Community), intra-Community supplies (supplying goods to another EU Member State to persons registered for VAT purpose in another EU Member State), international transport of goods and passengers, supplies related to international transport, and so on.

VAT Payment and the Input VAT Deduction

Generally, persons subject to VAT are registered suppliers. In cases of importing goods and intra-Community acquisitions, the liable persons are importers and acquirers respectively. Registered liable persons are obliged under the VAT Act to issue a tax document containing the amount of VAT and to include this amount in the VAT return to be submitted to the tax authorities for the relevant tax period so that the tax result for the period can be calculated.

The tax result for each period is equal to the difference between the total VAT levied by the relevant taxable person and the amount of the tax credit for the period concerned. The tax credit is the amount of input VAT paid by the taxable persons for goods and services which are used in their economic activity and which can be deducted in compliance with the VAT Act. The taxable persons are entitled to a deduction (tax credit) only with respect to the VAT paid for

input goods and services used in turn for their taxable supplies. No deduction (tax credit) is allowed by the VAT Act when the goods or services are used for exempt or gratuitous supplies or when the goods or services have representative purpose or in the case of purchasing motor vehicles (with some exceptions).

VAT Returns

The tax period for VAT purposes is in general a calendar month and the VAT return is to be filed within 14 days of the expiry of the relevant tax period. In a case where the VAT levied by the taxable person exceeds the amount of the tax credit, the tax result must be paid within the time-limits applicable to the submission of VAT returns. In a case where the tax credit exceeds the VAT levied by the taxable person for the relevant period, the difference is subject to a refund by the tax authorities. The general rules on refunds in the VAT Act lay down the following:

- If the taxable person is liable for other public receivables (taxes or social security contributions) compensation is effectuated between those receivables and the VAT subject to a refund;
- If the taxable person is not liable for other public receivables or if following the compensation above there is a certain amount left for a refund, the VAT is deducted from the VAT due by the taxable person for the next three tax periods;
- If the balance from the operations mentioned above is still some VAT for a refund, the VAT is refunded within 45 days of the submission of the last VAT return.

Registration

The VAT Act envisages compulsory and voluntary registration. Both persons established in the country and persons not established in the country provided that they effectuate taxable transactions as defined by the act are subject to registration. Foreign persons register through an accredited representative except for branches.

The obligation of VAT registration arises where the total taxable turnover of a person (taxable basis of all taxable transactions) for the previous 12 months equals or exceeds BGN 50 000.

Taxable persons who are not registered under the general rules and non-taxable legal entities are subject to compulsory registration if they effectuate intra-Community acquisitions with total taxable amount for the relevant calendar year equal or exceeding BGN 20 000.

Persons not complying with their registration obligations may be registered ex officio by the tax authorities if the conditions for registration under the VAT Act are met.

Any taxable person or non-taxable legal entity (for intra-Community acquisitions) not covered by the compulsory registration may register voluntarily under the VAT Act.

III.12.4.

Other Taxes

Real Estate Tax

Land and buildings located in urban territories as well as land with a certain designation situated outside the urban territories are subject to a real estate tax. The tax is payable by the owner or the holder of a right in rem over the property or by the concessionaire where

applicable. The tax rate is determined by the relevant Municipal Council within the range of 1.5 percent to 3 percent.

Transport Vehicles Tax

Vehicles registered in Bulgaria are subject to municipal tax. Again the tax amount is determined by the relevant Municipal Council within a range set by the Local Taxes and Fees Act (LTFA). For passenger cars the tax amount depends on the year of production and the engine power.

In addition, the use of public roads requires the purchase of a coupon.

Inheritance Tax

Inheritance tax is applied to Bulgarian citizens and foreign citizens inheriting property in Bulgaria. The taxable basis is generally equal to the net property of the donor, after deducting death duties. The spouse and lineal successors are exempt from the tax. LTFA provides a number of other exemptions as well. The exact tax rates are defined by the relevant Municipal Councils and differ according to the category of successors and the value of the inherited property.

Transfer Tax

The gratuitous transfer of property and the transfer of real estate, limited property rights and motor vehicles is taxed in accordance with the LTFA. The tax is normally paid by the acquirer. Donations between spouses and lineal relatives are exempt. There are a number of other exemptions such as acquisitions by the state and municipalities, the Bulgarian Red Cross, and representative organisations for disabled people.

Since 1997, when Bulgaria experienced a serious financial crisis, the country has enjoyed a period of consolidation and latterly stability and growth, culminating in its accession to the European Union in January 2007. In the three years prior to accession, the country achieved steady and stable economic growth of between 5 and 6 percent per year. In recent years GDP has grown at a rate of 6.09 percent (2006), 6.2 percent (2007) and 7 percent measured during first quarter of 2008.

Since Bulgaria joined EU there has been some immediate international trade liberalisation. Bulgaria is among the leading countries in producing lead, zinc, copper, caustic soda and weapons. The country has favourable natural, geographical, social and demographic factors for the development of industry. Its crossroads location and very good economic index in recent years, provides significant investment opportunities.

Unemployment at 19 percent in 2001 has been decreased to 7.4 percent in 2007 and now has levels similar to those in the EU. The flat tax rate of 10 percent has also played a positive role in 2008. Parliamentary priority is to keep the tendency of macroeconomic stability and investment in transport infrastructure and environmental protection.

A very positive evaluation from foreign investors is trust in the Bulgarian economy. They believe that there are excellent opportunities for direct investment and EU membership will lead to activity with surplus value. The flat tax and reasonable labour costs as well as flexible legislation are the three criteria inciting investors to choose Bulgaria for business.



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