

# Bulgaria

**Nickolay Nickolov and Iva Miteva**

Borislav Boyanov & Co

## 1 Joint ventures

Must foreign designers or contractors enter into a joint venture with a local contractor to design, build and be paid for their work? Does the law require that the local contractor control the joint venture?

Entering into a joint venture with a Bulgarian contractor is not necessary in order for foreign designers or contractors to perform the relevant activity in Bulgaria. However, there are specific requirements for designers and contractors, both local and foreign, to follow before the commencement of such activity in Bulgaria (for those requirements please refer to question 3). When a foreign designer or contractor satisfies the relevant requirements, it will be able to perform designing or construction work.

## 2 Foreign pursuit of the local market

If a foreign designer or contractor wanted to set up an operation to pursue the local market what are the key concerns they should consider before they took such a step?

The major issues that a foreign designer or contractor must consider are:

- the establishment of a company or branch in Bulgaria; it should be noted that Bulgarian law is rather welcoming to foreign investors and allows foreign individuals and legal entities to be shareholders and managers of a Bulgarian company;
- special legislation regulating design and construction matters; and
- recruitment of professionals, because a lot of construction companies have emerged on the Bulgarian market and there is shortage of skilled persons available;

## 3 Licensing procedures

Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences for working without a licence?

Both local and foreign qualified architects and construction engineers may only perform design services in the area of investment design after their registration in public registers of designers with full or limited designing capacity. Those registers are maintained by the Chamber of the Architects in Bulgaria and the Chamber of the Engineers in Investment Development–Project Design. Upon registration of the architects and engineers in the relevant registers, they receive a stamp with his or her name and unique registration number.

Architects and construction engineers educated abroad may practise in Bulgaria after recognition of their professional qualification. In 2008 Bulgaria adopted a new law on the recognition of the professional qualifications in accordance with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005. According to the new regime the competent bodies for acknowledgement of the relevant professions are the president of the Chamber of the Architects in Bulgaria and the president of the Chamber of

the Engineers in the Investment Development–Project Design. However, the local competent bodies have not adopted yet regulations on implementation of the new law. Therefore, currently there is no clarity regarding the requirements and procedure for recognition of those qualifications

Foreign and local construction companies have to be registered with a public Central Professional Register of the Constructor (CPRC) in order to perform construction works in Bulgaria. Only small constructions, such as construction of residential and mixed buildings of low construction, villas, reconstructions and general repairs may be performed by contractors that are not registered in the CPRC. Registration in the CPRC is classified according to the type of the construction works permitted to be carried out by the relevant contractor. According to Bulgarian law, these developments are classified into six categories. Category one projects are the most important, and tend to be complicated constructions such as highways and roads, airports, etc; category six constructions are temporary constructions, farm constructions, small greenhouses, etc. Contractors which only construct category six buildings are not subject to registration. If the contractor is registered for a higher category of performance, it may also construct developments of a lower category. The contractors have to meet certain criteria for registration under each respective category in the CPRC set forth by law. According to the law the construction site shall be opened only upon presentation by the owner of a construction contract with contractor registered in the CPRC.

## 4 Labour requirements

Are there any laws requiring a minimum amount of local labour to be employed on a particular construction project?

Generally, Bulgarian contractors are free to hire foreign employees under labour contracts on construction projects, and there are no specific provisions applicable to labour to be employed on construction development. However, there are specific requirements for employment of foreigners who are not citizens of the EU.

According to the Law for Foreigners in the Republic of Bulgaria, citizens of the EU and members of their family may enter Bulgaria and stay for a period of up to three months, and then exit using only an ID card or passport. EU citizens are entitled to work in the country without needing to obtain work permits.

In order to work and reside in Bulgaria, all other expatriates need to obtain:

- a work permit;
- a type D (long-stay) visa; and
- a residence permit issued by the Bulgarian authorities following certain procedures.

The procedure for the issue of work permits must be initiated by the employer prior to the expatriate's entry into Bulgaria. The Bulgarian

Encouragement of Employment Act provides that work permits are issued, inter alia, in the event that:

- the status, development and the public interest on the national labour market, in the opinion of the Agency of Employment, allow this; and
- the number of non-EU citizens working for an employer does not exceed 10 per cent of number of Bulgarian citizens, expatriates with the right to asylum and expatriates with refugee status, employed within the preceding 12 months (in which case no more work permits will be issued to non-EU citizens).

The entire procedure takes at least one month. Work permits are granted for a period not exceeding 12 months but may be renewed if the conditions for granting the permit have remained unchanged.

## 5 Local labour law

Are there any labour laws applicable to construction and infrastructure projects?

The general provisions of the Bulgarian Labour Code (LC) and the regulations for its implementation are also applicable to construction and infrastructure projects. There is special legislation only affecting the matter of the health and safety in working conditions.

According to the LC, the minimum wage levels are set by the Council of Ministers by decree. As of 1 January 2008 the minimum monthly salary in Bulgaria is 220 leva (approximately €110) and the minimum hourly wage is 1.30 leva (approximately €0.65) during normal working hours.

There is a minimum income provided by Bulgarian law above which a worker must pay tax on earnings and social security. This level of income for employees in the construction industry varies from 220 to 700 leva depending on the type of the construction (buildings, roads, airports, etc) and the position of the employee (managing personnel, personnel without qualification, etc).

According to the mandatory provisions of the LC and the Regulation on the Additional and Other Remunerations, employees are also entitled to the following remuneration:

- for length of service and professional experience (when the general length of service and professional experience of the employee is at least one year);
- for night work (minimum 0.25 leva or approximately €0.12 for each hour of night work); and
- for being at the disposal of the employer outside of the territory of its enterprise (minimum is 0.10 leva or approximately €0.05 for each such hour).

The LC has established a regular working week of five workdays, up to 40 working hours per week (eight hours per day), applicable to employees on construction and infrastructure projects as well. Regular working hours may be prolonged only in exceptional cases explicitly listed in the LC. In addition, the maximum duration of the prolonged working hours may not exceed 10 hours per day. Under no circumstances may the duration of the working week exceed 48 hours. Such prolonging of working hours is allowed only for a period of up to 60 working days within one calendar year, and for no more than 20 consecutive working days.

## 6 Health and safety regulation

Are there any specific health and safety rules regulating the construction industry?

The principal regulatory acts concerning health and safety at work are the LC and the Healthy and Safe Conditions at Work Act (HSCWA). Moreover, there are more than 20 regulations that pro-

vide for rules relevant to complying with the safety obligations of employers and employees. Among them is Regulation No. 2 dated 22 March 2004 for the minimum requirements for healthy and safe working conditions upon performance of construction and mounting works (Regulation No. 2).

According to the general provisions of the LC and the HSCWA every employer is obliged to ensure healthy and safe working conditions so that the hazards to the life and health of employees are eliminated, limited or reduced with a view to protecting the working capacity of employees. The employer must develop and approve rules for ensuring healthy and safe conditions of work on condition that such rules are not contrary to the regulatory requirements, and must inform employees of these rules in a suitable manner.

Employees may refuse to discharge or stop discharging their duties if there is a serious and immediate danger to their lives and health.

Whenever the employees of an employer are working on sites administered by another company, the employer has an obligation by means of a written agreement with such other company to ensure that the conditions of health and safety at work are also ensured on these sites.

Pursuant to the HSCWA, everyone who designs construction sites and constructions, technologies and working equipment shall be obliged to make sure the design complies with all rules and norms for healthy and safe working conditions. The developer is responsible, and shall require the respective supervision bodies to control the observation of the health and safety rules by the designer and contractor during the design and construction process, and when the development becomes operational. In addition, the exploitation of the development shall only be permitted upon proved compliance with the healthy and safety requirements.

Regulation No. 2 elaborates on the minimum requirements and the specific measures, along with the general one, to ensure healthy and safe working conditions on temporary and movable construction sites, considering the specifics of this type of work. Regulation No. 2 creates the obligation for the developer to determine a coordinator for health and safety for the investment design stage when the design is assigned to more than one designer, and for the fulfilment stage of the construction when the works are assigned to more than one contractor, or to a contractor who then hires subcontractors. The appointment of such a coordinator, however, shall not release the developer from responsibility for observation of the rules for health and safety conditions on the construction site. According to the Regulation, in the process of design and construction the observation of the healthy and safe working conditions rules is set forth as obligation of the developer, the designer, the contractor, the technical head (a mandatory participant in the construction process employed by the contractor, educated as construction engineer or construction technician, who has the responsibility to manage the construction works) and the head of the group of construction workers.

## 7 Close of operations

If a foreign contractor, who has been legally working, decides to close its operations, what are the legal obstacles to closing up and leaving?

The Bulgarian law is equal to both foreign and local contractors and they face the same difficulties in the event of closing down an operation in Bulgaria, such as:

- the liquidation of a company (if any) is rather a time- and cost-consuming procedure which will take around eight or nine months until the final winding-up of the company; and
- there are restrictive provisions of the labour legislation in case of collective redundancy.

According to the definition of the LC 'collective redundancy' is the dismissal made on one or more grounds at the discretion of the employer, and due to reasons not related to the specific employee, provided that the number of such dismissals is:

- at least 10 employees, over a period of 30 days, in enterprises where the number of employees in the month preceding the mass dismissal is more than 20 employees and less than 100 employees;
- at least 10 per cent of the employees over a period of 30 days in enterprises where the number of employees in the month preceding the mass dismissal is more than 100 and less than 300 employees;
- at least 30 employees over a period of 30 days in enterprises where the number of employees in the month preceding the mass dismissal is 300 employees or more; and
- at least 20 employees over a period of 90 days in enterprises irrespective of the number of employees.

According to the LC, when the employer intends to make a collective redundancy, it must start consultations with the trade union and employee representatives, however, no later than 45 days prior to the collective redundancy.

The employer must provide, prior to the collective redundancy, written information to the trade union representatives, the employee representatives and the Agency of Employment about the reasons for the forthcoming dismissal, the number of employees who will be dismissed, etc. A planned collective redundancy may not be performed prior to the expiry of 30 days after the notification to the Agency of Employment.

## 8 Standard forms of construction contracts

What standard-contract forms are used for construction and design?

There are no standard-contract forms on the Bulgarian construction market that enjoy great popularity and are used predominantly by contractors.

The participants in the investment process for projects financed entirely or partly by international financial institutions or by EU funds may use the contractual terms and conditions of the International Federation of Consulting Engineers (FIDIC).

## 9 Price escalations

In typical construction contracts, who assumes the risk of material price escalation and shortages?

According to the general provisions of Bulgarian law, if during the fulfilment of a contract the price of the material or labour is changed, the remuneration shall be changed accordingly, even if it has been agreed as lump sum. This provision of the law is not imperative and the freedom of contract allows the parties under a construction contract to negotiate any other mechanism for allocation of the risk. In practice, the risk of material price escalation and shortages is assumed by the owner.

The parties may agree that if the price escalation exceeds a certain amount of money, the risk will be assumed by the owner. Otherwise, the increased cost of the materials will be at the contractor's account. Usually, construction contracts provide that if the material price is increased by more than a certain amount, the owner shall be entitled to terminate the contract and pay to the contractor for the completed stages of the construction.

## 10 Competition

Do local laws provide any advantage to domestic contractors in competition with foreign contractors?

No. Domestic and foreign contractors are equal in all means.

## 11 PPP and PFI

In certain forms of construction such as PPP and PFI, where the contractor is responsible for long-term quality control and maintenance, how is the risk of additional future costs considered and mitigated?

PPP and PFI are new forms for the Bulgarian construction market which are not developed yet; there are just a few examples of those models and the normative basis is not precise. Therefore, a general conclusion about the techniques for mitigation of the quoted risks cannot be drawn.

## 12 Payment of fees

How may a contractor secure payment of its fees from an owner? May the contractor place liens on the property?

There are various mechanisms available to a contractor to secure payment of its fees from an owner. Usually, construction contracts set forth a payment scheme in which the contractor receives certain percentage of the remuneration upon the signing of the construction contract or commencement of the construction process. In addition, each stage of the contract must be paid in full upon its completion and before the start of the subsequent construction stage.

Other possible options for guarantee of the contractor's fees are:

- specification of penalty to be paid to the contractor in case of delay of the owner to pay the due remuneration;
- the right of the contractor to suspend work if the owner delays the payment of due contractor's fees;
- the right of the contractor to terminate the construction contract in the event that the delay of the owner to pay the contractor's fee exceeds a defined period of time; and
- payment of the contractor's fees in advance into an escrow account as the respective part of the fees shall be released in favour of the contractor upon reaching of the relevant construction stage.

The contractor is entitled to place a lien on the property of the owner in the event of non-performance of the owner's obligation to pay. The authority competent to impose a lien is the court. The lien requires a pending or immediately forthcoming court case.

## 13 Tort claims and indemnity

Do local laws permit a general contractor to be indemnified against all acts, errors and omissions arising from the work of a subcontractor, even when the general contractor is negligent?

According to the general provisions of Bulgarian law, every person or legal entity shall be obliged to remedy any damages caused to third party through its fault.

In addition, if the same person or entity has assigned a task to a third party, the assignor shall be responsible for the damages caused by the assignee upon or in relation to performance of the assigned task. If the owner has relations only with the contractor, who hired subcontractors, then the contractor shall be liable for the damages resulting from any subcontractors' actions or inactions. Therefore, despite whether the general contractor is negligent or not, it may not be released from liability. Usually, such a clause is a standard provision in construction contracts.

**14 Insurance**

Do local laws require the maintenance of any specific type of insurance on construction projects?

According to the relevant Bulgarian law some participants in the entire construction process, including the designers and the contractors, shall be obliged to insure against professional liability for any damages inflicted on the other participants in construction or third parties, or both, as a result of wrongful acts or omissions in the course of, or in connection with, the performance of their duties, including for death and bodily injury.

This insurance shall be valid for a period of one year and shall be renewed annually without interruption for as long as the person practises the respective activity. Upon discontinuance of an activity subject to compulsory insurance, the insured participant in the construction is obliged to take out additional insurance covering a period of five years after the discontinuance of the activity.

Separate insurance may be agreed between the participants in the construction covering their liabilities for a specific work. In addition, the contracting party may require that the contractor conclude additional insurance covering damage to property caused by the construction work, and to materials, mechanical construction equipment and the furnishings of the construction site, if paid for or owned by the contracting party.

The minimum thresholds of professional liability insurance vary from 35,000 to 300,000 leva for architects and from 70,000 to 600,000 leva for contractors, depending on the category of the construction. In practice, owners require much higher levels.

**15 Insolvency and bankruptcy**

If a contractor files for insolvency, or is declared insolvent, may its contract be terminated for default and a new contractor retained to prevent delay on the project?

The contract may be terminated for default if a contractor files for insolvency or is declared bankrupt, provided that the construction contract specifies this as grounds for termination of the contract due to the contractor's fault. Usually, construction contracts contain such a clause. If the contract does not set forth the consequences in case of insolvency of the contractor, the contract may be terminated by the owner if the contractor does not perform its obligations. In addition, the syndic (insolvency administrator) may terminate the contract at her or his discretion if it is not performed entirely or partly, and in such a case the other party is entitled to compensation.

**16 Contracting with government entities**

Can a government agency assert sovereign immunity as a defence to a contractor's claim for payment?

If a government agency is party to a construction contract and a dispute between the agency and the contractor arises, the disputing party shall enjoy equal rights in the proceeding. Bulgarian law does not grant right to the government agency to assert sovereign immunity as a defensive mechanism. According to the Bulgarian Civil Procedure Code the court shall ensure the equal opportunity of the parties to exercise its rights granted. The court shall apply the law equally in respect of all disputing parties.

**17 Bribery**

If a contractor has illegally obtained the award of a contract, for example by bribery, will the contract be enforceable?

Pursuant to the Bulgarian Criminal Code bribery is a criminal offence penalised by the law. It should be noted, however, that bribery always

involves an official. The law defines the term 'official' as any person assigned to carry out in exchange for remuneration or without pay, temporarily or permanently, the duties of an office in a state institution or management work, and work related to safeguarding or managing property belonging to others in a state enterprise, cooperative, public organisation, another legal entity or sole proprietor, as well as private notary and assistant notary, private enforcement agent and assistant private enforcement agent.

According to the general provisions of Bulgarian law a contract, including a construction contract, shall be null and void if it contravenes the imperative provisions of the Bulgarian law or infringes upon good morals. However, the contravention of the law and the morals infringement must be established by the court with a resolution in force. Therefore, if the award of a contract has been obtained illegally by the contractor, the contract may not be enforceable after acknowledgement of the illegality by the court.

**18 Arbitration**

Can a government agency agree to arbitrate disputes privately rather than go to court?

The Bulgarian International Commercial Arbitration Act explicitly allows disputes where the state or a state body participates to be referred for resolution to an arbitration tribunal.

**19 Foreign corruption**

Do local laws prohibit illegal actions in foreign jurisdictions?

Pursuant to the Bulgarian Criminal Code, Bulgarian law shall apply not only to crimes committed in Bulgaria, but also to criminal offences committed abroad when:

- the crimes are committed by Bulgarian citizens;
- foreign citizens have committed crimes of general nature abroad, whereby the interests of Bulgaria or of Bulgarian citizens have been affected;
- foreign citizens have committed abroad crimes against peace and humanity, whereby the interests of another state or foreign citizens have been affected; or
- other crimes committed by foreign citizens abroad, where this is stipulated in an international agreement, to which Bulgaria is a party.

**20 Force majeure and acts of God**

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

According to general principles of Bulgarian law a party to a contract has to be at fault in order to be held liable for default. In case of the occurrence of force majeure, such party shall not be considered at fault and shall not be responsible for non-performance of its contractual obligations. Force majeure circumstances are natural calamities, war, severe meteorological conditions, acts of government, administrative or other supervising authorities which are executed due to the contractor's faulty action or inaction, etc.

The force majeure rule is applicable even if it is not explicitly specified in the construction contract. In case of suspension of the construction resulting from force majeure circumstance, the deadlines for completion of the construction works shall be extended until the occurrence of the force majeure event. In similar cases there is a standard obligation of the party which may not be able to perform its obligations due to force majeure to notify the other party under the contract. Usually, construction contracts contain provisions that if the force majeure circumstance leads to ceasing of the construction for longer than a certain period of time, either party shall be entitled

to terminate the contract. In case of such termination, none of the parties shall be deemed faulty and the assignor of the construction works shall have to pay the fees of the contractor for the work performed up to the moment (if any).

## 21 Dispute resolution mechanisms

What dispute resolution procedures are successfully used to solve construction disputes?

The most successful procedure for the resolution of construction disputes is the arbitration procedure, since it is the cheapest, fastest and most efficient way for settlement of disputes in Bulgaria. Bulgarian arbitration institutions are the Arbitration Court to the Bulgarian Industrial Association, the Arbitration Court to the Bulgarian Chamber of Commerce and Industry, etc.

The other options for solving construction disputes are through the courts – which, however, is rather cost- and time-consuming – and mediation, which is a relatively new procedure and is still not very popular among investors.

## 22 Courts and tribunals

Are there any specialised tribunals that are dedicated to resolving construction disputes?

Apart from the arbitration institutions, there are no other specialised tribunals dedicated to the settlement of construction disputes. Recently, the Bulgarian Association of Architects and Construction Engineers started to select Bulgarian experts on FIDIC contracts to create a register of competent Bulgarian arbiters, entitled to resolve disputes on such contracts.

## 23 Dispute review boards

Are dispute review boards (DRBs) used?

No.

## 24 Mediation

How is mediation defined? And is it commonly used to resolve project disputes?

Mediation in Bulgaria is defined as voluntary and confidential procedure for out-of-court settlement of legal and non-legal disputes, in which the parties are facilitated to reach consent by a neutral and impartial professional, known as mediator. Mediation is an informal procedure in which the mediator facilitates the communication between the parties without having right to solve the dispute. The role of the mediator is to assist the parties in finding the best possible solutions to the dispute corresponding to their interest. All questions in a mediation procedure are resolved upon mutual agreement of the parties. The parties enjoy equal rights in the mediation procedure.

The mediation procedure can be initiated by any of the disputing parties, or a mediation clause as a mechanism for resolution of eventual dispute can be stipulated in the main project contract. The parties can also be directed to mediation by the court or other competent body to which the dispute has been referred for resolution. The mediation procedure can be started at any stage of the dispute and each party may withdraw at any time.

The procedure may be terminated:

- upon agreement for settlement of the dispute between the parties;
- upon mutual consent of the parties;
- upon refusal of any party to continue the procedure;
- upon illness of a disputing party; or
- by the mediator if he or she considers that the mediation does not follow the legal or ethical rules.

The form and content of the agreement for settlement of the dispute between the parties is determined by the parties and may be either verbal or written. The agreement is binding only upon the parties participating in the mediation.

Currently, mediation is not a commonly-used technique for resolving of disputes but it is expected to become more popular.

## 25 Confidentiality in mediation

Are statements made in mediation confidential?

The Mediation Act explicitly proclaims the confidentiality rule. All participants in a mediation procedure (parties, mediator, etc) are obliged to keep any circumstances, facts or documents made available to them in the course of the mediation procedure secret. In addition, the mediator is entitled to refuse to testify in a court proceedings resolving a dispute in which the mediator has acted in this capacity.

The confidentiality rule remains in effect after the termination of the dispute.

## 26 Arbitral award

Is there any basis upon which an arbitral award issued by a foreign or international tribunal may be rejected by your local courts?

According to Bulgarian law an arbitral award has the same legal importance and consequences as a court decision, if it has been adopted by tribunal with seat in Bulgaria. If, however, the arbitral award has been issued by a foreign or international tribunal, it has to be recognised and its enforcement admitted by the Bulgarian courts, according to the bilateral and multilateral international agreements concluded by Bulgaria. Arbitral awards shall be entitled to recognition and enforcement where:

- the tribunal had jurisdiction according to the provisions of Bulgarian law, but not if the nationality of the plaintiff or her or his registration in the country of the court was the only ground for the foreign jurisdiction over disputes in rem;
- the defendant was served a copy of the statement of action, the parties were duly summoned, and fundamental principles of Bulgarian law, related to the defence of the said parties, have not been prejudiced;
- if no effective judgment has been given by a Bulgarian court based on the same facts, involving the same cause of action and between the same parties;
- if no proceedings based on the same facts, involving the same cause of action and between the same parties are brought before a Bulgarian court earlier than a case instituted before the foreign court closed with judgment, whose recognition and enforcement is requested; and
- the recognition or enforcement is not contrary to Bulgarian public policy.

If the above criteria have not been met, the local court shall reject the arbitral award.

## 27 Governing law and arbitration provider

If a foreign contractor wanted to pursue work and insisted by contract upon international arbitration as the dispute resolution mechanism, which of the customary international arbitration providers is preferred and why?

The preferred international arbitration institutions in Bulgaria for the resolution of disputes, including construction ones, are the International Court of Arbitration of the ICC, the International Arbitral Centre of the Austrian Federal Economic Chamber, Vienna, the London Court of International Arbitration, the Court of Arbitration of

**Update and trends**

The hot topics in the construction sector are as follows.

- The construction sector has grown substantially in the past few years and is expected to further increase due to the European funds to be spent in Bulgaria.
- The impact of the global financial crises on the Bulgarian construction market has been almost insignificant compared to the negative consequences suffered by other countries.
- There have been insufficient construction employees available due to the construction boom of the last couple of years, and the number of construction companies; their needs have outpaced the availability of specialists.

the Zurich Chamber of Commerce, etc. These institutions are chosen because of the traditions and practices used in their capacity as international arbitration providers, if a dispute is referred by an arbitration tribunal to be resolved.

**28 International environmental law**

Is your jurisdiction party to the Stockholm Declaration of 1972? What are the local laws that provide for preservation of the environment and wildlife while advancing infrastructure and building projects?

Bulgaria is not party to the Stockholm Declaration of 1972.

The legal basis for preservation of the environment and wildlife is set forth by the Environment Protection Act (EPA). The EPA provides the following possible protection mechanisms in case of plans, programmes and development proposals for construction, whose implementation is likely to have significant effects on the environment:

- Environmental assessments shall be conducted of plans or programmes which are in the process of preparation or approval, or both, by the central or local executive and legislative authorities.
- Environmental impact assessments shall be conducted for development proposals for execution of construction and activities listed in appendices to the EPA. The law considers such types of developments and construction work as potentially harmful to the environment and requires a detailed environmental impact assessment to be obtained by the developer prior to the issuance of a construction permit. The assessment should confirm that the planned construction complies with the relevant environmental laws and regulations.

The necessity of the assessment shall be considered by the minister of the environment and water or the regional inspectorate of environment and water director depending on the type and dimensions of the development/plan. If the minister or director decides that the assessment is necessary, the owner of the construction or property shall assign its performance to experts.

The environmental assessment of the plans and programmes is followed by the opinion of the minister or director, whereas environmental impact assessment of development proposals for construction is followed by the decision of the minister or director. However, in both cases the opinion or decision has to be considered by the investor and the competent administrative bodies approving the plans or permitting the construction.

**29 Other international legal considerations**

Are there any other important legal issues that may present obstacles to a foreign contractor attempting to do business?

It is worth noting that the construction process requires coordination and approval of the completed construction by state and municipal bodies. Such coordination usually takes longer than would normally be expected due to heavy workload of the respective authorities.

**30 International treaties**

Is your jurisdiction a signatory to any investment agreements for the protection of investments of a foreign entity in construction and infrastructure projects? If so, how does your model agreement define 'investment'?

Bulgaria has entered into more than 60 bilateral agreements for the protection and promotion of investment with states as the US, France, Germany, UK, Russia, Spain, China, Austria, etc. The general meaning of the term 'foreign investment' means, inter alia, any investment owned or controlled directly or indirectly by a foreign person or entity, including in:

- shares, stocks and securities in trade companies;
- right of ownership and limited real rights to immovable and movable properties;
- credits, including a financial leasing, and any other receivables having economic value;
- intellectual property – subject matter of copyright and related rights, patentable inventions, utility models, trademarks, service marks, industrial designs, know-how and commercial secrets; and
- any rights given by a law or contract such as rights arising under concession contracts and management contracts, licences and permits.

In addition, Bulgaria is party to some multilateral agreements for protection of foreign investments such as the International Convention on the Settlement of Investment Disputes, Convention relating to the establishment of Multilateral Investment Guaranty Agency. There is also a special Promotion of Investments Act effective in Bulgaria and regulating both foreign and local investments.

**31 Tax treaties**

Has your jurisdiction entered into double taxation treaties pursuant to which a contractor is prevented from being taxed in various jurisdictions?

Bulgaria has concluded double taxation treaties with over 61 states among which are France, Germany, the United Kingdom, Russia, Spain, Italy, Canada, China, Japan, Austria, etc.

**32 Currency controls**

Are there currency controls that make it difficult or impossible to change operating funds or profits from one currency to another?

There are no legal restrictions for changing of the operating funds from one currency to another.

**33 Removal of profits and investment**

Are there any controls or laws that restrict removal of profits and investments from your jurisdiction?

The general principle is that transfer and export of money abroad is freely performed unless otherwise provided for by Bulgarian law. There are some controlling mechanisms implemented by law in the

case of transfer or export of money abroad provided, to prevent money-laundering.

Any transfer of money abroad made by local or foreign persons up to the amount of 5,000 leva (€2,556) can be made without restrictions. If the amount being transferred is between 5,000 and 25,000 leva (€12,782), the transfer can be made without restrictions but the transferor must complete and provide the transferring bank with a standard form for statistical purposes containing information about the transferor, transferee and the grounds for the payment. Where the transfer of money exceeds 25,000 leva, the transferor must provide the bank with documents evidencing the grounds and the amount of the money which has to be paid. If the transferor is a foreign person and the money has been derived from investment in Bulgaria, the transferor must show evidence of the investment made and the payment of the taxes due in Bulgaria regarding the investment. If the amount of the currency to be transferred abroad does not exceed the amount that has been received in Bulgaria, the transferor must present a copy of the document evidencing receipt of the money.

Local and foreign persons may export currency to the amount of up to €10,000 without limitation. If the exported money exceeds

€10,000 but is less than 25,000 leva, the person must complete a standard declaration specifying the origin of the money and the purpose of its export, as well as whom the money is for. If the amount exceeds 25,000 leva, along with the standard declaration the person must present evidence that there are no unpaid tax obligations in Bulgaria.

#### 34 Contractual matrix of international projects

What is the typical contractual matrix for a major project in your jurisdiction in terms of the contractual relationships among the various construction project participants?

According to the typical contractual matrix in Bulgaria, the owner enters into a direct contract with a designer for the designing of the investment project and with a general contractor for construction of the development. Bulgarian law requires the relationships between the owners, designers and constructors to be stipulated in the written contracts. Usually, general contractors assign some construction and assembly works or some construction stages to subcontractors, with or without the owner's approval.

## Borislav Boyanov & Co

**Nickolay Nickolov**  
**Iva Miteva**

**n.nickolov@boyanov.com**  
**i.miteva@boyanov.com**

Borislav Boyanov & Co  
82 Patriarch Evtimii Blvd  
1463, Sofia  
Bulgaria

Tel: +359 2 8 055 055  
Fax: +359 2 8 055 000  
www.boyanov.com