

# Bulgaria

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# Bulgaria

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## **Introduction**

During the last two decades, Bulgaria has seen some dramatic turns in its economic and political fortunes. The main focus of the process of accession of Bulgaria to the European Union (EU) has been the implementation of the *acquis communautaire* as, since the accession of Bulgaria on 1 January 2007 to the European Union, most of the national legislation has corresponded to the Regulations and Directives in force within the European Union.

## **Commercial and Corporate Law**

### **Contracts**

Bulgarian contract law is governed mainly by the Obligations and Contracts Act of 1950, as amended (OCA), and the Commerce Act of 1991, as amended (CA). Other specialized pieces of legislation can also pertain to the regulation of specific types of contracts. The ground of the Bulgarian contract law is the concept of a transaction. Derived from the German legal doctrine (*Geschäft*), the term 'transaction' incorporates both contractual relationships and unilateral acts.

A major distinction in Bulgarian contract law is that between non-commercial transactions (ie, civil transactions) and commercial transactions.<sup>1</sup> The civil transactions are regulated by the OCA, which also sets out the legal framework for general issues of contractual law, such as conclusion, validity, construction, and termination, which are applicable to all (including commercial) transactions.

The OCA embodies the principle of freedom of contracts and contractual relations, ie, the parties to a contractual relationship are free to determine their rights and obligations provided that no mandatory provisions of the law are violated. Under the OCA, a contract is formed by an offer and acceptance. Consideration is not a necessary element for the civil transactions. Pre-contractual negotiations must be conducted in good faith, and damages may be awarded to

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<sup>1</sup> The commercial transactions can be either absolute (ie, transactions which can be performed only by merchants) or non-absolute.

one of the parties, provided that the other party has acted in bad faith due to willful misconduct or gross negligence.

The OCA provides for specific indemnification in case of breach of a contract. Indemnifications are payable for all direct and foreseeable losses resulting from the breach, loss of profit included. However, the OCA makes a distinction between breaches which can not be avoided and breaches where there is an element of bad faith. In the former case, the court can reduce the damages or make no award whatsoever, whereas in the latter case the party in breach may find himself compensating for all losses, whether foreseeable or not. The party who is not in breach will not recover damages for the element of loss which could have been avoided by a reasonable attempt at mitigation.

As with most legal systems, Bulgarian law sets out special provision for contracts for the sale of goods. The seller of goods shall be obliged to deliver the goods in the same condition as they were in at the time the contract was concluded and to transfer a good title over them. The buyer shall be obliged to pay the price as and when agreed. The seller is liable for defects which significantly diminish the value of the goods or affect their fitness for their normal use. However, the seller will not be liable for latent defects or for defects which were, or should have been, apparent to the buyer. Where the seller fails in his obligations, the buyer may elect to rescind the contract and claim damages. Alternatively, he may keep the goods and claim a reduction in price or require the seller to remedy the defect. If the price is not paid as required, the seller may rescind the contract and claim damages. Commercial transactions are governed by the CA and include:

- Purchase of goods or other property for the purpose of resale in unchanged, processed or manufactured form;
- Sale of own produce;
- Purchase of securities for the purpose of resale;
- Commercial representation and mediation;
- Commission, forwarding, and transportation;
- Insurance;
- Banking and foreign-exchange transactions;
- Bills of exchange, promissory notes, and checks;
- Warehousing;
- Transactions of licensing;
- Quality control;
- Transactions concerning intellectual property;
- Hotel, tourism, publicity, information, software impresario, and other services;
- Purchase, building, and furnishing of real estate for the purpose of resale; and
- Leasing as well as any and all contracts to which one of the parties is a trader.

In contrast to civil transactions, commercial contracts in general require consideration to be determined; instruments issued via unilateral acts, such as promissory notes, bills of exchange, checks, or bank guarantees, are excluded from this rule. Even if no consideration has explicitly been agreed upon, an implied agreement for consideration is presumed.

The conclusion of a commercial contract can be a result of a public offer, which is binding to the trader up to the amount of the stock and for the period specified therein. Catalogues, price lists, and tariffs are not considered binding for the trader. Adversely to a non-trader, the failure of a trader to respond to a commercial offer is construed as agreement if this trader has had long-term commercial relations with the offering party. The performance under a commercial contract should be made with due care. According to the CA, the due care in performance under commercial transactions is the care of the good trader.

The good trader is expected to have professional knowledge of its business and therefore can anticipate and be aware of a much larger range of circumstances than a person not engaged in commercial transactions. When several traders contract together, they are in general considered jointly and severally liable, unless otherwise stipulated. The debtor under a commercial transaction can be released from its obligation by operation of law due to *force majeure* or by the court in cases of commercial intoleration (when due to unforeseeable circumstances the performance under the agreement has become contrary to justice and good faith).

The parties to both civil and commercial transactions may choose the applicable law to their relations (ie, law other than the Bulgarian) provided that the choice of law is not made for the purpose of violating imperative provisions of the Bulgarian law and/or achieving results forbidden by the Bulgarian law by way of usage of lawful instruments.

## **Corporate Law**

### *In General*

Business relationships in Bulgaria are governed by several pieces of legislation amongst which are the Commerce Act,<sup>2</sup> the Commercial Register Act,<sup>3</sup> the Cooperatives Act,<sup>4</sup> the OCA, the Public Offering of Securities Act,<sup>5</sup> the Credit Institutions Act,<sup>6</sup> and the Special Purpose Investment Companies Act.<sup>7</sup> The regulatory framework is set out in several layers. The general rules on types of

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2 *State Gazette* (SG) 48 of 18 June 1991, as amended and supplemented.

3 SG 34 of 25 April 2006, as amended and supplemented.

4 SG 113 of 28 December, as amended and supplemented.

5 SG 114 of 30 December, as amended and supplemented.

6 SG 59 of 21 July 2006, as amended and supplemented.

7 SG 46 of 20 May 2003, as amended and supplemented.

legal entities and incorporation, commercial transactions and operation, reorganization of legal entities, and insolvency proceedings are set out by the CA.

The second layer is formed by special pieces of legislation setting out rules for companies which are either engaged in certain types of business activities such as insurance, banking, or financial services or are subject to additional mandatory rules due to their nature — such as public companies. The third layer is formed by the rules set out by the Commercial Register Act<sup>8</sup>, which provides for the registration procedures of legal entities.

The definition of a legal entity, referred to as a ‘trader’ in the legislation, is central to commercial law. A trader is an individual or a company whose business involves any of the commercial transactions as pointed out above. In addition, the following are deemed to be traders whether or not they fall into one of the express categories:

- A commercial company;
- A co-operative, except a housing co-operative; and
- Any person who has established an enterprise which by its nature and scope requires that its activities be conducted as a commercial business.

Under the Commerce Act, every trader is required to apply to be registered with the commercial register within seven days as of his first coming within the definition of a trader. Companies are defined by the CA as associations of two or more persons and/or legal entities for carrying out of business activities (commercial transactions) by joint efforts and means. If so allowed by law, companies may be incorporated by one person only. The incorporation documents of a company shall in general indicate its trade name, seat and address of management, main scope of business, capital (if required), description of the in-kind contribution (if any), the manner of management and representation, and other relevant issues, according to the legal requirements for each type of company or as deemed appropriate by the founders. A company is deemed incorporated (ie, assumes a form of a legal entity) on the date of its registration with the Commercial Register.

A foreign company may establish in Bulgaria a local subsidiary or a branch office (which does not constitute a separate legal entity). A company established in Bulgaria under the Bulgarian legislation shall be considered as a Bulgarian legal entity regardless of who is the owner of the capital of the company. Foreign companies may also establish representative offices which, however, are prohibited from performing commercial activity.

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<sup>8</sup> SG 34 of 25 April 2006, as amended and supplemented.

### *Registration*

The Commercial Register Act provides for an administrative procedure for a centralized registration of a legal entity by a governmental agency which substituted the previous system of handling of the commercial registry by different district courts upon the seat of the trader. The now existing formed unified Commercial Register is maintained by the Registry Agency (the 'Agency') of the Ministry of Justice.

A significant step is the implementation of the principle of online handling of the Commercial Register allowing for the possibility of distant access to it, the issuance of reference certificates in electronic form as well as the acceptance of applications, acts of court, appeals of refusals, and sending documents in electronic form, conveyed by electronic means. Overall, the reform proved very successful, shortening the period for registration of companies and corporate changes from a few weeks (with the previous court-handled register) to about a business day after filing of the application online.

The registration procedures are subject to judicial control by the District court at the seat of the company, which ensures qualified legal control over the whole process of registration. The Commercial Register Act implements the European tendencies of introducing a more efficient, unified and time-saving commercial registration system, maintained by administrative bodies such as the systems in Denmark, Norway, Spain, Sweden, or the United Kingdom, and at the same time does not exclude the control, exercised by the judicial authorities, which guarantees the conformity with the law of all the registration procedures and therefore the reliability of the commercial register.

### *Companies*

**In General.** The Bulgarian law allows the incorporation of several different types of companies, namely:

- General partnership;
- Limited partnership;
- Partnership limited by shares;
- Limited liability company; and
- Joint-stock company.

With the latest amendments of the Commerce Act of Bulgaria, a legal framework was set out for:

- The European Economic Interest Grouping; and
- The European company.

**General Partnership.** The general partnership (GP) is a company formed by two or more persons for the purpose of effecting commercial transactions in a business manner under a joint trade name. The partners in a GP are jointly and severally liable for the company's liabilities and their liability is unlimited. Therefore, when bringing an action against a partnership, the plaintiff may also name as defendants one or several or all of the partners. However, collection actions must be directed against the partnership first and only in case of impossibility for full satisfaction of the claim can actions be initiated against the partners.

The trade name of a general partnership consists of the surnames or trade names of one or more of the partners with the extension 'general partnership' or 'partners'. The partnership's articles of association must be drawn up in writing with notarized signatures and must contain, *inter alia*, detailed designation of the partners, the type and amount of each partner's contribution and the valuation thereof, and the manner of distribution of profits and losses among the partners.

GPs do not have institutionalized management bodies and each partner is entitled to participate in the management of the partnership, except in case the management has been assigned by the articles of association to one or several of the partners or to a third party. As a rule, GPs are not commonly used due to the unlimited liability of the partners.

**Limited Partnership.** A limited partnership is formed by a partnership deed between two or more persons for the purpose of carrying out of commercial transactions under a common trade name. The provisions of the CA regarding the general partnership apply *mutatis mutandis* to a limited partnership.

The main difference between the limited partnership and the general partnership is that, although one or more partners assume joint and unlimited liability for the obligations of the limited partnership (general partners), the liability of the rest of the partners is limited to the amount of their contribution in the limited partnership.

The management of the partnership is conducted by the general partners, and the CA expressly provides that, although the limited partners have the right to inspect the partnership books and to receive its financial statements, they do not have the power to block resolutions of the general partners.

**Partnership Limited by Shares.** A partnership limited by shares is a hybrid between limited partnerships and joint-stock companies. A partnership limited by shares is formed by a partnership deed. The partnership is incorporated by its general partners who select limited partners from among applicants to the subscription offer. Limited partners (of which there must be three) are issued with shares in proportion to their contribution to the partnership's capital.

The partnership is managed by its board of directors, which includes only the general partners. In general meetings of the partnership, only limited partners have voting rights; a general partner has a deliberative vote entitling him solely to express his opinion on a matter.

The provisions in the CA governing joint stock companies apply *mutatis mutandis* to partnerships limited by shares.

**Limited-Liability Company.** A limited-liability company may be formed by one or more persons who are liable for the company's liabilities up to the amount of their capital contribution to the company.

*Share Capital.* The minimum registered capital of a limited-liability company is BGN 1 (approximately EUR 0,50). The capital contributions may be monetary and/or in-kind. In case of in-kind contribution the said contribution has to be evaluated by three independent experts appointed by the Commercial Register officials.

*Management.* The company's affairs are administered by its manager(s) and by the general meeting of the shareholders. There is no necessity for the managers to be shareholders as well. There are no restrictions on the participation of foreigners in management.

The managers, if not shareholders, are entitled to a deliberative vote in the general meetings. Where a company has more than 50 employees, the employees are entitled to be represented at general meetings with the right to a deliberative vote. Prior to the resolution of a labor or social matter, the general meeting is required to obtain the opinion of the employees' representative.

*Articles of Association.* The articles of association of the company state, inter alia, the name, the address, the capital, and the management structure of the company as well as the shareholders in the company.

*Statutory Requirements.* The CA contains specific provisions covering the rights and duties of the company's shareholders, the administration of the company, the procedures for amending the company's articles of association, and the methods of dissolution and liquidation of the company. The decisions for increase or reduction of the registered capital require the consent of all the shareholders in the company.

*Transfer of Shares.* For the purpose of shares in a limited liability company to be transferred, a sale and purchase agreement in notarized form has to be executed and the transfer has to be registered with the Commercial Register. In case the transferee is a third party (not a shareholder in the company), the

transfer has to be approved by at least three-quarters of the shareholders in the company.

The limited liability companies enjoy popularity because of the simplicity of the procedure for their incorporation and the low minimum requirements with respect to the registered capital.

**Joint-Stock Company.** Given some of the characteristics of a limited liability company (particularly the wide powers granted to its managers), the joint stock company is most likely to appeal to the foreign investor. A joint-stock company is constituted with a share capital and assumes liability to its creditors up to the value of its assets. It may carry on banking and insurance activities if so licensed.

*Share Capital.* The company may be formed either by a public offering of its shares in accordance with the Public Offering of Securities Act or, alternatively, without such a public offering, in accordance with the provisions of the CA. The minimum registered share capital is BGN 50,000. Joint-stock companies which carry on banking activities must have a minimum registered capital of not less than BGN 10-million. Joint stock companies which carry on life insurance as well as reinsurance must have a minimum registered capital of not less than BGN 6.4-million. For property insurance the minimum capital requirement is BGN 4.4-million.

The Public Offering of Securities Act (POSA) sets out the legal framework governing public companies under Bulgarian law. They may assume the form of a joint-stock company only and must either have issued shares under the terms of an initial public offering or have a share emission recorded in the special register under the Financial Supervision Commission Act for the purpose of trading on a regulated market or have more than 10,000 shareholders on the last day of two successive calendar years. The POSA imposes a set of specific requirements on public companies regarding the disclosure of information, their management, and the manner of adoption of decisions. The rules of the POSA on various issues may derogate the general legal framework of the CA (eg, on the procedure and requirements for increasing the capital of public companies, decision-making process, and takeover bids).

*Shares.* Shares of a joint-stock company may be physical (evidenced by transferable share certificates) or non-physical (book-entry form) shares existing in the form of entries in a registry maintained by the Central Depository, which is the institution responsible for maintaining the share registries of all companies with non-physical shares.

Physical shares may be issued as bearer shares (not indicating the name of the shareholder) and registered — with indication of the name of the shareholder and subject to registration in a Shareholders Book to be kept by the company.

*Management.* There are two systems of management for a joint-stock company, namely:

- The one-tier system; and
- The two-tier system.

The ultimate managing body for both the systems is the general meeting of the shareholders, which approves certain decisions of utmost importance for the existence and functionality of the joint-stock company (for example, amendment of the statutes, election of board of directors in the one-tier system and the supervisory board in the two-tier system, approval of financial statements, and reorganizations).

In the one-tier system a board of directors is elected which may have between three and nine directors. The board adopts its own rules on conduct and elects a chairman and deputy-chairman. The company is represented by the board members jointly. Upon the discretion of the board of directors, one or more executive directors may be elected (their number can not exceed half the number of the board members) to represent the company before third parties.

In the two-tier system two boards are established — a supervisory board which may have between three and seven directors and a managing board which may have between three and nine directors. No person may sit on both boards of the same company. The supervisory board has the power to appoint and dismiss members of the managing board, to supervise their activities, to approve certain material decisions of the management board, to determine their remuneration, and to sanction the rules which govern their proceedings. In practice, the two-tier system is preferred for companies with a large number of shareholders and complicated activities.

*Statutes.* The company's statutes govern the constitution and the administration of the company and must specify, inter alia, the amount of the capital, the type and number of shares, the rights of the individual classes of shares, any special terms of their transfer, as well as the nominal value of the individual share and the management bodies of the company, their mandate, and number of members.

*Statutory Requirements.* The CA regulates the issue of shares and debentures, increases in and reductions of capital as well as various general rights and obligations of the shareholders and directors.

The POSA provides for more stringent requirements for the protection of shareholders and management of public companies as well as for the conduct of general meetings of shareholders in public companies.

*Voting by Electronic Means.* The statutes of the public company may provide for the possibility of the general meeting to be conducted by usage of electronic means under one or more of the following options:

- Live transmission of the general meeting;
- Two-way live messaging granting the shareholders the possibility to participate in the discussions and the decision-making process of the general meeting; and
- Mechanism for voting prior or during the general meeting without the necessity of a proxy to be authorized (through correspondence, post services, e-mails, or courier) — in such case the vote shall be valid if received not later than the day preceding the date of the general meeting.

The shareholders shall have the right to authorize any third party to participate in the general meeting on their behalf. Moreover, the prohibition of the Commerce Act for the members of the boards to be proxies of shareholders shall not apply in case the shareholders have explicitly provided for the manner of voting under each of the points from the Agenda.

*Transfer of Shares.* Registered shares are transferred by endorsement which, to be binding on the company, must be recorded in its Shareholders Book. The statutes may provide for other conditions or restrictions for the transfer of registered shares. Bearer shares are transferred and pledged by handover. Non-physical shares are transferred by way of registration of the transfer with a special body named Central Depository responsible for keeping of the registers regarding public companies.

Joint-stock companies are becoming popular, especially for projects that require the accumulation of larger funds or due to the mechanisms for attraction of funds, the easier transferability of the shares, the lower minimum majorities in the decision-making process, and the lack of possibility for shareholders to be excluded. Many joint ventures are set up in the form of a joint-stock company.

**European Economic Interest Grouping and European Companies.** The accession of the Republic of Bulgaria to the European Union (EU) on 1 January 2007 invoked the necessity for regulation of two new forms of business structures:

- The European Economic Interest Grouping (EEIG); and
- The European company (*Societas Europaea*).

An EEIG, within the meaning given by Council Regulation 2137/85 on the EEIG (EEIG Regulation), which has its registered office in the Republic of Bulgaria, is a legal entity and is formed as from the day of its recordation in the Commercial Register. EEIG members recorded in the Republic of Bulgaria are

liable for the obligations of the EEIG according to the rules applicable to a general partnership, unless otherwise provided for in the EEIG Regulation.

A European company, within the meaning given by Council Regulation 2157/2001 on the statute for a European company, which has its registered office in the Republic of Bulgaria, is incorporated through merger or through transformation of a joint-stock company, which has its registered office in the Republic of Bulgaria, into a European company and is recorded in the Commercial Register. A European company which has its registered office in another EU member state may not be incorporated through merger where the transforming company, which has its registered office in the Republic of Bulgaria, owns land in Bulgaria. A European company which has its registered office in the Republic of Bulgaria and which owns land may not transfer its registered office to another member state. The last two prohibitions apply in conformity with the conditions ensuing from the accession of the Republic of Bulgaria to the EU.

### **Banking**

Core banking activity is defined in the Credit Institutions Act as the raising of deposits from the public for the purpose of extending of credits to the bank's clients. These are the banking activities that may be exclusively undertaken by a licensed banking institution. An institution licensed to undertake the core banking business is normally licensed to undertake the supplementary financial services specifically listed in some 16 items (types of transactions) usually undertaken by banks such as wire transfers, issuance and administration of electronic of payment instruments, money transfers, guarantee transactions, investment services (provided that these also meet the requirements of the Public Offering of Securities Act and following a consultation and opinion of the Financial Supervision Commission) and acceptance of values for safekeeping.

Banks are prohibited to undertake other business (falling outside the scope of their licensed activities) except for the purpose of collecting and recovery of loans and as part of their credit activities. The Bulgarian banking regulator is the Bulgarian National Bank (BNB). Banking activity may be exercised either by a bank licensed by the BNB or by a credit institution from an EU member state who has been 'passporting' to provide the banking services (for which it has been licensed in the home EU member State) in Bulgaria on the basis of the freedom of provision of services or through an establishment (by registering a branch in Bulgaria).

Bulgarian banks are joint stock companies licensed by the BNB to provide banking services falling within the scope of their license as business. A bank may issue only ordinary regular shares to persons meeting the requirements of the law and the BNB. All bank shares are non-physical book entry shares registered in the central depository (a depository institution created pursuant to

the special provisions of Bulgarian law). The minimum registered capital required is BNG 10-million. The capital is subscribed only against monetary capital contributions. No in-kind contributions are permitted.

A permission of the BNB is required for any natural or legal person (or related parties) to acquire (whether directly or indirectly) more than 20, 33, 50, 66, 75, or 100 per cent of the voting rights shares in a bank. The permit is also required if the above thresholds are passed as a result of relatedness between the shareholders which has subsequently occurred. The acquirers cannot exercise the voting rights until a permit is issued. The permission may need to be a preliminary one or, in case of publicly traded shares, it would need to be applied for within a month from the acquisition at the Bulgarian Stock Exchange. Shares cannot be acquired by loan financing.

A bank may have a two-tier (with a management board and supervisory board) or a one-tier (board of directors) management system. The members of the said bodies need to meet specific qualification requirements under the Credit Institutions Act. A bank may be represented only jointly by two persons as holders of the BNB certificate for professional experience. At least one of the two persons needs to speak the Bulgarian language. Specific requirements are provided for in the Credit Institutions Act in respect to the exercising of the banking activities, the relations with clients and the internal control and accounting system.

### **Insurance and Re-Insurance Companies**

The activities of the insurance and reinsurance companies are regulated by the Insurance Code<sup>9</sup> and the secondary legislation on implementation of the Code. For transacting business in Bulgaria, the insurance and reinsurance companies have to be licensed by the Financial Supervision Commission. The applicant for a license to engage in the business of insurance or reinsurance must be organized as either a joint-stock company established under the CA or a mutual company (cooperative) established under the Cooperatives Act. Under the Insurance Code, members of the managing or supervisory body of an insurance company need to be reliable and professionally capable. With regard to these requirements, each member shall need to submit before the Financial Supervision Commission declarations under the Insurance Code and certain documents proving its education, professional experience, and good reputation.

The Insurance Code provides for mandatory requirements on the assets of the insurance companies deemed to guarantee the availability of technical reserves in compliance with the third generation of Insurance Directives, including with respect to supplementary supervision of insurance undertakings. The Insurance Code provides for a minimum guarantee capital. For insurance and reinsurance companies it varies from BGN 4.4-million to 6.4-million; for mutual insurance co-operatives it varies from BGN 100,000 to BGN 400,000 depending on the

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<sup>9</sup> SG 103 of 12 December 2005, as amended and supplemented.

premium income. In addition to the requirement for guaranteed capital, each insurance and re-insurance company must have sufficient free and unencumbered capital resources in relation to all of its activities (a solvency margin). This solvency margin is determined on the basis of the risks the insurer or re-insurer is exposed to, the lines of business that it writes, and the amount of the premiums. The solvency margin provided in the Code and the ordinance for the own funds and the solvency margin of the insurers and the health insurers is in line with the requirement of Council Directive 2002/13.

According to the Insurance Code, each legal entity that directly, or together with, or through related parties, holds 10 per cent or more than 10 per cent of the votes in the General Meeting of an insurance company, or otherwise controls it (a 'Qualified Interest Holder'), must be clearly identified and approved by the Financial Supervision Commission. Such legal entity shall need to meet certain requirements for good reputation, good financial standing, as well as good reputation and qualification and experience of its management in financial matters. The Financial Supervision Commission also approves any reorganizations of the insurance and re-insurance companies and has to be notified in case of acquisition/disposal of interest by shareholders when certain threshold criteria are met.

### **Investment Intermediaries**

There are essentially two types of investment brokers under Bulgarian law — banks and dedicated investment brokerage companies. Entities that are not banks need a special license issued by the deputy chairperson of the Financial Supervision Commission in charge of investment supervision in order to provide investment services.

Investment brokers may only be joint-stock companies or limited liability companies having a minimum capital varying from BGN 100,000 (EUR 50,000) or BGN 250,000 (EUR 125,000) to BGN 1-million (EUR 500,000), depending on the scope and type of activities they perform. Investment brokers must be managed and represented jointly by at least two persons who meet the qualifications required by law.

### **Investment Companies and Funds**

The POSA provides for two types of investment companies — open-ended and close-ended investment companies, as well as contractual (mutual) funds. An investment company is a joint-stock company whose scope of business includes investment in securities and other liquid financial instruments of money raised by a public offering of shares. The investment company acts on the basis of risk allocation.

Investment companies are prohibited from undertaking other commercial activity unless this is necessary to the exercise of its core business. Any joint-

stock company which raises funds by a public offering of shares and whose investments in securities exceed 50 per cent of its balance sheet assets for a period of six months is also an investment company.

The contractual fund ('Trust' or 'Fund') is an aggregate of assets designated for collective investment in securities and other liquid financial assets raised by public offering of units on the basis of risk allocation. A management company may undertake its activity in relation to a Fund following receipt of a license by the FSC and registration in the special register maintained by the FSC.

An investment company may be open ended or close ended. Funds are always open ended. Open-ended companies need to have a minimum capital of BGN 500,000 (EUR 250,000), which should be at any time equal to the net value of its assets. The net value of the assets of the funds cannot be less than BGN 500,000 (EUR 250,000) and with a structure and ratio of balance sheet assets and liabilities in conformity with the requirements of a special ordinance.

Investment companies and funds are specifically prevented from entering into transactions leading to the acquisition of precious metals or certificates thereon. Investment companies' capacity is explicitly limited to investment in securities and the other liquid financial assets mentioned above. No other commercial activities would be permitted, except to the extent that they are necessary for undertaking the above activities. The risk exposure of the investment company to a single counterparty is regulated. Additional rules exist in respect of risk exposures related to derivative financial instruments.

### **Special Investment Purpose Companies**

Companies established under the Special Investment Purpose Companies Act<sup>10</sup> are divided into two types: companies designated for investment in real estates and companies designated for securitization of debt. Such companies may be in the form of joint-stock companies only and are expressly prohibited from entering into transactions other than those directly related and necessary for their activities for the attraction of funds by the issuing of securities, for the purchase of real estates and easements on real estates, undertaking of constructions and improvements for the purpose of their management, renting, leasing or sale, or the purchase or sale of claims.

Such claims can be only with respect to local persons or entities in Bulgaria. The special investment purpose companies are not subject to taxation under the Corporate Income Tax Act (ie, their profit is released from taxation).

### **Consortium and Holding Company**

A consortium is a contractual grouping of merchants for carrying out specified activities. A holding company must be set up as a joint-stock company, partnership

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<sup>10</sup> SG 46 of 20 May 2003, as amended and supplemented.

limited by shares, or limited-liability company the purpose of which is to participate under any form in other companies or in their management, regardless of whether it carries on manufacturing or commercial activities of its own. At least 25 per cent of the capital stock of a holding company must be invested directly in subsidiary companies. A subsidiary company is a company in which a holding company owns or controls, directly or indirectly, at least 25 per cent of the stocks or shares and is in a position to appoint, directly or indirectly, a majority of the directors due to the fact that:

- Each company may participate in other companies, ie, this is not reserved to holdings only;
- The setting up of a holding company is more expensive than the setting up of a 'simple' joint-stock company;
- Both the holding company and the 'simple' company can engage in any other type of business activities; and
- There are very few registered 'holdings' although a great number of companies are *de facto* holdings.

### **Branch Offices**

A merchant may open a branch office outside the place where its seat is located. A branch office must be registered in the Commercial Register on the basis of a written application indicating the seat and purposes of the branch, data concerning the person who manages the branch, and concerning the scope of his/her representation powers.

Any foreign person that is entitled to engage in commercial activity under its national law has the right to open a branch office in Bulgaria. The branch is to be registered in the Commercial Register. The rules applicable to Bulgarian companies would apply *mutatis mutandis* to branches of foreign companies. In particular, they are obliged to keep the same accounting books and are liable for the payment of the same taxes.

Branches, including those of foreign companies, are not independent legal entities. All contracts to which a branch office is a party are in fact contracts with the principal. Therefore, the decision whether to open a branch office or a company (independent legal entity) is also an element of the risk management policy of the foreign principal.

### **Representative Offices**

Any foreign merchant may open a representative office (RO) in Bulgaria. ROs are not permitted to carry out business activities in the country. Usually their main purpose is to disseminate information about the products or services of the principal (without entering into specific deals or mediating for the entry into

such deals), carry out market surveys, and check for possible infringements of IP rights.

ROs may employ staff, hire premises, enter into agreements aimed at supporting the activities of the RO, and import advertising materials or samples, but should not enter into any contract which would qualify their activity as business. If so, they would become a permanent business establishment (see below) and be liable for the payment of corporate tax on their profits.

### **Permanent Business Establishments**

#### *In General*

The tax laws introduce the general notion of the ‘permanent business establishment’, the purpose of which is to make sure that whatever business structure is used in Bulgaria it shall not evade taxation in this country. Branch offices and ROs of foreign entities are considered permanent business establishments, although strictly speaking the ROs are prohibited from engaging in any business and, as long as they comply with this requirement, they are not liable for the payment of corporate tax.

Some other forms of business presence, such as the hiring of a permanent representative in Bulgaria authorized to enter into transactions on behalf of the principal, could in fact lead to the existence of a permanent business establishment of the foreign entity in Bulgaria, and the incomes from such activity would, by definition, be taxable in Bulgaria.

#### *Company Transformation*

A company may be transformed without changing its organizational form. Such a transformation could be in the form of:

- A merger by formation of a new company and the transforming companies cease to exist (‘merger’);
- A merger by acquisition (‘infusion’);
- Partition of one company into two or more companies, where the first company ceases to exist (‘partition’) and, in case the property of the transforming company is passed to existing companies, it will be a partition by acquisition, or, in case the property is passed to newly established companies, it will be a partition by formation of new companies; or
- Partition of one company into two or more companies where the first company survives (‘spin-off’).

There is yet another possible transformation — the separation of a single person company, when a part of such company’s property passes to one or more newly established single-person limited liability or joint-stock company and the transforming company becomes a sole owner of their capital. The CA provides

for a detailed procedure for completion of the transformation, including the following steps:

- A notarized agreement or a transformation plan depending on the type of transformation;
- Report of the management bodies of the transforming companies with detailed legal and economic background of the transformation agreement/plan;
- A certified auditor's report on the agreement/plan;
- Decision on the transformation adopted by each of the companies involved;
- Delivery of the shares of the joint-stock company and partnerships limited by shares to a special depository; and
- An application for registration of the transformation submitted with the Commercial Register.

For the protection of the creditors of the transforming companies, the Commerce Act provides that in case of merger or infusion of the property of the companies existing before the transformation, it shall be managed separately within six months following the date of publication of the transformation in the Commercial Register. Within this term, the creditors of the transforming companies whose receivables have arisen prior to the date of the transformation may require payment or security for their claims.

In cases of partition or spin-off, all companies involved in the transformation are jointly liable for the transformed company's debts which have arisen before the transformation, up to the amount of the rights received upon the transformation. The transformation agreement/plan may distribute the liabilities of some of the companies to the others.

A company may also be transformed into another type (organizational form) of company. In such case a notarized plan on the transformation must be prepared by the managing body of the company and no new shareholders can be accepted simultaneously with such a transformation. In both types of transformation the shareholders/partners in the transforming companies may challenge the transformation before the court in case the transformation procedure has not been observed.

With the latest amendments of the Commerce Act, Regulation 2157/2001 of the SE has been introduced on national level. The newly adopted provisions have the purpose to ascertain the application of the Regulation. According to the Commerce Act, an SE with seat in Bulgaria can be established through either merger or transformation of a joint-stock company with seat in Bulgaria into an SE. The so-incorporated SE shall be registered with the Commercial Register.

The Commerce Act explicitly prohibits the establishment of an SE through merger having its seat in another member state in case the transforming company with

seat in Bulgaria owns land. Furthermore, an SE with seat in Bulgaria can not move its seat in another member state in case it owns land. These limitations of the regulation both come from the provisions of the Bulgarian Constitution prohibiting foreign entities to own land in Bulgaria. The prohibition is applicable also for EU-seated entities for a period of five years for land for a 'second home' and seven years for agricultural land as of the date of Bulgaria's accession to the EU (1 January 2007). The prohibition is subject to review at the third year after accession (2010) and may be derogated at that time by an unanimous decision of the European Council.

The Commerce Act explicitly states that the SE shall be terminated upon decision of the Court where its seat is on the grounds of such request by the prosecutor in case the SE does not any longer correspond to the requirements of article 7 of the Regulation, provided that the violation has not been cured within an appropriate term determined by the Court.

### **Promotion of Foreign Investments**

The legal framework for investments in Bulgaria has many sources — both domestic and international. On international level, Bulgaria is a party to the Incorporation Act of the International Financial Corporation (member of the World Bank Group), the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, the Convention Establishing the Multilateral Investment Guarantee Agency, and the Agreement Establishing the World Trade Organization as well as more than 100 agreements on mutual encouragement and protection of investments or on avoidance of double taxation.

Domestically, foreign investments are governed, in the first instance, by the Bulgarian Constitution, which provides for equal treatment of foreign and local investments and their protection by the law. Further, it sets the principle of priority of international treaties over domestic legislation. In addition, the Promotion of Investments Act<sup>11</sup> ('PIA') and the Regulation for the Implementation of the Promotion of Investments Act ('RIPIA') outline the regime regulating foreign investments in Bulgaria. The PIA implements and is in line with Regulation (EC) No 800/2008.

The PIA provides the legislative framework for improving the administrative and information services provided to investors and sets out specific measures to foster investments. The Minister of Economy and Energy is the responsible body for investments on the state level, while the district governors and the mayors are authorized to perform certain functions in promotion of investments on local level. A specialized body is the Bulgarian Investment Agency ('BIA'), which is required to provide information and assistance to investors. The specific measures are

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<sup>11</sup> SG 97 of 24 October 1997, as amended and supplemented.

differentiated according to the class of the particular investment, which in its turn depends on the amount invested. Preferential treatment is provided for investments which meet the following cumulative criteria:

- They are made in connection with the setting-up of a new undertaking, with expansion of an existing one, with diversification of the production in an existing undertaking with new products or with overall change of the production process;
- They are made in specific areas of the economy, namely: processing industry, production of electricity from renewable sources, high-technology activities in the field of the computer technologies, research and development activities, education and human health, and at least 80 per cent of the future income should come from products manufactured in these areas of economy;
- They are realized within three years (under certain conditions this term can be prolonged with one year) as of starting of the respective project until its completion;
- The amount invested is above a certain minimum, which minimum depends on the particular type of activity or project undertaken (the minimums vary between BGN 32-million for a Class A Investor certificate and BGN 16-million for a Class B Investor certificate to BGN 11-million for a Class A Investor certificate and BGN 5.5-million for a Class B Investor certificate);
- At least 40 per cent of the acceptable expenses are financed by own means;
- The workplaces established with the investment are maintained for at least five years in case of large enterprises and three years in case of small and medium-sized enterprises;
- The investment is maintained for at least five years; and
- The other conditions provided for in the applicable legislation are met.

Not all investments are encouraged under the PIA. These include the investments of certain persons (convicted, insolvent, in liquidation procedure, or those with monetary debts towards the state or a municipality), notwithstanding whether these conditions take place in Bulgaria or in the state of the investor's domicile, and investments in undertakings whose registered capital has lowered significantly within specified time periods, investment commitments under privatization or concession contracts, and investments in certain areas of the economy as specified in Regulation (EC) 800/2008.

The eligibility of the investor for preferential treatment under the PIA is demonstrated by a certificate for the class of the investment issued by the Minister of Economy and Energy. The investors to whom a certificate for class of the investment is issued depending on the class of the investment could enjoy different promotion measures, including:

- Shortened periods for administrative servicing;

- Individual administrative servicing needed for the investment project;
- Acquisition of real property rights over land — private state or municipal property without conduction of public tenders or public competitions; and
- Financial support for construction of elements of the technical infrastructure necessary for one or more investment projects.

According to the law, a ‘foreign person’ is a legal entity registered outside Bulgaria or an entity which does not have personality and is registered outside Bulgaria, or natural person whose permanent residence is outside Bulgaria. This distinction is important because despite the proclaimed equal treatment of domestic and foreign investments, there are still few limitations for foreign investors which are not applicable to the Bulgarian ones. For example, there is a general prohibition for foreigners to acquire agricultural land and forests and, if they are persons from EU member states, whereby such prohibition shall lapse after a seven-year transition period calculated from the accession of Bulgaria to the EU in 2007.

A ‘foreign investment’ according to the IPA is any investment or increase of investment, made by a foreign person or its branch, in shareholding in Bulgarian entities, ownership or real rights over buildings, immovables or movables of the nature of tangible fixed assets, right of ownership over detached parts of enterprises at least 50 per cent of the capital of which is held by the State or the municipalities, securities, credits with due term of not less than 12 months, intellectual property, rights under concession contracts, and management agreements.

The current legal investment regime in Bulgaria is modern, transparent and friendly. Argument for this is the fact that more than 80 investment projects have been certified since 2007 and, according to the official data of the Bulgarian National Bank for the same period, the direct foreign investments amount to over EUR 212-million.

### **Security Interests**

#### *In General*

Bulgarian law recognizes three main types of security interests:

- Guaranty;
- Pledges; and
- Mortgages.

The provision of securities is governed by the OCA, the CA, the Special Pledges Act, the Credit Institutions Act, the Financial Security Contracts Act, and other specialized regulations. A general lien in the entire debtor’s property exists to

the benefit of all creditors. However, creditors having been secured with one or more of the additional securities as described below would have priority.

#### *Retention Rights*

In general, any person who has a valid claim arising from the safekeeping, maintenance, repair, betterment, or damages from another's asset has the right to retain the said asset until indemnified, unless he acted in bad faith. Another variation of the general retention right is the so-called objection for non-performance, under which a person having a valid obligation under a contract may refuse to perform an obligation in case the other party is in default and has not performed its obligation under the same contract.

In case of traders, there are certain variations as from the general regime, namely a trader has a retention right over the movable property and securities of another trader which are in his lawful possession in order to secure his due claim.

#### *Personal Guarantee*

Under the OCA, the establishment of a guarantee, which must be made in writing, will make the guarantor jointly liable with the debtor for the performance of the guaranteed obligations. If the principal debtor fails in his obligation to the creditor and the guarantor performs the said obligation, he will be entitled to recover any payments made from the debtor.

#### *Pledge*

The OCA provides that a common (possessory) pledge can be established over movable property or receivables of the debtor. The common pledge is established through the delivery of the pledged assets to the pledgee or a third party-depository or, in case of a pledge over receivables, by means of a written contract notified to the payer of the receivables.

The fact that the pledgor has to relinquish its possession over the pledged property is a major obstacle to the use of this security instrument in commercial transactions. Therefore, a special type of non-possessory pledge is regulated by the Special Pledges Act.<sup>12</sup> Under this Act the pledge may be established without delivery of the pledged property to the pledgee. For this purpose a special register is kept and the pledges are perfected through their entry into this register. Under a special pledge can be pledged, among others, non-physical securities (including non-physical shares of a joint-stock company), share participations in limited liability companies, a set (*universitas facti*) of receivables, machines and equipment, goods or materials, and the ongoing concern of the pledgor. The pledgor has the right to preserve possession of the pledged property and to use it

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<sup>12</sup> SG 100 of 22 November 1996, as amended and supplemented.

for his business, as well as to dispose of the pledged property. In case of disposal of the pledged assets, the pledgor is obliged to satisfy the claim of the pledgee from the proceeds of the sale. The pledgor cannot dispose of the pledged property after receipt of a notice for commencement of compulsory execution over the pledged assets in satisfaction of the pledgee's claims.

A major advantage of the non-possessory pledge regulated by the Special Pledges Act is that the secured creditor is entitled to enforce the pledge, sell the pledged assets, and satisfy its claim in a flexible, privately handled process without involvements of courts or other governmental authorities.

The new Financial Security Contracts Act<sup>13</sup> regulates further flexible types of security interests particularly available to secure claims of financial institutions (broadly defined to include banks, other credit institutions, investment companies and brokers, insurers, and pensions funds) against merchants. The law provides for various flexible (mostly Anglo-Saxon) security concepts, including assignment by way of security as well as simplified enforcement procedures, including direct acquisition by the secured creditor of the pledged assets, which is otherwise prohibited under general rules of the OCA regarding pledges.

### *Mortgage*

A mortgage is the basic concept of establishing security interest over immovable property. The mortgage shall be established by a notary deed executed before a notary public and has to be registered with the Lands Register. The notary deed must specify precise details of the mortgagor, the debtor (if he is not the mortgagor), the mortgagee, the description of the property and details of the obligations secured. When registered, a mortgage will have priority over all other debts for a period of 10 years (the term can be extended by further registrations).

The process of establishing and enforcing a mortgage is quite formal and relatively inflexible and costly (a fee in the amount of 0.1 per cent of the amount of the secured receivable is due for the registration of the mortgage with the Property Registry without a cap being applied) and therefore an alternative method for assuring a priority security interest over real estate is used in practice. Under the Special Pledges Act, security interest may be created over the whole business (ongoing concern) of a merchant with express specification of particular assets (including real estate). If such assets are expressly specified, a specific security interest is created over them very similar to a mortgage but established and enforced under the more flexible rules of the Special Pledges Act.

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<sup>13</sup> SG 68 of 28 November 2008, as amended and supplemented.

## Competition

### In General

Bulgarian competition law is regulated by the Protection of Competition Act (PCA or 'the Act')<sup>14</sup>. The Act implements into Bulgarian law significantly increased sanctions' thresholds, extensive procedural rules on application of both national and European antitrust law, as well as a number of new substantive law provisions.

The body empowered to supervise the proper implementation of competition legislation is the Bulgarian Commission for the Protection of Competition (CPC or the 'Commission'). It enjoys broad competences in terms of merger and anti-trust control, control on unfair competition, as well as on misleading and illegal comparative advertising. The Commission applies both Bulgarian national competition law and articles 81 and/or 82 of the EC Treaty.

### Merger Control

#### *Concentrations Regulated by the PCA*

One of the tasks of the Commission is to assess mergers and acquisitions ('concentrations' in the words of the Act) and to clear or to prohibit them based on whether they may significantly impede competition, as a result of the creation or strengthening of dominant position.

Similarly, with European law a concentration is defined in the PCA as a merger of two or more previously independent undertakings or the acquisition, by a person or persons, already controlling one or more undertakings, of direct or indirect control of the whole or part(s) of another undertaking. A concentration will be caught by the PCA where:

- The combined aggregate Bulgarian turnover of the undertakings concerned exceeds BGN 25-million (EUR 12.8-million) in the latest complete financial year;
- The turnover of each of at least two of the undertakings concerned in the territory of Bulgaria during the previous financial year exceeds BGN 3-million (EUR 1.54-million); or
- The turnover of the target company in the territory of Bulgaria exceeds BGN 3-million.

#### *Merger Test*

A concentration would be cleared where it will not lead to the creation or strengthening of dominant position as a result of which effective competition would be significantly impeded. The CPC may clear a concentration, even where it does lead to the creation or strengthening of dominance, where it aims

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<sup>14</sup> SG 102 of 28 November 2008, as amended and supplemented.

at modernizing the relevant economic activity, improving market structures, better meeting the interests of consumers, and overall the positive effect outweighs any negative influence on competition.

The parties may offer and negotiate remedies that would bring the effect of the merger in line with the above rules, which when accepted by the Commission and included in its decision will become obligatory conditions attached to the clearance.

#### *Procedure*

Merger review goes in all cases through an initial phase of 25 working days (extendable if remedies are offered), at the end of which the transaction may be cleared, subject to conditions and obligations, or the Commission may declare that the transaction does not represent a notifiable concentration.

If, on the other hand, the CPC has serious concerns that the transaction may seriously impede competition, it can open an extended investigation procedure, which should last a further four months (extendable in complex cases and where remedies are to be negotiated). At the end of the second-phase procedure, the Commission may clear the transaction, issue a clearance subject to conditions and obligations, or prohibit the concentration.

#### *Sanctions*

Where the thresholds are met, the filing with the Commission is mandatory. It should be performed upon the execution of the agreement on the transaction or the launch of the public offer, except in certain cases where the parties have managed to demonstrate their intention to accomplish a notifiable concentration, even before these events.

If the parties have failed to notify a transaction prior to its implementation, they would be subject to fines of up to 10 per cent of their aggregate turnover for the previous financial year. Fines in an amount of up to 10 per cent of the annual turnover can also be imposed if:

- A concentration is completed under conditions and in a manner that differs from the ones notified to the Commission and on the basis of which its clearance decision was issued, including upon failure to honor commitments and obligations imposed;
- The concentration is completed in violation of an express prohibition of the Commission; and
- The concentration is completed in violation of the general suspension obligation that applies prior to a clearance decision.

In addition, the Commission is entitled to impose a sanction to the amount of up to one per cent of the total turnover for the preceding financial year in cases of:

- Failure to cooperate with the concentration investigation;
- Delay in the provision of information or the provision of incomplete, incorrect, untrue, or misleading information; and
- Failure to notify the Commission of the performance of its decision in the term specified in it (if the decision provides for such an obligation).

The Commission may also impose periodic sanctions of 5 per cent of the average daily total turnover for the preceding financial year for each day of failure to comply with conditions and obligations attached to a Commission's decision, and up to 1 per cent of the average daily total turnover for the preceding financial year for each day of failure to provide complete, true, and non-misleading information upon demand.

## **Anti-Trust**

### *Prohibited Agreements and Abuse of Dominance*

In the area of prohibited agreements and abuse of dominant position, the Bulgarian competition authority applies both the PCA and European competition law (articles 81 and 82 of EC Regulation 1/2003). Under the PCA and article 81 of the EC Treaty, all types of agreements between undertakings, decisions by associations of undertakings, as well as concerted practices of two or more undertakings having as their object or effect the prevention, restriction, or distortion of competition on the relevant market are prohibited.

In respect of abuse of dominance, the Act prohibits the actions of undertakings enjoying monopolistic or dominant position, as well as the actions of two or more undertakings enjoying a collective dominant position that may prevent, restrict, or distort competition and impair consumers' interests. Dominance is defined as the position of an undertaking which, in view of its market share, financial resources, possibilities for access to the market, level of technology, and economic relations with other undertakings may prevent competition on the relevant market, because it is independent of its competitors, suppliers, or customers.

### *Sanctions*

Where undertakings have entered or engaged in prohibited agreements, decisions, or concerted practices (either under Bulgarian or under EU law) or have abused their dominant position, the Commission may impose a sanction on the infringing undertaking amounting to up to 10 per cent of the total turnover for the preceding financial year. A sanction in the same amount can be imposed on an undertaking for failing to comply with a decision of the Commission. The Commission also may impose periodic penalties in an amount of up to 5 per cent of the average daily turnover for the preceding financial year, calculated on a daily basis for each day of non-compliance with:

- A decision of the Commission ordering the termination of an infringement, including by imposing the appropriate behavioral or structural remedies; and
- A ruling of the Commission, imposing interim measures.

The Commission may impose a sanction to the amount of up to one percent of the average daily turnover for the preceding financial year for each day of:

- Failure to comply with the obligation for assistance of the investigation;
- Failure to furnish complete, accurate, true, and not misleading information; and
- Impeding an inspection of the Commission.

### **Unfair Competition and Misleading and Comparative Advertising**

#### *Definitions*

The PCA and the Commission are entitled to enforce also the rules on unfair competition and misleading and illegal comparative advertising. In addition to the general ban against acting contrary to business ethics, specific counts of unfair competition include:

- *Defamation* — damaging the good name and trust in competitors, as well as in the goods or services offered by them, by way of the assertion or dissemination of untrue information, as well as by way of distorted presentation of facts;
- *Misrepresentation* — misrepresentation in respect of material properties of goods or services, or in respect of the manner of use of the goods or the provision of the services by making untrue assertions or distortion of facts;
- *Unfair Solicitation of Clients* — carrying out unfair competition, aimed at soliciting clients, as a result of which existing agreements are terminated or breached, or entry into such agreements with competitors is prevented;
- *Imitation* — offering of goods or services whose appearance, packaging, marking, name, or other features deceive or are likely to deceive in respect of their origin, manufacturer, seller, method and place of manufacture; source and manner of acquisition or purpose; and quantity, quality, nature, consumer properties and other material characteristics of the goods or services;
- *Bundling* — offering or granting as a supplement to goods sold or services provided, either free of charge or in consideration of an ostensible price, of other goods or services except for: advertising items of minor value and bearing a clear indication of the advertising undertaking; items or services which according to commercial usage are an attribute to the goods sold or services provided; goods or services as a rebate for sales in higher quantities;
- *Prize Games* — conducting a sale, where an offer or promise is attached, which is conditional upon: solving problems, puzzles, raffles, and riddles;

collecting a series of coupons and other similar items; and organizing games to win money or prizes, the value of which significantly exceeds the price of the goods or services sold. In respect of prize games, the Commission is expected to adopt special rules, which should replace the existing informal guidance adopted by it, that sets the limit above which prizes are considered excessive at 100 times the price of the product sold, but not more than 10 minimum wages;

- *Dumping* — the sale to the domestic market of significant quantities of goods over an extended period of time at prices lower than the costs of their production and marketing, with the purpose to unfairly solicit clients; and
- *Discovery and Disclosure of Trade Secrets* — discovering, using, or disclosing manufacturing or trade secrets that are contrary to good faith commercial practices, or where they have been discovered or disclosed under the condition that they shall not be used or disclosed further.

As regards the misleading advertising under the PCA, its definition follows closely Directive 2006/114/EC concerning misleading and comparative advertising. Misleading, in the words of the Act, is any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of this, is likely to affect their economic behavior or which, for these reasons, injures or is likely to injure a competitor.

Comparative advertising is permitted only where it:

- Is not misleading and is not an unfair commercial practice;
- Compares goods or services satisfying the same needs or intended for the same purpose;
- Objectively compares one or more features of the goods and services which are material, verifiable, and representative for these goods and services, which may include their price;
- Does not lead to confusion between the advertiser and his competitors or between trade marks, trade names, other distinguishing marks, goods, or services of the advertiser and those of his competitors;
- Does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods, services, activities, or circumstances of the competitors;
- Compares goods with the same designation of origin;
- Does not take unfair advantage of the reputation of a trademark, trade name, or other distinguishing marks of the competitors or of the designation of origin of competing goods; and
- Does not present the goods or services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

All forms of comparative advertising which do not answer all of the above criteria are illegal.

### *Sanctions*

Under the Act, where a company has engaged in unfair competition or misleading or comparative advertisement the Commission may impose on the infringing company a fine of up to 10 per cent of the annual turnover of the company for the preceding financial year. The Commission may also impose periodic penalties in an amount of up to 5 per cent of the average daily turnover for the preceding financial year, calculated on a daily basis for each day of non-compliance with a:

- Decision of the Commission ordering the termination of an infringement, including by imposing the appropriate behavioral or structural remedies; and
- Ruling of the Commission, imposing interim measures.

### **Inspection Powers of the Commission**

The PCA gives the Commission authority to make surprise inspections (the so-called ‘dawn raids’) in companies and premises in order to collect evidence of infringements of Bulgarian and European anti-trust and merger control law.

An inspection requires, however, an authorization by a judge from the Administrative Court of Sofia City. The Commission may:

- Enter any premises, means of transport, and other locations used by the undertakings and associations of undertakings;
- Examine all books and records, related to the business of the undertakings or associations of undertakings, irrespective of the medium on which they are stored;
- Seize or obtain information on hard, digital, or electronic copy, copies of, or extracts from such books and records, irrespective of the medium on which they are stored or, where this is impossible, seize the originals, as well as any other material evidence;
- Seize or obtain electronic, digital, and forensic evidence, including traffic data, from all types of computer data carriers, computer systems, and other information carriers as well as seize the devices for transmission of information;
- Receive access to all types of information carriers, including information stored on servers, accessible by computer systems or other means located in the inspected premises;
- Seal for a certain period of time any premises, means of transport, and other sites, used by the inspected undertakings or associations of undertakings, as well as commercial or accounting books or other information carriers; and

- Take down oral statements of any representative or member of the management and staff of the undertakings or associations of undertakings, on circumstances related to the subject matter and purpose of the inspection.

Any document or evidence found may be seized if it contains data raising well-founded doubts of other infringements under the Act or under articles 81 or 82 of the EC Treaty.

Failure to cooperate may lead to fines. Where a party has impeded the collection of information in respect of certain facts, the Commission is entitled to assume that these facts have been proven, and base its decision upon them.

### **Leniency**

Under the PCA, a leniency procedure is available to the cases of whistleblowing on a secret cartel or providing significant contribution to proving a cartel already discovered. The leniency policy offers companies involved in a cartel — which self-report and hand over evidence — either total immunity from fines or a reduction of fines which the Commission would have otherwise imposed on them. In order to obtain total immunity under the leniency policy, a company which participated in a cartel must be the first one to inform the Commission of an undetected cartel by providing sufficient information to allow the Commission to launch an inspection at the premises of the companies allegedly involved in the cartel. If the Commission is already in possession of enough information to launch an inspection or has already undertaken one, the company must provide evidence that enables the Commission to prove the cartel infringement.

In all cases, the company must also fully cooperate with the Commission throughout its procedure, provide it with all evidence in its possession, and put an end to the infringement immediately. The company may not benefit from immunity if it took steps to coerce other undertakings to participate in the cartel. Where the undertaking assists the Commission but is not the first to come forward, partial immunity may be available under the terms of the CPC's leniency program.

### **Damages**

In addition to the sanctions that may be imposed by the Commission, the parties which have suffered damages from a violation of the PCA or European competition law have the right to full compensation of the real value of the damages suffered. The entitlement to full compensation extends not only to the actual loss due to an anti-competitive price increase, but also to the loss of profit, but is limited to those damages which are a direct and immediate result of the infringement.

The PCA provides for a possibility of either individual claims to be filed with the District Court or a class action to be submitted. Bulgaria has an opt-out system of class actions. The decision of the Commission, finding and infringement, which has come into effect, or which has been upheld on appeal by the courts, is binding for the civil court as regards its validity and legality.

## **Property Law**

### **In General**

The legal framework of the Bulgarian property regime is proclaimed by the Constitution of Bulgaria establishing the fundamental principles of inviolability of private property, equality of all types of property, and equal opportunity for development and protection of the different types of property. The Constitution classifies the property as either private or public property. Holders of ownership right (the ‘OR’) to property can be the State, municipalities, individuals, or legal entities.

Only the State and the municipalities are entitled to own public property. The property, owned by the State or the municipalities, in turn, can be ‘public’ or ‘private’ state, respectively, municipal property. The public state and the public municipal property are explicitly defined by the law and are subject to special regulations — these can not be transferred to third parties, but might be used by third parties under concession agreements for a maximum of 35 years. State and municipal property that is private can be transferred to and acquired by third parties.

The OR may belong jointly to two or more holders. The shares of the joint owners are deemed equal unless otherwise stipulated. Each joint owner may use the common property in accordance with its purpose and in a manner not likely to disturb the other owners’ use. A joint owner may sell his/her share in the immovable property to a third party only if the latter has offered it under the same or more favorable conditions firstly to the other joint owners and none of them has accepted the offer. Each joint owner at any time may require the partition of the common property.

### **Limited Real Rights**

#### *In General*

Apart from the OR, which is the most comprehensive right over real estate, Bulgarian law also recognizes the concept of ‘limited real rights’ (the ‘LRRs’) over real estate owned by a third party. Those rights are:

- Construction right (the ‘CR’);
- Right to use (the ‘RU’); and
- Easement.

The LRRs are established, registered, and protected in the same way as the OR.

#### *Construction Right*

A CR is the right by virtue of which on land, owned by one person, another person can construct a building and become the owner of this building or a separate part thereof (eg, an apartment) depending on the volume of the rights granted. The owner of the CR is entitled to use the land beneath the building as far as it is necessary for the use of the building (apartment) itself and to transfer title to the existing building or apartment separately from the land. The CR may be established with or without a term (the usual practice). If the CR is limited by a term, upon expiration of this term the CR or the building constructed on the grounds of the CR shall be transferred to the owner of the land by virtue of law and free of charge. The CR, both limited and unlimited by term, must be exercised by its holder within five years of its acquisition.

Otherwise, the same lapses by virtue of law, ie, the holder of the CR will lose the possibility to build what was granted by the CR. The CR is considered exercised as of the moment when the roof of the building has been constructed. In case of destruction of the building due to whatever reason, the owner of the building (apartment) is entitled to construct the same building in its previous state and size by virtue of the CR granted earlier, but within a five-year term from the date of the destruction of the building. Therefore, based on these specific features of the CR, it would be more beneficial for the investor to purchase the OR over land rather than the CR.

#### *Right to Use*

An RU is the right by virtue of which one is entitled to use a property owned by another person in compliance with its purpose and to gain the profits from it without changing the property significantly. This right is granted *intuitu personae* and its holder cannot transfer it to any third party.

#### *Easement*

An easement is the right by virtue of which an owner of a real estate is entitled to benefit from another real estate (usually an adjacent one) in a definite way — for example, the right of passage. Easements can be either granted by law or under an agreement with the owner of the property concerned.

### **Transfer of Property Rights**

Both ORs and LRRs can be acquired through legal transaction, prescription, or other means provided by law. Bulgarian law requires a special form to validly transfer ORs and LRRs over land and buildings — it is a written contract signed before a notary in a form of a notary deed. However, when the State or a municipality transfers ORs and LRRs over state/municipal land or buildings, a

simple written form of the contract is sufficient. In some cases, explicitly specified by law, the transfer of an OR or LRR must be executed in written form with notary certification of the signatures of the parties (such as sale of legacy).

Furthermore, a judgment of a court of law may also be an instrument for transferring an OR or LRR over land or buildings (court partition of property). Notwithstanding the form of the contract or the type of document, all deeds transferring ORs or LRRs over immovable property must be registered with the respective office of the Real Estate Registry (the 'RER') where the real estate is located. Depending on the type of the deal, registration in some special registers can also be required.

The RER is a public register which keeps records of all deeds acknowledging or transferring ORs or LRRs to immovable property, as well as deeds establishing, transferring, or terminating ORs and LRRs, and the injunctions for distraint measured and mortgages to real estate within the territory of Bulgaria. As of 2000, when the new Cadastre and Real Estate Register Act was adopted, the system of registration of real estate transactions was changed significantly — after this date, transactions are entered in the RER under the real estate itself (the so-called 'real system'), whereas previously all transactions were registered under the owners of the respective right (the so-called 'personal system').

The real estate entry in the register contains information about the property, the owner(s) of the property, as well as about existing LRRs over the property, mortgages, and injunctions (if any). The database of the RER is connected with the database of the cadastre and receives from there information about real estates, buildings, and detached parts from buildings. Currently, actual cadastral maps and registers are being drafted, but the updated digital cadastre has not yet covered the entire territory of Bulgaria.

The acquisition of ORs and LRRs over real estate through prescription requires the expiration of a fixed term, as well as continuity and incessancy of possession during that time. The period of time is either five years in case of *bona fide* possession, or 10 years in case of *mala fide* (bad faith) possession. The possession is deemed to be *bona fide* when the entitled person possesses the property on a legal basis fit to make him an owner (eg, a notary deed for purchase of a real estate), without knowing that the transferor was not the owner or that the deal was not made following the procedure rules applicable to the real estate transaction (eg, the notary who made the deal was not regionally competent to certify it, or the title deed was signed by the parties not in the presence of the notary).

### **Acquisition of Property Rights by Foreigners**

Currently, Bulgarian law does not contain general and unrestricted possibility for foreigners and foreign legal entities to acquire ORs over land. However, the legislation allows foreigners and foreign legal entities to acquire ORs over land by virtue of an international treaty that has been ratified, published, and entered into

force for the Republic of Bulgaria, as well as through inheritance by operation of law. In addition, citizens and legal entities from EU member states or from states that are parties to the European Economic Area Agreement (the 'EEAA') can acquire ORs over lands under the conditions provided for by the local laws and in compliance with the Treaty of Accession of Bulgaria to the EU (the 'Treaty'). Pursuant to the Treaty and the local laws, Bulgaria has retained the right to introduce a transitional period for the cancellation of the restriction.

Citizens from member states or from states that are parties to the EEAA who are not residing permanently on the territory of Bulgaria can acquire OR over land for a second home after expiration of the term defined under the Treaty (five years from the date of the accession, ie, after 1 January 2012). This restriction on acquisition of land for a second home by citizens from member states shall not apply to persons permanently residing on the territory of Bulgaria:

Citizens from member states or from states that are parties to the EEAA can acquire OR over agricultural land, forestry and land from the forestry fund after expiration of the term defined under the Treaty (seven years from the date of the accession, ie, after 1 January 2014). This restriction shall not apply to self-dependent agricultural producers, who are citizens of a member state willing to settle down and legally reside in Bulgaria and who are registered in that capacity in the BULSTAT register (for statistic needs).

The Treaty allows the above clauses to be revised after the expiration of a three-year term from the date of the accession (ie, after 1 January 2010), however, it is not clear whether this option will actually be exercised, taking into account its conditional nature.

The above restrictions on acquisition of ORs over land could be legally bypassed by foreigners through the registration of a Bulgarian company. The company itself, as a Bulgarian legal entity, when registered will be fully entitled to own land despite the fact that 100 per cent of its capital is owned by foreigners or foreign legal entities.

No prohibition exists on acquisition of ORs over land by foreigners in case of inheritance by operation of law. However, on the one hand, only a foreign individual can be a heir by operation of law and, on the other hand, if the land is agricultural, and if the foreigner does not meet the criteria laid down in the Treaty or in an international treaty, the same has to transfer the OR over the agricultural land within three years from the date of its acquisition.

The restrictions on acquisition of property by foreigners or foreign legal persons refer only and solely to ORs over land. No legal restrictions exist for foreigners or foreign legal entities to acquire LRRs.

### **Preliminary Agreements**

A widespread practice upon real estate investments is the preparation of preliminary agreements (the 'PA'), under which the parties, without transferring ORs or CRs over real estate, undertake an obligation to sign a notary deed for the transfer at a definite point or with a specified term in the future. PAs are commonly used in case of purchasing off-plan property.

Under the law, a PA can be concluded in simple written form but, in order to be valid, it must contain the material terms and conditions of a notary deed. In case either of the parties to the agreement refuses to close the deal by signing the final notary deed, the other party has the right to file a claim with the court to declare that the PA has become the final deed.

### **Lease Agreements**

Any immovable property can be the subject of a lease agreement (the 'LA'), which cannot be for a term longer than 10 years, unless the LA is a trade deal. Pursuant to the law, a trade deal is any of the deals explicitly listed in the Commercial Act (eg, purchase of goods for the purpose of resale or sale of goods being own production) or a deal concluded by a trader and connected with the activity performed by the trader. Persons with only simple management capability cannot conclude lease agreements for a period longer than three years. LAs are not subject to mandatory registration in the RER or any other registration. However, the registration of the LA with the RER protects the rights of the tenant in case of future transfer of the leased property.

If registered, the LA is binding upon the transferee within the initially agreed term of the LA. If the LA is not registered, but has a verifiable date (such as a date certified by a notary), it is binding upon the transferee for the term stated therein, but for no longer than one year from the date of the transfer. In case of lack of a verifiable date and if the tenant is in possession of the property, the LA may be terminated by the transferee with one month's written notice to the tenant.

## **Taxation**

### **In General**

The tax laws were subject to amendments to bring the Bulgarian tax system in line with the dominant taxation principles of the European Union. The trend to decrease the rate of direct taxes was carried on. Both corporate and personal taxes were reduced. While the VAT rate remained unchanged, the overall value added tax regime faced an inevitable material change given the EU Accession of Bulgaria. Formerly EU export or EU import transactions are now treated as intra-Community supply or acquisition transactions with all consequences there from.

Despite harmonizing taxation with practices in the European Union, Bulgaria is still far from introducing tax consolidation of the economic groups. Each company is, therefore, taxed as a single entity with local residents being taxed on their world-wide income and foreign residents only on the profit derived from sources in Bulgaria.

### **Corporate Income Tax**

Since the new Corporate Income Tax Act<sup>15</sup> entered in effect in 2007, local corporate residents are taxed with a reduced corporate tax rate of 10 per cent. The corporate tax is levied on the taxable profit, being in essence the positive difference between total revenues and deductible expenses after certain re-adjustments. A taxation alternative to the corporate taxations is provided for the gambling businesses (that are levied a tax on the net amount of the strikes), the income from commercial transactions and rental proceeds of budgetary entities, as well as the ship operating companies which may opt (under certain requirements) to be levied tonnage tax instead of corporate tax on profits.

The Corporate Income Tax Act provides for special rules of treatment of the proceeds and expenses of cross-border transfers of business or assets between parts of one and the same enterprise located in different jurisdictions. Fixed assets are depreciable throughout their useful lives. The depreciation rates vary on an asset-by-asset basis. The Corporate Income Tax Act provides for special rules on the taxation of cross border transfers of business and in particular rules on the treatment of proceeds, expenses, and asset transfers between parts of one and the same company located in different jurisdictions. Losses may be carried forward for up to five years from the tax year in which they were incurred.

Tax relief is also provided to the extent it meets the requirements of permitted financial aid for regional development and occupancy stimulation in conformity with the EU taxation principles. A very detailed regime, including special rules for tax treatment of mergers and reorganization, is provided for in the new law. The corporate tax is remitted on the basis of annual tax returns due for submission by 31 March of the next year. The final tax payable is calculated on the basis of the total of the advanced amounts paid in the course of the year.

### **Withholding Tax and Tax Relief**

Incomes of foreign tax residents from a source in Bulgaria (provided that such foreign tax residents have no permanent establishment and a fixed base in Bulgaria) are subject to tax withholding at source. The withholding tax should be normally withheld and remitted by the Bulgarian payer. Such taxation encompasses the following incomes:

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<sup>15</sup> SG 105 from 22 December 2006, as amended.

- Dividends, liquidation proceeds (except for dividends from a local subsidiary payable to a mother company in the European Union);
- Interest, including interest from financial leasing;
- Royalties;
- Technical service fees;
- Lease, rental, and other similar payments;
- Franchising and factoring fees;
- Capital gains from sales of securities (except for non-physical securities traded on the stock exchange), financial assets, and immovable property; and
- Fees paid to managerial staff of Bulgarian companies under management contracts.

The rate of withholding tax for 2008 shall be 5 per cent. If there is a double taxation treaty between Bulgaria and the country of the beneficiary, the withholding tax rate can be substantially reduced or the tax may be eliminated.

#### **Value Added Tax**

A value added tax at a rate of 20 per cent is chargeable on taxable deliveries (supplies) in Bulgaria. Exceptions, however, exist for export of goods whereby the rate is 0 per cent and, for the accommodation by a hotelier if part of organized travel, the rate is 7 per cent. The taxable turnover level for compulsory registration is BGN 50,000 (EUR 25,000). Companies may opt for a voluntary VAT registration irrespective of turnover.

The overall regime in terms of VAT treatment of local and intra Community supplies and acquisitions is in general fully compliant with the *acquis communautaire*.

#### **Excise Duties**

The new Excise Act was adopted with the aim to bring the national excises regime in line with the dominant EU rules in the area.

#### **Income Tax on Natural Persons**

A new taxation system was introduced with the latest amendments of the Income Tax on Natural Persons Act. A flat tax of 10 per cent over the income of the natural persons is valid from 2008 on compared to earlier times, where a hybrid system of flat and graduated tax was used. The Income Tax on Natural Persons Act explicitly provides for how the taxable income shall be formed as well as for certain tax reliefs.

### **Local Taxes and Fees**

The recent changes of the Local Taxes and Fees Act triggered a new system for determination of the local taxes and fees which are gathered by the municipalities (ie, taxes over real estates, legacies, grants, vehicles, and fees for waste, administrative services, and extraction of materials).

According to the Act, each municipality shall determine the amount of the taxes and fees but under the general terms and conditions and within the limits provided by the Local Taxes and Fees Act. Furthermore, the municipality shall not be entitled to change either the amount of the taxes or the procedure of their determination throughout the year for which they correspond.

### **Tax and Social Security Procedure Code**

Since 1 January 2006, the National Revenue Agency (NRA) has taken over the functions of the tax authorities and part of the functions of the social security authorities. The entry into force of a Tax and Social Security Procedure Code (TSSPC) in January 2006, as amended, was aimed to consolidate the fiscal procedures for efficiency purposes as well as to improve collection of both tax and social security contributions. A new legal framework was set out on different types of matters, some of which are as follows:

- The process of registration of both companies and natural persons for tax purposes is facilitated. The companies have no longer the obligation to apply for registration before the National Social Security Institute and the tax administration as far as their registration shall be made officially on the basis of information provided by the Registry Agency which keeps the new Commercial Register. The data for the companies' accounts shall be gathered from the banks on the grounds of their obligation to send to the NRA information on the opened and closed company accounts;
- The NRA substitutes the National Social Security Institute in receiving of all declarations with respect to social security installments and their payment as well as in the registration of labor agreements;
- New sequence for repayment of overdue public takings is established for debtors: the principal sum shall be repaid first and afterwards the penalty interest and expenses accrued. Compared to the old regime where the interest and expenses had to be repaid first and then the principal sum, the new sequence is in favor of the debtors and eliminates the accruing of interest in case the debtor has no sufficient funds to cover all payments due;
- The former Taxation Code granted the administration the right to search premises and take evidences they need. According to the TSSC, such procedure may be performed only by the police authorities upon such request by the tax administration. The term for which the tax authorities shall have the right to seal premises for the purpose of gathering of evidences without the permission of the court is reduced from 72 to 48 hours;

- In case of audit, the taxation authorities are obliged to issue a report of the audit prior to the issuance of the tax audit act. Furthermore, the audited person has the right to present his position and proofs with respect to the conclusions of the report within 14 days as of receiving of the report. Thus the tax audit act shall be based on more precise information and shall take into account not only the tax administration point of view;
- Compared to the former Taxation Code, the roles with respect to the so-called 'burden of proof' are switched vice versa and the tax administration is the one which has the obligation to prove a violation committed but not the audited person to prove that he has not committed it;
- A possibility exists in case of appeal by the audited person of the tax audit act, the tax administration, and the said person to enter into agreement for the evidences both parties consider as undisputable;
- Each person shall have the right to claim indemnification from the State in case the NRA has damaged him with its actions or omissions. Under the former Code, this rule was valid for natural persons only and no explicit provision for such possibility existed in the taxation legislation;
- A possibility exists for a request to be filed by a person for any official to be suspended in case he is prejudiced or has any interest from the results of an examination or audit;
- Introduction of the institute of the silent denial after which the actions of the NRA can be appealed;
- Introduction of appeal for delay of procedures;
- Introduction of new means of communication with the tax administration: the companies and the natural persons are allowed to deliver explanations and documents, not only by personal delivery of these to the offices of the NRA or by mail but by electronic means with the usage of universal electronic signature or by courier; furthermore, the persons can choose whether to be able to receive official electronic messages and announcements on e-mails they have indicated; and
- Replacement of different certificates previously issued by the taxation authorities with declarations by the persons.

### **Labor Law**

Starting with the signing of the Accession Agreement and after 1 January 2007 when Bulgaria became a full member of the EU, the Bulgarian labor legislation has been in process of harmonization with the *acquis communautaire*, aiming to further and fully conform with the EU legislation.

The core of the labor protection is ensured by statutory acts, such as the Bulgarian Labor Code (the 'LC'), the Healthy and Safety Working Conditions Act, the Encouraging of Employment Act, the Guaranteed Employee

Receivables in case of Employers' Bankruptcy Act, and the Act on Information and Consultation of Employees and Workers in Community-Scale Undertakings, Groups of Undertakings, and European Companies. Substantial secondary legislation is also adopted on the implementation of the statutory rules.

The LC is based on the principle of setting the minimum standards for the relationship between the employer and the employee. The majority of its provisions (regarding working hours, breaks, leaves, labor discipline, duration, and termination) are therefore mandatory in nature and may not be waived even with the consent of the employee. Any mutual understanding to that effect will be in violation of the LC and may result in the imposition of sanctions on the employer in addition to being considered null and void.

Employment relations not governed by imperative statutory provisions may be regulated by collective labor agreements (CLAs). CLAs are concluded between trade unions and employers or organizations of employers. They can be concluded at an enterprise, branch, industry, or municipality level. The primary function of the CLAs is to ensure a better protection of the employees' interests. A CLA may not contain provisions less favorable to the employees than the applicable legislation or a CLA by which the employer is bound. Employment relations should be further regulated by individual labor agreements (ILAs) between the employer and the employee. An ILA must be executed in writing and registered with the Bulgarian National Revenue Agency.

An ILA should determine as a minimum: the parties thereto (detailed description of the employer through its corporate/other data, address, representatives, Unified Identification Code, or Bulstat number); the nature of the work (ie, the job position) and the place of work (eg, the city where the duties are performed); the date of conclusion and the date on which the employee has to start the performance of his duties; the duration of the ILA; the amount of the main and the extended paid annual statutory and additional leaves; that both parties have equal notice period in case of termination of the ILA; the main and the additional employment salaries of a permanent nature, as well as the periodic basis for their payment; and the duration of the work day or the work week. The agreed remuneration may not be less than the minimum working salary for the country (as of the beginning of 2008 it equals approximately EUR 110 per month for full-time employment).

Employees are also entitled to certain statutory additional remunerations, minimum amounts of which are established by the law (eg, for night labor, for length of service, and professional experience).

Apart from the mandatory content of the ILA, the parties may agree on other terms and conditions of the employment, provided that such conditions are not less favorable to the employee than the provisions of the applicable CLAs and the legislation.

In general, the ILAs should be entered into for an indefinite duration. The fixed-term ILAs are allowed only in certain exhaustively listed cases (for the completion of a specified work; and for substitution of an employee who is absent from work, as an exception). Mandatory requirements are established as to the duration and possibilities for renewal of fixed-term ILAs. A fixed-term ILA that has been concluded in breach of those requirements is considered an ILA for an indefinite duration. The LC, after its amendments in July 2006, explicitly provides, in line with Directive 1999/70/EC of 25 June 1999, concerning the Framework Agreement on fixed-term work, that the employees working under fixed-term ILAs enjoy the same rights and obligations as the ones working under contracts for indefinite duration.

Alterations to an ILA may be introduced only on the basis of the mutual consent of the employer and the employee. As an exception, the employer may increase unilaterally the remuneration of the employee, temporarily change the nature of his/her work (eg, in the case of a production necessity or work stoppage in the enterprise) or the working place within the same enterprise (in this case without changing the place of work, the job position, and the basic salary of the employee) or the place of work (ie, business trips), or temporarily establish a part-time working day. In case of change in the employment relationship, the employer is required to provide the employee, at the earliest opportunity and not later than one month after the entry into effect of the change, with the necessary information in writing containing details of the effected changes.

The normal working time is eight hours per day, five days per week. The normal duration of the working time may not be extended except in the limited cases provided for under the LC. For example, the working time during certain days may be extended by the employer in accordance with a special procedure, provided that the extension is compensated with reduced working time in other days. Extra work is allowed only as an exception.

The legislation guarantees certain minimum breaks and leaves to the employees, such as an uninterrupted break of 12 hours between two working days and 48 hours between two working weeks; basic paid annual leave of 20 working days; and additional paid annual leave of minimum five working days for work in harmful conditions or work under open-ended working hours.

In line with the provisions of Directive 2002/14/EC, establishing a general framework for informing and consulting employees in the EU, as per the LC, employers have to provide information and consultations to the employees, the deadlines for providing them, the manner and the procedure for appointing representatives of the employees with whom such procedures for providing information and consultations should be held, as well as their rights and obligations.

The employer has to provide information and hold discussions and coordination within the cases expressly established in the LC and only with the trade unions or the employees' representatives, when there are no trade unions in the

enterprise or there are no appointed employees' representatives or they refuse to participate in these procedures. Employees are entitled to receive timely, true, and comprehensive information on the economic and the financial status of the employer, which is relevant for their employment rights and obligations.

Such information and consultation should be mandatorily provided by employers in the cases of mass dismissals, change of the employer (ie, transfer of business or reorganization of the employer), and change of the scope of activity, the economic status, and the organization of the work within the enterprise. The highly protective nature of the Bulgarian labor legislation *vis-à-vis* the employees could be seen in the sphere of the ILA's termination. The LC allows the employer to dismiss employees only on certain grounds exhaustively listed in the LC, such as:

- Material infringement of the labor discipline by the employee;
- The closing of a part of the enterprise or reduction of payroll positions; and
- Absence of necessary professional qualification of the employee for the job.

The employer is further obliged to comply with mandatory procedural requirements ensuring the lawfulness and the validity of the dismissal. Since 2004, the LC shifted from providing protection for female employees to providing increased protection to pregnant employees, such as prohibition against extra work, night work, longer paid pregnancy and childbirth leave and special protection against dismissal, in line with the tendency in the EU.

Disputes concerning the arising, existence, performance, and termination of employment relations are settled by the court. The existing practice up to now shows that courts generally favor employees. Labor litigation is still very slow because most of the labor disputes (depending on the value and the merits of the claim), although subject to speedy-procedure rules, are heard in three instances and the last instance — the Supreme Court of Cassation — is overloaded with a great number of cases waiting to be scheduled. The LC complies with the European Acquired Rights Directive regarding the transfer of employees in case of reorganization of the employer.

Expatriates may also be employed in Bulgaria. Commonly, such employment triggers the requirement for work and residence permits. In October 2006, the Bulgarian government passed a law governing the entry and exit of EU and EEA nationals, their accompanying family members, and Swiss nationals, also establishing new conditions governing the issuance of long-term and permanent residence permits for those individuals. The law entered into force on the date of Bulgaria's official accession into the EU, ie, 1 January 2007. All other foreigners need to obtain:

- A work permit, based on the employment of the foreigner by a Bulgarian employer under the LC or on the secondment of the foreigner by his/her

foreign employer in the framework of the provision of services within the territory of the Republic of Bulgaria;

- A type D visa; and
- A residence permit issued by the Bulgarian authorities following certain procedures.

The employment relations between local employers and foreign employees are regulated by the Bulgarian labor laws. The Bulgarian Code on International Private Law provides that the ILA shall be governed by the law chosen by the parties, however, such choice should not deprive the employee from the protection he is given by the mandatory rules of the law which would have been applicable in case there was no choice of law. The LC further provides that it shall apply to all employment relationships with Bulgarian enterprises and joint ventures in this country, as well as to employment relationships between Bulgarian citizens and foreign enterprises in this country or Bulgarian enterprises abroad, save as otherwise provided for in a law or a treaty to which the Republic of Bulgaria is a party.

Taking this into account, any ILAs for work performed on the territory of the Republic of Bulgaria should be governed by the Bulgarian legislation. The conclusion of an ILA for work in Bulgaria which is subject to a foreign legislation is to the very least disputable. And, in any case, even if a foreign law is to be applied to an ILA, the clauses of the latter shall not contravene any imperative provision of the LC, and if the provisions of the LC are more favorable to the employees than the foreign law, they would be applicable irrespective of the choice of law in the contracts. However, in case of a dispute, the final decision on the favorability of the different provisions and the validity of the clauses of an ILA would be taken only by the court.

An important issue often raised by foreign companies which still do not have any establishment in Bulgaria is whether they could directly hire Bulgarian individuals under ILAs. It should be taken into account that once the foreign company enters into ILAs governed by the Bulgarian legislation, that company will have to start withholding and payment of the related income tax, and social and medical security contributions over the employee's salary on a monthly basis. The payment of these has to take place with or before the payment of the salary, otherwise the officials making the payment of the salaries could be subject to criminal liability under the Bulgarian Penal Code.

The fulfillment of this obligation requires the foreign company to register itself with the Bulgarian authorities as a direct foreign employer and insurer. In particular, the foreign company has to be registered as an employer with the Registry Agency, which state authority forwards the registration information to the National Revenue Agency (for tax purposes) and to the Social Security Institute (for social and medical security purposes). Once the registration with the Registry Agency is completed, the employer shall receive a special

identification number used for the payment of the taxes and the social and medical security contributions over the salaries of its employees.

In addition to the above, it has to be taken into account that, under the Bulgarian legislation, employees may not pay their own social and medical security and tax obligations, as it's the obligation of the employer when paying the salaries to withhold and pay the necessary social and medical security and tax contributions (part of which are at the expense of the employer and part at the expense of the employee, but in any case the actual payment should be done by the employer).

According to the current practice of the Bulgarian authorities, there is no mechanism under which the foreign company as foreign employer could directly register itself with the Bulgarian Registry Agency. This in practice means that even if the foreign company enters into an ILA governed by the Bulgarian legislation, it shall not be in a position to perform its mandatory obligations as an employer with respect to the payment of the social and medical security contributions and the withholding and transfer of the income tax over the employee's salary.

Hiring of employees through a Bulgarian recruitment agency is legally admissible to the extent that it is not expressly forbidden by the LC. Lease of personnel, however, is not a statutory regulated activity and therefore recruitment agencies are free to set out their own terms and conditions (of course within the legal limits). The practice shows that the relations between employers and the chosen recruitment agency are regulated by services contracts. The relations between the Agency worker and the Agency are regulated by an ILA concluded under the LC.

In fact, Agency workers enjoy the complete protection granted to them by the LC, the only difference being that they work not for their formal employer (ie, the Agency) but for a third party (ie, the respective Agency client). Bulgarian court practice is not developed in this area mainly due to the lack of disputes. Without any developed legislation and relevant court practice, it is difficult to assess in advance the risk of declaring the Agency client are actual employer of the Agency workers used in its enterprise. Although recent public discussions show willingness on the side of the Bulgarian authorities to regulate the above activity of recruitment agencies in a separate piece of legislation, no definite steps have been undertaken so far because of the opposition of the major trade union organizations.

