

Implementation of the Prospectus Directive in Bulgaria

by Raina Dimitrova and Angel Angelov
Borislav Boyanov & Co.

I. INTRODUCTION

With the ascertaining of the aims of Bulgaria to become a Member State of the European Union the acceptance of the *acquis communautaire* started. Thus most of the national legislation effective nowadays corresponds to the Regulations and Directives in force within the European Union and the accession of Bulgaria as of 01.01.2007 to the European Union was just the step needed to confirm the conformity of Bulgarian legislation with the legislation of the European Union.

Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC¹ (the “**Directive**”) as well as the other pieces of legislation of the *acquis communautaire*, which are related to issues such as public companies, trading of securities, prospectuses, etc., have been transposed into national law by either the enforcement of wholly new pieces of legislation or with amendment and supplement of existing laws.

In compliance with the Directive the Bulgarian legislation has fully accepted and implemented the substance of all the main terms and definitions used in the Directive, i.e. securities, equity securities, non-equity securities, offer of securities to the public, qualified investors, home and host Member State, small and medium-sized enterprises, etc.

The Bulgarian legislator has recently adopted special laws for implementation of the Directive and the other applicable *acquis communautaire* and simultaneously other existing pieces of legislation have been amended and supplemented respectively.

In Bulgaria, the issues regarding the publically offered and traded securities, the offerors, the regulated markets, the prospectus, the authorities having supervision functions over the process of trading with securities in particular are regulated mainly by the following laws:

- The Public Offering of Securities Act of 1999 as amended (“**POSA**”) – it regulates the legal status and special requirements applicable to publicly traded joint stock companies, the securities which are publicly traded, the public offers of securities and the admission of securities to trading on regulated markets, etc.
- The Measures Against Market Abuse With Financial Instruments Act of 2006 as amended (“**MAMAFI**”) – it regulates issues with the purpose of market abuse prevention and detection, heightening of the public confidence in the financial instruments market, provision of prompt and complete disclosure of information to investors, creation of conditions for development of a fair, transparent and effective financial instruments market, etc.;

□

¹ Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities.

- Markets in Financial Instruments Act of 2007 (“**MFIA**”) – it regulates the activity of investment intermediaries and regulated markets in financial instruments, the requirements applicable to persons managing and controlling such entities, as well as the requirements applicable to persons with qualified stake in the capital of such entities, the state supervision over the said entities and persons, etc.
- Ordinance No. 2 of September 17, 2003 of the Financial Supervision Commission on the Prospectuses In Case of Public Offering and Admission for Trade on a Regulated Market of Securities and on the Disclosure of Information by the Public Companies and the Other Issuers of Securities, as amended (“**the Ordinance**”) – it regulates the requirements applicable to the initial disclosure of information in case of public offering of securities, the subsequent disclosure of information by the public companies and the other issuers of securities, as well as the other requirements to the contents of a prospectus.

II. THE COMMISSION

For the purpose of exercising of control and supervision in the financial sector² a special governmental body has been established by virtue of the Financial Supervision Commission Act named Financial Supervision Commission (“**the Commission**”). The Commission is independent from the government and reports its activities to the National Assembly (the Parliament) of Bulgaria only.

The Commission exercises control through:

- issuance of authorizations (licenses) and confirmations, as well as refusals to issue such authorizations and confirmations;
- conduct of off-site and on-site inspections on the operations of the persons supervised;
- implementation of administrative measures and imposition of administrative sanctions.

Three directorates have been established within the Commission: Supervision of the Investment Activities, Insurance Supervision and Social Insurance Supervision. Each of the said divisions is managed by a Deputy-Chairman of the Commission.

Amongst the powers of the Commission the following shall be taken into consideration:

- adoption and enforcement of ordinances when so provided by the legislation;
- issuance of instructions in writing for the execution and interpretation of different pieces of legislation such as the POSA, MFIA, MAMAFI, etc.;
- issuance or refusals of the respective licenses as provided by the POSA, the MFIA, etc.;
- adoption of resolutions for granting or refusal of confirmation to prospectuses;

□

² According to the Financial Supervision Commission Act financial supervision shall be the supervision over:

1. activities of the regulated securities markets, the Central Depository, investment intermediaries, investment and management companies, natural persons who are directly engaged in securities transactions and investment consultancy, public companies and other issuers of securities under the Public Offering of Securities Act and the Markets in Financial Instruments Act;
2. activities of insurers, insurance brokers and insurance agents according to the Insurance Act and of health insurance companies according to the Health Insurance Act;
3. activities of supplementary social insurance companies and of the funds managed thereby according to the Social Insurance Code.

Considering the rights and obligations of the Commission it is the authority, which has to monitor and supervise all the issues with respect to the offering and trade of securities under the meaning of *acquis communautaire* and the Directive in particular.

With the purpose to monitor, supervise and enforce the legislation applicable in the financial sector the Commission has the right to take different types of administrative measures (such as ban of trade, appointment of administrators, etc.), to demand information and to impose sanctions in case of violations of the legislation.

III. GENERAL PRINCIPLES

Under the Bulgarian legislation the public offering of securities as well as their trade on regulated market is prohibited and illegal if the offeror of the said securities has not published a prospectus. The prospectus itself can be published only in case the Commission has issued a confirmation of the prospectus in writing. In case of subscription or sale of securities before publication of the prospectus (preceded by its approval) as well as in case the information in the prospectus is untrue or material information has not been revealed with the prospectus, the investor who has subscribed / purchased securities shall have the right to claim the transaction effected as null and void, save as where the said investor has acted in bad faith. The term for exercising such right is three months as of the ascertaining of the relevant circumstance but shall not exceed one year as of the subscription / the sale and purchase of the securities.

Exceptions

A. The provisions of the legislation on the procedures for offering of securities or admission of securities to trading on regulated market shall not apply to:

1. units issued by collective investment undertakings other than the closed end type;
2. non-equity securities issued by the Republic of Bulgaria or by another Member State, by the regional or local authorities thereof, by international organizations whereof the Republic of Bulgaria or another Member State is a member, by the European Central Bank, by the Bulgarian National Bank or by the central banks of the other Member States;
3. shares in the capital of the central banks of the Member States;
4. securities unconditionally and irrevocably guaranteed by the Republic of Bulgaria or by another Member State or by their regional or local authorities;
5. securities issued by non-profit organizations, recognized in a Member State, with a view to their obtaining the means necessary to achieve their objectives;
6. non-equity securities issued in a continuous or repeated manner by banks, provided that the said securities:
 - (a) are not subordinated, convertible or exchangeable;
 - (b) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative financial instrument;
 - (c) materialize reception of repayable deposits;
 - (d) are covered by the Bank Deposit Insurance Fund-Bulgaria or by a similar deposit guarantee scheme in another State;

7. non-fungible shares of capital whose main purpose is to provide the holder thereof with a right to occupy an apartment, or other form of immovable property or a part thereof, and where the shares cannot be sold on without this right being given up;
8. non-equity securities issued in a continuous or repeated manner by banks, where the total consideration of the offer is less than the BGN³ equivalent of EUR 50,000,000, which limit shall be calculated over a period of one year, provided that the said securities:
 - (a) are not subordinated, convertible or exchangeable;
 - (b) do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative financial instrument.

In the cases referred to in Items 2, 4 and 8 the issuer, the offeror or the person asking for admission to trading on a regulated market may draw up a prospectus in accordance with the requirements of the legislation and the instruments for the application thereof, when the securities are offered to the public or admitted to trading.

B. In compliance with POSA the obligation to publish a prospectus shall not apply to the following types of offers:

1. an offer of securities addressed solely to qualified investors;
2. an offer of securities addressed to fewer than 100 natural or legal persons in the Republic of Bulgaria or to fewer than 100 natural or legal persons in each other Member State;
3. an offer of securities addressed to investors who acquire securities for a total consideration of the BGN equivalent of at least EUR 50,000 per investor for each separate offer;
4. an offer of securities whose denomination per unit amounts to the BGN equivalent of at least EUR 50,000;
5. an offer of securities with a total consideration of the BGN equivalent of less than EUR 100,000, which limit shall be calculated over a period of one year.

Any subsequent resale of securities, which were previously the subject of one or more of the types of offer covered under items 1 through 5 above, shall be regarded as a separate offer with respect to the assessment of an offer as a public offer under the meaning of the POSA⁴. The placement of securities through investment intermediaries shall be admitted after publication of a prospectus if any of the conditions covered under items 1 through 5 above is not met.

C. The obligation to publish a prospectus shall not apply to offers of securities to the public of the following types of securities:

1. shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase of capital;

□

³ The Bulgarian official currency; 1 BGN equals to EUR 1.95583 by virtue of fixed exchange rate.

⁴ Under the POSA "Public offering of securities" shall be a communication on offer of securities addressed to 100 or more persons or to an unrestricted circle of persons in any form whatsoever and by any means whatsoever, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable investors to decide to subscribe to or purchase the said securities. The placing of securities through a financial intermediary shall likewise be treated as public offering if it fulfils the conditions under the previous sentence.

2. securities offered in connection with a takeover by means of an exchange offer, provided that a document is made available to the persons containing information which is regarded by the Commission as being equivalent to the information contained in the prospectus;
 3. securities offered, allotted or to be allotted in connection with a merger, provided that a document is made available to the persons containing information which is regarded by the Commission as being equivalent to the information contained in the prospectus;
 4. shares offered, allotted or to be allotted free of charge to existing shareholders, as well as dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that a document is made available to the persons containing information on the reasons for the offer of the shares, on the number and nature of the shares, on the rights conferred by the shares and the manner of exercise of the said rights, on the terms and procedure for acquisition of the shares, as well as other details of the offer;
 5. securities offered, allotted or to be allotted to existing or former members of the management and supervisory bodies and/or factory and office workers by the employer thereof, which has securities already admitted to trading on a regulated market, or by a person related thereto, provided that a document is made available to the persons containing information on the reasons for the offer of the securities, on the number and nature of the securities, on the rights conferred by the securities and the manner of exercise of the said rights, on the terms and procedure for acquisition of the securities, as well as other details of the offer;
- D.** The obligation to publish a prospectus shall not apply to the admission to trading on a regulated market of the following types of securities:
1. shares representing, over a period of one year, less than 10 per cent of the number of shares of the same class already admitted to trading on the same regulated market;
 2. shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, if the issuing of such shares does not involve any increase of capital;
 3. securities offered in connection with a takeover by means of an exchange offer, provided that a document is made available to the persons containing information which is regarded by the Commission as being equivalent to the information contained in the prospectus;
 4. securities offered, allotted or to be allotted in connection with a merger, provided that a document is made available to the persons containing information which is regarded by the Commission as being equivalent to the information contained in the prospectus;
 5. shares offered, allotted or to be allotted free of charge to existing shareholders, as well as dividends paid out in the form of shares of the same class as the shares in respect of which such dividends are paid, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market and that a document is made available to the persons containing information on the reasons for the offer of the shares, on the number and nature of the shares, on the rights conferred by the shares and the manner of exercise of the said rights, on the terms and procedure for acquisition of the shares, as well as other details of the offer;
 6. securities offered, allotted or to be allotted to existing or former members of the management or supervisory bodies and/or factory and office workers by the employer thereof or a person related thereto, provided that the said securities are of the same class as the securities already

admitted to trading on the same regulated market and that a document is made available to the persons containing information on the reasons for the offer of the securities, on the number and nature of the securities, on the rights conferred by the securities and the manner of exercise of the said rights, on the terms and procedure for acquisition of the securities, as well as other details of the offer;

7. shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided that the said shares are of the same class as the shares already admitted to trading on the same regulated market;
8. securities already admitted to trading on another regulated market, provided that:
 - (a) these securities, or securities of the same class, have been admitted to trading on that other regulated market for more than 18 months;
 - (b) the admission to trading on that other regulated market was preceded by confirmation of a prospectus and the publication thereof for securities first admitted to trading on a regulated market after the 31st day of December 2003;
 - (c) except where l. (b) applies, for securities first admitted to listing after the 30th day of June 1983, a prospectus for admission to trading was confirmed;
 - (d) the ongoing obligations for trading on that other regulated market have been fulfilled;
 - (e) the person asking for the admission of securities to trading on a regulated market in the Republic of Bulgaria, invoking this exemption, makes a summary document available to the public in a language accepted by the Commission, and the said summary document was published in the Republic of Bulgaria, and the contents of the said summary document is responsive to the requirements of the legislation and the instruments for the application thereof and the said document states where the most recent prospectus can be obtained and where the financial information published by the issuer according to his ongoing disclosure obligations is available.

In the cases where no prospectus has been published, the investors shall have the right to claim the transaction affected as null and void if the other information regarding the offer to the public or the admission of securities to trading on a regulated market, as circulated by the issuer or the offeror or the person asking for admission of securities to trading on a regulated market, is untrue or if material information has been withheld, save as where the said investor has acted in bad faith. The term for exercising such right is three months as of the ascertaining of the relevant circumstance but shall not exceed one year as of the subscription / the sale and purchase of the securities.

Should more than one issue of securities of the same class be issued within the relevant calendar and each of the said issue be offered to fewer than 100 persons but the total number of offerees of the said issues exceeds 100 persons, to the issue exceeding this limit the general rules for publishing of prospectus and its confirmation shall apply.

IV. THE PROSPECTUS

It shall be considered that the Ordinance enforced on the grounds of POSA explicitly states that for the requirements to the prospectus and its format, its publishing and contents included Regulation No. 809/2004 of the Commission for the implementation of Directive 2003/71/EC shall apply. Furthermore, the Ordinance contains annexes exactly specifying the information

which shall be provided with a prospectus. These annexes as well as the provisions of the Ordinance itself are identical in their contents with the annexes to the Directive.

Contents of the Prospectus

The prospectus shall contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable the investors to make an accurate assessment of the economic situation and financial position, assets and liabilities, profit and losses, and prospects of development of the issuer and of the guarantors of the securities, as well as of the rights attached to such securities. A prospectus may not contain untrue, misleading or deficient particulars.

The prospectus shall contain information concerning the issuer and the securities to be offered to the public or to be admitted to trading on a regulated market, and shall also include a summary. There is no requirement a summary note to be provided, where the prospectus relates to the admission to trading on a regulated market of non-equity securities having a denomination per unit of at least the BGN equivalent of EUR 50,000, except when the Commission or the competent authority of a relevant Member State requests the provision of such summary note.

The issuer, the offeror or the person asking for the admission of the securities to trading on a regulated market may draw up the prospectus as a single document or separate documents. A prospectus composed of separate documents shall contain all the information required under the legislation and the instruments for the application thereof, divided into three documents:

1. a registration document, containing information relating to the issuer;
2. a securities note, containing information concerning the securities offered to the public or to be admitted to trading on a regulated market;
3. a summary note.

The prospectus shall be considered to contain the relevant information even when the said information is incorporated in the prospectus by reference to one or more documents which have been confirmed by or submitted to the Commission, provided that the information contained in the said documents is the latest available and a detailed cross-reference list is drawn up in order to enable investors to identify easily specific items of information referred to.

Should any particulars of the required contents of a prospectus prove inapplicable to any specific issuer by reason of the corporate objects or legal form of business organization thereof, or the securities to which the prospectus relates the said particulars shall be replaced by equivalent information.

The information contained in a prospectus must be provided in an easily analyzable and comprehensible form for the investors.

Base Prospectus

In compliance with the Directive under the POSA the issuer, offeror or person asking for admission of the securities to trading on a regulated market may draw up the prospectus as a base prospectus where the following types of securities are offered to the public or are to be admitted to trading on a regulated market:

1. non-equity securities, including warrants in any form, issued under an offering programme;

2. non-equity securities issued in a continuous or repeated manner by banks⁵ where:
 - (a) the sums deriving from the issue of the said securities are placed in assets which provide sufficient coverage for the liability deriving from securities until the maturity date thereof;
 - (b) in the event of bankruptcy of the issuer bank, the sums referred to in 1. (a) above are intended, as a priority, to repay the principal and interest falling due.

Prospectuses consisting of separate documents

Where an issuer already has a registration document confirmed by the Commission, when securities are offered to the public or admitted to trading on a regulated market, only a securities note and a summary note may be drawn up. In such cases the securities note shall furthermore provide the latest available information that would normally be provided in the registration document if, since the registration document was last updated or supplemented, there has been a material change in the particulars contained or new circumstances have occurred, which could affect investors' assessments. The Commission shall pronounce on the securities note and the summary note according to the procedures established for confirmation of a prospectus. Where the issuer has a registration document, which has been submitted to the Commission without being confirmed, the Commission shall pronounce on the entire prospectus, including any updated information.

Omission of information

In compliance with the possibility under Art. 8 (2) of the Directive the Commission may authorize the omission from the prospectus of certain information if the Commission considers that:

1. disclosure of such information would be contrary to the public interest;
2. disclosure of such information would be seriously detrimental to the issuer, provided that the omission would not be likely to mislead investors with regard to facts and circumstances essential for the latter;
3. such information is of minor importance only for a specific offer or admission to trading on a regulated market and is not such as will influence the assessment of the financial position and prospects of the issuer, offeror or guarantor of the securities.

Where information on the final offer price and on the final amount of securities, which will be offered cannot be included in the prospectus, the maximum price or the criteria and/or the conditions in accordance with which the final price and the final amount of securities will be determined, shall be disclosed therein. If such information is not disclosed in the prospectus, the persons who have subscribed for or purchased securities, as the case may be, may withdraw the acceptances of the subscription or purchase within two working days or within another longer time limit as provided for in the prospectus after submission to the Commission of the information on the final price and the final amount of the securities which will be offered **by means of a written declaration at the places where the securities were subscribed for or purchased, as the case may be.** The person shall not be liable for the withdrawal of the acceptance thereof, save as where the said person has acted in bad faith.

□

⁵ It has to be noted that under Bulgarian POSA the exception applies only to the banks, i.e. not to all credit institutions.

The issuer, offeror or person asking for admission of the securities to trading on a regulated market is obliged to inform the Commission of the final price and the final amount of securities which will be offered and to publish this information - through its publication in the press, in the form of a leaflet or in another appropriate manner not later than the initial date of the public offering or the admission of the securities to trading on a regulated market.

Updates, Amendments and Supplements

Issuers⁶ whose securities are admitted to trading on a regulated market in Bulgaria shall be obliged, at least annually, to provide a document that contains or refers to all information that they have published or otherwise made available to the public over the preceding twelve months. Where such a document refers to a particular item of information, the said document shall state where the said information can be obtained.

The document shall be submitted to the Commission not later than within one month after publication of the annual financial statement of the issuer.

During the period commencing with the submission of an application for confirmation of a prospectus and ending with the making of decision by the Commission, the issuer, offeror or person asking for admission of the securities to trading on a regulated market must notify the Commission of any intervening changes as may necessitate amendments to the prospectus within three working days after occurrence or learning of the said changes, as the case may be, and must amend the prospectus accordingly.

During the period between the time when confirmation of the prospectus is granted and the final closing of the offer to the public or the time when trading on a regulated market begins, the issuer, offeror or the person asking for admission of the securities to trading on a regulated market must draw up a supplement to the prospectus and submit the said supplement to the Commission before the lapse of the next succeeding working day after the occurrence or the learning, as the case may be, of every significant new factor, material mistake or inaccuracy relating to the information contained in the prospectus, which is capable of affecting the assessment of the securities offered. The summary, as well as any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement to the prospectus. In such cases the person who has already subscribed for or, respectively, purchased securities before the supplement to the prospectus is published, shall have the right to withdraw the acceptance thereof of the said securities within two working days or within another longer time limit as provided for in the prospectus after publication of the notice of the supplement, without being liable, save as where the said person has acted in bad faith. The withdrawal of acceptance shall be effected via a written declaration at the place where the securities were subscribed for or purchased, as the case may be.

The Commission shall pronounce on the supplement to the prospectus within seven working days after receipt of the said prospectus, or, where additional particulars and documents have been requested, within seven working days after receipt of the said particulars and documents.

□

⁶ This is not applicable to issuers of non-equity securities whose denomination per unit amounts to at least the BGN equivalent of EUR 50,000.

The Commission shall refuse to approve the supplement to the prospectus if the requirements under the legislation and the instruments for the application thereof are not complied with. In such case, the Commission may discontinue the public offering or the trading in the securities.

The issuer, offeror or person asking for admission of the securities to trading on a regulated market must give public notice of any such supplement and shall make the supplement available to the public within seven days after the decision of the Commission to confirm the supplement to the prospectus.

Language

In case an offer to the public is made or admission to trading on a regulated market is demanded only in Bulgaria and the home Member State is Bulgaria, the prospectus shall be drawn up in the Bulgarian language.

In case an offer to the public is made or admission to trading on a regulated market is demanded in one or more Member States excluding Bulgaria and the home Member State is Bulgaria, the prospectus shall be drawn up either in a language accepted by the competent authorities of those Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission of the securities to trading on a regulated market. For the purposes of confirmation of the prospectus by the Commission, the prospectus shall be drawn up in the Bulgarian or the English language, at the choice of the issuer, offeror or person asking for admission of the securities to trading on a regulated market.

In case an offer to the public is made or admission to trading on a regulated market is demanded in more than one Member State including Bulgaria and the home Member State is Bulgaria, the prospectus shall be drawn up in the Bulgarian language. In such cases, the prospectus shall also be made available to the public either in a language accepted by the competent authorities of each host Member State or in a language customary in the sphere of international finance, at the choice of the issuer, offeror, or person asking for admission of the securities to trading on a regulated market.

Where admission to trading on a regulated market of non-equity securities whose denomination per unit amounts to at least BGN equivalent of EUR 50,000 is demanded in one or more Member States, the prospectus shall be drawn up either in a language accepted by the competent authorities of the home and host Member States or in a language customary in the sphere of international finance, at the choice of the issuer, offeror or person asking for admission of the securities to trading on a regulated market.

Liability

The prospectus shall be signed by the issuer and the offeror or by the person asking for admission of the securities to trading on a regulated market, as well as by the guarantor of the securities, who shall declare that the prospectus conforms to the statutory requirements.

The members of the management body of the issuer and the procurator (if any), as well as the offeror, the person asking admission of the securities to trading on a regulated market, and the guarantor of the securities shall be jointly liable for any detriment as may be inflicted by reason of any untrue, misleading or deficient particulars in the prospectus. The drawers of the financial statements shall be jointly liable with the persons mentioned above for any detriment as may be inflicted by any untrue, misleading or deficient particulars in the financial statements of the

issuer, and the registered auditors shall be jointly liable with the said persons for any detriment as may be inflicted by the financial statements thereby audited.

Such liability may not arise solely on the basis of the summary note, including any translation thereof, unless the information contained therein is misleading, untrue or inconsistent when read together with the other parts of the prospectus.

The prospectus shall clearly identify the persons who shall be liable by name and position or, respectively, by business name, registered office and address of the place of management, who shall declare that, to the best of their knowledge, the information contained in the prospectus is true and full.

In the cases where no prospectus has been published the liability shall be with respect to the other information circulated by the issuer, the offeror or the person asking for admission of the securities to trading on a regulated market in connection with the public offering or the admission to trading on a regulated market.

V. CONFIRMATION OF THE PROSPECTUS

Competency

The Commission shall decide on applications for confirmation of prospectuses in the following cases:

1. the home Member State of the issuer is Bulgaria; or
2. the Commission has undertaken the confirmation of the prospectus under a request by a competent authority of a Member State;

Where the Republic of Bulgaria is a home Member State, the Commission may, because of the type of the issuer and the securities offered or the peculiarities of the public offer, subject to the agreement of the relevant competent authority of another Member State, transfer the confirmation of a specific prospectus to the said competent authority. In such case, the Commission shall notify the issuer, the offeror or the person asking for admission of the securities to trading on a regulated market within three working days from the date of the decision taken by the Commission to transfer the confirmation. The time limit for pronouncement by the relevant competent authority, as the case may be, shall apply as from the date of the decision for the said transfer. Where the Republic of Bulgaria is not a home Member State, the Commission may assume the confirmation of a prospectus from the competent authority of another Member State.

Application

A person who wants confirmation of a prospectus shall file with the Commission a hard copy application in writing as well as a registration form in the form of a soft file (both forms approved by the Deputy – Chairman of the Commission responsible for department “Supervision of Investment Activity”). The applicant can be:

- a) in case of public offering of securities: the issuer, the offeror and the investment intermediary;
- b) in case of admission of securities to trade on regulated market – the issuer and the person who wants the securities to be admitted but is not the issuer;

In case an applicant or an issuer is a foreign entity all the requirements with respect to the documents needed to be presented shall be applied *mutatis mutandis*.

Both the application and the registration form shall be in the Bulgarian language. In case the documents, which have to be provided, are issued on a language different from the Bulgarian, these shall be translated in the Bulgarian language and legalized in conformity with the Bulgarian legislation in force. In case of discrepancies between the Bulgarian and non-Bulgarian language the Bulgarian translation shall prevail.

To the application for confirmation of a prospectus the following documents shall be applied:

1. the prospectus;
2. documents for the applicant, which include:
 - a) a certified copy from the certificate for entering into the Commercial Register, certificate for current legal status, a copy from the identification card under the BULSTAT registration⁷ / ID card in case the applicant is a natural person;
 - b) a certified copy of the Deed of incorporation/the Statutes of the company;
 - c) the resolution for public offering of securities or the admission of securities to trade on a regulated market and for the adoption of a prospectus by the competent body of the company;
3. documents under 1. "a" and "b" above for the issuer of the securities offered in case it is different from the applicant;
4. the issuer's last annual financial statement, as audited by a registered auditor;
5. documents certifying guarantees granted by third parties for securing of obligations of the issuer as well as any other documents necessary for confirmation of the information provided with the prospectus;
6. a receipt proving the payment of the tax due;

Examination

The Commission shall establish whether the requirements for issuance of the requested confirmation are met. If the particulars and documents provided are incomplete or inconsistent or additional information or evidence of the veracity of data is necessary, the Commission shall send a notification of the established incompleteness and inconsistencies and/or of the requested information and documents within 10 working days as of the receipt of the application.

The Commission shall pronounce on the application within 10 working days after the date of receipt thereof or, where additional particulars and documents have been requested, within 10 days after the date of receipt of the said particulars and documents.

In the cases where the public offer involves securities issued by an issuer, which does not have any securities admitted to trading on a regulated market and which has not previously offered securities to the public, the time limit shall be 20 instead of 10 working days.

Refusal

□

⁷ Under the Bulgarian legislation the legal entities registered in Bulgaria shall be registered with the Commercial Register kept by the District courts as well as in the Registration Agency to the Ministry of Justice in order to obtain an unique BULSTAT number;

The Commission shall refuse to grant confirmation of the prospectus by a reasoned decision in writing on any of the following grounds:

1. where the prospectus does not satisfy the statutory requirements;
2. where the issue price of the shares is lower than the balance-sheet value per share before the increase of capital, calculated at the time of passage of a resolution on an increase of capital, and the interests of shareholders are thus impaired;
3. on account of the special rights attached to the shares, or for any other reason the interests of investors are not safeguarded.

The Commission may refuse to grant confirmation only if the applicant has failed to cure the non-conformities or to submit the documents as required within the time limit set by the Commission, which may not be shorter than one month.

Validity

A prospectus shall be valid for a period of twelve months after its publication. A registration document shall be valid for a period of twelve months. In such cases, the registration document, accompanied by the securities note, updated if applicable, and the summary note shall be considered to constitute a valid prospectus.

In the cases of an offering program, the base prospectus shall be valid for a period of twelve months.

Admission to more Member States

If an offer to the public is made or admission to trading on a regulated market is demanded within the territory of one or more host Member States, the issuer or the person responsible for drawing up the prospectus must notify the Commission of this in advance. The notification shall indicate the host Member State or States. The prospectus shall be attached to any such notification unless confirmed by the Commission. Where Bulgaria is a home Member State, securities may be offered to the public or admission of securities to trading on a regulated market may be demanded within the territory of one or more host Member States on the basis of a prospectus confirmed by the Commission, after the competent authorities of the host Member States are notified with a notification in advance. Within three working days after the receipt of the notification or, respectively, within one working day after the confirmation of the prospectus, if the prospectus has been submitted for confirmation together with the notification, the Commission shall dispatch to the competent authority of the host Member State a certificate attesting that the prospectus has been drawn up in accordance with the requirements of the Directive, as well as a copy of the prospectus. The Commission shall notify forthwith the issuer or, respectively, the person responsible for drawing up the prospectus, of the dispatch of the documents.

In case the Commission has authorized the omission from the prospectus of certain particulars, this shall be stated in the certificate.

If the Commission is informed by the competent authority of the host Member State of any violations of the effective legislation of that Member State committed by the issuer or by the persons commissioned to carry out the offer to the public, or of any breaches of the obligations attaching to the issuer by reason of the fact that the securities are admitted to trading on a

regulated market, the Commission shall apply all relevant measures and shall notify the host Member State of the measures taken.

In case the Republic of Bulgaria is a host Member State, securities may be offered to the public or may be admitted to trading on a regulated market within the territory thereof after the Commission receives from the relevant competent authority of the home Member State:

1. a certificate attesting that a confirmed prospectus exists for the securities, which has been drawn up in accordance with the requirements of the Directive, as well as information whether any particulars have been omitted from or substituted in the prospectus, the particulars which have been omitted or substituted, as well as justification of the omission or substitution of the said particulars;
2. a copy of the confirmed prospectus.

The issuer, the offeror or the person asking for admission of the securities to trading on a regulated market shall be obliged to make the prospectus available to the public. Where the prospectus has not been drawn up in the Bulgarian language, the issuer, the offeror or the person asking for admission of the securities to trading on a regulated market shall be obliged to make a translation of the summary into the Bulgarian language available to the public together with the prospectus.

In case the Commission finds out any significant new information, material mistake or inaccuracy in the prospectus, the Commission shall draw the attention of the competent authority of the host Member State to the need of a supplement to the prospectus. Such notification shall be made too in case the Commission finds that the issuer or the persons commissioned to carry out the offer to the public in Bulgaria violates the applicable legislation and / or its obligations.

If despite the measures taken by the competent authority of the home Member State or because such measures have proved inadequate, the issuer or the person commissioned to carry out the offer to the public in Bulgaria persists in committing violations, the Commission may, after informing the competent authority of the home Member State, take the appropriate measures in order to protect investors. The Commission shall inform the European Commission of the measures taken within seven days after the application of the said measures.

Where Bulgaria is the home Member State of an issuer having its registered office in a third country, the Commission may confirm a prospectus for an offer to the public or for admission to trading on a regulated market, drawn up in accordance with the legislation of a third country, provided that:

1. the prospectus has been drawn up in accordance with international standards set by international securities commission organizations;
2. the information requirements, including information of a financial nature, are equivalent to the requirements under the POSA and its secondary legislation.

VI. PUBLICATION

The issuer or offeror shall give public notice of the public offering, the earliest and latest date for the subscription or the earliest and latest date for the sale, as the case may be, the registered number of the confirmation as granted by the Commission, and the place, time and manner of inspection of the prospectus, as well as other particulars and information as may be prescribed by the Ordinance.

Any notice for the information above shall be promulgated in the State Gazette and shall be published in one national daily newspaper not less than seven days prior to the earliest date for the subscription or the commencement of the sale.

Furthermore, the Ordinance explicitly states that the prospectus shall be deemed as made public if it is:

1. published in one or more central newspapers; or
2. printed in sufficient number of copies, which are freely distributed in the places where the securities are offered for subscription or trade, the office premises of the issuer, the offeror, the investment intermediaries and banks included; or
3. published via Internet on the web page of the issuer and if possible – on the web pages of the investment intermediaries and banks;
4. published via Internet on the web page of the regulated market on which the securities are to be offered / traded.

In addition, in the register of public companies and other issuers of securities to the Commission all confirmed prospectuses shall be published for a term of at least 12 months.

According to the Ordinance all the requirements of *acquis communautaire* with respect to the publishing of a prospectus, on the Internet included, shall be directly applicable.

The earliest date as stated in the notice, whereon the issuer's securities can be subscribed for or purchased, as the case may be, shall be deemed as commencement of the subscription or sale, as the case may be.

The issuer, the offeror or the person asking for admission of the securities to trading on a regulated market shall be obliged to make the prospectus available to the public via its publication in the press, in the form of a leaflet or in another appropriate manner not later than the initial date of the public offering or the admission of the securities to trading on a regulated market.

In the case of an initial public offer of a class of shares not already admitted to trading on a regulated market and whose admission to trading is to be demanded for the first time, the prospectus shall be made available to the public at least 6 working days before the end of the offer.

Any advertisement and publication in connection with a public offer of securities or admission of securities to trading on a regulated market shall state that the prospectus is or will be made available to the public, as well as the manner in which investors can inspect the said prospectus. Such an advertisement and publication may not contain any untrue or misleading information, or any information inconsistent with the information contained in the prospectus as submitted to the Commission. The Commission shall exercise supervision as to the conformity of the advertisements and publications with the requirements of the legislation and the instruments on the application thereof.

The issuer, the offeror and the person asking for admission of the securities to trading on a regulated market are not allowed to make any statements, which are inconsistent with the information contained in the prospectus as submitted to the Commission or which contain any material information, which is not available in the prospectus.

VII. POWERS OF THE COMMISSION

In order to ensure compliance with the provisions of the legislation regarding the confirmation / refusal of a prospectus, the Commission shall be empowered to:

2. require from the issuers, offerors or persons asking for admission to trading on a regulated market to include in the prospectus specific information, if necessary for investor protection;
3. require from the issuers, offerors or persons asking for admission to trading on a regulated market, and the persons that control them or are controlled by them, to provide specific information and documents;
4. require the auditors, the members of the management and supervisory bodies and the managers of the issuers, offerors or persons asking for admission to trading on a regulated market, as well as the persons commissioned to carry out the offer to the public or to ask for admission to trading, to provide specific information;
5. suspend a public offer or admission to trading for a maximum of ten consecutive working days on any single occasion if there are reasonable grounds for suspecting that the provisions of the applicable legislation have been infringed;
6. prohibit or suspend a specific advertisement for a maximum of ten consecutive working days on any single occasion if there are reasonable grounds for suspecting that the provisions of the applicable legislation have been infringed;
7. prohibit the carrying out of a public offer if there are reasonable grounds for suspecting that the provisions of the applicable legislation have been or would be infringed;
8. make public the fact that a specific issuer is failing to comply with its obligations under the applicable legislation.

The Commission may disclose to the public each measure applied and sanction imposed for infringement of the provisions of the applicable legislation, unless such disclosure would seriously jeopardize the stability of the financial markets or cause disproportionate damage to the parties involved.

VIII. DISCLOSURE OF INFORMATION

The POSA establishes requirements for disclosure of information by issuers for which Bulgaria is a home country and whose securities are admitted to trading on a regulated market as well as by issuers who have conducted public offering of securities in the Republic of Bulgaria.

For the purposes of the regulations of the disclosure of information

1. "home country" shall be:
 - a) for an issuer of shares or debt securities with single nominal value of less than the BGN equivalent of EUR 1,000 or equivalent amount in another currency in which the securities are denominated at the date of issue thereof:
 - aa) for an issuer from a Member State - the Member State where its registered office is located;
 - bb) for an issuer from a third country - the Member State in which the issuer is obliged to provide to the relevant competent authority a document which contains or makes reference to all the information it has published or has made public otherwise over

the last 12 months in accordance with the requirements of Article 10 of the Directive;

- b) apart from the cases under "a", the Member State where the registered office of the issuer is located or in which its securities are admitted to trading on a regulated market, at the option of the issuer; the issuer may specify only one home country and its choice shall be valid for a period of no less than three years, unless the securities are already traded on a regulated market in Bulgaria or in another Member State;
2. "host country" shall be the Member State in which the securities are admitted to trading on a regulated market where this country is different from the home country;

The provisions for disclosure of information shall not apply to:

- 1. units of collective investment undertakings other than the closed end type, or for units acquired or transferred within such collective investment undertakings;
- 2. money market instruments with a maturity of less than 12 months.

All the reports, notifications and the other information that shall be made public according to the disclosure of information rules, shall contain information as investors may need to make a reasonable investment decision. Any such reports, notifications and information may not contain untrue, misleading or deficient particulars.

The management body of the issuer shall be responsible for the preparation and public disclosure of the financial statements. The members of the management body of the issuer as well as its procurator (if any) shall be jointly liable for any detriment as may be inflicted by reason of any untrue, misleading or deficient particulars in the reports, notifications and any other information disclosed. The drawers of financial statements shall be jointly liable with the persons referred above for any detriment as may be inflicted by any untrue, misleading or deficient particulars in the financial statements of the issuer, and the registered auditors shall be jointly liable with the said persons for any detriment as may be inflicted by the financial statements thereby audited.

Any issuer shall disclose publicly its annual financial report within 90 days after the end of each financial year. Any issuer who is obligated to prepare consolidated financial statements shall disclose publicly its annual consolidated financial statements on its activity within 120 days after the end of each financial year. The issuer shall be obligated to ensure that the annual financial statements and the consolidated financial statements remain publicly available for a period of at least 5 years.

The annual financial report shall contain:

- 1. annual financial statements under the Accountancy Act of 2001 as amended, audited by a registered auditor as well as an audit report;
- 2. an annual report;
- 3. a program for application of the internationally recognized standards of good corporate governance, as prescribed by the Deputy Chairman;
- 4. declarations by the responsible persons within the issuer, specifying their names and functions, certifying that to the best of their knowledge:

- a) the financial statements, prepared in accordance with the applicable accounting standards, present correctly and fairly the information about the issuer's assets and liabilities, financial standing and profit or loss and of the companies included in the consolidation;
- b) the activity report shall contain a truthful review of the development and results from the activity of the issuer, as well as the condition of the issuer and the companies included in the consolidation, together with a description of major risks and uncertainties faced thereby;

5. any other information as explicitly specified by the Ordinance.

Where the issuer is obligated to prepare consolidated financial statements, the financial statements shall be prepared in accordance with the International Accounting Standards and shall be presented together with the annual audited financial statements of the parent company, prepared in accordance with the national legislation of the Member State at the registered office of the parent company. In case the issuer is not obligated to prepare consolidated financial statements the audited financial statements shall be prepared in accordance with the national legislation of the Member State at its registered office.

The annual activity report shall include in addition to the information under the Accountancy Act information about:

1. implementation of the program for application of internationally recognized standards of good corporate governance, as well as information about the compliance of management and supervisory bodies of the issuer with these standards during the year;
2. the reasons for non-compliance of management and supervisory bodies of the issuer with the programme or the standards under item 1, as the case may be, if such non-compliance exists;
3. the measures taken for eliminating the reasons under item 2 and for implementation of the program for good corporate management;
4. revision of the program and proposal for changes thereof to ensure better application of the standards of good corporate governance in the company;
5. any other information, as explicitly specified by the Ordinance.

Any issuer shall make public a three-month report on its activity within 30 days after the end of each quarter. Any issuer who is obligated to prepare annual consolidated financial statements shall make public its consolidated financial statements within 60 days after the end of each quarter. The issuer shall be obligated to ensure that the quarterly financial report and the quarterly consolidated financial statements remain publicly available for a period of at least 5 years.

Exclusions exist with respect to some of the provisions regarding the disclosure of information when an issuer is from a third country and if the Commission deems that the law of such third country stipulates requirements equivalent to the requirements of the legislation and the statutory instruments for application thereto. The Commission publishes on its website a list of the countries in respect of which it considers that their laws set out requirements equivalent to the requirements of the Bulgarian legislation.

Other group of entities to which the rules for disclosure of information (with respect to provision of accounting balances and reports on the activity) shall not fully apply are as follows:

1. Bulgaria, district or local authorities in Bulgaria, public international organizations in which at least one Member State is a member, the European Central Bank, the Bulgarian National Bank and the central banks of the other Member States regardless of whether they are issuers of shares or other securities;
2. issuers of shares who issue only debt securities admitted to trading on the regulated market with a nominal value of no less than the BGN equivalent of EUR 50,000 or in the cases of debt securities denominated in currency other than euro, with a nominal value at the date of their issue of no less than the BGN equivalent of EUR 50,000.

The provisions of the legislation with respect to the reports on the activities shall not apply to banks whose shares are not admitted to trading on a regulated market and which have issued only debt securities issued by them on a continuous basis or periodically, provided that:

1. the total nominal value of the debt securities is lower than the BGN equivalent of EUR 100,000,000;
2. have not published a prospectus.

The issuer of securities other than shares shall disclose publicly without delay: (i) any changes in the rights of the holders of securities other than shares, including changes in the time limits and conditions of such securities, which could affect indirectly such rights, resulting from a change in the conditions of the loan or the interest rate; (ii) information about issuance of a new issue of debt securities and any related guarantees and collateral. This requirement shall not apply to international institutions or other similar organizations in which at least one Member State is a member thereof.

The issuer or the person who has requested, without the consent of the issuer, admission of the securities to trading on a regulated market shall disclose the regulated information to the Commission and to the public at the same time. The issuer who has conducted only public offering of securities shall disclose the information under sentence one first on the territory of Bulgaria. This requirement shall also apply to issuers whose securities are admitted to trading on a regulated market in Bulgaria but are not admitted to trading on a regulated market in the home country. In this case the regulated information shall meet the minimum conditions of Directive 2004/109/EC.

The regulated information shall be disclosed to the public in such a manner so as to cover simultaneously as wide circle of people as possible and in a non-discriminating manner. The issuer shall use a news agency or another media to ensure the efficient dissemination of the regulated information to the public in all Member States. The issuer or the person who has requested admission of the securities to trading on a regulated market may not collect charges from investors for access to the regulated information.

Furthermore the Commission has created and keeps centralized storage database of the regulated information received from issuers whose securities are admitted to trading on a regulated market and whose home country is the Republic of Bulgaria. The information is made public and the access is free of any charges.

Language

In case the securities are admitted to trading only on a regulated market in Bulgaria and Bulgaria is the home country, the information shall be disclosed in Bulgarian. The same rule applies in case the securities are publicly offered on the territory of Bulgaria.

Where the securities are admitted to trading on a regulated market in one or more Member States simultaneously, including Bulgaria, and Bulgaria is the home country, the regulated information shall be disclosed in Bulgarian and in a language adopted by the competent authority of such Member States, or in the customary language in the sphere of international finance, at the option of the issuer.

In case the securities are admitted to trading on a regulated market in one or more Member States simultaneously, Bulgaria excluded, and Bulgaria is the home country, the regulated information shall be disclosed in a language adopted by the competent authority of such Member States, or in the customary language in the sphere of international finance, at the option of the issuer. For the purposes of the Commission's supervisory functions the information shall also be disclosed either in Bulgarian or in English, at the option of the issuer.

In case the securities with a single nominal value of at least the BGN equivalent of EUR 50,000 or debt securities with a nominal value in a currency other than euro of at least the BGN equivalent of EUR 50,000 at the date of their issue are admitted to trading on a regulated market in one or more Member States, the regulated information shall be disclosed in a language adopted by the home and the host Member States or in a customary language in the sphere of international finance, at the option of the issuer or of the person who has requested the securities to be admitted to trading on a regulated market.

Supervision requirements

The issuer shall notify the Commission of:

1. any changes in its articles of association;
2. any changes in its management and supervisory bodies;
3. the decision on transformation of the company;
4. other significant circumstances.

The obligation shall be performed by the issuer by closing of the working day following the day of taking the decision or coming of knowledge of the specific circumstance, and where it is subject to entry in the commercial register, by the close of the working day following the day of coming of knowledge of the entry but no later than 7 days after the entry.

IX. COMPETENCE OF THE COMMISSION

With the purpose to ensure compliance with POSA' provisions regarding the disclosure of information, the Deputy – Chairman of the Commission may:

9. require from auditors, the issuer and the persons controlling or which are controlled to provide specific information and documents; the auditor shall be exempt from the limitations on disclosure of information set out in law, by-law or a contract thus not liable for disclosure of information to the Commission and the Deputy Chairperson.
10. require from the issuer to disclose publicly the information under item 1 in a manner and within a time limit as set out by the Deputy – Chairman;

11. publish, after presentation of an explanation by the issuer, the information under item 1 at his own initiative in the cases where the issuer or the persons that control it or are controlled by it have not fulfilled their obligation under item 2;
12. require from the members of the management and supervisory bodies and the procurators of the issuer (if any) to provide information and where necessary, additional information and documents;
13. ban trading in specific securities on a regulated market for a period not exceeding 10 days if he has reasonable grounds to assume that the provisions re the disclosure of information are violated;
14. ban trading on a regulated market if the provisions re the disclosure of information are violated or there are reasonable grounds for him to assume that they are violated;
15. oblige the issuer to take specific measures for timely disclosure of information to ensure public access to it simultaneously in all Member States in which the issuer's securities are admitted to trading;
16. inform the public that a particular issuer does not meet its obligations;
17. oblige the issuer within a reasonable time limit set by it to remove any deficiencies or non-conformities with the applicable legislation, including the International Accounting Standards, established in the financial statements, records and other accounting documents.

The Commission may disclose any measure taken or penalty imposed, save where such disclosure would seriously jeopardize the stability of financial markets or cause disproportionate damage to the parties involved.

In case Bulgaria is a host country and the Commission establishes that an issuer violates the legislation it shall notify the competent authority in the home country thereof. If, despite the measures taken by the competent authority in the home country or where such measures prove inadequate, the issuer persists in infringing the legislation, the Commission may, after informing the competent authority of the home country, take all the appropriate measures in order to protect investors. The Commission shall notify the European Commission of the measures taken within 7 days after their implementation.

X. JUDICIAL CONTROL

One of the main principles of the Bulgarian legal system is the possibility the acts of the administration to be subject to judicial control. With this respect the POSA and the other pieces of legislation explicitly state that:

- the individual administrative acts of the Commission (such as denials for granting of confirmation of prospectuses) can be appealed before the Supreme Administrative Court;
- the individual administrative acts of the Deputy – Chairman of the Commission can be appealed under the procedure established with the Administrative Procedures Code – before the Chairman of the Commission and the decision of the Chairman of the Commission – before the Supreme Administrative Court;

It shall be noted that the Court can decide on the legality of the appealed act but not on its objective (unless unlawful). However in case an act is not well-reasoned the Court may abrogate

it on these grounds. The appeal of an act of the Commission does not stop its execution automatically but such request may be filed too.

As mentioned above the Commission may impose sanctions for breaches of the legislation. The procedure is regulated by the Administrative Violations and Sanctions Act. The sanctioned entity has the right to appeal the sanction imposed before the Court too.

—