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# INTRODUCTORY NOTES

In the last few years Bulgaria is in the focus of the investors' interest. The political stability and predictability due to the NATO membership and to the EU accession, the stable economic perspective and the growing credit rating of the country and its institutions, these are only some of the elements guaranteeing that the investors' interest will further grow and will be effectively realized. The improvement of the investment climate in the country gives new incentives to the striving for faster economic growth. This growth is even faster than the growing rate of the EU itself. External investors have been attracted by rapidly developing national industry, highly skilled workforce and significant new market. While doing business in Bulgaria is easier than ever, good understanding of the legal system is a key to optimizing new and existing opportunities.

The current Bulgarian legal system is dynamic, constantly improving, adopting the modern patterns which reflect the economic progress, the globalization and the directions of the political development. The process of harmonization of our legal system with the *acquis communautaire* has finished successfully. In Bulgaria investors will find out that many legal provisions are similar to those regulating other markets on which they used to do business. In many areas investors will be nicely surprised to find the tendency to speed up and make more effective as well as to reduce the number of the bureaucratic and administrative regimes. They may as well benefit from the establishment of special measures fostering the investment projects with more significant amount. The equal treatment of local and foreign investors is a principle legally determined and the provisions differing from it, such as the property on land, are in a process of overcoming. The development of the banking sector, the legal regime of securities and the privatization policies are areas no longer threatening with uncertainty and crises.

The efficient protection of the intellectual and industrial property in Bulgaria is often one of the preconditions for the start of investments in the country. And what determines the good investment climate in this respect is not only the accordance of local laws with the achievements of the international instruments but it is again the existence of the respective institutions and the organization of their activity for the implementation of the legal provisions and for the prevention of infringements of rights.

The answers of these and of many other questions which investors pose could be found in the present Legal Guide. ■

## I ENTRY, STAY AND WORK OF FOREIGN NATIONALS IN BULGARIA

### I.1. General Principles

The legal status of foreign nationals in Bulgaria is governed by the Constitution of the Republic of Bulgaria, the Foreign Nationals Act (effective 1998), the Regulation on the Application of the Foreign Nationals Act and the Ordinance on Issuing Visas. Generally, the Bulgarian legislation concerning foreign citizens is in compliance with the EU *aquis communautaire* related to immigration policy.

As from 1 January 2007 certain changes in the Bulgarian legislation concerning the status of the European citizens were introduced.

Pursuant to a draft Act for amendments of the Foreign Nationals Act that is subject to adoption by the National Assembly, the definition of a “foreigner” shall be changed. As foreigners will be considered all persons who are not citizens of any of the member states of the European Union, the European Economic Area and the Swiss Confederation (hereinafter referred to as “European citizens”). As a result of this new definition of a foreigner, the Foreign Nationals Act will no longer apply to the status of European citizens. Their legal status in Bulgaria shall be governed by the Law on Entry, Residence and Departure of European Union Citizens and Members of Their Families from the Republic of Bulgaria, as well as by the applicable Acts of the EU legislation.

European citizens who wish to enter and stay in Bulgaria do not need a visa. They enter and leave the country with an identity card or a passport. They can stay and reside in Bulgaria for a period up to three months starting from the date of their first entry without need to obtain any permits or certificates.

The foreign nationals whose status is governed by the Foreign Nationals Act

(hereinafter referred to as “Foreigners”) must obtain a visa before entering in Bulgaria unless they are subject to visa-waiver agreements.

### I.2. Visas

A visa is a clearance, issued to a Foreigner, for entry and/or stay on the territory of the Republic of Bulgaria for a certain period of time.

A valid visa is not a guarantee of entry into Bulgaria. The border control officers will determine whether the Foreigner meets the requirements for admission. If there has been a change in the circumstances between the date of the application and arrival, or if subsequent information is given which was not originally available to the visa office, then the Foreigner may be refused entry.

The Foreign Nationals Act provides for the following main visa categories: transit visa, short-stay visa and long-stay visa.

A transit visa is required for travel through Bulgaria to another country within 24 hours.

A short-stay visa allows a Foreigner single or multiple entries into Bulgaria for up to 90 days within a period of six months.

A long-stay visa allows a Foreigner to enter into Bulgaria and thereafter to apply for a long-term or permanent residence permit. The validity of the long-stay visa is 6 (six) months and it allows its holder of stay up to 90 days. Pursuant to a draft Act for amendments of the Foreign Nationals Act there will be an option the validity of the long-stay visa to be up to 1 (one) year for certain categories of foreigners.

The calculation of the period commences on the day of first arrival into Bulgaria as indicated in the Foreigner’s international passport. All visa applications should be submitted to the respective Bulgarian diplomatic missions and consular departments around the world. In exceptional cases (e.g. the state’s interest, extraordinary circumstances or humanitarian

reasons) border control officers, after coordination with the Foreign Nationals Administrative Control Office, can issue transit visas or short-term visas for up to 10 days.

Apart from the European citizens, Foreigners from other countries can also enter Bulgaria without obtaining visas. Such countries are, among all: the USA, Japan, Australia, New Zealand, Israel, and other countries with which Bulgaria has signed visa-waiver agreements.

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### **I.3. Residence permits and residence certificates**

As from the date of accession of Bulgaria to the EU, the European citizens who wish to reside in the country on a long term or permanent basis (more than three months within each six-month period) shall be issued a certificate instead of a residence permit.

Residence permits are issued to Foreigners who have been granted a long-stay visa and who intend to stay in the country longer than three months.

Both the certificates for European citizens and the residence permits for Foreigners are issued by the “Migration Directorate” at the Ministry of Internal Affairs and can be divided into two groups – long term and permanent ones.

#### **1.3.1 Residence permits**

A. Long-term residence permits – up to one year, and

B. Permanent residence permits – for an indefinite period of time

The most common grounds for issuance of long-term residence permits are:

- The Foreigner is a member of the management or supervisory bodies of a Bulgarian company

- The Foreigner is a trade representative of a company registered with the Bulgarian Chamber of Commerce and Industry

- The Foreigner has been issued a work permit by the Bulgarian Employment Agency, and

- The Foreigner conducts business activities in Bulgaria, provided that the Foreigner has employed at least 10 Bulgarian nationals, etc.

In order to apply for a residence permit the Foreigner should initially obtain a long-stay visa.

The common documents required for issuance of a long-term residence permit are as follows: (i) the valid international passport of the applicant; (ii) evidence that the applicant has been provided with a place to live during his/her stay in Bulgaria (e.g. rental contracts); (iii) the standard application form; (iv) evidence of payment of the relevant state fees, and (v) evidence that the applicant has sufficient financial means to meet the costs of his/her stay in Bulgaria.

The application for obtaining a long-term residence permit must be filed before the Migration Directorate not later than 7 days prior to the expiration of the term of the long-stay visa. Applications are considered and reviewed within 7 working days of their submission and the decision of the Migration Directorate is then presented in writing to the applicant.

The long-term residence permit can be renewed if the grounds for its issuance still exist at the time of the renewal. It should be noted that an extension of the long-term residence permit can be refused if it is established that the Foreigner has not stayed on the territory of the Republic of Bulgaria for at least 6 months and one day during the preceding calendar year.

Once the Foreigner has been granted a long-term residence permit, he/she may live, reside and travel in the Republic of Bulgaria while the permit is valid. The Foreigner may freely choose and change his/her place of

residence, or leave the country and enter it again.

Foreigners who have obtained a long-term residence permit have all the rights and obligations granted to or imposed on the Bulgarian citizens. For example, they can be employed by Bulgarian employers, receive social security compensations, health care insurance, etc. Long-term residence status for a foreign citizen is usually evidenced by the issuance of a Bulgarian ID card for the foreign national.

### 1.3.2 Residence certificates

A. Long-term residence certificates – up to five years, and

B. Permanent residence certificates – for an indefinite period of time

The most common grounds for issuance of long-term residence certificates are:

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

In order to apply for a residence certificate the European citizen should submit an application to the Migration Directorate within three months after his/her first entry in the Republic of Bulgaria.

The common documents which should be enclosed to the application are as follows: (i) a valid identity card or a passport of the applicant; (ii) documents evidencing the existence of the ground on which the European citizen applies for his/her

residence certificate (e.g. labour contracts, valid medical insurance, documents proving the current education, etc.); (iii) documents evidencing the payment of the relevant state fee, and (iv) evidence that the applicant has sufficient financial means to meet the costs of his/her stay in Bulgaria/if required/.

Applications are considered and reviewed and the certificate should be issued on the day of submitting the application. The certificate contains the full name of the person and the registration date.

In case some of the necessary documents are missing or not valid, the European citizen shall be granted a seven-day term to correct them. If the person fails to correct the omissions within this term the competent authority shall deny the issuance of a long-term residence certificate.

The right of entry and the right of residence in the Republic of Bulgaria of a European citizen may be restricted in exceptional cases and on grounds related to national security, public order or public health.

Permanent residence certificates are issued to European citizens who have resided continuously in the Republic of Bulgaria for a period of five years and who meet other special requirements set forth in the law.

## I.4. Work permits

### 1.4.1 General rules

Foreigners may work in Bulgaria only after obtaining a work permit, unless otherwise stipulated by the law. The bases for obtaining a work permit are an employment contract, or a business trip to undertake certain activities.

As from the date of joining of Bulgaria the EU European citizens may be employed, self-employed or commissioned to a business trip and may work in Bulgaria without restrictions and without the need of work permits.

Work permits required for Foreigners should be requested by the local employer and are issued by the Employment Agency. A number of legal terms and conditions must be met for the permit to be issued. Work permits are issued for a maximum duration of 1 year. If the terms and conditions for its issuance are still valid, the work permit may be renewed for an additional one-year term.

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

#### **1.4.2 Foreign nationals who generally do not require a work permit in Bulgaria**

Outlined below is a list of the main categories of foreign nationals who may work in the country without a work permit:

- Managers of companies or branches of foreign legal entities
- Members of the Managing Board or Board of Directors of local companies, who are not employed on a labour contract
- Trade representatives of foreign companies registered at the Bulgarian Chamber of Commerce and Industry, and
- Foreign nationals with permanent residence in Bulgaria

#### **1.4.3 Foreign nationals who may work on short-term assignments without a work permit**

Foreign nationals may also be engaged to perform short-term assignments without a work permit under the following conditions:

- They are sent on a business trip to Bulgaria by their foreign employer
- The assignment in Bulgaria is no longer than 3 months within a period of one year
- The assignment encompasses any

of the following: (i) the installation or the warranty repair of imported machinery and equipment; (ii) training in the operating of equipment or the delivery of ordered equipment, machines or other items; (iii) training as part of an export contract for the supply of goods under a license agreement; (iv) control and coordination of the performance of a tourist services contract between a foreign tour-operator and a Bulgarian tour-operator or hotel-keeper.

For all other categories of employees a work permit is required. It is usually issued provided that all requirements of the law are met (e.g. there is ratio requirement between foreign and Bulgarian employees: 1:10).

Employers must register Foreigners and European citizens at the National Revenue Agency within 3 days from the start of their employment even if no work permit is required. ■

## II SET UP OF COMPANIES

### II.1. Legal Framework

The primary legal act governing the types, corporate governance structure and the procedure for establishment of commercial companies is the Commerce Act 1991. Other relevant primary legislation governing specific corporate matters includes the Commercial Register Act 2006, the Corporate Income Tax Act 2006, the VAT Act 2006, the BULSTAT Register Act 2005, the Social Security Code 1999, the Tax and Social Security Procedure Code 2005, the Protection of Personal Data Act 2002, etc.

### II.2. General Review

Bulgarian law recognizes the following types of commercial companies exhaustively listed in the Commerce Act: (i) general partnership; (ii) limited partnership; (iii) limited liability company ("LLC") or one-person-owned limited liability company; (iv) joint stock company ("JSC") or one-person-owned joint stock company; and (v) company limited by shares.

A joint stock company can be publicly listed or private. Under Bulgarian law, joint stock companies are the only type of companies that may become listed, provided that they have conducted an initial public offering or have a registered share issue for the purposes of trading on a regulated securities market. As public companies further qualify joint stock companies with more than ten thousand shareholders as of the last day of two consecutive calendar years. The Public Offering of Securities Act 1999 sets forth the general legal framework of public companies.

In addition to the five types of commercial companies mentioned above, business may also be conducted in one of the following organisational forms: (i) sole trader; (ii) holding; (iii) branch; (iv) trade representative

office ("TRO"); and (v) co-operative.

Under Bulgarian law, sole traders, partners in general partnerships and unlimited partners in limited partnerships and in companies limited by shares have unlimited personal liability to the company's creditors. On the other hand, the shareholders' exposure in limited liability companies and joint stock companies as well as the liability of limited partners in a limited partnership and in a company limited by shares is capped at the amount of their shareholding in the company's capital.

### II.3. Establishment of a Company

The procedure for incorporation of a company in Bulgaria does not differ when local or foreign persons participate in its establishment. Under Bulgarian law there are no restrictions as to the size of the foreign participation in the capital of a Bulgarian company and, therefore, up to 100% of the registered capital of a local company can be held by foreign persons.

All types of commercial companies are incorporated by way of registration with the commercial register held by the companies' department of the district court where the seat of the subject company is located. The procedure and documents required for the establishment of each particular type of commercial company are set forth in the Commerce Act. The court registration procedure would usually take one to two weeks as of filing the relevant documents. The incorporated company becomes a capable legal entity as of the date of its entry into the commercial register.

Pursuant to the new Commercial Register Act the procedure for incorporation of a local company is transformed from judicial into administrative as of 1 July 2007. The new Commercial Register shall be kept by the Registration Agency functioning under the authority of the Ministry of Justice. Thus, the Commercial Register Act will

shortly introduce a fundamental change in the procedure for incorporation of local companies, reducing costs and time for new business start-up and making the process more efficient and transparent.

Although a local company or a branch should register its scope of activities, it is free to conduct any type of activities not prohibited by law, even if the respective activity is not expressly included in its registered scope of activities (under Bulgarian commercial law, there is no applicable *ultra vires* rule in this respect). Where a license or permit is required by virtue of special laws for the performance of a specific activity, such activity may be performed after obtaining the respective license or permit. By way of example, activities subject to licensing/permit regime include banking, insurance, gambling, trade in medicines, trade in tobacco, etc.

A branch of a foreign company is established by means of registration into the commercial register. A trade representative office of a foreign company is established by means of registration into the commercial register held by the Bulgarian Chamber of Commerce and Industry (the "BCCI").

As of the date hereof, within seven days following the registration in the commercial register with the court or with BCCI, commercial companies and branches, respectively TROs shall register with the BULSTAT Register, a united national administrative register also held by the Register Agency under the BULSTAT Register Act 2005. This secondary registration serves as tax, social security and statistics registration. As of 1 July 2007, when the Commercial Register Act will become fully effective, commercial companies and branches will be subject to one single registration in the commercial register with the Registration Agency, as said registration will serve also for tax, social security and statistics purposes. The commercial registration of TRO will remain with the BCCI.

## II.4. Most Commonly Used Forms of Business Organisations

The types of business organisations most commonly used for establishment of foreign presence in Bulgaria are the LLC, the JSC, the branch and the TRO.

### II.4.1. Limited Liability Company

The limited liability company is the type of business organisation most widely used among investors because of the minimum capital requirements and the simplicity of its corporate governance structure. However, qualified majority or unanimity is required by law for transfer of shares to third parties, admission of new shareholders and capital increase or decrease, which may decrease the flexibility of the company's operations.

Two or more shareholders may establish a limited liability company. The Commerce Act allows also sole person ownership of an LLC. As a type of LLC, the one-person-owned LLC is subject to the same regulation as the LLC, with certain exceptions relating to its specific structure of shareholding. Shareholders in an LLC may be Bulgarian or foreign individuals or legal entities.

The corporate governance structure of an LLC consists of (i) a general meeting of the shareholders; and (ii) one or more managers, who manage the company and represent it before third parties jointly or severally.

The general meeting of the shareholders consists of all shareholders in the company and has the exclusive power, among other powers, to: (i) amend and supplement the articles of association; (ii) approve new shareholders and expel shareholders, and give consent for the transfer of shares to a new shareholder; (iii) resolve on the increase or decrease of the registered capital, etc. If the LLC is a wholly owned subsidiary, the sole owner of the

capital resolves on all matters within the competence of the general meeting of the shareholders. Under Bulgarian law there are no restrictions for a foreign person to be appointed as a manager of an LLC.

The minimum share capital required by the Commerce Act for incorporation of an LLC is BGN 5,000 (five thousand), distributed in shares with value of not less than BGN 10 (ten). At the time of incorporation of the company and as a condition precedent for such incorporation, at least 70% of the registered capital must be paid in, and every shareholder must have paid in at least 1/3 of its shareholding, but not less than BGN 10 (ten).

The shares in an LLC are not tradable instruments. They may be transferred by a notarised share transfer agreement. The transfer of shares between shareholders is free, while transfer of shares to third parties requires a resolution of the general meeting of the shareholders for accepting a new shareholder.

#### **II.4.2. Joint Stock Company**

The joint stock company is another widely used type of business organisation. It is preferred because of the lack of statutory restrictions on the transfer of shares and the absence of personal engagement of the shareholders in the operation of the company. However, the corporate governance structure is more complex compared to the one of the LLC and the Commerce Act sets forth mandatory rules governing the forming of a reserve fund, distribution of profit and minority shareholders rights.

A JSC may be established by one or more Bulgarian or foreign individuals or legal entities. As a type of a JSC, the one-person-owned JSC is subject to the same regulation as the JSC, with certain exceptions relating to its specific structure of shareholding.

The corporate governance structure of a JSC consists of: (i) a general meeting of the shareholders, and (ii) a board of directors (in the case of a one-tier governance system), or a supervisory board and a managing board (in the case of a two-tier governance system). The powers vested by law in the general meeting of the shareholders of a JSC are similar to those of the general meeting of an LLC. These powers include, among others: (i) amendment and supplement of the articles of association of the company; (ii) increase and decrease of the registered capital; (iii) appointment and dismissal from office of the members of the board of directors, or of the supervisory board, respectively, etc. If the JSC is a wholly owned subsidiary, the sole owner of the capital resolves on all matters within the competence of the general meeting of the shareholders.

The members of the board of directors, or the managing board, respectively, represent the company jointly, unless the articles of association provide otherwise. The board of directors (in the case of the one-tier governance system), or the managing board subject to the approval of the supervisory board (in the case of the two-tier governance system), may authorise one or more persons to serve as executive director(s) of the JSC and to represent the company before third parties. The law does not impose any restrictions for appointing foreign persons as executive directors of a JSC.

The minimum share capital required by the Commerce Act for incorporation of a JSC is BGN 50,000 (fifty thousand). However, special legislation may require higher minimum share capital for carrying out certain types of activities, for example banking or insurance activity. The share capital of a JSC must be distributed in shares of nominal value of not less than BGN 1 (one). At the time of incorporation of the company and as a condition precedent

for such incorporation, at least 25% of the nominal value (or issuing value determined in the articles of association) of each share must be paid in. Share capital contributions may be made in cash or in kind.

The shares of a JSC are tradable instruments. The shares of a JSC may be: (i) registered or bearer shares; (ii) common or privileged shares, (iii) materialised or book-entry-form shares. The articles of association of a JSC may provide that privileged shares grant to the respective shareholder additional voting rights, a guaranteed or additional dividend or liquidation quota, or special management rights, such as veto rights. Shares granting equal rights form a separate class of shares, as the rights of different shareholders from one and the same class may not be restricted.

Registered shares are transferred by endorsement, whereas bearer shares are transferred by mere delivery. The transfer of registered shares must be entered into the book of shareholders of the JSC to have effect against the company. Restrictions to the transfer of shares may be provided for in the articles of association of the company, and such restrictions shall be binding on the company and on the shareholders. Restrictions on transfer may relate to any type of shares.

### II.4.3. Branch

The incorporation of a branch is one of the alternatives for the establishment of business operations of a foreign company in Bulgaria. Foreign companies registered abroad, as well as foreign individuals or persons other than legal entities can register a branch in Bulgaria if they are properly incorporated and/or entitled to conduct business under the national law of their home country.

A branch of a foreign company is established by means of registration into

the commercial register. After its proper registration according to Bulgarian law, the branch of a foreign company, although not a separate legal entity, will have a certain degree of independence from the parent company. Thus, it will be required to keep commercial books as a separate business establishment and prepare a separate balance sheet. However, as the branch is not a separate legal entity, its assets and liabilities are deemed to be assets and liabilities of the parent company. Therefore, the branch is not required to comply with capital registration requirements or to have separate by-laws or a distinct management structure, except for a manager.

From tax point of view a branch of a foreign company is considered a "permanent establishment" and it triggers corporate income tax liability in Bulgaria for the foreign parent company.

### II.4.4. Trade Representative Office

Foreign persons can register a trade representative office in Bulgaria if they are property entitled to conduct business under the national law of their home country. As mentioned above, a TRO is established by means of registration with the BCCI. A TRO is not a separate legal entity and it may not carry out business activities. Thus, a TRO is meant to carry out non-proprietary activities such as organising promotions, exhibitions or demonstrations, training or advertising of products or services, etc. Consequently, in general a TRO does not generate income and is not subject to corporate income taxation in Bulgaria. However, should a TRO engage in business activities in the country, it would qualify as a "permanent establishment" for tax purposes and the foreign parent company will be liable in Bulgaria for corporate income tax on the profit made as a result of the business activity of the TRO. ■

**III INVESTMENT LEGISLATION****III.1. Legal Framework****III.1.1. Laws and Regulations**

■ Encouragement of Investments Act (promulgated in State Gazette, issue 37 of 2004);

Rules on the Enforcement of the Encouragement of Investments Act (promulgated in State Gazette, issue 74 of 2004);

**III.1.2. International Treaties (Bilateral and Multilateral)**

- Convention for the establishment of Multilateral Investment Guarantee Agency;
  - Convention for the establishment of International Center for Settlement of Investment Disputes;
  - Convention for the establishment of the World trade organization;
  - Bilateral investment promotion and protection treaties;
  - Double tax treaties.

**III.2. Legal Definitions****III.2.1. Foreign Investors**

Under the Encouragement of Investments Act, foreign investors are:

- legal persons which are not registered in Bulgaria;
- partnerships which are not legal persons and are registered abroad;
- foreigners with permanent residence abroad.

**III.2.2. Definitions and Forms of Investment**

Foreign investment is any investment or increase of investment of foreign persons or

their branches in:

- stock or shares of trade companies;
  - title to buildings and limited property rights over real estates;
  - title and limited property rights over goods and chattels, having the nature of non-current tangible assets;
  - title to unbundled parts of commercial companies with more than 50 per cent state or municipal interest in their capital within the meaning of the Privatization and Post-Privatization Control Act;
  - securities, including bonds and treasure bills, as well as instruments derivative therefrom, issued by the state, the municipalities or other Bulgarian corporate entities, with time remaining to due date not less than 6 months;
  - credits, including in the form of financial leasing for a period not shorter than 12 months;
  - intellectual property – subject to copyright and its related rights, patentable inventions, utility models, trademarks, service marks and industrial design;
  - rights under concession contracts and contracts for commissioning of management.
- Bilateral treaties on promotion and mutual protection of foreign investment to which Bulgaria is a party may provide for a wider definition of foreign investment.

**III.3. General Preview****III.3.1. Legal and International Guarantees for Foreign Investment****a) National Treatment**

The Bulgarian Constitution and the Encouragement of Investment Act provide national treatment to foreign investors which means that foreign investors are entitled to perform economic activity in the country under the same provisions applicable to Bulgarian investors except where otherwise is provided by law. In particular this principle covers the whole range of economic and legal forms of

activities for accomplishing entrepreneurial businesses. The national treatment to foreign investors includes the participation in the process of Privatisation and acquisition of shares, debentures, treasury bonds and other kinds of securities.

**b) Most Favoured Nation Status**

Bulgaria is signatory to a system of bilateral treaties on promotion and mutual protection of foreign investment which provide, further to the national treatment regime, for the most favoured nation status of the investment made by entities and individuals from one of the contracting countries on the territory of the other contracting country.

**c) Priority of International Treaties**

When international treaties to which Bulgaria is a party provide for more favourable terms and conditions for foreign investment, these terms have precedence over the local rules. This guiding principle finds expression in the treaties for protection of foreign investments and especially in the agreements for abstaining of double taxation regulations. The international treaties on mutual protection of foreign investment always include an extended concept of a foreign direct investment, and the application of this concept shall be prior to the Bulgarian legislation.

**d) Legal Guarantees against Adverse Changes in the Law**

The Law on Foreign Investments stipulates the principle that foreign investment made prior to the adoption of amendments in law imposing statutory restrictions only with regards to foreign investments, shall not be affected by these restrictions.

The sense of the law provides for that foreign investments shall be guaranteed against subsequent legislative changes.

**e) Protection against expropriation**

The Bulgarian Constitution allows forcible expropriation of property in the name of the state or for municipal needs only if effected

by virtue of a law provided that these needs cannot otherwise be met, and after a fair compensation has been ensured in advance.

Expropriation under Bulgarian Law is governed by the Law on State Property and Law on Municipal Property.

**III.3.2. Investment Incentives under the Encouraging of Investments Act**

The new Encouraging of Investments Act regulates the terms and procedures of investing in Bulgaria. The law **equally applies to Bulgarian and foreign investors**.

According to the new law, the Minister of Economy and Energy is the leading executive authority that shall perform the state policy in the investment sphere. In the implementation of this activity the Ministry of Economy and Energy prepares a strategy for encouraging investment in cooperation with other authorities of the executive power. In compliance with this strategy and the regional development strategies regional Governors shall develop investment encouragement programs for the respective region and coordinate their implementation.

The Encouragement of Investments Act sets forth preferential treatment measures for investments meeting certain criteria specified in the said law as follows:

- the investment to be in fixed assets acquisition with the purpose of creating new or enlarging or modernizing existing production of goods and/or services;
- new jobs to be created;
- the investment project to be implemented within 3 years.

The measures, however, do not apply to investments in banks, non-banking financial institutions, insurance companies, investment companies and companies with special investment purposes, managing companies, pension funds, health insurance companies, gambling companies and investments made under privatisation agreements.

The measures are differentiated according

to the class of the investments, as the latter are grouped in three classes, depending on the investment project value. The value thresholds are set forth in the Rules on the Enforcement of the Encouragement of Investments Act as follows:

1. first class - investments over BGN 70 million.
2. second class - investments from BGN 40 million to BGN 70 million, and
3. third class - investments from BGN 10 to 40 million;

Generic preference applied to all classes of investments is shortening the time limits for provision of administrative services to certified investors for realization of their investment plans. On presentation of a certificate for investment class, central and territorial executive authorities, and local self-government authorities shall provide administrative services within **time limits by one third shorter** than the ones provided for in the legislation.

For **3<sup>rd</sup>-class** investments InvestBulgaria Agency will provide **information services** to investors as follows:

- **pre-developed information materials**;
- information about **potential partners** in the country;
- information about **all administrative procedures** concerning the implementation of the investment project.

For **2<sup>nd</sup>-class** investments InvestBulgaria Agency will provide investors with:

- **information services** as mentioned above;
- **individual administrative servicing** with respect to all central and regional bodies of the Executive.

Investors will have the opportunity to **authorize officials of the Agency** to obtain from the corresponding competent bodies on investors' behalf and for investors' account any documents necessary for implementation of the particular investment project as may be required under the existing legislation.

For **1<sup>st</sup>-class** investments, the InvestBulgaria Agency will assist investors as follows:

- individual informational and administrative services
- **assistance with real estate "titling" issues**

- **infrastructure building assistance**

On the request of the 1<sup>st</sup>-category investor the Agency may propose to the corresponding authorities to transfer ownership rights or establish a limited ownership right over real estate (private - state or municipal property) without a tender, free of charge or on preferential prices. Where the technical infrastructure networks and facilities of the transport, water-supply, sewerage, communication, and other systems are public property, their construction will be financed from the state budget, or by the corresponding municipality on a decision by the Municipal Council; in all other cases they shall be for account of the managing operation company.

### III.3.3. Terms and Procedure for Certification.

The preferential treatment measures under the new law are applied only to certificated investors. The certifying procedure and the requirements to the investment plan are set forth in the Rules on the Enforcement of the Act. According to the latter rules certificates for the respective class of investment are issued by the Executive Director of the InvestBulgaria Agency or thereby authorized official as based on investor Request. The following **documents** must come **enclosed with the Request**:

1. investment plan;
2. certificate of incorporation or registration (if the Requester is a corporate entity, a sole-trader or a branch of a foreign person) or a copy of identification document (if the Requester is a natural person);
3. annual financial reports for the past three years, auditor verified, with auditor reports thereon. A branch must additionally enclose the annual financial reports for the past three years of the foreign person, auditor verified in

compliance with its national legislation, with auditor reports thereon. This requirement is not applied if the Requester is a natural person;

4. investment projects carried out so far, if any;

5. documents to certify capacity for project financing;

6. declaration for the origin of the financial resources in the form set by the Executive Director;

7. document to certify absence of liquid and due tax liabilities and mandatory security contributions as at the moment of filing the Request in compliance with the respective national legislation.

The Rules on the Enforcement of the Encouraging of Investments Act also set forth some binding requirements in respect to the **contents of the investment plan**, which must include the following requisites:

- identification data of the investor presented pursuant to its national legislation. If the Requester is a branch of a foreign person, the identification data for the branch and the foreign person must be indicated. If the Requester is a natural person, its personal data must be specified;

- purpose of investment pursuant to Art. 12 of the Encouragement of Investment Act i.e. if the investment is for the purpose of the creation of new or expanding or modernizing already existing enterprise;

- breakdown of the cash amounts to be invested in long-term fixed assets acquisition for each year within the 3-years period for realization of the investment plan;

- itemization of expected profits and losses;
- expected cash flow breakdown;
- sources of financing;

- expected staff number, as well as its expected increase in the process of its performance, the requirements for personnel's professional qualification, and expected spending on staff qualification training and re-training programmes;

- determining the place where the enterprise will be built or production equipment localized;
- type of equipment and facilities, as well

as size in square meters of the area where they will be built: manufacturing facility, store houses, administrative buildings, etc.;

- information regarding the planned construction of new buildings, leasing, or buying existing ones;

- stages in the performance of the investment plan and the cash resources to be allocated for each stage.

An investor Request filed, the Executive Director, or thereby authorized official appoints the Agency staff to examine the investment plan and thereto enclosed documents. In virtue of the examination the authorized persons prepares an opinion on the investment conformity with the terms and conditions of the Encouragement of Investment Act and of The Rules on the Enforcement of the act. In virtue of the opinion thus prepared, the Executive Director, or thereby authorized official, issues a certificate for investment class within one month of the filing of the Request.

The Executive Director, or thereby authorized official, **refuses to issue a certificate** in case:

1. all required documents have not been enclosed with the Request nor presented later on after notice given to the Requester by the Agency staff;

2. the investment does not meet the criteria specified in the law (Art.12 of EIA) or the investment value is under minimum threshold set forth in the Rules on the Enforcement of the Act (Art. 2 of the REEIA);

3. convincing evidences regarding the abilities of the person to fund the project have not been submitted.

### Infrastructure support

Financial support for building the technical infrastructure, necessary for the implementation of the investment plan, is granted for 1<sup>st</sup> class investment by the Council of Ministers upon a proposal of the Minister of Economy and Energy, if the investor fulfills the following requirements:

- the investor who has received a certificate has not entered in insolvency or liquidation procedure;
- the minimal participation of the investor in the funding of the project is 25 percent share, in which a state subsidy is not included;
- compliance of the project with the ecology requirements of the national legislation;
- the project and technical documentation, developments and plans for construction of the elements of the technical infrastructure has been worked out;
- request for infrastructure subsidy filed by the investor to the Minister of Economy and Energy prior commencement of the implementation of the investment project.

The projects applying for infrastructure subsidy have to be pre-approved by the Minister of Economy and Energy according to the following criteria:

- proportion of the amount of the investment and of the needed funds for construction of the technical infrastructure;
- number of new jobs related to the investment;
- criteria of additional index of significance:
  - a) investment in high-technological production and services;
  - b) investment in other productions besides these under item "a";
  - c) investment in regions/municipalities of higher than the average for the country unemployment, related to creation and maintenance of more than 100 jobs for a period not shorter than 5 years.

After the investment plan has been approved by the Council of Ministers, the Minister of Economy and Energy sign a contract with:

- the certified investor and/or other companies owned 100 % by the investor, and
- the entity assigning under the Public Procurement Act the preparation of the technical documentation, developments and plans and the construction of the elements of the technical infrastructure.

With the contract the investor is obliged to fulfill the investment plan and the state to ensure the construction of elements of the technical infrastructure, connected with the realization of the investment plan to the boundaries of the property. The investor is obliged to provide a bank guarantee to the amount of the resources provided by the state. The terms and procedure for providing, releasing or utilization of the bank guarantee is set forth in the Rules on Enforcement of the Act.

### III.4. Investbulgaria Agency

The Encouragement of Investment Act transforms the Bulgarian Foreign Investment Agency into executive agency under the power of the Ministry of Economy and Energy. The basic function of the Agency after the transformation shall be to support the Minister of the Economy and Energy in the implementation of the investment encouraging state policy.

In this connection the Agency shall:

- provide information and individual administrative services to the investors after the issuance of a certificate for investment category by the director of the Agency or by a state servant authorized by him;
- carry out marketing and other studies on the account of the investors;
- carry out investment marketing by presenting and advertising abroad the investment opportunities in the country;
- prepare an annual report on the investments in the country and on the conditions for their encouragement, which report shall be submitted to the Council of Ministers via the Minister of Economy and Energy.

A key function of the Agency is to assist companies in the investment process. It provides to prospective investors up-dated information on the investment process in the country, legal advice, searching for suitable Bulgarian partners and co-ordination of the investment policy with other institutions. ■

## IV OWNERSHIP OF REAL ESTATE

### IV.1. Legislative Framework and General Rules

#### IV.1.1. Legislative Framework

The major legislative acts governing the real estate and real estate transactions in Bulgaria are the Bulgarian Constitution, Law on property, Law on state property, Law on municipal property, Civil procedures code, Law on promotion of investment, Law on territorial development and Law on contracts and obligations.

#### IV.1.2. Direct Acquisition of Real Estate in Bulgaria by a Foreign Company

In Bulgaria foreign companies can directly acquire buildings, premises within a building and limited property rights (e.g., a construction right, right of use), but not land.

Special rules are provided for the citizens and entities of the member states of the European Union (“EU”) and the European Economic Area (“EEA”). According to the Accession Act of Bulgaria to the EU, Bulgaria, upon its discretion, can keep the restrictions for acquisition of land by citizens and entities from the member states: (i) for five years starting from 1 January 2007 – for the land provided for second residence, and (ii) for seven years starting from 1 January 2007 – for agricultural land, forests and forest land.

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

#### IV.1.3. Indirect Acquisition of Real Estate in Bulgaria by a Foreign Company

Indirectly, foreign companies can acquire any type of real estate, including land, by registering a Bulgarian company to act as acquirer. It is possible for such a company to be 100% owned by the foreign investor.

#### IV.1.4. The Transaction

The general rule under Bulgarian law is that transactions involving real estate (e.g. a purchase, exchange, etc.) should be executed with a notary deed before a registered notary in the region where the real estate is located. After execution of the deed the notary is obliged, by law, to register the transaction in the Real Estate Registry in order to make the ownership title of the acquirer defensible against third parties.

A notary deed is not required for the sale of state or municipal property or in privatization transactions where the simple written form is sufficient for a valid title transfer. There are also special rules and procedures governing the acquisition of real estate arising from enforcement, insolvency and similar procedures, and for in-kind contributions of real estate.

#### IV.1.5. The Price

The purchase price is freely negotiable and may be stipulated and paid in BGN or in any other currency.

#### IV.1.6. Legitimacy of the Buyer

##### a) Direct acquisition by a foreign company

Where a foreign company acquires directly buildings, premises or limited

property rights it should ensure that at least the following documents are presented:

Resolution of the competent corporate body approving the acquisition of the targeted real estate. The resolution has to be notarized and apostilled/notarized and legalized in the respective country and translated in Bulgaria by a certified translator and legalized in Bulgaria

Certificate for Good Standing – apostilled/legalized in the respective country and translated in Bulgaria by a certified translator and legalized in Bulgaria, and

Power-of-attorney, signed before a notary and apostilled/legalized in the respective country and translated in Bulgaria by a certified translator and legalized in Bulgaria, for the person who will represent the foreign investor before the Bulgarian notary.

#### **b) Indirect acquisition by a foreign company**

Where a foreign company indirectly acquires real estate in Bulgaria through a Bulgarian subsidiary company it should ensure that at least the following documents are presented:

- Resolution of the competent corporate body of the Bulgarian subsidiary approving the acquisition of the targeted real estate

- Certificate for Good Standing of the Bulgarian subsidiary –original or a certified copy

- Power-of-attorney signed before a notary for the person (if this is not the person referred to in the Certificate for Good Standing as the person representing and binding the Bulgarian subsidiary) who will represent the Bulgarian subsidiary before the Bulgarian notary handling the transaction and

- BULSTAT (statistics) registration card of the Bulgarian subsidiary – the original and a copy for the notary.

#### **IV.1.7. Statutory costs and expenses for direct acquisition**

- Transfer tax – 2% of the higher of the purchase price agreed between the parties, or the tax valuation made by the tax office prior to the transaction. The tax may be shared between the parties or be just born by one of them

- Fee for registration in the Real Estate Register – 0.1% of the higher of the purchase price agreed between the parties, or the tax valuation made by the tax office prior to the transaction. The fee may be shared between the parties or be borne by just one of them, and

- Notary fee – according to the statutory Notary Tariff not more than BGN 3,000 (approx. Euro 1,550) per transaction. The fee may be shared between the parties or be borne by just one of them.

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#### **IV.2. Title Review (Real Estate Legal Due Diligence)**

Before purchasing real estate it is recommended that the buyer ensure verification of the ownership status of the targeted real estate, including that there is/are:

- a clean, valid and marketable ownership title held by the seller. The seller has to be, and his predecessors should have been the valid owner of the targeted real estate in order to avoid any risk of rescinding or annulment of the transaction. Usually, this title review covers the last 10 years since the maximum acquisitive prescription term in Bulgaria is 10 years

- no liens or encumbrances over the property. The buyer should be fully aware as to whether there are any registered liens and/or encumbrances over the targeted real estate, e.g., mortgages, interlocutory injunctions, going-concern pledges, limited property rights established in favor of third parties. A general principle in Bulgarian

law is that liens and encumbrances “follow the property”, i.e., the registered liens and encumbrances can be enforced against the new owner

- no other registered rights in favor of third parties – if there are registered rental or lease agreements over the targeted real estate then the buyer shall be bound by them until the expiration of their term, and
- no court or restitution claims.

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### **IV.3. Special Cases**

#### **IV.3.1. Acquisition of Marketable State Owned Real Estate**

Marketable state owned real estate can be acquired through:

- a sale purchase transaction
- exchange with other real estate owned by the foreign investor or its Bulgarian subsidiary, or
- an in kind contribution into the capital of a Bulgarian company

In general, the person authorized to dispose of marketable state owned real estate is the Regional Governor of the administrative region where the property is located.

Currently the sale of marketable state owned real estate has to be performed through a tender. The Regional Governor determines the tender procedure with an administrative order. After the issuance of a further administrative order announcing the winner of the tender, a sale-purchase contract is concluded. The contract has to be registered in the Real Estate Registry in order to make the ownership title of the acquirer defendable against third parties.

An exchange of marketable state owned real estate is performed without a tender. The Regional Governor issues an administrative order, which has to be approved by the Minister of Regional

Development. Based on this order a contract is concluded. The contract has to be registered in the Real Estate Registry in order to make the ownership title of the acquirer defendable against third parties.

Where the tax valuation of the property is over BGN 550,000 the sale can only be performed after a decision of the Council of Ministers that has been initiated upon the proposal of the Minister of Regional Development. In such circumstances the Minister of Regional Development issues an administrative order and then concludes the contract for the sale or exchange.

Where the tax valuation of the property is over BGN 1,000,000 the exchange can only be performed after a decision of the Council of Ministers that has been initiated upon the proposal of the Minister of Regional Development. In such circumstances the Minister of Regional Development issues an administrative order and then concludes the contract for the sale or exchange.

#### **IV.3.2. Acquisition of Marketable Municipality Owned Real Estate**

The person entitled to conclude a contract for the sale or exchange of marketable municipal real estate is the Mayor of the municipality in which the property is located.

Currently the sale of marketable municipal real estate has to be performed through either a tender or an auction. The said Municipality should pass a resolution for the sale on the basis of which the tender/ auction is initiated. Once the result of the tender/auction is determined the Mayor issues an order and concludes a formal contract. The contract has to be registered in the Real Estate Registry in order to make the ownership title of the acquirer defendable against third parties.

Currently an exchange of marketable municipal real estate is performed without a tender or an auction. The Municipal Council passes a resolution to effect the exchange. On the basis of the said resolution, the Mayor issues an order and concludes a formal contract. The contract has to be registered in the Real Estate Registry in order to make the ownership title of the acquirer defensible against third parties.

#### IV.4. Incentives

##### IV.4.1. General

Upon the request of an investor whose investment is certified by the InvestBulgaria Agency (“IBA”) as a “first class investment” – an investment at the amount over BGN 70 million – the IBA shall propose to the competent state or municipal body that they:

- transfer to the investor, without remuneration, the ownership title over marketable real estate owned by the state or municipality
- sell to the investor marketable real estate owned by the state or municipality without tender/auction
- establish, without remuneration, limited property rights in favor of the investor over private real estate owned by the state or municipality, or
- establish, against remuneration, limited property rights in favor of the investor over private real estate owned by the state or municipality, without tender/auction

##### IV.4.2. Transfer of the Ownership Title over Real Estate Owned by the State without Remuneration

The transfer of ownership over marketable state owned real estate to an investor without remuneration should

be initiated by IBA, which has to send a formal proposal to the Ministry of Regional Development. In turn, the Ministry of Regional Development has to send a formal proposal to the Council of Ministers. If the Council of Ministers accepts the proposal it will issue a resolution allowing the transfer of the said real estate. On the basis of the resolution of the Council of Ministers, the Regional Governor of the region, where the real estate is located, concludes a formal contract with the investor. The contract has to be registered in the Real Estate Registry in order to make the ownership title of the acquirer defensible against third parties.

##### IV.4.3. Sale of Marketable Real Estate Owned by the State without a Tender/Auction

The sale of marketable real estate owned by the state without a tender/auction is started by the preparation of an evaluation by an independent certified evaluator. The Minister of Regional Development and the Minister of Economics provide a written opinion on the sale of the real estate and on the evaluation. The relevant Regional Governor can then issue an administrative order and conclude the sale contract.

##### IV.4.4. Sale of Marketable Real Estate Owned by the Municipality without Tender/Auction

The sale of marketable real estate owned by a municipality without a tender/auction is started by the preparation of an evaluation by an independent certified evaluator. The Municipal Council then passes a resolution with an administrative order issued by the Mayor of the region where the real estate is located. On the basis of the said resolution the Mayor can conclude a formal contract with the investor.

**IV.4.5. Establishment of Limited Property Rights over Marketable Real Estate Owned by the State without Remuneration**

The establishment of limited property rights over marketable real estate owned by the state without remuneration should be initiated by IBA, which has to send a formal proposal to the Council of Ministers. If the Council of Ministers accepts the proposal, it should issue a resolution allowing the establishment of limited property rights over the said real estate. On the basis of the resolution, the relevant Regional Governor then concludes a formal contract with the investor.

**IV.4.6. Establishment of Limited Property Rights over Marketable Real Estate Owned by a Municipality without Remuneration**

The establishment of limited property rights over marketable real estate owned by a municipality without remuneration is initiated by IBA, which has to send a formal proposal to the Municipal Council. If the Municipal Council accepts the proposal it will issue a resolution with an administrative order of the Mayor, allowing the establishment of limited property rights over the said real estate.

**IV.4.7. Establishment of Limited Property Rights over Marketable Real Estate Owned by the State without a Tender/Auction**

The establishment of limited property rights over marketable real estate owned by the state without a tender/auction is started by the preparation of an evaluation by an independent certified evaluator. The Minister of Regional Development and the Minister of Economy provide a written

opinion on the sale of the real estate and on the evaluation. The relevant Regional Governor can then issue an administrative order and conclude the sale contract.

**IV.4.8. Establishment of Limited Property Rights over Marketable Real Estate Owned by a Municipality without a Tender/Auction**

The establishment of limited property rights over marketable real estate owned by a municipality without a tender/auction is started by the preparation of an evaluation by an independent certified evaluator. The Municipal Council should pass a resolution and the Mayor should issue an administrative order. On the basis of the said resolution the Mayor can conclude a formal contract with the investor. ■

## V CONSTRUCTION

### V.1. Legislative and Administrative Framework. Categories of Construction Works

#### V.1.1. Legislative Framework

The major legislative acts governing the construction process in Bulgaria are the Territorial Development Act ("TDA"), the Chamber of Constructors Act, the Chambers of Architects and Engineers in the Project Design Act and the various Ordinances on its application, such as: Ordinance No. 1 on the categorization of construction works; Ordinance No. 2 on putting into operation of completed construction works and the minimum warranty periods for them; Ordinance No. 3 on the acts and protocols executed in the course of construction works; Ordinance No. 4 on the scope and contents of project designs; Ordinance No. 7 on the rules and norms for development of the different types of territories and development zones, etc.

Provisions concerning separate aspects of the design and construction process are contained in a number of other acts not directly related to construction, as well as in the ordinances issued by each municipality with respect to works executed on their territory.

#### V.1.2. Administrative Bodies

The issuance of the principal documents in the construction process – visas, approvals of project designs, construction permits and operation permits (with a few exceptions) – typically falls within the competence of the chief architect of the respective municipality, against payment of a fee that is determined by each municipality on the basis of the type and size of the works. Where projects concern more than one municipality, or more than one district, these documents are

issued by the relevant district governor, or by the Minister of Regional Development, respectively. The Minister of Defense, or the Minister of the Exterior, respectively issue the same documents with respect to special projects related to national defense and security.

Administrative control for observing and applying the relevant laws and regulations is exercised by the National Construction Supervision Directorate ("NCS D"), as well as by the municipal authorities. The municipal authorities have powers that cover all phases of the construction process, including inspection of sites and all construction documents, issuance of mandatory instructions to all project participants, suspension of works, imposition of penalties, prohibition of access, etc. NCS D has the same powers and it is in addition entitled to review appeals against construction permits issued, ban the use of materials, restrict the operation of construction projects, which are not properly put into operation, and to order the demolition of illegal construction works.

#### V.1.3. Categories of Construction Works

Construction projects are divided by TDA into 6 categories depending on their characteristics, significance, complexity and operational risks:

I – big infrastructure projects of national significance such as highways; class I and II roads; railways; public ports and airports; electric power plants and heating plants with a capacity of over 100 MW; industrial plants with over 500 working places; metallurgical and chemical plants, mines, quarries, cultural monuments of national or international significance, etc.;

II – smaller projects of national or regional significance such as roads of class III; facilities and installations for treatment of waste; public service buildings and facilities

for over 1000 visitors; industrial plants with 200–500 working places; 25–100 MW electric power plants and heating plants, cultural monuments of local significance, etc.;

III– projects of local significance such as municipal roads and streets; tall residential and multi-purpose buildings; public service buildings and facilities of more than 5000 m<sup>2</sup> or for 200–1000 visitors; industrial buildings with 100–200 working places; up to 25 MW electric power plants and heating plants; parks and gardens of over 1 ha, etc.;

IV– private roads; medium-height residential and multi-purpose buildings; public service buildings and facilities of 1000–5000 m<sup>2</sup> or for 100–200 visitors; industrial buildings with 50–100 working places; parks and gardens of up to 1 ha, etc.;

V– low-height residential and multi-purpose buildings; villas; public service buildings and facilities of less than 1000 m<sup>2</sup> or for less than 100 visitors; industrial buildings with less than 50 working places, etc.;

VI– temporary structures erected for the purpose of construction and other minor works for which no approval of the design is required and a construction permit only is issued.

It is important to categorize the project properly, as the requirements for its implementation vary depending on the category.

## V.2. Participants In the Construction Process. Insurance

The persons recognized by the law as participants in the construction process with their specific obligations are: the investor, the designer, the contractor, the consultant, the structural engineer, the technical controller and the supplier of plant and equipment. The relations between

the project participants must be settled by written contracts.

- The **investor** is the person, individual or legal entity, that has ownership title, or the right to construct on the land plot on which construction works are to be carried out.

- The **designer** of the construction works can be an individual who has a degree in his area of specialization, as well as designer capacity, or an entity employing such individuals. Designers are responsible for the preparation of the project design and, if explicitly assigned by the investor, for carrying out preliminary research and investigation. They also exercise author's supervision for compliance of the construction works with the design, and are authorized to issue instructions in that respect, which are mandatory for other participants in the process. In all categories of projects except VI, the author's supervision is mandatory for the structural part of the works; an extension of the designer's scope may be agreed in the contract with the investor.

- The **contractor** is a trader registered that executes the construction works under a contract with the investor. The contractor can be local trader registered under the Bulgarian Commercial Act or a foreign trader registered under its national legislation. As from 3 January 2008 a precondition for execution of construction works by the contractors will be the registration at the Central Branch Register, administrated by the Chamber of Contractors. Exempted from registration are the contractors executing villas, residential and commercial-residential buildings with 10 metres height, executing VI category construction works, and performing repair or reconstruction of V category construction works. The contractor is responsible for execution of the works in compliance with the approved design and permits, and the legal requirements

concerning construction works, methods, materials and products, as well as for preparing the “as-made” documentation for the works, if this role is explicitly assigned to him under the construction contract.

- The **consultant** is a trader that has been licensed by the Minister of Regional Development and Public Works for exercising independent supervision over construction works and for carrying out compliance evaluations of project designs. Apart from these two activities, such a person may be appointed by the investor also to carry out preliminary research and investigation, preparation of the design process and/or co-ordination of the construction process until the completed works are put into operation.

TDA mandates that a consultant be appointed by the investor for supervising the construction works categories I to IV. The supervision of category V works can be exercised by the technical controller. Category VI construction works are not subject to supervision. The **supervisor** (consultant or technical controller):

- is responsible for the lawful commencement and execution of the construction works, the completeness and correctness of all acts and protocols executed during the construction, the fitness of the completed works for putting into operation, the assessment of their energy efficiency and their accessibility to disabled persons;
- is obliged to inform the regional branch of NCS D of any breach of the technical norms and regulations it has identified in the course of the construction works;
- is authorized by law to certify the order book for the construction works and to issue mandatory instructions and orders to the contractor, that can be appealed within 3 days before NCS D;
- must sign almost of the acts and protocols executed in the course of the

construction works and issue a final report to the investor upon their completion;

- is jointly liable with the contractor for damage resulting from breach of the technical norms and regulations, or deviation from the approved designs.

When appointing a consultant, investors should bear in mind that a consultant cannot act as a supervisor or carry out the compliance evaluation of designs for projects in which it or its employees or related parties are involved as designers, contractors or suppliers.

- The **structural engineer** is an individual possessing the special capacity for exercising technical control over the structural part of detailed project designs (technical and execution designs). He must also countersign the “as-made” documentation.

- The **technical controller** is an individual with technical education (secondary professional diploma or university degree) managing the execution of the construction works on behalf of the contractor. If the works are executed by the investor himself, he is obliged to appoint a technical controller. Technical controllers are also responsible for the supervision of works in category V, where no consultant has been appointed by the investor.

- If the investor has assigned the supply and the assembling of the construction plant to a **supplier**, then the latter is, by virtue of the law, responsible for its due and timely supply and assemblage, as well as for the passing the relevant tests thereof.

Designers, consultants, contractors, structural engineers and supervisors are obliged to insure for professional liability for damage caused as a result of unlawful acts or omissions in the course of the fulfillment of their obligations. A special Ordinance determines the minimum liability limits under the insurance policies for different project

participants and for different categories of works.

As the mandatory insurance covers the minimum liability of the insured under any project in which it participates during its term of validity, the investor may, in its contracts with the respective project participants, require that they undertake additional insurance especially for their own project. Extended insurance coverage (e.g. contractor's-all-risks, employer's liability, etc.), if required by the investor, has to be agreed contractually, as it is not mandatory under the law.

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### **V.3. Preliminary Research and Investigation.**

#### **V.3.1. Preliminary Research and Investigation**

Prior to commencing any works, the investor may require that preliminary research and investigation be made in order to determine the most appropriate location and to estimate the legal admissibility and expedition of the project. Though not a mandatory phase of the process, it is often necessary and useful for the investor to obtain in advance data on the site specifics (e.g. geological, seismic, hydrological, climatic and other conditions, existing structures and networks in and around the site). The scope of such preliminary research and the person(s) to which it is assigned will vary depending on the type of project and the investor's requirements.

#### **V.3.2. Visa**

In specific cases listed in TDA the investor must, before commencing the design of the project, obtain permission for drafting the project design entered on an excerpt from the detailed zoning plan covering the plot and the surrounding properties (a visa). As

per TDA, the visa should be issued by the chief architect of the municipality within 14 days after being requested.

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### **V.4. Project Design**

#### **V.4.1. Execution. Compliance Evaluation**

Execution and approval of the project's design is a precondition for commencing the construction works for all construction projects with the exception of category VI projects.

The design's scope depends on the specific project and it should be stipulated in a written contract, signed between the investor and the designer.

Project designs must be subjected to an evaluation of their compliance with the detailed zoning plan, the territorial development norms and regulations, the legal requirements concerning construction works, the requirement for coordination between the separate parts of the design and for completeness, and the structural integrity of the engineering calculations.

Compliance evaluation for projects in category I or II must be made by a consultant (different from the designer), who issues a report on its findings. In addition, the structural part of the technical and execution designs must be evaluated by a structural engineer.

In lower construction categories the appointment of a consultant is optional; if such is not appointed, the compliance evaluation is made by the municipal Expert Council, but only after the structural part of the design has been approved by a structural engineer.

#### **V.4.2. Approval of the Project Design. Validity**

Project designs must be approved by

the respective administrative bodies before commencement of the construction works. For the purpose of getting an approval, the investor must present to the competent authorities the design itself, the compliance evaluation report, preliminary agreements with the utility companies for connection to their technical infrastructure networks, as well as approvals from the controlling authorities (e.g. fire safety department, sanitary inspection agency, environmental authorities), if such are necessary. The prescribed term for approval is 7 days after submission of all required documents, or 1 month – in the event that the compliance evaluation was not made by a consultant.

The approved project design serves as grounds for the issuance of a construction permit. The investor may apply simultaneously for this with the submission of the design for approval. The approval of the design loses its validity if within 1 year the investor has not applied for a construction permit.

The refusal to approve project designs can be appealed by the investor before NCSD within 14 days after the refusal.

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## **V.5. Construction Permit**

### **V.5.1. Required Documents. Procedure. Validity**

An issued construction permit is the second precondition for commencing the construction works.

For issuance of a construction permit the investor must submit an application to the respective authority, supported with the ownership title/construction right documents, the visa (if applicable), three copies of the project design, the compliance evaluation report, along with the approvals of the controlling authorities (if applicable).

As per TDA, the permit should be issued within 7 days after the request. The

approved project design is an integral part of the construction permit.

The permit expires if construction works have not commenced within 3 years or if the rough construction has not been completed within 5 years of its issuance, but it can be revalidated within 1 year after it being expired against payment of 50 % of the fee due for a newly issued permit.

### **V.5.2. Appeals**

The issuance of, or the refusal to issue, a construction permit can be appealed by the interested parties before the regional branch of NCSD, within 14 days of them being notified thereof. Determination of who are the interested parties depends on the scope of the construction project. Such parties could be, for example, the owners of the land plot where the construction project is located or the owners of the neighbouring land plots.

The regional branch of NCSD is entitled also to execute an ex officio inspection on the issued construction permit within 7 days after its announcement. Construction permits that have entered into force cannot be repealed.

### **V.5.3. Changes in the Project Design after the Issuance of the Construction Permit**

Such changes are allowed only if they are not substantial, and are reflected in the “as-made” documentation. Substantial changes such as changes in: the type of structure; structural elements and/or loads; in the purpose of separate parts of the works; the type and location of installations in buildings; or the type, level or location of technical infrastructure or transportation networks, can be made only after the design thereof has been approved and attached to the construction permit.

## **V.6. Commencement and Execution of Construction Works**

### **V.6.1. Acts and Protocols Executed during Construction Works**

The date of commencement of the construction works is deemed to be the date on which the protocols of opening of the construction site and of determining the construction line and level (Protocol 2) are signed by the supervisor. As from 3 January 2008 precondition for signing of Protocol 2 is signing of a construction contract with a contractor duly registered at the Central Branch Register. Protocol 2 is one of the most important records to be compiled during construction: in it, the supervisor enters the results of all inspections it has made upon reaching the major levels of construction, before authorizing the contractor to proceed with the next level. It is mandatory for all categories of works except those in category VI.

Within 3 days of signing of Protocol 2, the supervisor certifies the order book for the works and informs the municipality, NCSD and the utility companies of certification. The book will contain all orders and instructions of the competent persons and authorities concerning the works.

In addition to the above protocols and an order book, a number of other standard-form acts and protocols have to be compiled during the construction process, such as acceptance of the executed works before covering, interim and final acts of acceptance of the various stages of works, etc. Ordinance No. 3 determines in detail the 17 standard types of acts and protocols, their contents, and the persons who compile and sign them. The acts and protocols serve as evidence for the circumstances recorded therein and concerning the commencement, execution and completion of the works.

### **V.6.2. Legal Requirements Concerning Construction Works**

Construction works must be executed in compliance with the legal requirements contained in various laws and regulations concerning: bearing capacity, the stability and durability of structures and the foundation base under operational and seismic loads; fire safety; protection of people's lives, health and property; safety of operation; preservation of the environment during the time of construction and of use of the completed works; economy of heat energy and heat insulation; accessibility, etc.. The responsibility for compliance with these requirements is borne jointly by the contractor and the supervisor.

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## **V.7. Completion**

### **V.7.1. "As-made" Documentation**

Upon completing the works the contractor (or another person appointed by the investor) must prepare the "as-made" documentation which contains a full set of drawings of the works as they were actually executed. The "as-made" documentation is countersigned by the investor, the contractor, the supervisor and the structural engineer, and is submitted to the administrative body that has issued the construction permit, which must stamp each page.

If it is evident from the "as-made" documentation that the works were executed with a substantial deviation from the approved design, the respective administrative body notifies NCSD or the respective municipal authorities.

### **V.7.2. Acceptance of the Completed Works by the Investor and the Supervisor**

The completion of construction is certified by execution of a protocol (the so called "Act 15") which is signed by the investor, the designer,

the contractor and the supervisor. Act 15 is the document evidencing the delivery and acceptance of the completed works between the contractor and the investor. With it, they certify that the works have been executed in compliance with the approved design, the "as-made" drawings, the legal requirements for the construction works and the terms of the construction contract.

Based on Act 15, the supervisor prepares a final report on the execution of the works.

### V.7.3. Permitting the Use of Completed Works. Warranty Periods

Completed works or parts thereof can only be used after having been put into operation in the manner prescribed by TDA.

Works of categories I to III are put into operation on the basis of a permit for operation and/or occupancy issued by NCSO following the procedure established in Ordinance No. 2. For the purpose of its issuance, a special committee is appointed by the Director of NCSO upon request of the investor, supplemented with: (i) the final report of the supervisor; (ii) the major acts and protocols signed during the construction; (iii) certificate of registration of the works in the Cadastral Agency; (iv) signed contracts with the utility companies for connecting the completed works to the technical infrastructure networks. All costs related to the committee's work are borne by the investor.

The committee includes the investor, the supervisor, representatives of NCSO and the special supervisory authorities. The chairman of the committee is entitled to appoint other persons involved in the construction process. Upon inspection of the completed works and the relevant documents, the committee issues Protocol 16 for accepting or rejecting the works (the so called "Act 16"). Based on it, the Director of NCSO issues the permit for operation and/or occupancy. The legislative term for completing the procedure, is about 40 days.

The procedure for works in categories IV and V is simplified and involves just a desktop review of the documents for the construction (which are substantially the same as those necessary for Act 16) and their registration for commencement of operation. It is performed by the chief architect of the municipality, and ends with the issuance of a certificate that permits operation and/or occupancy, which as per TDA should be done within 7 days after all necessary documents have been submitted by the investor.

Works of VI category can be used without issuance of permit for operation, respectively – certificate for operation.

The contractor remains responsible for the works executed by him for a specified period after their completion. The minimum warranty periods are prescribed by the law and vary from 5 to 10 years, depending on the type of work. The warranty period for road repair works is usually 1 year. Longer periods can be determined contractually.

### V.8. Limitation of Liability

Our advice in this document is limited to the conclusions specifically set forth herein and is based on the completeness and accuracy of the above-stated facts, assumptions and representations. If any of the foregoing facts, assumptions or representations is not entirely complete or accurate, it is imperative that we be informed immediately, as the inaccuracy or incompleteness could have a material effect on our conclusions. In rendering our advice, we are relying upon the relevant provisions of the current legislation in Bulgaria, the regulations thereunder, and the judicial and administrative interpretations thereof. These authorities are subject to change, retroactively and/or prospectively, and any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or modifications to the law and regulations or to the judicial and administrative interpretations thereof. ■

## VI LABOUR AND SOCIAL SECURITY LEGISLATION OF BULGARIA

### VI.1. Bulgarian Labour Legislation

#### VI.1.1. Normative Provision

The Bulgarian legislation related to labor law is characterized by codified and detailed provisions established in our Constitution, the Labor Code, a number of legal acts and many regulations and rules.

The Labor Code lays down the principles, rules and manner for labor implementation in the territory of the Republic of Bulgaria within the framework of a labor relationship. The Code determines the territorial scope of the effect of the Bulgarian labor legislation; scope of persons in relation to which it is applied; trilateral cooperation; levels of labor negotiation; employees' organizations; employers' organizations; basic labor rights and obligations; types and content of labor contracts; general contents and amendment of the labor relations; preserving labor relations in case of change of the employer; working hours, rests and leaves; labor remuneration; termination of labor relations and explicitly listed grounds for it; compensations related to labor relationships; safe and healthy working conditions; special protection of certain categories of employees; labor disputes and control for protection of the labor legislation.

Laws containing provisions for labor relations may be divided into two basic groups: general laws developing the Labor Code and special laws regulating labor relations of special categories of employees. Within the first group fall: Protection Against Discrimination Act, Safe and Healthy Working Conditions Act, Encouragement of Employment Act, Settling Collective Labor Disputes Act, Employees' Secured Claims in Case Of Employer's Insolvency Act. The second group includes: Higher Education Act, State Employee Act, Protection, Rehabilitation

And Social Integration of Disabled Persons Act, Ministry of Internal Affairs Act, Defense and Armed Forces Act, Judicial System Act and Civil Aviation Act.

The number and types of sub-legislative normative acts in the sphere of labor law do not allow for their exhaustive enumeration, therefore we shall specify only several of those acts which apply in respect to all labor relations. Those are: Regulation on Working Hours, Rests And Leaves, Regulation on Additional and Other Labor Remunerations [to be repealed as of 01.07.2007 and replaced by the Regulation on the structure and the organization of the labor remuneration, effective as of 01.07.2007], Regulation of Business Trips and Specialization Abroad and Regulation of Business Trips in the Country, Regulation on Work-book and Length of Service, Regulation No 3 on obligatory preliminary and periodical medical examinations of employees, Regulation № 4 on documents required for execution of a labor contract, Regulation № 5 on illness where employees suffering from those illness, profit a special protection according to article 333, para 1 of the Labor Code, Regulation No 7 on the minimum requirements for healthy and safe working conditions in the place of work and in case of the use of working equipment and Regulation No 14 on the service centers for labor medicine, etc.

Of course, along with the national legislation, the Republic of Bulgaria has ratified a number of Conventions in the sphere of labor relations, such as: the Convention on working hours, the Convention on unemployment, the Convention on employees' representatives, the Convention on annual paid leaves and the Convention on discrimination in the labor sphere and professions, etc. These conventions represent an integral part of the Bulgarian legislation and in case of controversy between any internal law and any of these Conventions, Bulgarian courts are obliged to apply directly the provisions of the respective Convention.

As of 01.01.2007 integral parts of the Bulgarian legislation are also all labor related Regulations and Directives of the European Union. In case of controversy between any internal law and any of EU regulations, Bulgarian courts are obliged to apply directly the provisions of the latter.

#### VI.1.2. Legal Definitions

The labor legislation indicates legal definitions of the basic labor terms as follows:

**Employer** - is any natural person, legal entity or its division, as well as any other organizational and economically separated formation (enterprise, establishment, organization, cooperation, economy, institution, household, company, etc.) which independently employs employees under labor relations;

**Enterprise** – is any place - enterprise, establishment, organization, cooperation, establishment, site, etc. – where employed labor is implemented;

**Place of Work** – is any premise, workshop, room, location of machinery, equipment or any other similar territorial specific place within the enterprise where the employee implements the labor assigned by his employer in pursuance of his obligations arising out of the labor relationship.

#### VI.1.3. General Review of the Labour Legislation

The Bulgarian labor legislation is based on principles generally applicable to the labor law and the legal system of the European Union: freedom and protection of labor, social dialogue between the state and employees' and employers' organizations for regulation of labor relations, a ban on discrimination, sexual equality regarding the right to employment and remuneration, guaranteeing the labor remuneration, fixed working hours, limitation of overtime work, guaranteeing

rests and leaves, preserving the labor relation in case of change of the employer, collective arrangements and freedom of association of employers and employees.

As determined in the Labor Code, the Bulgarian labor legislation is applicable 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, insofar as not provided otherwise in a law or a treaty to which the Republic of Bulgaria is a party. The employment relationships of Bulgarian citizens sent to work abroad in foreign enterprises or joint ventures, and of foreign nationals appointed to work in this country in Bulgarian enterprises or joint ventures pursuant to treaties shall also be regulated by the Labour Code, insofar as not provided otherwise in a law or a treaty to which the Republic of Bulgaria is a party.

There is no collective labor agreement in Bulgaria established at a national level but there is a National Council for trilateral cooperation comprising representatives of the Council of Ministers, representative organizations of employees and employers. The Council has advisory functions and its own formations on a branch, trade and municipal level.

Collective labor bargaining exists on three levels: enterprise, branch and industry field. For businesses that are financed by the budget of a municipality a Collective Labour Agreement (CLA) is possible at the level of the respective Municipality. The Collective labour bargaining regulates issues of the labour and social security relations of employees, which are not regulated by mandatory provisions of the law. A collective labour agreement shall not contain clauses which are more unfavourable to the employees than the provisions of the law or of a higher grade of CLA, which is binding upon the employer.

Labor contracts, individual and collective

ones, are signed in writing and are subject to subsequent registration.

A CLA should be registered, depending on their level, at a special register of the local or Central Labor Inspectorate. CLAs are effective for 2 years.

The individual labour contract shall be concluded between the employee and the employer before the commencement of the job. Individual labor contracts are subject to registration within three days as of their signing at the respective division of the National Revenue Agency.

Upon conclusion of the labor contract the employer shall introduce the employee to the labour obligations ensuing from the position occupied or the nature of the work performed. According to the last amendments of the Labor Code, the obligatory contents of the individual labor contract was extended and it must now specify the place, position occupied and nature of work, duration of the labor contract, date of execution and commencement of performance, amount of basic and extended annual paid leave and additional annual paid leaves, identical term of advance notices for both parties in case of termination of the labor contract, basic and additional labor remunerations of constant nature as well as the periodic terms for their payment and the duration of the working day or week.

The employment contract may be concluded:

- for an indefinite period; or
- as an employment contract for a fixed term.

Fixed term employment contracts are: for a definite period which shall not be longer than 3 years, insofar as a law or an act of the Council of Ministers does not provide otherwise; until completion of some specified work; for substitution of an employee who is absent from work; for working at a job which is to be taken through a competitive examination, for the time until it is taken on the basis of the competitive examination; for a certain mandate, where such has

been specified for the respective body or an employment contract for a trial period. A fixed-term employment contract shall be concluded for execution of casual, seasonal or short-term work and activities, as well as with newly hired factory and office workers in enterprises that have been adjudicated bankrupt or put into liquidation. As an exception, a fixed-term employment contract may be concluded for a period of not less than one year and for work and activities that are not of a casual, seasonal or short-term nature. Such an employment contract may also be concluded for a shorter period upon request in writing by the factory or office worker. Any employment contract, concluded in violation of these principles shall be considered as a contact of an indefinite duration.

With similarities to the legislation of the European Union, the Bulgarian labor legislation envisages retention of the employment relationship in case of a change of employer. The employment relationship with the employee shall not be terminated in the event of a change of employer as a result of:

- merger of enterprises by the formation of a new enterprise;
- merger by acquisition of one enterprise by another;
- distribution of the operations of one enterprise among two or more enterprises;
- passing of a self-contained part of one enterprise to another;
- change of the legal form of business organisation;
- change of the ownership or of a self-contained part thereof;
- cession or transfer of activity from one enterprise to another, including transfer of tangible assets.
- renting, leasing or granting under concession of the enterprise or of an autonomous part thereof;

In these cases, the rights and obligations of the transferor employer arising from the employment relationships existing on the date

of the change shall be transferred to the new transferee employer.

As with the signing of labor contracts, termination of labor contracts is done in writing. The termination procedures and grounds for termination of labor contracts are specified in detail in the Bulgarian labor law. The types of termination of labor contracts may be divided in several basic groups:

- Procedures where termination requires consent of the other party or procedures where termination involves the will and actions only of the party entitled to initiate termination – termination by mutual consent or unilateral termination of the contract;
- Termination procedures via advance notice or termination procedures where no advance notice is required. The maximum terms of the advance notice are specified in the Labor Code: 1 month for non-fixed term contracts unless anything else is specified in the contract, but in any event not more than 3 months, and 3 months for fixed term contracts, but not more than the remainder to the expiry of the contract;
- Termination procedures of the contract upon a motion of the employer and termination procedures upon a motion of the employee. However, while the employee may terminate the labor contract without stating any grounds, the employer cannot use such a procedure.

Within seven days after the termination of the employment contract, the employer or a person authorised thereby shall be obligated to send a notification of this to the relevant territorial directorate of the National Revenue Agency.

There are no special Bulgarian courts for consideration of labor disputes as in certain other European countries, but our legislation establishes a special procedure for consideration of labor disputes. A particular feature of considering labor disputes is that employees are released from paying fees and taxes related to the court procedure.

#### **VI.1.4. Incentives**

Incentives in the sphere of labor law are aimed mainly at decreasing unemployment and enhancement of employment. Those are established in the Encouragement of Employment Act and the Rules on its application. The incentives are payment of funds from the Employment Agency to employers who open new job positions, preserve opened job positions in case of decrease of the working volume, hiring unemployed women over the age of 50 years and unemployed men over the age of 55, engaging unemployed persons of decreased working ability, hiring unemployed women/mothers or single parents, employing permanently unemployed persons, etc.

An employer wishing to apply for an encouragement of employment program should be registered pursuant to the existing legislation and lack any claimed public liability. Depending on the particular program, other requirements may also be specified.

Another hypothesis for encouragement of employment is provided by the Corporate Income Tax Act – the so called “assignment or decrease of the corporate tax”.

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## **VI.2. Bulgarian Social Security Legislation**

### **VI.2.1. Normative Provision**

The right to social security and social relief is determined in the Constitution of the Republic of Bulgaria. Similarly to the labor legislation, the provision of social security is characterized by codification: its basic provision is grounded in the Social Security Code. The procedure provisions are newly settled in the Bulgarian Tax and Social Security Procedure Code.

The legal acts representing part of the normative provision on social security are The Budget of the State Social Security Acts,

which are adopted annually.

Issues of general importance from the sub-legislative acts in the sphere of social security are: the Regulation on elements of remuneration and income over which are deposited social security installments; Regulation on granting and payment of financial compensations for unemployment; Regulation on pensions and security length of service; Regulation on social security funds and the Regulation on social security of self-secured persons and Bulgarian citizens working abroad.

The Republic of Bulgaria is a party to a number of international deeds in the sphere of social security such as: Contracts for social security between the Republic of Bulgaria and Spain, Republic of Macedonia and the Ukraine; Agreements with the Slovak Republic, Czech Republic, Federal Republic of Germany, Hungary and Libya, etc.

As of 01.01.2007 integral parts of the Bulgarian legislation are also all social security related Regulations and Directives of the European Union. In case of controversy between any internal law and any of EU regulations, Bulgarian courts are obliged to apply directly the provisions of the latter.

### VI.2.2. Legal Definitions

Of all legal definitions specified in the provisions of the social security, we shall review just the three basic terms:

**Secured persons for all secured risks** – pursuant to article 4 of the Social Security Code such persons are:

the factory and office workers hired to work for more than five working days or 40 hours, within a calendar month, regardless of the nature of the work, the mode of pay, and the source of funding. Persons included in the From Social Welfare to Employment Programme and the Maternity Support Programme shall not be insured against unemployment; the civil servants; the judges,

prosecutors, investigating magistrates, executive judges, recording magistrates, and judicial officers; the career servicemen under the Defence and Armed Forces of the Republic of Bulgaria Act and the civil servants under the Ministry of Interior Act and the Implementation of Penal Sanctions Act; the co-operative members, who perform work and receive remuneration at the co-operative; the co-operative members, who work at the co-operative without entering into an employment relationship, shall not be insured against unemployment; the persons who work under a second employment contract or under an additional employment contract; the contractors under contracts for management and control of commercial corporations; persons performing work and receiving income from elective office, with the exception of the ministers holding a spiritual title of the Bulgarian Orthodox Church and other registered religions under the Religious Denominations Act.

Obligatory secured persons for disability because of a general disease, for old age and death are persons registered as practitioners /as freelancers and/or craftsmen activity; persons performing work as sole traders, owners or partners in commercial corporations; registered agricultural producers and tobacco producers; persons who perform work without entering into an employment relationship and who receive a monthly remuneration equal to or exceeding one minimum wage less the expenses allowed for standard deduction, unless insured on different grounds during the relevant month; persons who perform work without entering into an employment relationship and who are insured on different grounds during the relevant month, regardless of the amount of the remuneration received.

**Social Insurance Contributors** – according to article 5 of the Social Security Code it is .  
any natural person, legal entity non-personified entity as well as any other organizations obligated by the law to make

social security contributions for other natural persons.

**Self-secured person** – a natural person obligated to make his social insurance contributions entirely at its own account.

### VI.2.3. General Review

Social security relations in the Republic of Bulgaria may be divided in two general groups: relations regarding the state social security and relations regarding the additional social security.

The state social security covers risks of general disease, labor accident, professional illness, maternity, unemployment, old age and death.

The additional social security consists of: additional obligatory pension security in case of old age and death; additional voluntary pension security in case of old age, disability and death; additional voluntary security for unemployment and/or professional qualification.

The basic characteristics of the state social security are: equality of socially secured persons, obligation, comprehensiveness, solidarity of socially secured persons, and fund organization of securing funds.

The income over which security instalments are assessed includes all remunerations and other income received from labor activity. The Budget of the State Social Security Act for the respective year determines the amount of social security instalments depending on the encompassed social risks as well as the minimum and maximum security income for the year. For the year 2007 the amount of security instalments for all risks regarding employees working at the third (basic) category of labor is 29,5 % + from 0,4% up to 1,1% for labor accident and illness.

The distribution of security instalments between social insurers and employees, members of cooperatives, contractors under agreements for management and control, persons employed at selectable positions and

persons employed under no labor relations is changing throughout the time and is as follows:

For year	Allocation of social security installment liability	
	For the insurer	For the insured
2007	65%	35 %
2008	60%	40%
2009	55%	45%
2010 and on	50%	50%

Security instalments for state social security which are to the account of social insurers are deposited simultaneously with the payment of remunerations. Social security instalments to the account of socially secured persons are to be deducted and deposited upon payment of the remuneration. Security instalments for self-secured persons and persons employed under no labor relations are deposited by the tenth day of the month following the month they refer to.

### VI.2.4. Incentives

Incentives in the sphere of social security are directed mainly at tax reliefs:

- Income of universal and professional pension funds is not subject to taxation pursuant to the Corporate Income Tax Act;
- Income from investments of pension funds distributed to the individual lots of secured persons is not subject to taxation pursuant to the Taxation of Income of Natural Persons Act;
- Individual security instalments for additional obligatory pension security are deducted from the income prior to taxation;
- Instalments made by employers for additional obligatory pension security are acknowledged as costs related to their business activity. ■

## VII TAXATION

### VII.1. Direct Taxation of Corporations

The taxation of corporate income and profits is governed by the Corporate Income Tax Act ("CITA"). In connection with the accession of Bulgaria to the European Union since January 1st 2007, a new CITA was adopted to meet the necessity of harmonization of Bulgarian taxation legislation with the requirements of the European directives concerning direct taxation. Another reason for passing a new act in the field herein is to make perception and application of the corporate taxation easier for the taxable persons and for the revenue administration.

Apart from the corporate income tax which is charged on the corporate profits, CITA also regulates certain other taxes, such as:

- A tax alternative to corporation tax shall be levied on: gambling businesses; the income accruing to public-financed enterprises from commercial transactions, as well as from letting movable and immovable property; the vessels operation activity;
- Taxes on corporate expenses. Any expenses defined as compulsory by a statutory instrument shall be recognized for tax purposes and shall not attract a tax on expenses;
- Withholding tax on income accruing to any resident and non-resident legal persons.

#### VII.1.1. Taxable Persons

Taxable persons are:

- the resident legal persons;
- the non-resident legal persons which carry out economic activity in the Republic of Bulgaria through a permanent establishment or which receive income from a source inside the Republic of Bulgaria;
- the sole traders: in respect of the taxes withheld at source and in the cases specified in the Income Taxes on Natural Persons Act

(when they perform activities liable to taxes alternative to corporation tax);

- the natural persons who are merchants within the meaning given by Article 1 (3) of the Commerce Act (persons who have established a business, which in accordance with its purposes and volume requires that its activities be conducted on a commercial basis) : in the cases specified in the Income Taxes on Natural Persons Act ;
- the employers and the commissioning entities under contracts for management and control: in respect of the tax on the expenses on fringe benefits.

For the purposes of taxation of income from a source inside the Republic of Bulgaria, any non-resident organizationally and economically distinct formation (trust, fund and other such), which independently carries out economic activity or performs and manages investments, shall likewise be a taxable person where the owner of the income cannot be identified.

A significant amendment in corporate taxation is that legal entities are no longer liable to final annual (license) tax whatever their activity is. Pursuant to the previous CITA legal entities that perform specific activities and have annual turnover less than 50000 lv were liable to the mentioned final tax.

#### VII.1.2. Corporate Income Tax

Corporate income tax in Bulgaria applies in a single rate of 10%. This is the lowest rate of corporate income tax in the European Union.

#### VII.1.3. Profits Subject to Tax

Bulgarian resident companies are subject to Bulgarian tax on their world-wide profits. Companies that are non-residents in Bulgaria are liable to taxes in respect of the profits gained through a permanent establishment in the Republic of Bulgaria and of the income

specified in the CITA accruing from a source inside the Republic of Bulgaria.

A company is resident in Bulgaria if it is incorporated (registered) pursuant to Bulgarian legislation. Resident companies are also any companies incorporated under Council Regulation (EC) No 2157/2001, and any cooperative society incorporated under Council Regulation No 1435/2003, where the registered office thereof is situated in the country and they are entered into a Bulgarian register.

Most of the taxation rules, including the major rules relating to tax incentives, apply equally to resident and non-resident corporations conducting activities through a Bulgarian permanent establishment.

#### VII.1.4. Determination of Profits for Tax Purposes

Profits are determined in accordance with the generally accepted accounting principles (provided for in the respective accounting standards), subject to adjustments for tax purposes. Currently, the corporate taxpayers should mandatory apply the International Financial Reporting Standards (IFRS) adopted by the European Commission for accounting purposes and approved by the Bulgarian Council of Ministers. There is a statutory requirement for banks, insurance companies, other financial institutions and public companies to apply IFRS as a primary accounting basis. Legal entities that qualify for small and medium size enterprises (SME) may choose whether to apply the IFRS or the Bulgarian Generally Accepted Accounting Principles (BGAAP). SMEs that are eligible to apply the BGAAP are enterprises with personnel less than 250 people and annual turnover up to BGN 15 million or with total value of the non-current tangible assets not exceeding BGN 8 million.

Accounts are to be prepared in Bulgarian Leva (BGN), regardless of the functional currency of the respective company.

Generally, the taxable profit (pursuant to the terminology in the new CITA the taxable profit is called "tax financial result") is determined in accordance with the accounting financial result adjusted for tax purposes for: the permanent tax differences; the temporary tax differences and specific amounts provided in the CITA.

- The permanent tax differences are sums which affect the tax financial result only once.

They are accounting income or expenses which are not recognized for tax purposes and in this regard for the purposes of determination of the tax financial result, where this CITA indicates that:

- a cost (loss) is not recognized for tax purposes, the accounting financial result shall be credited with any such cost (loss) in the year of accounting for the said cost (loss), and the accounting financial results shall not be adjusted during the succeeding years;
- an income (profit) is not recognized for tax purposes, the accounting financial result shall be debited with any such income (profit) in the year of accounting for the said income (profit), and the accounting financial results shall not be adjusted during the succeeding years.

For example the following accounting **expenses** shall not be recognized for tax purposes: any non-business expenses; any expenses on fines charged, forfeitures and other sanctions imposed for violation of statutory instruments, any default interest charged for late payment of public state or municipal debts etc. The accounting expenses on donations to a total amount of up to 10 per cent of the positive accounting financial result (accounting profit) shall be recognized for tax purposes where the expenses on donations are incurred in favor of specific institutions or enterprises and many others. The following accounting **income** shall not be recognized for tax purposes: any income resulting from distribution of dividends by resident legal persons; any income from interest payments

on unduly remitted or collected public obligations, as well as on value added tax not refunded within the statutory time limits, charged by the central-government or municipal authorities.

For the first time in Bulgarian corporate tax legislation the new CITA provides regulation regarding accounting expenses on incorporation of a legal entity. These expenses are not recognized for tax purposes at the incorporators. The unrecognized expenses shall be recognized for tax purposes upon determination of the tax financial result of the newly established legal person in the year of commencement of the legal existence thereof. The tax law provides the hypothesis that the legal entity is not established despite all the efforts of the incorporators. In this case expenses referred to herein shall be recognized for tax purposes upon occurrence of circumstances determining that the legal existence of a new legal person will not commence. The said expenses shall be recognized in the year of occurrence of the said circumstances.

- The temporary tax differences affect the tax financial result for more than one accounting Period. They are accounting income or expenses which are recognized for tax purposes in a tax period other than the year of accounting of the said income or expense, which is due to the specific of the respective transactions. The mechanism by which the temporary tax differences affect the tax result is similar to the one pointed out above concerning the permanent tax differences.

An example of temporary tax differences are **interest costs**. Interest costs are normally deductible on accrual basis, subject to the limitations provided in the Bulgarian thin capitalization rules. The latter apply to substantially all forms of financing, except for: 1) any interest payments on financial leases and bank loans, except where the parties to the transaction are related parties or the

lease or the loan, as the case may be, is guaranteed or secured by or is extended on the order of a related party; 2) any penalty charges for late payments and damages; 3) any interest unrecognized for tax purposes on other grounds in CITA.

Under the thin capitalization rules, if the debt-equity ratio of the taxpayer does not exceed 3:1 as of the end of the respective calendar year the interest costs can be deducted for tax purposes in full. If the debt equity ratio is higher than 3:1, then the maximum tax deductible portion could not exceed the sum of the interest income of the taxpayer and 75% of the accounting financial result before all expenses on interest payments and income from interest receivable. The portion that appears to be non-deductible in the current year can be carried forward and deducted in the following five years, subject to the formula described above.

A general rule is that an accounting expense shall be recognized for tax purposes where it is supported by an accounting source document within the meaning given by the Accountancy Act. An accounting expense shall be recognized for tax purposes even where part of the information required under the Accountancy Act is missing in the accounting source document, provided that documents certifying any such missing information are available. There are some other exceptions, provided in the law unlike the previous CITA.

The law enumerates some amounts with which the tax financial result is adjusted:

- Where the disposition of any shares and any negotiable rights attaching to shares in public companies, shares in and units of collective investment schemes, is effected on a regulated Bulgarian securities market, upon determination of the tax financial result the accounting financial result:

- shall be debited with the profit determined as a positive difference between the selling

price and the documented cost of acquisition of the said securities, and

- shall be credited with the loss determined as a negative difference between the selling price and the documented cost of acquisition of the said securities.

- Tax treatment of debts. The tax regime of debt taxation is thoroughly new. Upon determination of the tax financial result, the accounting financial result shall be credited with the amount of the debts of the taxable person originating from amounts which lead to a diminution in the tax financial result, and the said crediting shall be effected in the year in which one of the following circumstances occurs:

- the debts are extinguished by prescription, but not more than five years after the time when the debt became exigible;

- the bankruptcy proceedings against the taxable person have been closed by a confirmed plan for rehabilitation which provides for incomplete satisfaction of the creditors; the crediting shall be effected by the amount of the diminution in the debt;

- an effective judgment of court has decreed that the debt or part thereof is undue;

- the creditor has relinquished the claim thereof by a judicial procedure or has redeemed the said claim; the crediting shall be effected by the amount redeemed;

- before the lapse of the prescription period, the debts have been extinguished by virtue of a law;

- the taxable person has submitted a motion for expungement.

#### **VII.1.5. Valuation of Depreciable Assets for Tax Purposes. Depreciation and Amortization**

Tax depreciable assets are

- the tax tangible fixed assets;
- the tax intangible fixed assets;
- the investment properties, with the exception of land;

- the subsequent expenses associated with asset written off from the tax depreciation schedule

Goodwill generated as a result of a business combination is not a tax depreciable asset. Any loss from impairment and upon write-off of goodwill shall not be recognized for tax purposes.

Taxable persons who form a tax financial result prepare and keep a tax depreciation schedule, posting therein all tax depreciable assets. The tax depreciation schedule is a tax ledger wherein the information, regarding the process of acquisition, subsequent keeping, depreciation and write-off of the tax depreciable assets, shall be posted.

Depreciable assets are valued for tax purposes at historical acquisition cost. Additions and improvements to such assets are recognized as separate depreciable assets and are subject to depreciation in accordance to the tax rates applicable to the main asset.

The depreciable assets are divided into several categories:

- Category I: solid buildings, including investment properties, plant, transmission facilities, electric power carriers, communication lines;

- Category II: machinery, process equipment, apparatus;

- Category III: means of transport excluding automobiles; surfacing of roads and of runways;

- Category IV: computers, computer peripheral equipment, software, and right to use software;

- Category V: automobiles;

- Category VI: tax tangible and intangible fixed assets whereof the period of use is restricted according to contractual relationships or a legal obligation;

- Category VII: all other depreciable assets.

The annual rate of tax depreciation is determined on a single occasion for the year and may not exceed the following amounts:

Asset category	Annual rate of tax depreciation (%)
I	4
II	30
III	10
IV	50
V	25
VI	100/years of legal restriction The annual rate may not exceed 33 1/3
VIII	15

Tax depreciation rates can be freely chosen by taxpayer, within the above maximum rates, and are not linked to the accounting depreciation rates or the useful life of the asset. The choice of the applicable tax depreciation rates can be changed each calendar year and the change applies prospectively.

#### VII.1.6. Utilization of Losses

The tax loss can be carried forward for five consecutive years to offset the taxable profit reported in these years. Losses cannot be carried back.

According to the new CITA (unlike the previous one) the taxable person **is entitled to choose** whether to carry forward losses or not. The taxable person can exercise the right thereof by means of deduction of the tax loss **during the first year** after incurrence of a tax loss, during which the said person has formed a positive tax financial result before deduction of the tax loss. If the taxable person has not formed a positive tax financial result before deduction of the tax loss until the date of tax control, the person shall be presumed to have exercised the right thereof to election which means that the term is preclusive. The company is not obliged to submit any returns, therefore it notifies the revenue administration by its annual return.

Another innovation is that the tax loss must be deducted upon determination of the tax

financial result within the **total** amount of the positive tax financial result before deduction of the tax loss. Where the tax loss is less than the positive tax financial result before deduction of the tax loss, the full amount of the said loss shall be deducted upon determination of the tax financial result. The tax loss shall furthermore be deducted upon determination of the quarterly prepayments of corporation tax.

Any tax loss, formed during the current year in a State wherewith the Republic of Bulgaria has concluded a convention for the avoidance of double taxation and the method of avoidance of double taxation with respect to profits is exemption with progression, shall not be deducted from the tax profits from a source inside the country or other States during the current or succeeding years. The tax loss referred to herein shall be deducted in compliance with the requirements of this Chapter successively solely from the tax profits from the source outside Bulgaria from which the said loss has been incurred during the next succeeding five years.

Where a taxable person has formed a tax loss and the said loss or a part thereof has its source outside Bulgaria in respect of which source the credit method for avoidance of double taxation is applied, the loss which is not deducted during the current year shall be deducted during the next succeeding five years in compliance with the requirements of this Chapter successively solely from the tax profits from the source outside Bulgaria from which the said loss has been incurred.

#### VII.1.7. Group Taxation. Transactions Between Related Parties

There is no group taxation in Bulgaria. Each entity is taxed as a separate taxpayer.

Bulgaria has tax rules regulating the tax deductions and the taxable revenue from transactions between related parties ("the transfer pricing rules"). Transfer pricing rules

apply to both domestic and international transactions between related parties. The Bulgarian transfer pricing rules are broadly similar to the generally accepted OECD standards that could be seen in the EU and OECD countries.

### **VII.1.8. Tax reporting and Tax Payments**

In Bulgaria the tax year coincides with the calendar year. The taxable persons must submit an annual tax return in a standard form regarding the tax financial result and the annual corporation tax due on or before the 31st day of March of the next succeeding year. Any taxable person, who fails to submit such a tax return or fails to submit it within the legal term or fails to state or misstates any particulars or circumstances leading to underassessment of the tax due or to undue reduction, retention of or exemption from tax, shall be liable to a pecuniary penalty of BGN 500 or exceeding this amount but not exceeding BGN 3,000.

The corporate income tax is paid through making monthly/quarterly provisional tax payments. Monthly tax prepayments are made by taxable persons who have formed a tax profit for the last preceding year. Quarterly tax prepayments are made by taxable persons who are under no obligation to make monthly tax prepayments. The monthly prepayments are generally based on the tax profit for the preceding year, adjusted for economic indicators. Monthly tax prepayments are remitted on or before the 15th day of the month to which the said prepayments apply. Quarterly tax prepayments are remitted on or before the 15th day of the month next succeeding the quarter to which the said prepayments apply. No quarterly tax prepayments are made for the fourth quarter.

An annual balancing payment is made before the 31st day of March of the next succeeding year. It is calculated as a balance between the annual tax liabilities reported in the tax return and monthly provisional installments paid.

### **VII.1.9. Intra-community Dividends**

With regard to the accession of the Republic of Bulgaria since January 1st 2007 a new chapter of the CITA was passed – “Intra-community dividends” which implements Directive 90/435. Pursuant to these provisions the pressure of taxation and tax treatment is equal for transactions between Bulgarian legal entities and between companies seated in different member states.

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## **VII.2. Corporation Tax Reduction, Retention and Exemption**

### **VII.2.1. Corporation Tax Retention**

Corporation tax retention is the right of a taxable person not to remit to the executive budget the amounts of corporation tax, which subsist in the patrimony of the taxable person and are spent for purposes prescribed by a law. CITA provides some specific requirements for the taxable persons in order to be entitled to take advantage of tax retention.

### **VII.2.2. Corporation Tax Exemption**

Collective investment schemes, which have been admitted to public offering in the Republic of Bulgaria, and licensed investment companies of the closed-end type under the Public Offering of Securities Act, are exempt from the levy of corporation tax.

Special purpose investment companies under the Special Purpose Investment Companies Act are exempt from the levy of corporation tax, too.

### **VII.2.2. Corporation Tax Incentives**

Corporation tax incentives are divided into General tax incentives, Regional incentives and Employment incentives.

**The General incentives** on their part are:

1) tax incentives upon hiring of unemployed persons (such legal entities are entitled to debit the accounting financial result by the amounts paid for labor remuneration and the contributions remitted for the account of the employer to the public social insurance funds and the National Health Insurance Fund during the first twelve months after the hiring); 2) incentives for enterprises hiring people with disabilities (these taxable persons are allowed to retain 100 % of the corporation tax under certain conditions); 3) incentives for agricultural producers (they are allowed to retain 60 % of the corporation tax under specific conditions) etc.

**The regional tax incentives** are available for investments in depressed regions included in a list approved by the Minister of Finance. The following companies and industries cannot benefit from these incentives: legal persons carry out activities in the sectors of coal, steel, shipbuilding, synthetic fibres manufacture, fisheries, as well as production of agricultural products listed in Annex I to the Treaty establishing the European Community, for the respective activity, or are subject to bankruptcy proceedings, are placed in liquidation, or are subject to rehabilitation proceedings, or are defined as enterprises in difficulty. A precondition for the right of such incentive is the taxable person to perform manufacturing activities (in such cases they are entitled to retain 100% of the tax) or make investments in municipalities with unemployment rate above national average (they are allowed to retain debit their corporation tax with 10% of the value of the acquired assets).

The incentives are subject to some advance and subsequent filing requirements and notifications.

Where the regional aids from all sources related to the initial investment exceed BGN 75 million, the corporation tax reduction or retention a clearance by the European Commission under the terms and according

to the procedure established by the State Aids Act is necessary. The latter rule is not applicable to taxable persons which have received minimum aids, regardless of the form or source of acquisition thereof, to a total amount not exceeding BGN 200,000 during the last three years, including the current year.

**Employment incentives.** Upon determination of the tax financial result, the accounting financial result may be debited with the compulsory social insurance contributions remitted for the current year for the account of the employer in respect of the newly created jobs. The said reduction is allowed on a single occasion in the year during which the persons are appointed. The right herein shall accrue subject to the condition that the jobs have been created in municipalities where the rate of unemployment for the year preceding the current year is by 50 per cent or more higher than the national average for the same period. Some conditions must be fulfilled for this reduction to be available: according to European Commission Regulation (EC) No 2204/2002, including:

- the average number of employees for the current year must have increased compared to the preceding year as a result of the newly created jobs, and persons registered as unemployed must be appointed to the newly created jobs under an employment contract;
- the newly created jobs must be maintained for a minimum period of three years;
- the State aid referred to herein, together with other State aids for employment in respect of the same newly created jobs, must not exceed 50 per cent of the cost of wages and compulsory social insurance contributions for the newly created jobs for two years;
- the State aid, together with other regional aids and State aids for employment, must not exceed 50 per cent of the sum total of the initial investment and the cost of wages and

compulsory social insurance contributions for newly created jobs, related to the initial investment, for two years.

Where the State aid for employment referred to herein, including other State aids for employment, exceeds BGN 30 million for three years, the reduction shall be valid if the taxable person has been granted a permissibility authorization by the European Commission under the terms and according to the procedure established by the State Aids Act.

### VII.3. Alternative Taxes

#### VII.3.1. Gambling businesses

The taxable amount for assessment of the tax on gambling activities of toto and lotto, betting on the outcome of a sports competition and uncertain events is the value of the bets taken for each game and the tax rate is 10%.

The taxable amount for assessment of the tax on gambling activities of lotteries, raffles and bingo and keno numbers lotteries is the nominal value of the bet as specified in coupons, cards, tickets or other tokens certifying participation and the tax rate is 12%.

The taxable amount for assessment of the tax on gambling activity of games where the value of the bet consists in an increased charge for a telephone or another telecommunication link is the increase in the charge for the telephone or telecommunication link. The tax rate is 12%

#### VII.3.2. Tax on Public-financed Enterprise Income

Any income accruing to public-financed enterprise from commercial transactions covered under Article 1 of the Commerce Act, as well as from rent of movable and immovable property, shall attract a tax on income. The monthly taxable amount is the income accruing to the public-financed enterprise during the relevant month. The

annual taxable amount is the respective income accruing to the public-financed enterprise during the relevant year.

The tax rate is 3 %. The rate of tax on income accruing to the municipalities is 2 %.

#### VII.3.3. Tax on Vessels Operation Activity

Taxable persons are the persons carrying out maritime merchant shipping which simultaneously fulfill the following conditions:

- they are corporations registered under the Commerce Act, or permanent establishments of a corporation which is resident for tax purposes in another Member State of the European Community, or a Member State of the European Economic Area, according to the relevant tax legislation and by virtue of a convention for the avoidance of double taxation with a third State is not considered to be resident for tax purposes in another State outside the European Community or the European Economic Area;

- they operate their own vessels or chartered vessels, or manage vessels under a contract of management, as well as charter vessels;
- they do not refuse to train apprentices on board the vessels, with the exception of the cases where the number of apprentices exceeds one per fifteen officer members of the ship's complement;
- they man the vessel with Bulgarian citizens or with nationals of other Member States of the European Community or of the European Economic Area;
- vessels flying the Bulgarian flag or a flag of another Member State of the European Community or of the European Economic Area account for at least 60 per cent of the net tonnage of the vessels operated.

These persons may elect their activity to attract a tax on vessels operations activity. The tax shall be levied on the taxable persons who have elected to be liable for the said tax for a period not exceeding five years. The tax rate is 10%.

## VII.4. Tax on Corporate Expenses

Bulgaria levies taxes on certain expenses. The taxes are charged monthly. The expense and the tax thereon shall be recognized for tax purposes in the year of charging and shall not form a temporary tax difference. A significant amendment in expenses taxation is that in case the taxable person has over remitted any tax on expenses or any **corporation tax**, the said tax may be deducted from **the tax on expenses due**.

Pursuant to the new CITA the tax rate for taxes on all kinds of expenses is 10%. With regard to the fact that the tax on expenses is recognized for tax purposes, the effective tax rate is 9%

The following expenses, supported by documents, are subject to tax on expenses:

### VII.4.1. Business Entertainment Expenses

Taxable persons are the persons which are subject to levy of corporation tax. Therefore the expenses of legal entities, subject to alternative tax, are not levied with the tax herein.

The tax is levied on the gross amount of business entertainment expenses for the respective month.

### VII.4.2. Benefits to the Personnel (“Social Expenses”)

The taxable expenses are expenses on fringe benefits provided in kind to factory and office workers and to persons hired under a management and control contracts (hired persons). These expenses furthermore include:

- the expenses on contributions (premiums) for voluntary retirement and health insurance and voluntary unemployment and/or vocational-training insurance, and/or life assurance and life assurance linked to an investment fund;

- the expenses on food vouchers

Expenses on fringe benefits, which are not provided in kind and which constitute income of a natural person, are taxed under the terms and according to the procedure established by the Income Taxes on Natural Persons Act.

Taxable persons are all employers or commissioning entities under management and control contracts.

No tax shall be levied on expenses on fringe benefits not exceeding the amount of BGN 60 per month per hired person, where the taxable persons do not incur any coercively enforceable public obligations at the time of incurrance of the expenses. No tax shall be levied on expenses not exceeding the amount of BGN 40 per month, provided in the form of food vouchers to each hired person if certain conditions are fulfilled.

No tax shall be levied on any expenses on fringe benefits incurred on transportation of factory and office workers and of persons hired under a management and control contract from the place of residence to the place of work and back. The latter does not apply if any such transportation is carried out by passenger car or by extra bus services. However the expenses herein shall not be levied with tax if the transportation of factory and office workers is carried out by passenger car to inaccessible and remote areas and the taxable person cannot ensure the implementation of the activity thereof without incurrance of the expense.

The taxable amount for assessment of the tax on social expenses is the expenses on fringe benefits provided in kind debited with the income related to the said expenses for the relevant month. The taxable amount for assessment of the tax on expenses on contributions (premiums) for voluntary retirement and health insurance and voluntary unemployment and/or vocational-training insurance, and/or life assurance and life assurance linked to an investment fund is the excess of the said expenses over

BGN 60 per month per hired person. The taxable amount for assessment of the tax on expenses on food vouchers is the excess of the said expenses over BGN 40 per month per hired person.

#### VII.4.3. Expenses Relating to Use and Maintenance of Company Vehicles

The taxable amount for assessment of the tax on these expenses are the expenses on maintenance, repair and operation of means of transport, charged during the calendar month, debited with the income charged from insurance benefits associated with the means of transport, up to the amount of the expenses on repair incurred where the benefit applies. If means of transport are used concurrently to carry out activity as a regular business and to service management operations, upon determination of the taxable amount:

- the expenses on operation shall relate to the management operations on the basis of the total kilometers covered for the said operations during the current month;
- the expenses on maintenance and repair shall relate to the management operations on the basis of the kilometers covered for the said operations in relation to the total kilometers covered by the relevant means of transport during the last preceding twelve months, including the current month.

#### VII.5. Withholding Tax Obligations

With the new CITA significant amendments and supplements are made in the matter of withholding taxes. Subject to such a tax is only the income of resident and non-resident legal entities whereas the income of natural persons is regulated by Income Taxes on Natural Persons Act.

Corporate taxpayers are subject to the following main withholding obligations:

#### VII.5.1. Repatriation of Profit/Dividend Withholding Tax

Bulgarian resident corporations which distribute dividends have to withhold dividend withholding tax of 7% from dividend distributions in favor of:

- non-resident legal persons, with the exception of the cases where the dividends accrue to a non-resident legal person through a permanent establishment in the country;
- resident legal persons which are not merchants, including any municipalities.

No withholding tax is levied if the dividends are distributed in favor of resident legal person who participates in the capital of the company as a representative of the State or common fund.

The new CITA regulates intra-community dividends. Pursuant to its provisions dividends charged by a resident subsidiary in favor of a parent company of a Member State shall not be subject to levy of a withholding tax. Dividends charged by resident legal persons in favor of a permanent establishment in another Member State shall not be subject to levy of a withholding tax where the following conditions are simultaneously fulfilled:

- a tax under Annex 2 of the CITA (a list of the taxes in different member-states) or a similar profits tax is levied on the profits from a permanent establishment and the permanent establishment has no option or the possibility of being exempt from the levy of such tax;
- the permanent establishment is of another resident person or of a company of another Member State;
- the resident person/company referred to in Item 2 has, inter alia through the permanent establishment, a minimum holding of 15 per cent in the capital of the resident person distributing the dividends for an uninterrupted period of at least two years;
- the resident persons referred to in Items 2 and 3 are commercial corporations or unincorporated associations and the profits thereof attract corporation tax.

The taxable amount for assessment of the tax withheld at source on dividends is the gross amount of the dividends distributed.

### **VII.5.2. Withholding Obligations with Respect to Payments to Non-residents**

Certain items of business and investment income of non-resident legal entities earned from sources in Bulgaria are subject to flat final income tax, which is normally levied by means of withholding. The domestic rate of tax is 10%. Where the recipient of the payments resides in a country with which Bulgaria has a Double Tax Treaty, the tax rate could be reduced or an exemption could be available subject to the provisions of the respective treaty.

The following income of nonresident legal entities is subject to withholding tax:

- income from financial assets issued by resident legal persons, the Bulgarian State and the municipalities;
- income from transactions with such financial assets;
- the following income, charged by resident legal persons, resident sole traders or non-resident legal persons and sole traders through a permanent established or a fixed base in the country or paid by resident natural persons or by non-resident natural persons who have a fixed base in the country:
  - interest payments, including interest within payments under a financial lease contract;
  - income from rent or other provision for use of movable or immovable property;
  - copyright and license royalties;
  - technical assistance fees;
  - payments received under franchising agreements and factoring contracts;
  - compensations for management or control of a Bulgarian legal person.
- income from agriculture, forestry, hunting ground management and fisheries within the territory of the country;
- income from immovable property or from

transactions in immovable property, including an undivided interest or a limited right in rem to any immovable property situated in the country.

The income pointed out above, shall be subject to levy of a tax withheld at source where not accruing through a permanent establishment.

The tax shall be withheld by the resident legal persons, the sole traders or the permanent establishments in the country which charge the income to the non-resident legal persons, with the exception of the income referred to in Items 2 and 4 herein.

Where the payer of the income is not a taxable person under the CITA and in respect of the income referred to Items 2 and 4 herein, the tax shall be withheld from the recipient of the income.

Income from disposition of shares in public companies, negotiable rights attaching to shares in public companies, and shares in and units of collective investment schemes, shall not attract a tax withheld at source where the said disposition is effected on a regulated Bulgarian securities market.

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### **VII.6. Treaties for Avoidance of Double Taxation (Double Tax Treaties)**

Bulgaria has concluded sixty one double tax treaties which provide for a relief of tax or a reduced rate of tax. The double tax treaty with the USA was signed on February 23rd 2007 and its effective date is February 1st 2008.

#### **VII.6.1. Procedures for Claiming Relief Under a Double Tax Treaty**

In order to benefit from the reliefs in a double tax treaty a non-resident person must submit application in a standard form with the revenue authority proving that the said person:

- is a resident of the other State within the meaning given by the relevant treaty;

- is an owner of the income from a source inside the Republic of Bulgaria;
- does not own a permanent establishment or a fixed base within the territory of the Republic of Bulgaria, whereto the income is effectively connected;
- fulfills the special requirements for application of the treaty or separate provisions thereof in respect of persons specified in the treaty itself, where such special requirements are contained in the relevant treaty.

Written evidence regarding the type, the grounds for realization and the amount of the relevant income should be attached to the claim.

The revenue authorities exercise control as to the application of convention and conduct an examination or an audit. Where an examination is conducted, an opinion on the existence or non-existence of grounds for application of the tax convention shall be issued to the non-resident person within 60 days after submission of the request. Non-pronouncement within this time limit is presumed as an opinion on existence of grounds for application of the double tax treaty.

The non-resident person is entitled to appeal the refusal of the revenue authorities to allow direct application of the tax treaty.

## VII.7. Local Taxation

Local taxes are charged by the municipalities. The main local taxes are:

### VII.7.1. Real Estate Tax

Taxable properties are built up land, non-built construction plots and buildings with tax valuation more than BGN 1,680. No tax shall be levied on agricultural land tracts and forests, with the exception of developed land in respect of the actually developed surface area and the adjoining ground.

Taxable persons are the owners or holders

of limited real rights over the taxable property.

The tax rate is 0,15% on the tax value of the property. A reduction of 50% of the tax is allowed if the property is a main residence.

### VII.7.2. Transfer Taxes

Tax shall be levied on any properties acquired by donation, as well as on any onerously acquired real estates, limited real rights thereto, and motor vehicles. The tax shall be paid by the transferee of the property of by the transferor in case the transferee is abroad.

The tax rate is 2% and is charged as follows:

- with respect to real estate properties – on the higher amount of the consideration agreed and the tax valuation of the property;
- with respect to vehicles – on the full insurance value of the vehicle transferred.

Donation and disposal without consideration of any property are subject to tax at the following rates:

- 0.7 per cent: on donations between siblings and the children of siblings;
- 5 per cent on donations between any other persons.

Exemption from transfer taxes is provided for privatization of assets, for in-kind contribution of assets to the share capital of a company as well as in some other cases provided in law.

### VII.7.3. Vehicle Tax and Road Charge

Vehicle tax is payable by the owners of road means of transport, ships and airplanes registered in Bulgaria. The rate of tax depends on the type and the characteristics of the respective mean of transport, e.g. the vehicle tax for cars is determined by the engine power. The tax is due on an annual basis.

The owners of vehicles are subject to service charge for use of the public roads payable to the Ministry of Transport. Such tax is paid through purchase of certificates/

stickers for the use on the roads for a specific period (calendar year, month or week).

In addition to the above taxes, the municipalities also collect some service charges for performance or maintenance of public services such as waste collection charge, tourist charge, charges for various administrative services.

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## **VII.8. Capital Taxation. Ecological Levies**

### **VII.8.1. Taxes on Capital**

Except as mentioned above, no specific taxes are charged on the capital of the businesses or their net worth or on their assets. In particular, no capital duties or material stamp duties are payable on the incorporation of a Bulgarian company or on its capital or on subsequent contributions to the capital.

### **VII.8.2. Packing Charge**

As of 2004 Bulgaria introduced a packing charge levied on the import of packed products or on the sale of locally manufactured packed products on the Bulgarian market. The charge is collected for the provision of the public services related to management of packing waste. The charge is not payable if the importer/manufacturer put in place a proper system of management and recovery/recycling of the packing waste.

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## **VII.9. Income Taxation of Individuals**

### **VII.9.1. Taxable Persons**

Taxable persons are resident and non-resident natural persons, who earn income from sources in Bulgaria and resident and non-resident persons, who are obligated to withhold and remit taxes.

“Resident natural person,” whatever the

nationality, is any person:

- who has a permanent address in Bulgaria, or
- who is present within the territory of Bulgaria for a period exceeding 183 days in any twelve-month period, or
- who is sent abroad by the Bulgarian State, by bodies and/or organizations thereof, by Bulgarian enterprises, and the members of the family of any such person, or
- whose centre of vital interests is situated in Bulgaria.

Any person, who has a permanent address in Bulgaria but whose centre of vital interests is not situated in the country, is not a resident natural person. Where a Double Tax Treaty applies, the residency status could be impacted by the provisions of the Treaty.

Resident natural persons are liable to taxes in respect of any income acquired thereby from sources inside and outside the Republic of Bulgaria while non-resident natural persons are liable to taxes in respect of any income acquired thereby from sources inside the Republic of Bulgaria.

Bulgarian law contains detailed rules on when an activity or investment is sufficiently related to Bulgaria to give rise to Bulgarian taxation.

### **VII.9.2. Taxable Income**

The annual taxable income is defined as an aggregate of the total income received by the individual during the calendar year with the exception of the income which is non-taxable by virtue of a law and the income specifically excluded from the annual income which is taxed separately under specific rules.

The taxable income and the taxable amount shall be determined for each source of income separately under specific procedures, provided in the law. The aggregate annual taxable amount is the sum total of the annual taxable amounts determined for each type of income, depending on the sources, net of the tax relieves provided for by law.

The sum total of the annual taxable amounts is debited with:

- personal voluntary social insurance contributions made during the year to an aggregate amount not exceeding 10 per cent of the sum total of the annual taxable amounts, as well as with any personal voluntary health insurance contributions and premiums/payments paid during the year under contracts of life assurance to an aggregate amount not exceeding 10 per cent of the sum total of the annual taxable amounts;
- donations made during the year up to certain limits and under certain conditions etc.

### VII.9.3. Tax Rate

In general individual income tax is charged over the annual taxable income in accordance to progressive tax rates, as follows:

Annual Taxable Amount		Tax
Lower limit	Upper limit	
0	BGN 2,400	-
BGN 2,400	BGN 3,000	20 per cent of excess over BGN 2,400
BGN 3,000	BGN 7,200	BGN 120 + 22 per cent of excess over BGN 3,000
Above BGN 7,200		BGN 1,044 + 24 per cent of excess over BGN 7,200

Certain items of income of residents or non-residents are not included in the taxable annual income and are subject to special rules of taxation with respect to the rates and the basis for tax.

### VII.9.4. Exemptions

Taxability does not apply to:

- income acquired during the tax year from the sale or exchange of:

(a) one residential immovable property, regardless of the date of acquisition of the said property;

(b) up to two immovable properties, as well as any number of agricultural and forest properties, provided that more than five years have elapsed between the date of acquisition and the date of sale or exchange;

- income accruing from the sale or exchange of movable property, with the exception of:

(a) means of transport by road, air and water, provided that the period from the date of acquisition to the date of sale or exchange is less than one year;

(b) works of art, collectors' items and antiques;

(c) shares, interests, compensation instruments, investment vouchers and other financial assets, as well as the income accruing from trade in foreign exchange;

(d) movable property delivered to persons who have the right to carry out collection, transport, recovery or disposal of waste in accordance with the Waste Management Act;

- interest paid on accounts and deposits with any domestic commercial bank, branch of a foreign bank and with domestic mutual aid funds;

- interest paid and discounts made on Bulgarian government, municipal and corporate bonds etc.

### VII.9.5. Wage Withholding Taxes

Salaries and other payments due for employment are included in the annual taxable income and are subject to personal income tax. The employer is required to withhold provisional tax from the wages of the employees on a monthly basis. The law provides specific rules for determining the taxable amount for tax on income from labor relationships. The wage withholding tax is charged in accordance to monthly progressive rates which generally coincide with the annual rates of tax on a full-year basis:

Monthly Taxable Amount		Tax
Lower limit	Upper limit	
0	BGN 200	-
BGN 200	BGN 250	20 per cent of excess over BGN 200
BGN 250	BGN 650	BGN 10 + 22 per cent of excess over BGN 250
Above BGN 600		BGN 87 + 24 per cent of excess over BGN 600

Therefore, where the employee worked the full year, the provisional wage withholding tax normally would coincide with his/her annual tax liability.

When during the respective year the employee received only employment income, he/she is not liable to file a tax return. Where the wage withholding tax exceeds the annual tax liability (for reasons of being employed for part of the year, etc.), the refund is determined and provided through the employer.

### VII.9.6. Final Taxes

- Taxation of non-resident persons' income.

Certain items of income are not included in the annual taxable income but are taxed separately with a final tax. This treatment applies to the following items of income:

- compensations for lost profit and damages of such nature;
- scholarships for study in Bulgaria and abroad;
- interest payments, including interest within payments under a lease contract etc.

The provisions determining the income which is not subject to tax do not apply to the items herein. However, no final tax shall be levied on such items exempted from taxation under the mentioned provisions and charged/paid in favor of non-resident natural persons established for tax purposes in a Member State of the European Union, as well

as in another Member State of the European Economic Area.

The tax rate is 10%.

- Income of resident and non-resident natural persons.

Unlike the tax legislation prior to January 1st 2007 the income deriving from dividends and from shares in liquidation surplus of resident and non-resident natural persons is not taxed with withholding tax which had to be withheld by the legal entity, distributing the dividend/share of liquidation surplus. Pursuant to the present Income taxes on natural persons act the income from dividends and from shares in any liquidation surplus in favor of resident or non-resident natural person, where accruing thereto from a source inside Bulgaria and resident natural person, where accruing thereto from a source outside Bulgaria attract a final tax.

The tax rate is 7%.

- Under certain conditions a final tax shall be levied on the gross amount of the taxable income from supplementary voluntary social insurance, from voluntary health insurance and life assurances. A final tax shall be levied on the gross amount of the income acquired by the person upon the sale or exchange of movable property.

The tax rate is 15%.

### VII.9.7. Businesses of Individuals/Sole Traders

A specification in taxation with respect of sole traders is that the tax basis of the registered sole traders is the taxable profit in accordance with the tax rules applicable to corporations. The latter applies to the income from economic activity of a natural person who is a merchant within the meaning given by the Commerce Act but is not registered as a sole trader. The taxable income referred to herein excludes the accounting financial result formed by activities:

- on which alternative taxes are levied under the Corporate Income Tax Act ;
- on which a final annual (license) tax is levied.

The annual taxable amount shall be determined by debiting the taxable income referred to herein for the tax year with the contributions for social and health insurance.

### VII.9.8. Final Annual (License) Tax

A significant amendment in Bulgarian tax legislation is that legal entities are no longer and under no conditions subject to final annual (license) tax. The latter is applicable to natural persons and sole traders only and under the following conditions:

- performance of certain activities pointed out in the Income taxes on natural persons act;
- turnover of the person for the last preceding not exceeding BGN 50,000, and
- the person is not registered under the Value Added Tax Act, with the exception of registration for intra-Community acquisition.

### VII.9.9. Tax Returns and Payment of Taxes

Natural person should file an annual tax return. The obligation to submit an annual tax return does not apply to persons who have received solely:

- income from employment relationships,
- non-taxable income;
- income on which a final tax is leviable;
- income accruing to non-resident persons, on which a final tax has been levied.

The return should be filed before the 30th day of April of the year next succeeding the year of acquisition of the income. Income acquired during the year 2006 should be declared before the 15th day of April, which was the term pursuant to the previous law.

The tax should be remitted on or before the 30th day of April of the year next succeeding

the year of acquisition of the income. As far as income acquired during year 2006, the tax should be paid within one month following the date of the filing of the tax return as the previous law provided. Certain items of income are also subject to provisional tax payable through the year on monthly or quarterly basis

If the annual tax return is submitted on or before the 10th day of February of the next succeeding year, a rate rebate of 5 per cent of the balance of tax due under the annual tax return where remitted on or before the same date is allowed. If the return is submitted on or before this date by electronic means, a rate rebate of 5 per cent of the balance of tax due under the annual tax return where remitted on or before the same date is provided.

### VII.9.10. Double Taxation Treaties

As mentioned above Bulgaria has concluded 61 double tax conventions. They also provide rules regarding the natural persons.

If no such treaty exists with the respective country pursuant to the Income taxes on natural persons act resident natural persons are allowed foreign tax credit in respect of identical or similar foreign taxes levied abroad by the respective competent authorities.

### VII.10. Excise Duties

On November 15 2005 the existing Excise Duties Law has been abolished and substituted by a new excise law, which introduced the system of the tax warehouses. A tax warehouse is the place where excise duty goods are produced, stored, entered or sent by traders under the term of delayed excise duty payment.

The new excise law took effect on January 1, 2006 except in respect to the excise duties control and the competent authorities, where

the change took effect on 1 July 2006.

Certain luxury products, as well as certain other goods listed in law are subject to excise duties. Excise duties are payable as one-time consumption tax on the import of dutiable products in Bulgaria, or on the first sale of locally manufactured products in Bulgaria by their manufacturer.

The following main categories of products are subject to excise duties:

- liquors and beer, and raw materials with a content of alcohol; wine is zero-rated for excise duty purposes, but the producers of wine may be subject to excise duty registration and control;
- tobacco products such as cigars, cigarettes, tobacco for consumption;
- coffee, extracts from coffee and tea (except for herbal and fruit tea);
- certain automobiles (with maximum 9 seats) with an engine power exceeding 120 Kw under the DIN system;
- energy products and electricity;

Excise duties are normally charged as a flat amount per measurement unit for the respective product (BGN per piece/ton/liter, etc.).

Exports are exempt from excise duties. Where excise duties have been paid for products that are subsequently exported, a refund could be received.

Where excise duties are charged on raw materials with a content of alcohol which have been used for production of dutiable liquors or non-dutiable food products or medicines, a refund could be claimed for the duties paid on the raw materials.

## VII.11. VAT System

Pursuant to Bulgarian legislation the following transaction should be VAT taxable:

- each taxable supply of goods or services effected for consideration;
- each intra-Community acquisition effected for consideration, whereof the place of

transaction is within the territory of the country, by a person registered under this Act or by a person in respect of which an obligation to register has arisen;

- each intra-Community acquisition of new means of transport effected for consideration, whereof the place of transaction is within the territory of the country;
- the importation of goods;

Under Bulgarian legislation taxable person shall mean any person who independently carries out an economic activity, whatever the purpose and results of that activity.

Non-taxable persons should be these which are not a taxable within the meaning given above and which effects intra-Community acquisition of goods. The intra-Community acquisition of goods is defined in details in the Value Added Tax Act.

### VII.11.1. Registration of Persons

Pursuant to VAT Act some of the persons which fall within the requirements of the law are obliged to register with the National Revenue Agency, which maintains VAT Persons Register. Upon registration each persons is issued a unique ID number for VAT purpose having BG prefix.

The requirement for registration applies to each taxable person who is established within the territory of the country and who affects taxable supplies of goods or services. Also the person is required to register under the VAT Act it is a taxable person who is not established within the territory of the country and who effects taxable supplies of goods or services covered under Article 12 other than those for which the tax is chargeable from the recipient.

According to the VAT Act there are two types of registration – compulsory and optional.

- The compulsory registration applies to taxable person having a taxable turnover

of BGN 50,000 or more for a period not exceeding twelve consecutive months last proceeding the current month. These persons should file an application for registration within 14 days after the lapse of the tax period during which such turnover has accrued. These requirements should not apply to persons to whom the following conditions are simultaneously fulfilled:

- they supply services electronically to recipients who are non-taxable persons, who are established or have a permanent address or usually reside within the territory of the country;
- they are not established within the territory of the Community;
- they are registered for VAT purposes for their activity referred to in Item 1 in another Member State.

In case of intra-Community Acquisition the taxable and non-taxable persons which do not cover the presented above conditions are required to register, are required to register if they conduct intra-Community acquisitions. This requirement should not apply to persons which sum of the acquisitions does not exceed 20 000 BGN for the current calendar year.

Notwithstanding the taxable turnover, the registration requirement under the VAT Act shall apply to each person who is established in another Member State, who is not established within the territory of the country and who affects taxable supplies of goods which are assembled or installed within the territory of the country by or for the account of the said person.

- The optional registration under the VAT Act provides the persons which satisfy a certain requirement the right to register (but not the obligation) and to benefit from the regime of the VAT system. Pursuant to Article 100, para. 1 any person which do not cover the condition for compulsory registration may register under the VAT Act.

Any taxable and non-taxable legal person, which does not cover the compulsory

registration conditions, has the right to register under the VAT Act for intra-Community acquisition. Also any taxable person may register provided that the said person has notified the tax administration of the Member State where the said person is registered for VAT purposes that the said person wishes the distance selling effected thereby to have a place of transaction within the territory of the country.

The optional registration is administered by the National Revenue Agency where the persons may file an application.

- In some cases the tax authorities may initiate a registration procedure for a person who has fallen within the requirements for compulsory registration. In this case the tax authority would issue an ordinance stating the grounds and the date on which the obligation to register has arisen.

#### VII.11.2. Tax Rates

The rate of tax is 20% and is applicable to:

- the taxable supplies, except for those expressly specified as subject to the zero rate;
- the importation of goods into the territory of the country;
- the taxable intra-Community acquisitions.

The rate of tax applicable to accommodation provided by a hotelier, where part of a package tour, is 7%.

#### VII.11.3. VAT Exemptions

The following major transactions are entitled to **zero rate of VAT**:

- supplies of goods dispatched or transported to destination outside territory of the European Community;
- certain transactions related to international transportation;
- supply for handling of goods;
- supply related to duty-free trade;

- supply of goods provided by agents, brokers and other intermediaries.

Main transactions which are exempt from VAT are:

- supply linked to health care;
- supply linked to welfare and social security work;
- the transfer of the right of ownership of land, the creation or transfer of limited rights in rem to land, as well as the letting or leasing of land Transactions with buildings or parts thereof, which are not new, with building land, as well as the creation and transfer of other rights in rem thereto, are an exempt supply. The letting of a building or part thereof for residential use to a natural person who is not a merchant shall likewise be an exempt supply. However the transfer of a right of ownership of a regulated lot within the meaning given by the Spatial Development Act, with the exception of the building land of buildings which are not new is not exempt from VAT.

#### VII.11.4. Intra-community Supply of Goods

The new VAT Act provides the **intra-community supply** of goods which actually replaces the regulation of export under the previous VAT Act as far as transaction between merchants from different **member states** is concerned. Intra-community supply of goods is any supply of goods, transported **from** the territory of the country to the territory of another Member State, where both supplier and recipient are registered for VAT. **Intra-Community acquisition** is acquisition of the right of ownership of goods, as well as the actual receipt of goods, which are dispatched or transported **to** the territory of the country from the territory of another Member State, where the supplier is a taxable person registered for VAT purposes in another Member State.

Intra-community supplies with the exception of the exempt intra-community supplies referred are liable to tax at the zero rate.

Regarding intra-community acquisition, the recipient charges 20% VAT and is entitled to deduct credit for input tax.

#### VII.11.5. VAT Documents, Reporting and Payment

Tax documents are:

- the invoice;
- the advice to an invoice;
- the memorandum.

1. **Invoice.** Each taxable person who is a supplier is obligated to issue an invoice for a supply of goods or service affected thereby or upon receipt of an advance payment before affecting such a supply except in the cases where the supply is documented by a memorandum. The invoice to contain some compulsory requisites. The invoice shall mandatory be issued not later than five days after the date of occurrence of the chargeable event for the supply, and in the cases of advance payment, not later than five days after the date of receipt of the payment. However, upon an intra-Community supply, including in the cases of advance payment, the invoice shall mandatory be issued not later than the 15th day of the month following the month during which the chargeable event occurred

2. **Advice to an invoice.** It is issued if the taxable amount has changed or where other circumstances have occurred which result in change of the due tax and an invoice has already been issued.

3. **Memorandum.** It is a new tax document, issued where the VAT is due by the recipient.

VAT is generally reported and paid monthly. The monthly VAT returns are to be filed and monthly VAT payments by the 14-th day of the following month.

The tax under this Act shall become chargeable in respect of the taxable supplies and an obligation for the registered person to charge the said tax shall arise on the date when the supply of goods or services is affected. The tax upon an intra-Community acquisition shall become chargeable on the 15th day of the month following the month during which the supply of goods or services is affected. Any registered person, in respect of whom the tax has become chargeable, shall be obliged to charge the said tax and, to this end, must issue a tax document and indicate the tax on a separate line therein

#### VII.11.6. VAT Refunds

Where VAT incurred on purchases exceeds VAT charged on sales, the excess VAT deduction is first carried forward for a period of three months to offset VAT debt due in these three months. If at the end of the three-month period the excess VAT or part thereof has not been recovered, the balance is refunded within 45 days after the date of filing of the VAT return for the third month (i.e., within approximately five months after the excess VAT has been incurred), except where the tax person has declared in written to deduct the excess VAT from the input VAT on purchases incurred in the next 9 months. The period for refund could be extended by the tax authorities if they commence a tax audit, but generally by not more than three months.

#### VII.11.7. Special Rules for Material Investment Projects

VAT-registered investors who perform certain eligible investment projects are entitled to import assets needed for the project without effective payment of import VAT. In addition, such investors are entitled to refund VAT incurred on local purchases within 30 days after filing of the tax return. In

order to benefit from the special investment rules, the investor needs to obtain an advance approval from the Minister of Finance. In order to receive the approval, the investment project must meet certain conditions, such as:

- the time limit for implementation of the project does not exceed two years;
- the amount of investment exceeds BGN 10 million for a period not longer than two years;
- more than 50 new jobs are created;
- the person is capable of financing the project, as well as of constructing and maintaining facilities ensuring the implementation of the said project.

#### VII.11.8. Special VAT Regulations for Tourist Sector

There are two regimes in the new VAT Act regarding the tourist sector depending on the services provided. The rate of tax applicable to accommodation provided by a hotelier to foreign tour operators for organized group of foreign tourists (which is called “**basic tourist service**”), where part of a package tour, shall be 7% The provision by a tour operator or a travel agent, acting in his own name, of goods or services in connection with the journey of a tourist for the direct benefit of the tourist, is treated as a supply of a **single service** to tourists. The goods and services directly benefiting the tourist shall be the goods and services which the tour operator or the travel agent has received from other taxable persons and has provided to the tourist without alteration. If the place of transaction of a single service to tourists is in Bulgaria, the tax rate is **20%**. However, if the supplies of goods and services for the direct benefit of the tourist have a place of transaction within the territory of third countries and territories (i.e. outside the territory if the Community) they are taxed at **zero rate**. ■

## VIII E-COMMERCE

Electronic commerce in Bulgaria is governed by many acts as long as this sector of the national economy is related to different business models and covers a variety of commercial activity. In general the regulation of the e-commerce is provided by the Electronic Commerce Act, the Consumers Protection Act and the Commercial Code.

### The Electronic Commerce Act (ECA)

is one of the latest laws in the sphere of information and communication technologies. Its purpose is to provide a modern regulation of the electronic commerce by defining the obligations of the providers of the services of the information society. The ECA is in compliance with the requirements of the European Law and in particular with Directive on electronic commerce 2000/31 EC.

Pursuant to the ECA electronic commerce shall mean provision of services for the information society. The provision of services is the basis of the meaning of the electronic according to the act and therefore the supply of goods should be considered as out of the scope of the definition. ECA provides regulation only for the provision of services.

The services of the information society are such which are usually onerous and are provided from a distance by electronic means upon an explicit declaration of the recipient of the service. A provider of services may be every natural or legal person. A recipient of the services may be any natural or legal person.

According to the ECA the providers of the services of information society are obliged to provide the following information prior to the conclusion of the contract:

- its name or title;

- its permanent address or its seat and registered office;
- the address where it operates if it differs from the address under item 2;
- contract information, including telephone number and e-mail address for the purposes of establishing direct and timely contact with it;
- data for registration in a commercial or any other public register;
- information for the body, which exercises control over its activities, if these activities are subject to notification, registration or licensing regime;
- when it exercises a regulated profession
- information for the chamber, the professional union or the organization of which the provider is a member or with which it is registered, the professional title and the country in which it has been granted, as well as a reference to the applicable provisions regarding the right to exercise the craft or the profession and an explanation of the means to access them;
- respective indication if it has been registered under the Value Added Tax Act;
- any other information, provided for in a statutory instrument.

The providers must also comply with the requirements for the provision of information to the recipient of commercial communication. Commercial communication pursuant to ECA is advertising or any other communication, designed to promote, directly or indirectly, the goods, services or reputation of the person, performing a commercial or craft activity or exercising a regulated profession. The commercial communications should comply with the following requirements:

- to be easily identifiable as commercial ones;
- to enable clear identification of the natural or legal persons on whose behalf it has been made;
- to define clearly and unambiguously the

conditions for participation in promotional offers such as discounts, premiums and gifts, if such are included;

- to assure easy access to clear and unambiguous conditions for participation in competitions and games with declared prizes, if they contain such information;
- to contain any other information, stipulated in other statutory instruments.

The provision of unwanted commercial communication should identify the communication as such. A register has been created where the legal persons may enter the addresses which are forbidden from sending unwanted communication. The sending of unwanted communication to consumers is totally forbidden.

ECA also provides regulation for the information to be provided before the conclusion of the contract with the recipient of the service and the liability of the provider in certain cases such as caching, hosting, indexing, deep linking and extc.

The Consumer Protection Act (CPA) provides regulation of the distance contracts with regard to the protection of the consumers and is in compliance with the Distance Contracts Directive. Pursuant to Article 48 of CPA distant contract should be considered every contract, concluded on the bases of the offer, made by the provider to the consumer as a part of the system of sale of commodities or provision of services, and where from the date of making the offer, till the conclusion of the contract, the parties are not in a physical contact between each other.

If the provider is going to conclude a distance contract it should comply with numerous requirements of CPA. The most important ones are as follows:

- To provide to the consumer before the conclusion of the contract the information defined in Article 52:
  - the name and the address of the provider;

- the general characteristics of the commodities or the services;
  - the price of the commodities or the services, including all taxes and fees;
  - the cost of postal or transport charges, which are not included in the price of the commodities or the services, related to their delivery;
  - the cost of using a mean of communication from distance, when it is calculated in a way, different from the one indicated in the general tariff;
  - the way of payment, delivery and implementation of the contract;
  - the right of the consumer to withdraw from the contract and the conditions in which the commodity may be returned or the service refused, except the cases under Art. 55, para 2;
  - the period for which the made offer or price shall be valid;
  - the minimal duration of the contract – for contracts of constant or periodical delivery of commodities or services.
    - The provider is denied from accepting a prior payment before the expiration of the cooling period. In Bulgaria the period in which the consumer is entitled to return the good or service is 7 day from the date of delivery;
    - At the moment of the delivery the provider is obliged to provide also the following information to the consumer:
      - the name of the provider and the official address, at which the consumer may send complaints;
      - the right of the consumer to withdraw from the concluded contract, the conditions and the way to exercise this right;
      - the conditions of termination of the contract, when it is concluded for an indefinite term or for term not longer than one year;
      - data for the provided services after the sale and for the provided guarantees.
- The right of the consumer to return the good during the cooling-of period should not apply in the following contracts:

- of provision of services, which fulfillment has begun with the explicitly agreement of the consumer and has finished before the expiration of the term under para 1;
- of delivery of commodities and provision of services which price depends from the fluctuation in money-market interest rates, which the provider shall not be able to control;
- of delivery of commodities and services manufactured regarding the consumer's requirements or under his/her individual order;
- of delivery of commodities which because of their character can not be returned or are highly perishable, or there is a danger from deterioration of their quality characteristics;
- of delivery of audio- and video recordings or software, printed by the consumer;
- of delivery of newspapers, magazines and other periodical issues;
- of gambling games and lotteries.

The Commercial code provides regulation for the so called B2B transactions in the electronic commerce. These are based on the general provisions of the commercial and civil law and cover the different aspects of the deals between the companies on the e-commerce market. ■

## IX COMPETITION

### IX.1. Legal Framework

The protection of Competition Act (1998, being subsequently amended as of then to reflect the EU competition rules) is the main legislative instrument, which regulates the issues pertaining to the competition. It prohibits any act of conduct which results in limitation or exclusion on the competition on the Bulgarian market, including but not limited to contractual and other arrangements, concerted commercial practices of the parties, misuse of monopolistic and dominant position, concentration (merger, acquisition, establishment of control).

### IX.2. General Review

The authority responsible for the observation and compliance of the competition rules is the Commission for Protection of Competition (the "Commission"). The Commission is fully independent from the executive and court authorities and reports only to the National Assembly.

There are four types of relationships that may be subject to an examination by the Commission:

- certain types of agreements, decisions and concerted practices;
- misuse of monopolistic and dominant position;
- mergers and acquisitions (concentrations)
- unfair competition.

### IX.3. Agreements and Concerted Practices, Generally Prohibited by Law

The law imposes general prohibition towards agreements, **decisions** and concerted practices, which are concluded with purposes or results in direct or indirect determination of the prices, division of markets or of sources of supplies; agreements, which aim to limit or control the production, commerce, the technical

development or the investments; agreements which impose different conditions towards the respective parties to the agreement whereby the different parties are put into non-equal position; agreements, whose conclusion is subject to the assumption by other party to the agreement of additional obligations or undertaking to conclude another agreement, which in its scope and with a view of the commercial practice are not related to the subject of the agreement or with the performance of the rights and obligations arising out of it. Such agreements are null and void by virtue of law. An exception from this rule, i.e. such agreements and concerted practices will be valid provided that the total market share of the parties to the respective agreement is less than 5 % of the respective market if the parties **are** competitive; or is less than 10 % of the respective market if the parties are **not** competitive. **However, this exception does not apply if the agreements, decisions and concerted practices are concluded with purposes or result in direct or indirect determination of the prices, division of markets or of sources of supplies.**

The Commission treats as concerted practices the case when two or more companies coordinate among them their market conduct so that practically they are jointly doing business on the market and exclude the competition among themselves.

All agreements, decisions or concerted practices meeting the above characteristics are subject to notification with the Commission.

There is an exception provided by the law whereas agreements, although limiting the competition, but are being concluded with purposes to improve the production of certain goods or contribute to the economic and technical growth, are permitted in principle. Still, such agreements shall not be permissible when they impose or result in creation of limitations which are not required for the purposes of the agreement or provide for a possibility to eliminate the competition on the respective market.

It is advisable for the investor to report an

agreement with respective clauses of the Commission. The obligation to notify the Commission arises within a **30-days** period as of conclusion of the particular agreement. The Commission makes a decision on the notification within a 2-month period whereas it may decide that there are not any grounds for applying the general prohibition or if there are such, the Commission prohibits the agreement. **During this 2-month period any legal or practical actions regarding the agreement, decision or concerted practice are prohibited.**

#### IX.4. Monopolistic and Dominant Position

A monopolistic enterprise shall be the one, which by virtue of law, is entitled to carry out exclusively certain business activities.

Further, a competitor shall be considered having a dominant position if it has such a market share, financial resources, access to other markets, technological level and economic relations with other companies, which would allow it to infringe the competition. There is the legal assumption that an enterprise is dominant if it has a market share exceeding 35 % of the respective market unless the requirements as per the preceding sentence are not available.

A dominant position itself is not prohibited while it is rather the misuse of a monopolistic and dominant company are directed or result in infringement of the competition or the interest of the consumers, such activities being for instance: imposing sales prices and other unfair conditions; limitation of the markets, commerce and the technological development which adversely affect the consumers; imposition of unusual conditions with regard to different parties while only some parties are favored by these conditions, etc.

One of the typical examples of misuse of monopolistic and dominant position, which serves as a pattern of misuse in both Bulgarian and EU competition practices, is when the consumers have to pay a high price for

goods or services, which is not based on the expenses required for the production, i.e. the expense when compared with the final price, is very small. Another typical example of misuse of monopolistic and dominant position is when a company imposes fixed sales prices for the goods and services distributed by other companies, as it is deemed that this does not improve the quality of the goods and services produced which finally results in infringement of the interests of the consumers.

#### IX.5. Concentrations

Concentration of business activity shall represent any merges or acquisitions or establishment of control by a company (which already exercises control over another company) over a company whereas the control is gained through acquisitions of rights, conclusion of agreements or in any other way that gives the controlling company the opportunity of exercising decisive influence over the controlled company as the controlling company is entitled to right of ownership or use over the company's enterprise or part of it, or because the controlling company can determine the structure of the governing bodies of the controlled company or can exercise influence over their voting or resolutions. Furthermore the Competition Protection Act states that as concentration of business activity should be considered the establishment of joined venture when it functions permanently as economically independent subject. Agreements that would lead to concentration of business activity are subject to prior written notification to the Commission provided that the total turnover for the preceding year exceeds BGL 15,000,000, i.e. such intended concentrations must be reported to the Commission before their completion.

Within one month as of the submittal of the notification, the Commission values the concentration or decides that the concentration does not fall under the prohibitions established

by the law. It is possible for the Commission to decide that even there is a concentration, then it is permissible as it does not lead to creation, then it is permissible as it does not lead to creation or increase of the monopolistic or dominant position of the participants involved in the market.

However there is an exception provided by law whereas any of the following activities should not be regarded as concentration of business activity:

- when banks or other financial institutions, whose business activities include transactions with securities, temporarily possess securities for the purpose of reselling them, provided that they do not exercise the voting rights, embodied to them, in order to influence the competition behavior of the company or the voting right is exercised only for the purpose of preparing the transfer of the securities which should be executed within a year following their acquisition;

- when the control is gained by a subject who executes functions related to liquidation or declaring insolvency of the company and

- when the establishment of control over a company is carried out by financial holding and the control has the purpose of maintaining the initial capitalization amount and not for the purpose of determining the company's competition behavior.

It should be noted that the Protection of Competition Act applies to any and all enterprises operating on the territory of Bulgaria or outside the territory of the state if these enterprises infringe or may infringe the competition in the state. This is to say that even though a transaction is carried out abroad, if it leads to the described consequences, it will fall under the provision of the law.

### IX.6. Unfair Competition

Unfair competition is deemed to be each action or failure to perform an action which contradicts the standard commercial practice and infringes or may infringe on the other side, the interests and relations among the competitors and on the

other side, the interests and relations between the competitors and the consumers. Such an unfair competition is generally prohibited. The Commission has ruled on numerous cases pertaining to unfair competition and practically has established certain criteria and requirements, which if being kept or avoided, will prevent the investor from unfair competition.

### IX.7. Incentives (Scope, Requirements, Procedure)

Depending on the infringement of the law, and in particular its prohibitions, the Commission, among other measures, is entitled to impose fines. In case of non-permitted concentrations which have already taken place, the Commission is entitled to prescribe other measures appropriate for restoration of the situation that existed before the concentration, for example: to order the control to be stopped, or the company's property to be split, etc.

### IX.8. Foreign Investors Related Measures

With the exception of the agreements, decisions and concerted practices reviewed first above which are null and void once being concluded or made, the remaining infringements of the competition rules does not result in their considering as being null and void. Even if the Commission has imposed fines having decided that there is, for instance, concentration of economic activity in breach of the provisions of the law (the breach being failure of the parties concerned to notify the Commission in advance about the concentration), any measures (fines) imposed by the Commission shall not affect the validity of the transaction.

Nevertheless, it is recommendable that a foreign investor always notifies the Commission should be involved in terms of the contemplated transaction. This will protect the investor from paying fines for infringement of the provision of the law. ■

## X CURRENCY REGIME

### X.1. Legal Framework

#### X.1.1. Laws and Regulations

The most important acts pertaining to this matter are the Currency Act, Credit Institutions Act, the Measures against Money Laundering Act, The Bulgarian National Bank Act, etc. There are numerous regulations that have been issued in implementation of the provisions of said acts.

#### X.1.2. International Institutions

Bulgaria is a member of: the International Monetary Fund as of 1990. The quota of the state is BGL, 640.2 million SRI; International Bank for Reconstruction and Developments as of 1990 whereas the shareholding of the state is 0.34 % of the bank's capital; the European Bank for Reconstruction and Development as of 1990 as the shareholding of the state towards 31 December 2003 is 158.0 mln. Euro; The Republic of Bulgaria adjoins to the Agreement for Setting up the Black Sea Bank for Commerce and Development on 23 December 1994 thus being among the members, which have incorporated the bank. The shareholding of the state in bank is 13.5 % of the capital.

### X.2. General Review

The national currency of the Republic of Bulgaria is the Bulgarian lev (BGL). After the instruction of a Currency Board Arrangement on July 1, 1997, the exchange rate is currently fixed by law at 1.95583 Levs per Euro. The Bulgarian National Bank (BNB) is the body responsible for maintaining and conduction the monetary and credit policy, printing and issuing banknotes and coins, which is its exclusive right, supervising banks

and the payment system and performing other tasks assigned to it by virtue of law.

**The BNB act in accordance with the principle of the open market economy with free competition favoring an efficient allocation of resources. From the date of accession of the Republic of Bulgaria to the European Union and without prejudice to the primary objectives of price stability, the BNB shall support the general economic policies in the European Community with a view to contributing to the achievement of the objective of the European Community as laid down in article 2 of the Treaty establishing the European Community.** For supervision and inspection purposes the BNB may inspect the documentation of all banks in Bulgaria. The BNB is the authority which determines by regulations the specific rules pertaining to the currency regime and the various obligations which must be performed by the participants on the foreign exchange market and the payment system.

The Currency Act regulates the transactions and payments between local and foreign persons, the cross border transfers and payments, the foreign exchange transactions in the course of business, the transactions with precious metals and precious stones as well as their import, export and processing, import and export of levs and foreign exchange cash, the collection, maintenance and reporting of statistical information on Bulgaria's balance of payment and exercising of foreign exchange control.

The Currency Act does not impose any restrictions as to the buying and selling of foreign currency and these activities may freely be done between licensed commercial banks and other persons, between commercial banks themselves and between the BNB and the commercial banks. There are no restrictions as to the amount of money which may be paid in cash neither there are restrictions as to the type of currency used for payment.

Legal and natural, local and foreign persons are also entitled to have in various currencies. For opening a bank account by an entity banks in Bulgaria require a court of law resolution for registering the company, **an excerpt from the articles of association**, statistical number of the company and in case a natural person opens it- an identity card/ passport of the natural person. A signature pattern of the person authorized to operate with the bank account is to be provided to the bank. A notarized power of attorney will also be required in case a proxy of the person willing to open the bank account is going to open it.

Foreign persons are entitled to transfer abroad amounts arising out of different grounds, as the amount may be: income earned from investments, liquidation quota received upon termination of the investment; revenues from sale of the object of the investment, etc.

Normally, upon the moment of remittance of the amount the banks require a document proving that the respective taxes, if any, have been paid in Bulgaria. Notwithstanding the liberalization of the currency regime, still the money flow is controlled by the state through the measures contemplated by the Currency Act and specifically by the measures and investments provided by the Money Laundering Act.

According to the latter act money laundering shall represent transformation and transfer of property, acquired through illegal activity or through acts of participation in such activity for the purpose of concealing the illegal origin of the property or for the purpose of helping a person avoid the legal results of such activity; concealing the nature, source, location, movement and rights of the property, acquired by illegal activity; acquisition, possession or usage of property when the person as to the moment of acquisition of the property knows the assets are result of an illegal activity or participation in such activity. Furthermore,

money laundering shall represent obtaining property through any of the enumerated acts if committed in a Member State of European Union or in any other country beyond the jurisdiction of Republic of Bulgaria.

Measures and activities for discovering and preventing money laundering are to be undertaken in the course of depositing, withdrawing and exchanging money, conclusion of acquisition property transactions and in other forms of use and other property which could be used for money laundering. The persons responsible for carrying out the measures specified in the Money Laundering Act are numerous and among them are: the Bulgarian National Bank, the commercial banks, the foreign banks which have obtained a license by the Bulgarian National Bank to conduct bank operations in Bulgaria through a branch, financial houses, exchange bureaus, insurers, pension funds, privatization bodies, leasing enterprises, tax authorities, notaries public, certified public accountants and specialized auditing enterprises, customs authorities, persons organizing tenders for public procurement, etc.

The person, which are obliged to apply mandatory measures against money laundering, have to determine the identity of their clients upon establishment a permanent commercial relations with them, incl. upon opening a bank account, or in the course of a transaction, which exceeds BGL 30,000 or the equivalent in other currencies, or if the transaction exceeds BGL 10,000 when it is executed with banks, financial brokerage house or an exchange bureau. In addition, the origin of the funds should also be declared.

Apart from the identification of clients, other measures to be undertaken may be: data collection on the substantial elements of the transaction, data safe-keeping and reporting suspicious transactions to the Financial Intelligence Agency (The "Agency").

The Agency is authorized to collect, process, analyze, store the data received from the respective persons and disclose it to the state authorities. The Agency is an administrative unit to the Minister of Finance.

### **X.3. Licenses, Permits. Procedure-Competent Authority, Documents Required, Terms, Fees**

The transactions enumerated below being not less than BGN 5,000 require declaration with the BNB within 15-days as of their execution as the declaration is made with statistical purposes (for payment balance statistics) and does not represent a step towards obtaining an approval on the deal. Failure to declare a transaction is subject to fines as set out in the Currency Act. The transactions are:

- initial direct investments abroad effected by local legal entities or sole proprietors, and
- any contract for granting financial credit between local legal entities and sole-proprietors and a foreign person is exceed of BGN 5,000 must be reported to the BNB for the purpose of national monetary statistics.

Currency transfers and payment transfers abroad may be made through banks only after informing the bank of the purpose of the transfer. If a person wishes to transfer abroad currency exceeding BGL 25,000- that person, apart from declaring data and documents, which are determined by a regulation issued by BNB.

Local and foreign persons may export currency in cash (in levs or foreign exchange currency) under the following conditions:

- amounts up to BGL 8,000 or their equivalent in other currency may be exported freely- no written declaration before the customs authorities is required;
- amounts between BGL 8,000 and BGL 25,000 or their equivalent in other currency- must be declared at the customs;
- amounts over BGL 25,000 or their

equivalent in other currency- may be exported only after they have been declared before the customs authorities whereas the declaring person should point out the origin and the exact amount of the money exported, including payment instruments payable to the bearer **and should present a certificate issued by the respective territorial department of The National Income Agency, certifying the lack of tax arrears as well.**

Cash transactions being within the scope of the regular business may be carried out by a person, registered as trader as per the Commerce Act as well as a person registered as a trader as per the legislation of a member state of the European Union or a member state of European Economic Area Agreement, and only after it has been entered into the public register of persons, operating as an exchange bureau.

A written permit (license) issued by the BNB is required for carrying out cash and non-cash transactions in foreign currency by a brokerage financial house. A regulation issued by BNB determines the documents and fees required for issuance of the permit. A regulation issued by the Council of Ministers determines the documents and requirements for registration in the public register of persons, operating as an exchange bureau.

Persons who carry out business activities on extracting and processing of precious metals and precious stones, and produce articles made of such materials, or who carry out business activities with them shall be obliged to register themselves with the Ministry of Finance within a 14-day period before starting their activity. The Ministry of Finance maintains a public register of persons engaged in extracting, processing and trading with precious metals and precious stones and articles made of them in the course of business. A Tariff approved by the Council of Ministers provide for the fees to be collected for this registration. ■

## XI CONCESSIONS REGIME

### XI.1. Legal Framework

The primary legislative acts which set the legal framework of concessions in Bulgaria are the Constitution of the Republic of Bulgaria 1991 and the Concessions Act 2006. The sector specific legislation applying to the different types of property and activities in respect of which a concession could be granted includes the Underground Resources Act 1999, the Waters Act 1999, the Forests Act 1997, the Civil Aviation Act 1972, the Railway Transport Act 2000, the Sea Waters, Inland Waterways and Ports of the Republic of Bulgaria Act 2000, the Roads Act 2000 and the Fishery and Aqua Activities Act 2001.

The Concessions Act 2006 took effect on 1 July 2006 as it is aimed at rendering the legal regime of concessions in compliance with the principles of the Treaty Establishing the European Community and the requirements of Directive 2004/18/EC of the European Parliament and the Council of 31 March 2004 on the Coordination of Procedures for the Award of Public Work Contracts, Public Supply Contracts and Public Service Contracts. The Concessions Act 2006 introduces a uniform regime for granting concessions by the state and by municipalities.

### XI.2. Legal Definitions

The Concessions Act 2006 defines concession as a right of operation of a site of public interest, provided by a concession grantor to a merchant - concession holder against the obligation of the latter to construct and/or manage and maintain that site at its own risk. Concession is granted on the grounds of a long-term written agreement between the concession holder and the concession grantor.

Depending on the subject matter of the concession, the Concessions Act 2006 distinguishes between three types of concessions, namely (i) concession for construction, (ii) concession for service, and (iii) concession for extraction.

The subject matter of a concession for construction is the completion of a construction - the concession site, and management and maintenance of the site after its commissioning into operation, whereas as consideration for the completion of the construction the concession holder shall be entitled to exploit the concession site, or exploit the concession site and receive a compensation (as defined by the Concession Act 2006) by the concession grantor.

The subject matter of a concession for service is the provision of management and maintenance service in respect of the concession site, whereas as compensation for such service the concession holder shall be entitled to exploit the concession site, or exploit the concession site and receive compensation (as defined by the Concessions Act 2007) by the concession grantor.

The subject matter of a concession for extraction is the exploitation of natural resources by way of extraction performed at the expense and at the risk of the concession holder.

### XI.3. Concession Sites

The Concessions Act 2006 determines the possible objects of concession as sites of public interest that are (i) exclusive state property (such as underground resources, seashore beaches, the national road network, waters, forests and parks of national importance, and natural and archaeological reserves); (ii) state or municipal property of public or private character used in the course of commercial activities; or (iii) property owned by an

organisation governed by public law (as defined by the Concessions Act 2006) and used in the course of commercial activities. Title over the concession site remains with the concession grantor.

#### **XI.4. Granting Concessions Under the Concessions Act 2006**

##### **XI.4.1. Competent Authority**

The authorities competent to grant concessions under the Concessions Act 2006 are as follows: (i) the Council of Ministers - in respect of concession sites that are state property, (ii) the relevant municipal council - in respect of concession sites that are municipal property, and (iii) the relevant organisation governed by public law (as defined by the Concessions Act 2006) - in respect of concession sites owned by such organisation.

##### **XI.4.2. Process of Granting Concessions**

The process of granting concessions under the Concessions Act 2006 encompasses the following stages:

- undertaking of preparatory measures;
- carrying out of a procedure for granting a concession; and
- execution of a concession agreement.

###### **(i) undertaking preparatory measures**

Preparatory measures are undertaken by the competent authority as specified by the law, and include preparing a justification for the granting of concession and making a proposal, based on said justification, for granting of a concession. On the basis of the justification, the competent authority must prepare drafts of the following documents: (i) a resolution for initiation of a procedure for granting a concession; (ii) an announcement for initiation of a procedure for granting a

concession; (iii) a concession agreement; and (iv) documentation for participation in the procedure.

###### **(ii) carrying out of a procedure for granting a concession**

This second stage includes: (a) adoption of a resolution for initiation of a procedure for granting a concession, (b) holding of a procedure for granting a concession, and (c) determining of the concession holder.

*(a) adoption of a resolution for initiation of a procedure for granting a concession*

Competent to adopt a resolution for initiation of a procedure for granting a concession is the authority competent to grant such a concession, as explained above. The resolution must specify, among others, (i) the subject matter of the concession and the concession site; (ii) the commercial operations the concession site may be exploited for; (iii) the main rights and obligations under the concession agreement; (iv) the terms relating to the concession compensation (if any); (v) the type of competitive procedure to be applied; and (vi) the criteria to be used in evaluating the participants' bids and the relative weight of each criterion in the overall complex evaluation. The resolution is subject to publication in the State Gazette.

Further, an announcement for the initiation of a procedure for granting a concession is to be promulgated in the State Gazette and entered into the National Concessions Registry. Following publication of the announcement in the State Gazette, a notification for the procedure for granting a concession is to be published in the mass media and/or in the Internet.

*(b) holding of a procedure for granting a concession*

The Concessions Act 2006 provides that concessions may be awarded by way of three main types of competitive procedures, namely (i) open procedure; (ii) limited procedure; and (iii) competitive dialogue. The Concessions Act 2006 further provides

for one supplementary procedure, namely electronic auction, which is permissible as a supplementary procedure to the open or limited procedure.

The choice of procedure depends on four criteria set forth in the Concessions Act 2006, namely (i) the specifics of the concession site and of the commercial operations it may be exploited for; (ii) the anticipated number of participants in the procedure; (iii) the volume and complexity of the concession procedure documentation; and (iv) the anticipated volume and complexity of the bids.

A procedure of competitive dialogue may be held only for the purposes of granting a construction concession, always provided that the particular case objectively exhibits a high degree of complexity due to the fact that the technical specifics of the contemplated construction or the legal/financial frame of the concession cannot be determined.

The major difference between an open procedure and a limited procedure resides in the preliminary selection of persons/entities that may submit bids, carried out in the context of a limited procedure. In the case of a limited procedure, bids may be submitted only by participants that have been invited to do so after a preliminary selection based on the following criteria: (i) suitability for the performance of professional activities; (ii) economic and financial condition; and (iii) technical capacity and/or professional qualifications. To the opposite, in an open procedure any person may submit a bid.

Like the limited procedure, the competitive dialogue procedure includes a preliminary selection of participants based on the criteria enumerated in the preceding paragraph. That procedure further includes discussions with selected candidates on the solutions proposed by the latter to address the issues of complexity relating to the contemplated construction concession. Bids may be submitted only by the participants that have been invited to do so following the discussions.

As mentioned above, electronic auction

may be used as a supplementary procedure within the course of an open procedure or a limited procedure, provided that the technical specifications of the concession are clearly determined and the resolution for initiation of a concession procedure provides that following the preliminary evaluation of the bids, the concession holder is determined by way of an electronic auction.

In all types of competitive procedure (i.e. open procedure, limited procedure and competitive dialogue), the evaluation of bids is based on determining the economically most advantageous bid. To that end, bids are subjected to an overall evaluation in accordance with an evaluation methodology detailing (i) the specific criteria against which bids are to be evaluated, and (ii) the relative weight of each criterion. The methodology forms an integral part of the documentation for participation in the competitive procedure. The Concessions Act 2006 sets forth an indicative list of criteria for evaluation of bids, whereas the criteria to be used in a particular procedure should be specified in the resolution for initiation of a procedure for granting a concession, as well as in the announcement for initiation of such a procedure. The bidder ranked first on the basis of the methodology is determined as winning bidder.

The resolution of the competent authority for determining the winning bidder is subject to promulgation in the State Gazette and may be appealed as non-compliant with the law before the Bulgarian Competition Protection Commission within 10 days as of its promulgation.

### **(iii) execution of a concession agreement**

The final stage of a concession procedure is the execution of a concession agreement between the concession grantor and the winning bidder. In negotiating and executing the concession agreement the winning bidder is bound by the proposals made in the bid submitted in the competitive procedure as well as by the draft concession agreement

prepared by the competent authority as part of the preparatory measures.

The concession agreement should be signed upon expiry of the deadline for appeal of the decision of the competent authority for determining the winning bidder, provided that such decision has not been appealed or the appeal filed does not set forth a request for suspension of the procedure as an interim measure.

The Concessions Act 2006 further governs the contents of a concession agreement, the performance, amendment and termination thereof.

#### **XI.4.3. Validity Term of a Concession**

The Concessions Act 2006 provides for a 35-year term for which a concession may be granted, without a possibility for extension of the term. Pursuant to the Concessions Act 2006 when defining the term of a concession, the financial parameters and the technical and/or technological characteristics of the concession site shall be taken into consideration.

#### **XI.4.4. Concession Holder**

The Concessions Act 2006 allows that any natural person, legal entity or an alliances of such persons/entities participate in a procedure for granting a concession, provided that such person/entity/alliance meets certain eligibility requirements set forth in the Concessions Act 2006 relating to, among others, lack of insolvency and liquidation proceedings, lack of convictions for certain types of crimes and lack of outstanding obligations to the state or a municipality, or its employees.

Notwithstanding the above, where the winning bidder is a legal entity or an alliance that does not have the capacity of a merchant, the Concessions Act 2006 requires that the concession be granted to, and the

concession agreement be executed with, a newly incorporated commercial company whose capital is entirely owned by the legal entity, or respectively by the natural persons/legal entities participating in the alliance. Similarly, where the winning bidder is a natural person, the Concessions Act 2006 requires that the concession be granted to, and the concession agreement be executed with, a newly incorporated commercial company whose capital is entirely owned by the natural person, or to a sole proprietor registered by the latter.

#### **XI.4.5. Transferability**

In general, effective legislation defines concession as non-transferable, unless transferability has been allowed by an exceptional provision of a specific statute, which applies to the particular concession. Such case is provided for by the Underground Resources Act and is discussed below.

Further, the Concessions Act 2006 envisages a possibility for keeping the effectiveness of a concession agreement in the case of winding up of a legal entity, provided that there is a legal successor of the wound up entity, such legal successor meets certain eligibility requirements provided for in the Concessions Act 2006 and the resolution for initiation of a procedure for granting a concession, and has requested, within 3 months as of its registration into the commercial registry, keeping the effectiveness of the concession agreement between it and the concession grantor.

#### **XI.4.6. Compensation and Concession Fee**

Pursuant to the Concessions Act 2006, the concession holder under a construction concession or a service concession is entitled to a consideration in the form of the right to exploit the concession site, which

may, but does not have to, be complemented by a compensation paid by the concession grantor. The compensation, taking the form of payment of part of the expenses for the concession site, is admissible only in case it is needed (i) to ensure that the price of the services provided through the exploitation of the concession site is socially acceptable in case such price is set by statute or (ii) to cover expenses arising following a force majeure event. The compensation for management and maintenance of the concession site may be paid only for the time during which the concession site is being effectively exploited.

The resolution of the competent authority for initiation of a procedure for granting a concession may also provide for an obligation of the concession holder to pay a concession fee to the concession grantor. The concession fee is determined on a case-by-case basis by taking into account (i) the economic advantage flowing from the concession in favour of the concession holder; (ii) the fair distribution of the economic advantage between the concession holder and the concession grantor; and (iii) the need to attain a socially acceptable price of the services provided through the exploitation of the concession site in case such price is set by statute. The procedures and time limits for payment of the concession fee are to be specified in the concession agreement.

### **XI.5. Granting Concessions Under Special Laws**

Concessions may be granted under terms and procedures other than those stipulated under the Concessions Act 2006 only in exceptional cases explicitly provided for by law.

Granting Concessions under the Privatisation and Post-privatisation Control Act 2002

An exception to the general rule that

concessions shall be granted following a competitive procedure is provided for in the Privatisation and Post-privatisation Control Act 2002 and relates to the case of privatisation of commercial companies with State/municipal interest.

In particular, pursuant to the Privatisation and Post-privatisation Control Act 2002 commercial companies with State interest and announced procedure for privatisation, which use sites qualifying as state property of public character, shall be directly granted concessions for the sites used without following the procedures set forth in the Concessions Act 2006. In this case, the concession agreement shall take effect as of the date of the property transfer under the privatisation agreement.

However, this "direct award" rule does not apply to companies using the following objects of State concessions: one or more terminals of ports for public transport of national importance and civil airports open to public use. Concessions with respect to these assets can be granted only under the terms and procedures laid down in the Concessions Act 2006.

Similarly, commercial companies with 50% or more municipal participation in the capital and with announced procedure for privatisation, which use sites qualifying as municipal property of public character, shall be granted concessions for the sites used without following the procedures set forth in the Concessions Act 2006.

Further, in the event of privatisation of a self-standing unit of a company, in which the State/ a municipality holds over 50% of the shares, where such self-standing unit has direct technologic connection to a site qualifying as state/municipal property of public character, the concession is granted to the purchaser of the self-standing unit under the privatisation agreement. In this case the privatisation agreement takes effect upon the execution of the concession agreement.

Granting Concessions under the

#### Underground Resources Act 1999

Concessions for extraction of underground resources shall be granted following a competitive procedure (tender or action) under the terms of the Underground Resources Act 1999. However, said Act provides for an exceptional case where an extraction concession may be granted without holding such competitive procedure.

In particular, in the case of “commercial discovery” of underground resources, a right to be granted a concession for extraction of underground resources arises by operation of the law for a person or entity, which has obtained a permit for prospecting and exploration, or for exploration only, of underground resources, provided that such person or entity: (i) has made a discovery of deposit of underground resources during the term, and within the area, for which the permit has been granted to it, which discovery qualifies as “commercial discovery” within the meaning of the Underground Resources Act 1999, (ii) the person or entity has registered such commercial discovery under the terms of the Underground Resources Act 1999, (iii) has received a certificate of the commercial discovery made under the terms of the Underground Resources Act 1999, and (iv) has requested in writing the granting of a concession for extraction of underground resources within 6 months as of obtaining the certificate under item (iii) above.

A concession for extraction of underground resources under the Underground Resources Act 1999 is granted for a term of up to 35 years, with a possibility for extension with up to 15 years according to the terms of the concession agreement.

The concession fee due by the holder of a concession of extraction of underground resources under the Underground Resources Act 1999 shall be determined pursuant to principles and methodology set forth in Regulation on the Principles and Methodology for Determination of the Concession Fee for Extraction of

Underground Resources pursuant to the Underground Resources Act 1999.

The rights and obligations under a concession for extraction of underground resources granted under the Underground Resources Act 1999 may be assigned fully or partially to certain qualifying third parties with the permission of the competent authority (the Council of Ministers). ■

## XII PERMITS AND LICENSES ACCORDING TO SPECIAL LEGISLATION

### XII.1. Legal Framework

Permits and licenses for performance of specific industrial activities are governed by general legislation applicable to regulatory and controlling activity of regulatory authorities, as well as by special legislation applicable to specific industry areas. The general legal framework of regulatory and controlling activity of regulatory authorities is set forth in the Constitution of the Republic of Bulgaria 1991, the Code of Administrative Procedure 2006, the Administrative Violations and Sanctions Act 1969 and the Restricting Administrative Regulation and Administrative Control over Industrial Activity Act 2003 (the "Administrative Regulation Act"). The legal framework of specific industry areas is set forth in special laws and the secondary legislation on their implementation.

### XII.2. General Review

The Constitution of Bulgaria proclaims the principle of free economic initiative. The Administrative Regulation Act, effective as of the end of 2003, aims at restricting administrative regulation and control exercised by regulatory authorities. Said law sets forth the general principle that a licensing or registration regime for performing an industrial activity, or a permit, certification or notification regime for performing a specific transaction or action, may be established only by law. Further, any requirements for performing an industrial activity, as well as for executing a transaction or action, shall also be set forth by law.

The Administrative Regulation Act exhaustively lists the industry areas which may be subject to a licensing regime

due to posing higher risk for the national security or public order, the environment or the rights of citizens or legal entities. (Such industry areas amount to 40 and are listed in [APPENDIX].) In addition, a licensing regime may only be introduced for industrial activities related to sites which are exclusive state property or over which the State exercises sovereign rights pursuant to the Constitution.

Further, with respect of regulatory authorizations or permits the Administrative Regulation Act introduces the principle of implicit consent, i.e. where an application is submitted for issuance of a permission or a certificate for performance of a single transaction or action, and the competent authority has not ruled on such application within the statutory period, the consent of the latter shall be deemed given, unless otherwise provided for by law.

Under Bulgarian law special permits and licenses are generally granted by way of a decision of the competent regulatory authority. As a general rule, decisions of regulatory authorities granting or, refusing to grant, special permits or licenses are subject to appeal before the Supreme Administrative Court under the terms and procedure of the Code of Administrative Procedure 2006.

It is to be noted that special legislation often sets forth definitions of particular industrial activities. Further, such special legislation would usually define, among other issues, the objectives and principles of regulation, the powers of the competent regulatory authorities and procedure and documents required for issuance of relevant permits or licenses. Below we have provided a summary of the regulatory regime of only some of the country's main industry areas, and in particular insurance, energy, telecommunications and audio-visual sector.

### **XII.3. Permits and Licenses According to Special Legislation. Procedure - Competent Authority, Documents Required, Terms and Fees**

#### **XII.3.1. Insurance**

Insurance activity is governed by the Insurance Code 2005 (effective as of 1 January 2006, which derogated the Insurance Act 1996), the Financial Supervision Commission Act 2003 (the "FSCA"), the Export Insurance Act 1998 and the regulations on their implementation.

Insurance activities may be conducted only by an insurer, whereas an insurer may be (i) a Bulgarian joint stock company registered under the Commerce Act 1991 and licensed under the terms and conditions of the Insurance Code, or (ii) a co-operative registered under the Co-operatives Act 1999 and licensed under the terms and conditions of the Insurance Code, or (iii) an insurer having its registered seat in a member state of the EU or the European Economic Area (EEA) under the terms and conditions of the freedom of establishment or freedom of services. Further, an insurer from a third state, i.e. a state different from Bulgaria and the EU and EEA member states, may also perform insurance activities in Bulgaria through a branch registered under the Commerce Act and licensed under the terms and conditions of the Insurance Code. A re-insurer may be a Bulgarian joint stock company licensed under the terms and conditions of the Insurance Code or a person licensed to perform active re-insurance pursuant to the legislation of its registered seat.

The share capital of an insurer or re-insurer, organised in the form of a local joint stock company, shall not be less than a minimum guarantee capital set out in the Insurance Code. The minimum amount of the guarantee capital depends on the licensed insurance activity and shall be as follows:

(i) for accident, illness, land, rail and sail transportation vehicles, freight damages and losses, fire and natural calamities, other property damages, financial losses, legal costs and transportation assistance insurance – BGN 4 million; and (ii) for life, health, marriage and children, unit linked, capital purchase, supplementary (including additional life and health risks), general tort liability and tort liability for damages related to possession and use of transportation vehicles, credit and guarantee insurance – BGN 6 million. For an insurer licensed for active re-insurance, and for a re-insurer licensed for insurance activities, the minimum amount of the guarantee capital as defined under the preceding sentence is increased by one third. The Insurance Code regulates separately the minimum guarantee capital required for insurers organised in the form of co-operatives, as well as the capital requirements for Bulgarian branches of insurers from third countries. In certain cases, the minimum amounts of the guarantee capital set forth in the Insurance Code shall be updated annually in accordance with the European index of consumer prices as published by Eurostat.

Licenses for insurance and/or reinsurance activity are granted by the Financial Supervision Commission ("FSC"), a specialised state body in charge for the regulation and supervision over the activity of, among others, insurers and insurance intermediaries, pursuant to a detailed procedure and upon submission of documents set out in the Insurance Code. The FSC is required to rule on the application within four months as of submission thereof.

As mentioned above, insurers having their registered seat in a EU or EEA member state may carry out the respective licensed insurance activity on the Bulgarian market under the freedom of establishment or freedom of services, after the FSC has been duly notified pursuant to a procedure set out in the Insurance Code.

The FSC charges insurers and re-insurers

a fee for issuance of licenses and an annual fee for its regulatory and supervisory activity. The amount of the latter fees is set in a tariff representing an appendix to the FSCA.

### XII.3.2. Energy

The main principles of the Bulgarian legal regime in the energy sector are set forth in the Energy Strategy of the Republic of Bulgaria 2000-2010, the Energy Act 2003, the Energy Efficiency Act 2004, and secondary legislation adopted in the implementation thereof.

The Energy Strategy of Bulgaria has as its objective the increase of competitiveness of the Bulgarian energy sector in the regional Balkan and integrated European market, as well as to attain liberalisation of the industry to the fullest possible extent. The achievement of this target requires corresponding development in the following areas: (i) financial restructuring and accelerated privatisation of Bulgarian energy enterprises; (ii) the establishment of a clear and stable regulatory framework; (iii) implementation of institutional changes, and (iv) gradual deregulation of the market. The Energy Act provides for full liberalisation of the electricity market in stages by 1 July 2007. However, the thermal power sector will remain subject to higher regulation.

The Energy Act sets forth detailed rules on the organisation and functioning of the energy sector. It regulates the relations associated with (i) generation of electricity and/or thermal power; (ii) transmission of electricity, thermal power or natural gas; (iii) distribution of electricity or natural gas; (iv) storage of natural gas; (v) trade in electricity; (vi) organisation of the electricity market; (vii) public contracting of electricity or natural gas; (viii) public supply of electricity or natural gas; (ix) transit transmission of natural gas; (x) management of the electric energy system; and (xi) distribution of electric energy through the railway distribution network. All of these

activities are subject to a licensing regime, which should be conducted on the basis of objective, transparent and non-discriminatory criteria.

The competent regulatory authority for granting, amendment and supplement, termination and withdrawal of licences in the energy sector is the State Energy and Water Regulation Commission (the "SEWRC"), an independent specialised state regulatory body in the energy sector. Pursuant to the Energy Act, the SEWRC can grant only one license in the territory of Bulgaria for (i) transmission of electricity or natural gas, (ii) organisation of the electricity market, (iii) public contracting of electricity or natural gas; and (iv) management of the electric energy system. Furthermore, the SEWRC can grant only one license for a specific territory for (i) transmission of thermal power, (ii) distribution of electricity or natural gas, and (iii) public supply of electricity or natural gas.

Licenses for activities in the energy sector are granted pursuant to a detailed procedure and upon submission of required documents provided for by the Energy Act. Only legal entities registered under the Bulgarian Commerce Act 1991, legal entities originating from the European Union or legal entities originating from a country which is a party to the Treaty for the European Economic Area may apply for a license. Licenses are issued for a term of up to 35 years with a possibility for extension for another up to 35-year period. The SEWRC shall issue or, refuse to issue, a license within three months as of submission of the application.

Licensed entities shall pay (i) an initial fee - on the initial grant or modification of a license; and (ii) an annual fee - for the regulatory activity of the SEWRC under the license for the respective year. The amounts of license fees and the terms of payment thereof are set forth in the Tariff on the Fees Charged by the State Energy and Water Regulation Commission under the Energy Act, approved by the Council of Ministers.

In respect of electricity price formation,

until full liberalisation of the electricity sector is achieved, two parallel markets will operate: a regulated market where the prices are regulated by the SEWRC and a non-regulated market where the participants freely negotiate prices. However, the prices of the thermal power, at which generators sell to the transmission company and the transmission company sells to the consumers, will be subject to regulation by the SEWRC even after the liberalisation of the electricity sector.

### XII.3.3. Telecommunications

The telecommunications sector is governed by the Telecommunications Act 2003 (the "TA") and the secondary legislation on its implementation. The currently effective legislation implements the principles set out in the EU 1998–2000 Regulatory Package and reflects the Bulgarian commitments undertaken in the accession negotiations.

The telecommunications sector is governed by the Council of Ministers (the government), the National Radio Frequency Spectrum Council and the State Agency for Information Technologies and Communications. The national regulatory authority in the telecommunications sector is the Communications Regulation Commission (the "CRC"), an independent specialised authority and a separate legal entity.

Depending on the means used for the provision of telecommunications services, these can be provided: (i) freely, i.e. without any licensing or registration (these activities are listed in the TA and include inter alia provision of access to the Internet); (ii) based on registration under a general license (these activities are listed in the TA and include inter alia activities carried out (a) via a telecoms network or radio equipment using radio frequency spectrum for common use determined by the CRC; or (b) via a public telecoms network without using scarce resource, whereas the latter is legally

defined to include numbers from the National Numbering Plan, the radio frequency spectrum and the positions of geo-stationary orbit, allocated for Bulgaria by virtue of international treaties); and (iii) based on an individual license (these activities are listed in the TA and include (a) telecoms activities via a telecoms network using individually allocated scarce resource; (b) provision of fixed voice telephony service and/or universal telecoms service; or (c) provision of leased lines, including international leased lines).

Licenses are issued, and registrations under a general license are performed, by the CRC. Where scarce resource is used, individual licenses are granted after holding of an auction or tender, except for cases provided for in the TA. Where scarce resource is not used, individual licenses are granted without holding an auction or tender, upon application by the interested person. In the latter case, the CRC shall decide on the application within six weeks of its submission; in certain cases provided for in the TA, the term may be extended. Individual licenses are granted for up to twenty years with a possibility for extension. The CRC shall register eligible applicants under a general license within thirty days as of the application. As a general rule, registrations are of unlimited time.

The TA provides for license fees and registration fees payable by undertakings carrying out telecoms activities, as well as for fees for using scarce resource (radio frequency spectrum and numbering capacity). The amount and the terms and methods of payment of the fees are further specified in the Tariff for the Fees Charged by the Communications Regulation Commission under the Telecommunications Act 2004.

Other matters regulated by the TA include network access (special access and unbundled access to the local loop) and interconnection, co-location and facility sharing, designation of operators having significant market power, universal service and end-users' rights.

Last, it is important to mention that Bulgarian Parliament is currently debating on Bill on Electronic Communications (the "Bill") at a second hearing. It is expected that said Bill will be adopted and will come into force in the middle of April 2007.

In general, the Bill aims at further transposing the EU law into Bulgarian legislation by implementing EU 2002 Telecoms Regulatory Framework. One of the major achievements of said Bill, when adopted, would be the abolishment of the licensing regimes whereby operators would be able to carry out electronic communications only upon submission of a notification for commencements of such activities to the regulator unless scarce resource is needed (in the latter case the regulator shall issue a respective permit). A list of all electronic communications activities, which shall be subject to the Bill, shall be published in the State Gazette after a public debate.

The Bill provides for transition periods, which will allow all holders of individual licenses under the currently effective TA, which in the future will only need a notification to the CRC, to be automatically registered into the specific register to be held by the regulator for those purposes. In addition, the Bill sets forth rules and timeframe for completion of the licensing procedures, which commenced under the currently effective TA, but are not completed as of the time the Bill entered into effect.

#### XII.3.4. Audio-Visual Sector

Audio-visual sector is governed separately from the telecoms sector. The legal framework is set forth in the Radio and Television Act 1998 (the "RTA"), the TA and the secondary legislation on its implementation. The regulatory bodies in the audio-visual sector are the CRC and the Council for Electronic Media (the "CEM"), an independent specialised state

authority and a separate legal entity. Whereas the CRC is the authority in charge of the technical parameters, the CEM regulates the audio-visual activity through registration or issuance of licenses, and supervises broadcasters as to the content and manner of broadcasting of their programmes.

Depending on the means used for broadcasting, radio and/or television activity may be carried out based on a license or a registration. Radio and/or television activity using available and/or building, maintaining and using new telecoms networks for terrestrial radio broadcasting is carried out on grounds of a license for radio and/or television activity, issued under the terms of the RTA by the CEM, and an individual license for telecoms activity, issued by the CRC under the terms of the TA. Broadcasting through technical means different from terrestrial broadcasting (eg, through cable and/or satellite) is carried out on grounds of a registration.

Persons eligible to apply for a license for radio and/or television activity under the TA include (i) sole traders and legal entities registered under Bulgarian law, and (ii) foreign natural persons and legal entities registered as merchants under the laws of a EU Member State or of another state - party to the Treaty for the European Economic Area. Licenses are granted by the CEM after holding an auction, as the overall procedure may take five to eight months. Licenses are issued for a term of up to fifteen years with a possibility for extension, but in total not longer than twenty-five years. The CEM shall register eligible applicants within fourteen days as of the application, as registrations are of unlimited term.

The RTA provides for license and registration fees, as the amounts and the manner of imposition of such fees are further specified in the Tariff on the Fees for Radio and Television Activity 2006. ■

## XIII INDUSTRIAL & INTELLECTUAL PROPERTY

### XIII.1. Legal Framework

#### XIII.1.1. Laws and Regulations

- Copyright and Neighboring Rights Act, published in State Gazette No. 59 of June 29, 1993 as in force from August 1, 1993, last amendments published in State Gazette No 73 of September 5, 2006 as in force from October 6, 2006
  - Patents and Registration of Utility Models Act, published in State Gazette No. 27 of April 02, 1993 as in force from July 01, 1993, last amendments published in State Gazette No. 64 of August 8, 2006 as in force from November 9, 2006
  - Marks and Geographical Indications Act, published in State Gazette No. 81 of September 14, 1999 as in force from December 15, 1999, last amendments published in State Gazette No 96 of November 28, 2006 as in force from January 1, 2007
  - Industrial Design Act, published in State Gazette No. 81 of September 14, 1999 as in force from December 15, 1999, last amendments published in State Gazette No 73 of September 5, 2006 as in force from October 6, 2006
  - Topography of Integrated Circuits Act, published in State Gazette No. 81 of September 14, 1999 as in force from December 15, 1999
  - Protection of New Plant Varieties and Animal Breeds Act, published in State Gazette No. 84 of October 10, 1996 as in force from January 04, 1997, last amendments published in State Gazette No 30 of April 11, 2006 as in force from March 1, 2007
  - Different Regulations on drafting up, filing and examination of corresponding objects of Industrial Property.

#### XIII.1.2. EU legislation

- Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights
- Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.
- Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs.
- Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products

In 2005 and 2006 legislative improvements were introduced in Bulgarian legislation for the implementation of Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art and Directive 2004/48/EC on the enforcement of intellectual property rights

#### XIII.1.3. International Treaties (bilateral and multilateral)

##### a) General

- Paris Convention for the Protection of Industrial Property of March 20, 1883 as in force from September 27, 1965
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP's Agreement) of April 15, 1994

##### b) Specific International Agreements

- (i) *Copyright and Neighboring Rights*
  - Berne Convention for the Protection of Literary and Artistic Works of 1886
  - International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations
  - Convention for the Protection of the Producers of Phonograms against Unauthorized Reproduction of their Phonograms.

*(ii) Patents*

- Patent Cooperation Treaty of June 19, 1970 as in force from May 21, 1984
- European Patent Convention of October 05, 1973 as in force from July 01, 2002

*(iii) Trademarks*

- Madrid Agreement Concerning the International Registration of Marks of April 14, 1891 in force as of August 01, 1985
- Protocol Related to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989 in force as of October 02, 2001

*(iv) Industrial Design*

- Hague Agreement Concerning the International Deposit of Industrial Designs of June 02, 1934 as in force from December 11, 1996

*(v) Others*

- Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods of April 14, 1891 as in force from August 1, 1975
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958 as in force from August 12, 1975
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedures of April 28, 1977 as in force from August 19, 1980
- International Convention for the Protection of New Plant Varieties (UPOV) of December 02, 1961 as in force from April 24, 1998

**Utility models** are granted legal protection by their registration with the Patent Office. Utility models are registered if they are new, industrially applicable and have inventive step.

The discoveries, scientific theories and mathematical methods, results from artistic work, schemes, rules and methods of intellectual activity, for playing games or doing business, computer programs as such, or presentation of information are not regarded as inventions.

The following objects are not patentable:

- (i) invention the exploitation of which would be contrary to the public order or morality;
- (ii) methods for treatment of human or animal body by therapy or surgery, as well as diagnostic methods practiced on the human or animal body. This provision is not related to products, in particular substances or compositions used in these methods;
- (iii) plant varieties or animal breeds or essentially biological processes for obtaining them. This provision does not apply to microbiological methods and the products thereof.

**Mark** - a sign which is capable of distinguishing the goods or services of one person from those of other persons, and which can be presented graphically. Such signs can be words, including names of persons, letters, numerals, drawings, figures, the shape of the products or the packing thereof, combination of colors, sound signs or any combinations of such signs.

**Geographical indications** means appellations of origin and indications of source.

**Industrial Design** is the appearance of the whole or a part of a product resulting from the specific features of the shape, lines, contours, ornamentation, colours or combination thereof. Product means any industrial or handicraft item, including parts intended to be assembled into a complex item, sets or composition of items, packaging, graphic symbols and typographic typefaces.

### XIII.2. Legal Definitions

The **copyright** over literary, artistic and scientific works arise for the author with the creation of the literary, artistic and scientific work.

According to the Patents and Registration of Utility Models Act patents are granted for inventions from all area of the technics which are new, have inventive step and are industrially applicable.

### XIII.3. General Review

#### XIII.3.1. Copyright and Neighbouring Rights

The law provides for protection of copyright during the whole life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.

The author is entitled to the exclusive right to use the work created by him and to permit its use by other persons. The reproduction of the work, regardless whether it is related to the distribution, presentation, broadcasting, transmission or public exhibition and if it is addressed to unlimited number of people or to a limited number of people (in certain cases), is considered as a use of this work.

The copyrights of performers, producers of phonograms and broadcasting organizations are protected for a period of 50 years.

The performer has the exclusive right to permit against compensation: (a) the broadcasting of his/her performance by wireless means, its transmission and retransmission by cable, as well as a sound and video recording of the performance, the reproduction of the recording on video or video carriers and their distribution; (b) the public performance, broadcasting by wireless means, transmission and retransmission by cable of such recordings; (c) offering by wireless means or cable of access to the recording of unlimited number of people and (d) import and export of the recording in commercial quantities. The broadcasting organizations, as far as their programs are concerned, have the right to permit their re-broadcasting, re-transmission, recording, reproduction and distribution.

The computer programs are copyright objects and the law provides for their protection for 70 years. The copyright over such a program belongs to the person, whose work has resulted in the creation of

computer program. In case the computer program was created under an employment contract and unless otherwise agreed, the copyright over it shall belong to the employer.

#### XIII.3.2. Patents

The exclusive right on invention is obtained by issuance of a patent by the Bulgarian Patent Office. The procedure includes (i) a formal examination and (ii) an examination whether the criteria for patentability are fulfilled.

Any patent application may enjoy a priority from earlier application filed in a Member-State of the Paris Convention within 12-months.

The scope of protection is determined by the patent claims. The exclusive right on an invention includes the right of usage of the invention, the right to prevent third parties from usage and the right to dispose of the patent. Where the subject matter of the patent is a method, the patent owner shall have the right to prohibit others from performing the following acts: (i) application of the method; (ii) offering or putting on the market, using or importing, or stocking for offering or putting on the market or use of a product obtained directly by the patented method.

The term of validity of a patent for invention is 20 years..

In order to maintain the validity of a patent annuity fees are due.

The exclusive right on utility model is obtained by its registration with the Patent Office. The procedure includes (i) a formal examination and (ii) an examination whether the criteria for registration are fulfilled. The term of validity of utility model registration is 4 years from the date of the filing of the application. That term may be extended for two consecutive periods of three years each. The total term of protection may not exceed 10 years from the date of the filing of the application.

### XIII.3.3. Marks

The exclusive right on a mark is obtained by its registration in the Bulgarian Patent Office. The law provides protection for trademarks, service marks, certificate marks and collective marks. The procedure of registration consists of two stages: (i) formal examination, and

(ii) examination about the absolute and relative grounds for refusal.

Any trademark application may enjoy a priority from an identical application filed in member-state of the Paris Convention within a 6-month period.

Each application, which satisfies the requirements as to proper form, shall be published in the Official Bulletin of the Patent Office. Within two months after the date of publication of the application, any person may give notice of opposition to the registration of the mark in pursuance of the absolute and relative grounds for refusal of registration..

The exclusive right on a mark includes the right of the owner to use it, to dispose of it and to prevent other parties from unauthorized use in the course of business activity of any sign which: (i) is identical with the mark in relation to goods or services which are identical with those for which the mark is registered; (ii) due to the identity or similarity to the mark, and the identity and similarity of the goods or services, there is a likelihood of confusion among the consumers and a possibility of association with the mark; (iii) is identical or similar to the mark in relation to goods or services which are not identical or similar to those for which the mark is registered, where the mark is known on the territory of the Republic of Bulgaria, and where the use of the sign takes without due cause unfair advantages of the distinctive character or renown of the mark or is detrimental to them.

The term of protection of a registered mark is ten years from the date of filing

the application. The registration may be renewed for an unlimited number of ten-year periods.

The registration of a trademark may be revoked if within a period of five years following the date of registration the owner has not put the mark to genuine use on the territory of Bulgaria or if such use has been suspended during an uninterrupted period of five years.

The registration of a mark may be cancelled when (i) it has been registered in breach of the absolute or relative grounds for refusal; (ii) it is registered in the name of an agent or a representative of the owner without its consent; (iii) the applicant has acted in bad faith which has been established with a court decision; (iv) the usage of the trademark could be prohibited on the grounds of earlier right such as a right on a name, and a portrait, copyright, a right on a name of new plant variety or animal breed, industrial property right.(v) the trademark consists of or contains the trading name of another party whereof the trading name has been registered and used in the Republic of Bulgaria prior to the date of filing of the application for registration in relation to identical or similar goods and services.

With the latest amendments to the Marks and Geographical Indications Act detailed criteria have been introduced for the recognition of a mark as well – known or as a mark of renown and the establishment of a Register of such marks with the Bulgarian Patent Office is provided.

A Community trade mark registered in the Office for Harmonization in the Internal Market (trade marks and designs) under Council Regulation (EC) No. 40/94 on the Community trade mark shall have effect on the territory of the Republic of Bulgaria as of 1 January 2007. The use of a Community trade mark on the territory of Republic of Bulgaria may be prohibited if an earlier trade mark or other earlier right was registered, applied for or acquired in good faith in Bulgaria prior to 1 January 2007.

### XIII.3.4. Geographical Indications

The protection of a geographical indication is obtained by its registration. Entitled to apply for registration is any person who carries out his production activity in the corresponding geographical region and the goods which he produces conform to the established properties and features.

The geographical indication can be used by any recorded user.

### XIII.3.5. Industrial Designs

The exclusive right on industrial design is obtained by its registration at the Patent Office.

The criteria for registration of industrial designs are world novelty and originality.

The procedure of registration consists of two stages: (i) formal examination, and (ii) examination about the presence of the criteria for registration.

The scope of protection of registered industrial design is determined by its representation(s) and includes every identical design whose characteristic features differ only in unsubstantial details. The exclusive right on registered industrial design includes the right of its owner to use it, to dispose of it and to prevent third parties from copying or using in the course of business activity a design included in the scope of protection.

The term of protection of registered industrial design is 10 years from the date of filing the application. It could be extended three times for further periods of 5 years, i.e. the maximum term of protection is 25 years.

Under Council Regulation (EC) No 6/2002 a Community design application filed with the Office for Harmonisation in the Internal Market with an established date of filing or priority date shall be deemed an application filed regularly on the territory of the Republic of Bulgaria. Civil legal protection in case of infringement of the rights over a Community design shall be carried out in accordance

with the procedure set forth in Council Regulation (EC) No 6/2002.

### XIII.3.6. Licenses

The owner of a patent, registered mark or industrial design could assign the right of usage through a license agreement which should be recorded with the Patent Office. The License Agreement or at least an extract thereof has to be submitted to the Patent Office, containing the identification data of the licensor and the licensee, bibliographic data about the patent, trademark or industrial design, the kind of the license (exclusive or non-exclusive), the term of the agreement. The license agreement is in effect with regard to third parties as of the date of its recordal in the State Register.

## XIII.4. Protection Against Infringement of IP Rights

### XIII.4.1. Civil Protection

In any case of unlawful use of a patent, trademark, industrial design or geographical indication the rightful owners are entitled to **lodge a claim** with the competent first-instance court – the Sofia City Court - against the infringer in order to:

- (i) establish the infringement;
- (ii) claim compensation for the damages suffered because of the infringement,
- (iii) require the termination of the infringing actions.

(iv) require the seizure and destruction of the products- subject of the infringement,

The Marks and Geographical Indications Act provides explicitly the terms and conditions for determination of the amount of compensation for damages occurred as a result of the infringements.

In case the court rules in favor of the claimant the latter may require the decision to be published in two dailies, as well as

the infringing objects to be destroyed or reprocessed.

Sofia City Court is the competent first-instance court to rule on disputes on the authorship of inventions, utility models and disputes related to marks and industrial designs

Upon infringement of a right to a mark or infringement of a registered geographical indication or industrial design, or where there is good reason to believe that any such infringement will be committed or some evidence will be lost, destroyed or concealed, the court, acting at the request of the rightful owner or of the exclusive licensee, may furthermore admit some of the following injunctions without notifying the respondent of this:

- prohibition of performance of any acts which allegedly constitute or will constitute unauthorized use of a mark, geographical indication or industrial design
- seizure of the goods which allegedly wrongfully bear a registered mark or geographical indication or have allegedly been manufactured by means of copying or using any design within the scope of protection;
- sealing of the premise in respect of which an infringement is allegedly committed or will be committed.

In any case of infringement of a copyright or a neighboring right the rightful owners or, as the case may be, the persons entitled to exclusive rights of use are entitled to lodge a claim with the competent district court against the infringer in order to:

- establish the infringement
- require the termination of the infringing actions;
- receive a compensation for the damages suffered because of the infringement. In case the claim's ground is established but the amount of the damages may not be estimated the above persons may, instead of compensation, receive:
  - o the proceeds obtained as a result of the violation;

- o the value of the subject of infringement calculated on the basis of the retail prices of lawfully reproduced copies; or

- o sum amounting between BGN 500 and BGN 100 ,000 determined by the court upon its discretion;

- o require the seizure and destruction of the infringing copies and the equipment exclusively used for their production. require the court decision to be published in two dailies, as well as to be announced on the Bulgarian national TV in the time zone between 7 p.m. and 9p.m.

### XIII.4.2. Criminal Protection

According to the Criminal Code:

- Any person who records, reproduces, distributes, broadcasts or transmits, or makes any other use the object of a copyright or neighbouring right without the consent of the owner or holder of such right as required by law, shall be punished by imprisonment for up to five years and a fine of up to BGN 5,000.

- Anyone who, without consent of the person required by law, detains material carriers containing the object of copyright or a neighbouring right, amounting to a large-scale value, or who detains a matrix for the reproduction of such carriers, shall be punished by imprisonment from two to five years and a fine of BGN 2,000 to BGN 5,000.

- If the acts described above have been repeated or considerable damaging consequences have occurred, the punishment shall be imprisonment from one to six years and a fine of BGN 3,000 to BGN 10,000.

- Anyone who, without the consent of the owner of the exclusive right uses in commercial activity a trademark, industrial design, a plant variety or animal breed, object of said exclusive right, or makes use of a geographical indication or imitation thereof without a legal justification, shall be punished by imprisonment of up to five

years and a fine of up to BGN 5,000. Where the act is repeated or significant damages have been caused, the punishment shall be imprisonment from five to eight years and a fine from BGN 5,000 to BGN 8,000. The object of the crime shall be taken to the benefit of the state, irrespective of the fact whose property it is, and it shall then be destroyed.

- Anybody who issues or uses under his name or under a pseudonym another's work of science, literature or art or a substantial part of such a work shall be punished by imprisonment of up to two years or by a fine of BGN 100 to BGN 300, as well as by public reprobation. The same punishment is provided for any person who, without having participated in the creative work, by abusing his authority joins as a co-author of a work of science, literature or art.

#### **XIII.4.3. Administrative Protective Measures**

The President of the Patent Office is empowered to impose administrative penalties - fines or monetary sanctions between BGN 500 and 5 000 - on infringers of rights of the owners of trademarks or geographical indications.

The administrative penalties on infringers of rights of the owners of copyrights or neighboring rights are imposed by the Minister of Culture or a person authorized by him.

In addition in all cases mentioned above the infringing goods shall be seized, regardless of the ownership thereof, and shall be destroyed.

Border control measures are also established for goods carried through the borders of the state bearing a registered mark or geographical indication without the consent of the holder or an imitation thereof or such goods for which there are grounds to consider that they infringe a right protected by the Copyright and Neighboring Rights

Act. The customs authorities will detain such goods at the written request of the holder or, as the case may be, at the request of the owner of the copyright or persons entitled to exclusive rights of use.

#### **XIII.5. Foreign Investors Related Measures**

Foreign authors will enjoy the same rights as Bulgarian authors unless otherwise provided by international treaties and agreements. In case Bulgarian law is applicable to foreign authors or the object of copyright was first created or published in a foreign country, the holder of the right will be determined by the respective foreign law and the term of protection will be the one provided by the foreign law if Bulgarian law provides for a longer period.

Foreign physical and juridical persons and all persons with a domicile or seat outside Bulgaria may apply for the registration of a patent, trademark, geographical indication, industrial design only through their local industrial property representatives listed with the Patent Office.

The provisions of Bulgarian law will apply to foreign physical and juridical persons whose respective country of origin is a member to international agreements, to which Bulgaria is a party. To other foreigners Bulgarian laws will apply only in case of reciprocity, which will be established by the Patent Office in case-by-case basis. Where bilateral international agreements exist their provisions will apply.

The international registrations of patents under the Patent Cooperation Treaty; of trademarks in conformity with the Madrid Agreement; of geographical indications under the Lisbon Agreement; and of industrial designs under the Hague Convention, have the same effect as if the applications were directly lodged and the registrations were made in Bulgaria according to the relevant Bulgarian law. ■

## XIV PUBLIC PROCUREMENT

The specific character of the budgetary and public funds requires a special procedure for their spending. Therefore, the Public Procurement Act sets forth the state policy on the award of public procurement contracts.

The Bulgarian legislator has provided for special procedures for spending of the funds provided for or accumulated by public services. Thus it aims at increasing the effectiveness of the use of budget and public resources and at the protection of the consumers of public services.

The Public Procurement Act codifies the public procurement legal framework. This Act was adopted in May 2006 and became effective from the 1st July 2006.

One of the principal goals of this Act is to harmonize the Bulgarian legislation concerning public procurement with the **four major public procurement directives of the European Union**. The Bulgarian legislation acknowledges the importance of the public interest related to the award of public procurement contracts and provides the rules for the protection and control over public and budgetary spending. The provisions are imperative and regulate all material aspects of public procurement.

The Public Procurement Act regulates the terms and procedures for the award of public procurement contracts, the objects and subjects of the public procurement procedures, the bodies implementing the state policy in this area, the procedures on awarding contracts and the procedure on appeal against public procurement related decisions.

The Public Procurement Acts defines the parties in the contract award procedures – **assignors, candidates, participants and contractors**.

*The assignors* are enumerated in the law and classified in several categories. These

are the state bodies, the diplomatic and consular representations of the Republic of Bulgaria abroad, organizations of the public law, the medical establishments, public companies and commercial companies when they perform some of the activities specified in the law, etc.

One of the new terms adopted by the Act is “organization of the public law”. As defined in §1 of the additional provisions of the Public Procurement Act, the “organization of the public law” is a legal entity created for the satisfaction of a given public interest, having no commercial or industrial character, and satisfying the conditions set in the law.

*The assignors* benefit from a special legal protection, as the law provides that several imperative clauses in their favor should be implemented in any public procurement contract. An example for such a clause is the assignors’ right to unilaterally terminate the awarded contract under some special conditions, explicitly set in the law.

*The candidates* for the award of a public procurement contract can be any natural person or legal entity that has applied for participation in the procedure for public procurement assignment.

*The participant* is any natural person or legal entity or their alliance that has presented an offer or a project.

*The candidates* and participants for the award of a public procurement contract can be any natural person or legal entity, as well as alliances thereof. This definition makes it obvious that unlike the old Public Procurement Act (1999), the effective Law does not require the candidates to be registered as free lancers, sole entrepreneurs or companies. Hence, for the award of public procurement contract can apply: first, all kinds of merchants, regardless of their organizational form. Foreign persons and entities can also apply in the public procurement procedures regardless whether they are registered as merchants under Bulgarian or their

respective local legislation.

The Act provides the assignors with the right to require that the candidate shall create a legal entity when the chosen candidate is an alliance of natural persons or legal entities. In such cases the newly incorporated company shall be bound by the offer. The assignor cannot set the incorporation of a new company as a condition for participation in the procedure for assigning a public procurement.

For a limited number of business activities the special legislation can impose specific requirements on the candidates. In this case the possible scope of the candidates shall be limited. For example, public procurement contracts for the supply of insurances can only be awarded to insurers.

*The Contractor* is a candidate who took part in the public procurement procedure and who has concluded a public procurement contract.

**Objects** of public procurement can be various types of activities that can be assigned to contractors under the procedures for the award of public procurement contracts under the rules of the Public Procurement Act. Instead of enumerating all the objects of public procurement procedures, the Law marks most of them, but expressly indicates all the exceptions of this scope. Those exceptions refer to the character of the activity or the value of the contract. In general, the effective Law benchmarks higher contract values above which a public procurement procedure must take place.

The terms and conditions for assigning a public procurement are obligatory for the following procurements (without the VAT):

- Construction for more than BGN 1800000,00 and when abroad – BGN 5000000,00;
- Delivery for more than BGN 150000,00 and when abroad – BGN 250000,00;
- Services for more than BGN 90 000,00 and when abroad – BGN 250000,00;

- Design contest - for more than BGN 30000,00.

The Act regulates the types of procedures for the award of the public procurement contracts. These types include the **open procedures**, the **restricted procedures**, **competitive dialogue**, **negotiated procedures** and the **design contest**.

The Act however provides for two kinds of negotiated procedures – with or without announcement, and also introduces a new type of procedure – the design contest procedures. The executors can be chosen in an open procedure, a restricted procedure and the negotiated procedure with an announcement through the use of an electronic competition when the technical specifications of the procurement are strictly defined.

The main criterion for distinction between the various types of procedures is the scope of the possible participants in each procedure. In general, the announcements for the start of a procedure are published in the State Gazette. In an open procedure all interested persons and entities can obtain the documentation, present their offers and participate in the procedure as candidates. In a restricted procedure, the assignor conducts a preliminary selection among an unlimited number of candidates and invites the approved candidates to present their offers. Similarly, in the negotiated procedure contracting with an announcement, the procedure is open to all interested candidates, but the assignor conducts a preliminary selection and invites in the negotiations only the approved candidates. In the negotiated procedure without an announcement, the assignor invites for negotiations a limited number of candidates, and an announcement for the start of a procedure is not published at all. The design contest is a procedure for acquiring by the assignor a plan or a project prepared by an independent jury based on a contest with or without awards. The **design contest** procedure can be

conducted either as an open procedure or as a restricted procedure.

The assignors are free to choose the type of procedure that they can conduct. However, the negotiated procedures with and without announcement can only be applied in a limited number of cases explicitly set forth in the law.

The European legislation alike, the new Bulgarian public procurement legislation introduces special rules for the award of public procurement contracts by entities operating in the water, energy, transport and telecommunications sectors. The main difference from the general rules is the right for the assignors in this group to choose and apply any procedure, the only restriction being that the assignor can conduct a negotiated procedure without an announcement only in a small number of cases, expressly limited by Law. Besides, only this group of assignors can award framework contracts with their chosen contractors.

The procedure for awarding public procurement contracts is opened by decision of the assignor. With this decision the assignor approves the public announcement and the documentation for the candidates' participation in the procedure. The Decision and the announcement are sent simultaneously to State Gazette and to the Agency for the Public Procurement for registration in the Register of Public Procurement. The announcement should meet the requirements of the Law concerning its form and minimum content. Further, the announcement for the opening of a public procurement procedure must be sent in electronic form as well.

The Act provides that a "preliminary announcement" for an opening of a public procurement procedure should be made whenever the value of the contract exceeds certain levels. The preliminary announcement is also sent to the State Gazette and the Register of Public

Procurement. This obligation affects a scope of assignors defined in the Act. The announcement should be sent before the 1 March of each year and should contain all public procurement procedures and frame agreements that the assignor plans to open during the same year.

The new Public Procurement Act contains a new institute – the frame agreement. It is concluded by and between one or more assignors and one or more potential executors. Its aim is to define in advance the terms and conditions of the contracts which the parties intend to conclude for a period no longer than four years regarding the prices and if possible the expected quantities. As an exception the term of the frame agreement may be longer than four years. The assignors are entitled to sign frame agreements for every public procurement procedure except for the negotiated procedure without an announcement.

The assignor appoints a special commission for the purpose of conducting the procedure. The commission's task is to review, evaluate and rate the candidates' offers according to the terms set by the assignor. The commission's final act is the protocol for the candidates' classification.

Based on that protocol, the assignor has to adopt a decision that announces the classification of all candidates and the candidate that has been chosen for a contractor. Then the assignor signs a public procurement contract with the candidate who won the first place according to the commission's protocol and therefore obtains the award the contract.

The public procurement contract includes all the participant's proposals of the offer, which helped him to be chosen as an executor. A contract cannot be concluded if its term is not set.

The assignor shall inform the Agency about every contract or frame agreement signed, in order to be registered in the

Public Procurement Register.

After the amendments in the Act the acts of the assignors are considered to be individual administrative acts.

The decisions, actions or omissions of the assignors until the signing of the contracts or the frame agreements are under the control and can be appealed before the Commission for Competition Protection by any of the candidates or participants or by anyone whose interests have been injured. The complaint should be filed within ten days as of the notification about a certain decision or an action but no later than the signing of a contract or a frame agreement. The complaint does not stop the procedure unless the Commission decides so. In order to stop the procedure the complainant should submit a motivated request and pay in a deposit to the amount of 1 % of the procurement amount but no more than BGN 50000,00. The Commission decides on the complaint within two months.

The resolutions of the Commission can be attacked before the Supreme administrative court. The court's decision is final and is not subject to control.

The judicial power of the Arbitration court is subject to the existence of an **arbitration agreement**. Every assignor can offer such an agreement and the candidate has to sign it before filing an offer. Any candidate for the award of a public procurement contract can also offer the adoption of an arbitration clause. The arbitration clause should refer to the arbitration court chosen by the parties. Whenever an arbitration clause is adopted, the Arbitration Court shall solve the dispute with the subsidiary application of the Bulgarian act on the international commercial arbitration.

According to the provisions of the Public Procurement Act, the State policy in the area of the public procurement shall be carried out by the Minister of Economy. A new state body – the Agency on Public

Procurement, shall assist the minister.

The Agency shall create and manage a register of the Public Procurement, where the agency shall register decisions and announcements on the opening of public procurement procedures, information on the awarded public procurement contracts and other data, as provided by the law. ■

**XV SECURITIES AND BANKS****XV.1. Securities****XV.1.1. Overview**

After discontinuing the public trade of securities after World War II, the First Bulgarian Stock Exchange started functioning in 1991. The Bulgarian Parliament adopted the first act regulating the trade in securities – the Securities and Stock Exchanges Act from 1995. This Act provided for the creation of the State Securities Commission (SSC) – the state regulator of the stock market. At the same time most stock exchanges merged to the Bulgarian Stock Exchange. In 1997 the SSC officially licensed the Bulgarian Stock Exchange to organize a regulated market and in 2001 – to organize an unofficial market. In the end of 1999 the Bulgarian Parliament adopted the Act on the Public Offering of Securities, which is currently in force. This act set the grounds for the development of a market working under criteria and conditions similar to those in the European Union. Further positive development was seen in 2000 with the launch of a modern trading system and of an official index – SOFIX. The latest trends in the securities market development were marked by the replacement of the SSC with a new state regulator – the Financial Security Commission. An additional step for bringing Bulgarian securities market closer to local and international investors is the launch of the Client Order-Book Online System, a.k.a. COBOS. COBOS allows clients or stock exchange members to place real-time orders over the Internet. Now orders can be placed not just from all over the country, but they can also be placed from all over the world.

**XV.1.2. Legal Framework**

The most important legal rules related to securities and their trade in Bulgaria are

contained in the Public Offering of Securities Act. The Act governs all material aspects related to the trade in securities, securities markets and the State control over them. The Act is aimed at the investor's protection; the creation of a fair, transparent and efficient securities market and the establishment of a strong public confidence in the securities market overall. The other important acts in that area are the Commercial Code, the Act on the Privatization Funds, the Act for the Encouragement of the Investments, the Act on the Privatization and Post-Privatization Control and the Financial Supervision Commission Act.

The Financial Supervision Commission has the power to adopt ordinances related to the public trade of securities, such as the ordinance on the licenses for the performance of activities of a stock exchange, unofficial market, investment intermediary, investment company, management company; the ordinance on the requirements for the activities of the investment intermediaries; the ordinance on the requirements to the activity of the investment companies and the contract funds; the ordinance on the capital adequacy and liquidity of the investment intermediaries; the ordinance on the requirements for the natural persons who directly perform the trade in securities or investment consultations and the procedure to obtain the right to perform such activity, etc.

The Bulgarian Stock Exchange adopted its rules and regulations, which provide the principles governing the overall operations on the Bulgarian Stock Exchange - Sofia. It determines the listing requirements, the trading components and all related and pursuant proceedings, membership provisions, disclosure, surveillance as well as procedures pertaining to disputes and discipline subjects.

The Bulgarian National Bank is vested with the powers to adopt regulations, some of which affect the trade in securities as well. Such regulations of the Central Bank govern

the Control over Transactions in Book-entry Government Securities, the Central Depository of Securities and the Government Securities Settlement.

### XV.1.3. The Market Players

**THE STOCK EXCHANGE** is a public company with a special status. The main business activity of a stock exchange is to organize an official securities market. The stock exchange can also organize an unofficial market. The stock exchange cannot perform other commercial transactions, unless it is necessary for its activity, it cannot give loans, pledge obligations of third parties, or issue bonds.

The minimum registered capital of the stock exchange should be equal or exceed BGN 100 000,00. At the time of receipt of the license to organize an official securities market, the all capital should be paid-in. At least 2/3 of the capital should be owned by investment intermediaries or institutional investors. No shareholder can own more than 5 % of the stock exchange's capital. The stock exchange can establish or join an established system for clearing, settlement and guaranty of the transactions that take place at its market.

The Financial Supervision Commission is responsible for the issue of stock exchange licenses. The applicant for such a license should present together with its application the Articles of incorporation adopted by the founders; particulars about the capital paid in and its structure; particulars about the persons involved in the management of the applicant, and information about their professional qualification and experience; the stock exchange rules and the rules of the arbitration panel; data about the premises and the technical equipment of the stock exchange; other documents. The FSC shall pronounce on the request within three months as from its receipt, and where additional information and documents have

been requested – as from their receiving. Without the license, Bulgarian courts will refuse the company's incorporation. If the commission refuses a license, the same applicant can apply again after at least 6 months.

**INVESTMENT INTERMEDIARIES** shall be any person providing one or more investment services and/or performing one or more investment activities by profession. Investment services and activities are specifically listed in the Public Offering of Securities Act and include: accepting and giving orders related to securities, including brokerage for the conclusion of transactions related to securities; performance of orders for purchase or sale of securities in the name and on behalf of clients; security transactions in one's own name and on one's own behalf; management, in compliance with the contract concluded with a client, of an individual portfolio including securities, at one's own discretion without any specific orders by the client; subscription of security issues and/or initial offering of securities with unconditional and irrevocable obligation to subscribe/acquire securities in one's own name and on one's own behalf; investment intermediaries may also provide additional services specifically provided for by the law and related to the administration of securities in the name and on behalf of clients, including trust and any services related thereto; advising companies in relation to the structure of capital, industrial strategy and any issues related thereto, as well as advice and services related to mergers and purchase of enterprises, etc.

The minimum required capital which the investment intermediary should have is defined depending on the investment services such intermediary offers: 1. Any investment intermediary who does not hold any money or securities of clients and does not perform investment services and activities related to security transactions in its own name and on its own behalf and

subscription of security issues shall at any time have capital of no less than BGN 100 000; 2. Any investment intermediary who holds money and/or securities of clients and provides one or more of the investment services provided for by the law shall at any time have capital of no less than BGN 250 000. 3. In case the investment intermediary performs security transactions in its own name and on its behalf and activities related to the subscription of security issues and/or initial offering of securities with unconditional and irrevocable obligation to subscribe/acquire securities in its own name and on its behalf, it shall at any time have capital of no less than BGN 1 500 000.

Only public companies and limited liability companies holding a license issued by the FSC may provide investment services and perform investment activities by profession. Investment intermediaries may also be banks which provide one or more investment services and/or perform one or more activities holding a license for the performance of such services and activities issued by the Bulgarian National Bank.

To receive a license as an investment intermediary the applicant should present an application as well as the Article of incorporation; particulars for the capital; particulars for the management and the persons carrying out transactions, and about their professional qualification and experience; the general conditions applicable to contracts with clients; activities program of the company; particulars for the persons who hold, directly or through related persons, 10 or more than 10 per cent of the votes in the general meeting of the applicant company, or may otherwise control it; etc. The FSC shall decide on the application within three months as from its receipt, and where additional information and documents have been requested – within one month as from their receipt. Such license contains an exhaustive list of the investment services and activities, which the person is entitled to perform and provide.

**FUND FOR COMPENSATION OF SECURITY INVESTORS** is a legal entity organized pursuant to the Act. This fund has been organized to guarantee that the clients of investment intermediaries will receive compensation through the moneys of the fund when the investment intermediary is unable to settle its liabilities to clients because of any reasons directly related to its financial status. This fund pays compensation to each investment intermediary client amounting to 90% of its receivables, but in no case more than BGN 40 000. The Act includes a list of the persons who are not entitled to compensation. The fundraising sources of the fund are: initial installments by the investment intermediary, annual installments; income from investing the moneys raised by the fund; other sources such as loans, grants, international assistance, etc.

**PUBLIC COMPANIES** are the companies traded on the stock exchange. Many companies listed on the exchange are former state companies. They were listed on the exchange before or during their privatization. Therefore, many companies went private after being privatized.

To go public, a Bulgarian company should generally publish a prospectus and make an IPO. The Public Offering of Securities Act contains special requirements towards the content of a prospectus and the other requirements to be met in order the company to go public.

The Bulgarian legislation provides for a series of special rules, which grant the shareholders' rights and protect their interests. For example, unlike general legislation, whenever a public company wants to increase their capital, it has to grant the right of the minority shareholders to participate proportionately in the capital increase, thus effectively protecting the minority shareholders against dilution of their participation. The legislation also provides some rules to secure the principle of equal

access to information, such as the rules on information disclosure or the insider information.

**INVESTMENT COMPANIES** are public companies with a capital of no less than BGN 500,000. Investment companies carry out the activity of investing cash into publicly traded securities and other financial assets, raised through public offering of securities, and which companies operate on the principle of risk division. Investment companies can either be open-end or closed-end.

An open-end investment company must permanently offer its shares to the investors at their issue price based on the net asset value and, upon request of its shareholders, to redeem those shares at the price based on the net asset value. The issue price and the redemption price shall be calculated at least twice a week. A closed-end investment company redeems its shares under the general legislation. Open-end investment companies can only be managed by management companies, while closed-end investment companies can be managed by either a management company or the company's own managing bodies.

Bulgarian legislation requires a license for carrying out investment company's activities. This license is granted by the FSC within 3 months of application. The application form is filed together with the Articles of Association; particulars about the capital subscribed and paid-in; information about the members of the management and supervisory bodies or about the natural persons representing legal entities authorized to manage and represent the investment company, and information about their professional qualification and experience; the contract with the management company, in accordance with Art. 168, and the contract for depository services; the names or business names of and particulars about the persons who hold, directly or through related parties, more than 10 per cent of the voting shares of the applicant or may control it otherwise; etc.

**MANAGEMENT COMPANIES**, the companies that manage investment companies, should have no less than BGN 250,000 registered capital and should also be licensed by the FSC. The commission will issue the license within 3 months of submission of the application form, together with the documents required by law.

**THE MUTUAL FUND** is independent property for the purposes of collective investment in securities of the moneys raised by public offering of shares on the principle of diversification, for which the management company is responsible. The mutual fund may only be open-type. The net value of the mutual fund capital may not be less than BGN 500 000. The mutual fund is organized and managed by the management company. In managing the mutual fund, the management company acts on its behalf and at the account of the mutual fund.

The management company may start performing this activity after receiving a permit to organize and manage a mutual fund and after the registration of the fund in the respective register by the FSC. This license is granted by the FSC within 3 months of application. The following should be attached to the application: the rules of the mutual fund; resolution of the competent body of the management company for organizing the mutual fund; the rules on assessment of the portfolio and on determining the net value of assets, etc.

#### **XV.1.4. Conclusion**

Bulgaria keeps on attracting ever growing interest with its investment opportunities. Foreign investors are interested to invest in Bulgarian securities market in many forms. They can just invest in listed securities or create an investment company or investment intermediary. Foreign investors should always keep in mind that they are treated equally with local investors, thus enjoying the

special investors protection provided by the local legislation.

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## **XV.2. The Banks**

The banking sector is crucial for the proper functioning of country's economy. For many years now Bulgaria has been publishing data on its macro-economic stability. These data, in combination with the fiscal discipline of Bulgarian governments enhance the confidence to Bulgarian economy and contribute to the high rate of economic growth over the recent years. All this was only possible after a series of measures that Bulgaria had to undertake following a wave of banks bankruptcies a little than a decade ago. These measures cover both the introduction of currency board arrangements and pegging of the BGN exchange rate to EUR, and the robust regulatory framework of the banking sector.

The major pillars of this framework are the Bulgarian National Bank Act and the Credit Institutions Act adopted in the beginning of 2007. It also includes the Registered Pledges Act (1996), the Act on Information regarding Non-performing Loans (1997), the Bank Deposits Guaranty Act (1998), the Measures against Money Laundering Act (1998), the Foreign Exchange Act (1999), the Mortgage Bonds Act (2000), The Government Debt Act (2002) and the Bank Bankruptcy Act (2002). Rules related to banking are also adopted by the Council of Ministers and the Central bank.

### **XV.2.1. The Central Bank**

The Bulgarian National Bank (BNB) is the central bank of the Republic of Bulgaria. Its major tasks are – through the mechanisms of monetary – to maintain the national currency stability, to secure the functioning of effective payment mechanisms, and to regulate and

supervise the activity of banks in the country. The bank is responsible for the stability of the banking system and the protection of depositors' interests.

The central bank is the only institution in the country authorized to issue banknotes and coins. It is also obliged upon request to exchange without limitation Euro for Bulgarian levs at a fixed rate. Thus the Bulgarian Lev is "pegged" to the Euro.

The bank has the power to adopt regulations on conducting banking business in the country to the extent provided by the law.

The bank is managed by a Board, a Governor and three Deputy governors. The Board of the Bank consists of seven members - the Governor, the Deputy governors and three members. The Governor and the Deputy governors are appointed by the Parliament.

BNB's activities are organized in three departments – the Issue Department, the Banking Department and the Banking Supervision Department, each reporting to one of the three Deputy governors of the central bank. The Issue Department maintains full coverage of the gross amount of monetary reserves of BNB and manages the international currency assets of the bank. In case of occurrence of a system risk for the banking system stability, the Banking Department performs the function of a creditor of last resort. Supervision over the banking system is exercised by the Deputy Governor in charge of Banking Supervision Department.

### **XV.2.2. Banks and Their Scope of Business**

Under the Credit Institutions Act there are two kinds of credit institutions in Bulgaria – banks and electronic money companies.

The Act defines the bank as a legal entity that attracts deposits and grants credits and other funding on its own risk.

Each bank is entitled to conduct only the business transactions expressly allowed by law and included in the bank license. In addition to the transactions in the definition above, banks can accept valuables at a safe deposit; issue electronic payment instruments; perform transactions of non-cash payments; issue and management of bank cards; provide bank safe deposit boxes; financial leasing and bank guarantees, etc. Banks are not entitled to perform any other business transactions besides the ones listed in the Act, except when it is required in relation to the performance of banking operations.

Besides the banks, electronic money may be issued by the electronic money companies, which have received a license for performing such activities by the BNB or by the competent authority of a member-state.

### **XV.2.3. Establishment and Management**

The Credit Institutions Act includes a list of obligatory requirements with regard to the legal form of the banks and the electronic money companies. It also provides some special requirements to their managing bodies.

Banks can only be incorporated as public companies. At the time of their incorporation, the paid-in capital should be equal to or exceed BGN 10 000 000,00. Contributions can only be made in cash. The bank issues only dematerialized shares, which entitle their holders to one vote.

Electronic money companies can also be incorporated only as public companies. Their paid-in capital should be equal to or exceed BGN 2 000 000,00.

Banks should be managed and represented by at least two individuals jointly. At least one of the managers should speak Bulgarian. The members of the Managing Board or of the Board of Directors can be only individuals having acquired university education with at

least a master's degree and considerable professional experience, in addition to many other requirements they have to meet.

### **XV.2.4. Licensing Procedures**

The Bulgarian National Bank issues the banking permits (licenses) to the banks. Conducting banking operations without such a license is illegal.

The procedures for issue and revocation of banking licenses are defined in chapter III of the Credit Institutions Act and Ordinance No. 2 from 02.12.2006 on licenses and permits issued by BNB.

A license for banking operations in the country can be issued by BNB to a public company based in Bulgaria or a local branch of a foreign bank. A bank licensed in a member-state may operate in Bulgaria after BNB had been notified about that by the respective authority, which had issued the license. Any foreign bank, licensed in a member-state, which is operating via a branch needs to open only one branch, regardless of the number of places of activity.

The application of a local company for a bank license should be accompanied by the founding documents, records of the shares issued and the installments made, a business plan, description of the management and control systems of the bank, personal details about the individuals participating in the managing and control bodies and the persons who have acquired more than 3 % of the shares, as well as other documents, required by Ordinance No. 2 and necessary to decide if all legal requirements are met.

The application for a license for banking operations in Bulgaria through a branch should be submitted together with documents proving the registration of the Bank in its homeland, its Articles of incorporation, the banking license issued by the competent local authority to the applicant bank, a business plan, annual

financial statements for the last three years, a written consent of the banking supervision authority for opening a branch, details about the persons, conducting the branch management, etc. The branch can be license to perform only activities included in the bank license.

BNB performs a research on the validity of the presented documentation and reliability and the financial state of the applicant. Within three months as of the receiving all required documents BNB makes a resolution about the issue of the license. The license is issued if within three months as of the above term provides evidence that the minimum capital had been paid in, all managers had acquired the necessary professional licenses and qualifications, an inside management and control system had been provided, etc.

### **XV.2.5. Banking Sector Stability**

The legal framework of the banking sector is meant to provide a high level of stability. This is an important prerequisite for the development of the economy overall. Therefore, the Law on Banks, together with the BNB regulations and the Law on Bank Deposits Guaranty form a modern framework providing for the necessary strict requirements for banking in Bulgaria.

Banks have to maintain liquidity, i.e. to always be prepared to perform without any delay their daily obligations both in a normal banking environment and in a crisis situation. Banks also have to maintain obligatory minimum reserves in their current accounts in local and foreign currency with BNB against their borrowed funds in BGN and foreign currency, respectively. Capital adequacy of banks is guaranteed through requirements to the minimum amount and structure of banks' equity.

Security of cash deposited in banks is also guaranteed by the statutory requirements to

the admissible risk concentration as a total for the bank or the banking group to each individual customer or related parties. Banks and banking groups should not exceed the ratios of great exposures to equity, as provided in the regulations. In the meaning of the law, an exposure to an individual customer or to related parties is considered to be great when equal or exceeding 10 per cent of the equity of the bank or banking group.

The Law on Bank Deposits Guaranty provides for the creation of a fund, insuring the bank deposits with local banks and with branches of foreign banks, licensed to operate in the country, provided the home country of the bank does not have an adequate system of deposits insurance. This Fund guarantees full repayment of client's deposits with a bank up to the amount of BGN 25 000 in case the banking license is revoked by BNB. Depositors' claims exceeding the repayments of the Fund are satisfied from the assets of the bank.

These requirements for licensing are in general applied to electronic money companies as well.

### **XV.2.6. Bank Secret and Information**

Confidentiality of banking operations is crucial for the activities of each entity using banking services. Every legislator has to balance between the personal privacy and the public security in the combat against the money laundering and terrorism.

By virtue of the Credit Institutions Act bank employees do not have the right to disclose or use to their personal benefit facts and circumstances concerning assets and movements in accounts and deposits of bank's customers. According to the Bulgarian National Bank Act, banks are obliged to submit to BNB all

requested documents and information in relation to the execution of central bank's functions. Beyond such cases, a bank may provide information on the transactions and balances of accounts of individual customers only with the consumer's consent or based on a court decision. The court may order the bank to disclose information in a limited scope of cases and by request of a limited scope of state bodies, for example the district attorney in the case of data pointing to a committed crime. The court may also order the disclosure of information about operations and assets of banks clients at the request of the Director of the territorial directorate of the National Revenue Agency, when the respective evidence has been presented that a person is not conducting the necessary accounting or some accounting documentation has been destroyed, as well as at the request of the Committee on property acquired from criminal activities, the director of the State financial Inspection Agency, the director of the Customs agency and the directors of the Police and The national Security Department.

The bank secret is further limited by the Measures against Money Laundering Act. "Money laundering" is any transformation of assets acquired through a crime in order to hide the criminal origins of the assets or to avoid the legal consequences of the committed crime, as well as any actions aiming the concealing of the nature, source, location or the movement of the above assets, and the acquiring of assets originating from criminal activities.

The Bulgarian National Bank, banks, investment companies, as well as a wide range of legal entities listed in the Act are obliged to identify their clients and the real owners of the clients-legal entities, to collect information about the business activity of the client and monitor the relationship established with him, keep and disclose information on dubious transactions. Banks

identify their clients when establishing business relations, including opening of a bank account and when conducting a transaction in cash in BGN or foreign currency over BGN 10 000,00. In addition, persons and entities are obliged to declare the origin of funds when conducting a bank transaction over BGN 30 000,00 or a transaction in cash over BGN 10 000,00 or their equivalent in foreign currency.

The overall control on the money laundering is conducted by the Financial Investigation Agency, which is an administrative state body under the Ministry of Finance. The Act assigns to a broad range of entities, including banks, to inform the Agency of any cash payment over BGN 30 000 or their forex equivalent made by or to a customer of theirs. This information can be used only for the needs of money laundering combat.

### XV.2.7. Conclusion

A significant number of foreign banks are already present on the Bulgarian market. Most of these entered the Bulgarian market through the privatization process rather than through a licensing of a branch or subsidiary in Bulgaria. It is worth noting that the banking sector was one of the first sectors of Bulgarian economy where privatization was completed successfully.

The banking system in Bulgaria makes stable progress. The trends currently observed are credit expansion, wide spread of banking cards, Internet banking development, etc. The robust legal framework and the development of the Bulgarian economy provide good business opportunities in the banking sector at equal conditions for both local and foreign investors. The Bulgarian banking market still provides business opportunities for both new-coming and existing banks. ■

## XVI INVESTMENT DISPUTES AND DISPUTES RESOLUTION IN BULGARIA

### XVI.1. Legal Framework

#### XVI.1.1. Laws and Regulations

**Civil Procedure Code** (promulgated in State Gazette, issue 12 of 1952, as amended);

**Private International Law Code** (promulgated in State Gazette, issue 42 of 17th May 2005)

**International Commercial Arbitration Act** (promulgated in State Gazette, issue 60 of 1988, as amended);

#### XVI.1.2. International Treaties (Bilateral and Multilateral)

**1958 New York Convention for recognition and Enforcement of the International Arbitral Awards** (ratified by Bulgaria in 1961);

**1958 European Convention on the International Commercial Arbitration** (ratified by Bulgaria in 1964);

**1978 European Convention on Mutual Assistance in Penalty and Civil Matters** (ratified by Bulgaria in 1994);

**1965 Washington Convention for Settlement of Investment Disputes Between States and Other States' Citizens** (ratified by Bulgaria in 2000);

Number of bilateral treaties on protection of investments (over 50) and in the field of legal assistance (over 25) entered into by Bulgaria.

### XVI.2. Investments Disputes. General Review

#### XVII.2.1. Investments Protection Treaties

Bulgaria is a party to more than 50 bilateral Investments Protection Treaties

("Treaties"), and all of them explicitly provide for certain dispute resolution mechanism. The overwhelming majority of the Treaties stipulate for two separate mechanisms applicable depending on the type and level of the dispute: i) a dispute between a signatory state and an investor from the other state; and ii) dispute between the signatory states themselves.

According to most of the Treaties the disputes between the signatory states would be referred to an ad-hoc arbitration in case the parties fail to reach settlement through friendly negotiations. Each Treaty provides for the specifics of the arbitration in each separate case. However, this particular mechanism concerns **only disputes between the states** and it could be initiated only by a contracting state in the event of breach by the other, i.e. at a governmental level. Nevertheless, it may still be used as a (last) indirect possibility for protection of the interest of a particular investor but only if undertaken by its own state.

The direct means of action available to an investor in case of a dispute with the host-state (i.e. Bulgaria) will be reviewed separately below.

#### XVI.2.2. Average Dispute Resolution Mechanism

Most of the Treaties provide for three potential institutions a dispute between a foreign investor and the host-state (Bulgaria) could be referred to:

- ad-hoc arbitration;
- International Centre for Settlement of Investment Disputes (ICSID);
- the competent national (Bulgarian) courts/arbitration.

The different Treaties provide for a number of potential combinations of these institutions. Few of the Treaties admit only the jurisdiction of the national courts or refer all disputes directly to arbitration ad-hoc. Some of the

Treaties grant to the investor the possibility to choose upon its own discretion the institution to which to refer the dispute. The majority of the Treaties, however, provide for a differentiation of the procedure and institution disputes should be referred to depending on the nature of the dispute itself.

The most frequently stipulated mechanism involves:

- Ad-hoc or ICSID arbitration for disputes concerning nationalization or expropriation of investments / property and especially due compensations as well as concerning repatriation (transfer) of investments income, profit and other related funds;
- Jurisdiction of national (Bulgarian) courts in all remaining cases.

However, any investor considering the possibilities to protect its interests in an investment dispute should in any case thoroughly examine the provisions of the particular Treaty between its country and Bulgaria.

### **XVI.2.3. Arbitration Ad-hoc**

As a principle, ad-hoc arbitration stipulated in the Treaties would be held by three arbitrators. Each party would appoint one arbitrator whereas the third to be appointed by the other two should in most cases be national of a third country which keeps diplomatic relations with both contracting states. Some of the Treaties stipulate the third arbitrator to be appointed by a respected international institution. Many of the Treaties explicitly refer to UNCITRAL arbitration rules (<http://www.uncitral.org/english/texts/arbitration/arb-rules.htm>).

### **XVI.2.4. International Center for Settlement of Investment Disputes (ICSID)**

ICSID is an autonomous institution closely linked to the World Bank. ICSID was established by the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. The purpose of the Convention is to stimulate larger flow of private international investment between participating countries. ICSID procedures are specifically designed for the settlement of disputes between foreign investors and host nations. ICSID is a de-localized system operating independently and exclusively of domestic legal systems. The role of domestic courts is limited to judicial assistance in recognition of ICSID awards.

Further information on ICSID is available at: <http://www.worldbank.org/icsid/>.

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## **XVI.3. National (Bulgarian) Court/Arbitration**

### **XVI.3.1. Court Dispute Resolution**

The Bulgarian Judicial System and the hierarchy of Bulgarian courts include four types of judicial bodies: district courts, regional courts, courts of appeal, and topping the hierarchy are the two highest courts – the Supreme Court of Cassation and the Supreme Administrative Court.

The resolution of disputes by the courts is generally regulated by the Civil Procedure Code (“CPC”). According to the CPC Bulgarian courts are exclusively competent to consider all civil cases including investment disputes.

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<sup>1</sup> However persons enjoying extraterritoriality, as well as the foreign countries, shall be subject to the jurisdiction of the Bulgarian courts under the following circumstances: when they have initiated the proceedings themselves; under cases related to their companies in Bulgaria and under cases for rights on real estates located in Bulgaria.

Bulgarian courts are competent to administer justice against all persons (individuals and legal entities) in Bulgaria except in cases of extraterritoriality<sup>1</sup>.

Since 1st January 2007 when Bulgaria became a Member to the European Union the relevant EU laws will be applicable in Bulgaria including Council Regulation (EC) No.44/ 2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. In case Bulgarian courts will be competent to resolve an investment dispute under the rules of the Regularion, the provisions of CPC will be applied for the court proceedings.

Court proceedings in front of Bulgarian courts may develop in three or in some cases with interest under a certain limit - in two, instances.

Prior to the lodging of the claim or after the claim has been lodged the claimant may request the court to impose against the assets of the (future) defendant specific injunction measures for a total amount of up to the size of the claim . Such injunction may be enforced by placing interdict on a real estate; distraint on movables and receivables of the debtor and by other appropriate measures, determined by the court, including by stopping of the implementation of some actions of the debtor.

The court fees involved in a dispute resolution procedure depend on the scenario of the particular case. Generally, they may be summarized as follows:

- Court fee for the first instance court – 4 % of the claim's value but not less than BGN 15.
- Court fee for the second (and third, when applicable) instance court – 2 % of the amount of the appealed part of the ruling.

In addition parties may have to pay court expenses for the appointment of court experts, summons of witnesses, etc.

The Bulgarian Private International Law Code ("PILC") provides for specific rules applicable to the recognition and enforcement of foreign judgements, but in

case the foreign judgment is issued by a court of a EU Member State the provisions of Council Regulation (EC) No.44/ 2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters will be applicable. Both legal instruments have similar provisions.

According to the PILC the judgements of foreign courts shall be recognized by the authority whereto the said judgment is presented. Should the conditions of recognition of the foreign judgment be raised as the issue in a dispute, an action for ascertainment may be brought before the Sofia City Court. This court is competent to hear cases for enforcement of foreign judgments as well.

In proceedings for recognosion and for enforcement of foreign judgments the court shall not examine the merits of the dispute decided by the foreign court. It will only verify the conditions covered as defind by the PILC, namely: 1/ that the foreign court had jurisdiction according to the provisions of Bulgarian law, but not if the nationality of the plaintiff or the registration thereof in the State of the court seised was the only ground for the foreign jurisdiction over disputes in rem; 2/ that defendant was served a copy of the statement of action, the parties were duly summoned, and fundamental principles of Bulgarian law, related to the defence of the said parties, have not been prejudiced (however the defendant in the proceedings for recognition and enforcement of the foreign judgement may not invoke such violations in case the said defendant could have raised them before the foreign court); 3/ that no effective judgment has already been given by a Bulgarian court based on the same facts, involving the same cause of action and between the same parties; 4/ that no proceedings based on the same facts, involving the same cause of action and between the same parties, are brought before a Bulgarian court earlier than the case instituted before the foreign court in the matter of which the judgment whereof the

recognition is sought and the enforcement is applied for has been rendered; and 5/ that the recognition or enforcement is not contrary to Bulgarian public policy.

The above said shall furthermore apply to court settlements, if they enjoy equal status as judgments of court in the State in which they are reached.

The state fee for filing an application for recognition and enforcement of a foreign judgment depends on the value of the claim and is 4 % on the respective amount.

### **XVI.3.2. Alternative Dispute Resolutions**

Being faster and less expensive compared to the court proceedings, arbitration is the most popular out-of court alternative dispute resolution in Bulgaria. Arbitration in Bulgaria is based on the regulations of the International Commercial Arbitration Act ("ICAA") and the relevant international treaties to which Bulgaria is a party.

ICCA applies to international commercial arbitration, based on an arbitration agreement when the place of arbitration is within the territory of the Republic of Bulgaria. The arbitration is only competent to settle civil disputes arising out of international economic relations, as well as disputes related to the filling gaps in contracts or their adaptation to newly arisen circumstances when the residence or the domicile of at least one of the parties is not within the territory of the Republic of Bulgaria. The CPC explicitly excludes from the competence of the arbitration the disputes having as their subject matter any real rights or possession over a real estate, alimony or a right under a labor relation.

There are more than a dozen arbitration institutions in Bulgaria at the moment such as the Marine Court of Arbitration at the Bulgarian Marine Chamber, Sofia Court of Arbitration at the Association for Internal and International Arbitration, Court for Small Civil Disputes at the Bulgarian Association for Civil

Society and Legal Initiatives, etc. The most famous and reputable among them are the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry (<http://www.bcci.bg/arbitration/index.html>) and the Arbitration Court at the Bulgarian Industrial Association (<http://www.bia-bg.com/arbitration/>).

The fees attributable to the arbitration institutions in Bulgaria differ from one another and are specified in their respective Tariffs and Rules on Arbitration. In principle the fees are formed on the basis of the value of the claim as they increase in proportion to it.

The state fee for the enforcement of an arbitration award issued by an arbitration court in Bulgaria is 0.2% on the interest for which the enforcement is requested.

With regard to the recognition and enforcement of foreign arbitration awards the ICCA refers to the international agreements to which Bulgaria is a party. In view of the above mentioned such awards shall be recognized and enforced in compliance with the provisions of the New York Convention for Recognition and Enforcement of Foreign Arbitration Awards (the "Convention") to the extent it is not conflicting to the bilateral agreements concluded by Bulgaria which provide for specific rules for recognition and enforcement of foreign arbitration awards. Unless otherwise provided in an international convention to which Bulgaria is a party the competent court is the Sofia City Court.

Sofia City Court may in some specific cases refuse the recognition and enforcement of the award, f. ex. where there was no valid arbitration agreement or in case of breach of the procedural rules or the provisions of the arbitration agreement as well as when the recognition or enforcement of the award would be contrary to the public order in Bulgaria.

The fee collected by the Sofia City Court for the recognition and enforcement of foreign arbitration awards is fixed to 0,4 % of the amount for which enforcement is requested. ■

**XVII TELECOMMUNICATION****XVII.1. Legislation**

The TA'03 was significantly amended in 2005 to reflect the creation of special agency called State Information and Communication Technologies Agency which is the policymaker in Bulgaria. The Agency issues the secondary acts (such as ordinances, methodologies, etc.) or drafts such act when they have to be adopted by the council of ministers.

The market is regulated by the Communications Regulatory Commission which has the basic competences to: issue, amend, supplement, suspend, terminate and revoke individual licences for telecommunication activities; issue class licences for telecommunication activities, register and write off operators under such class licences; work out the National Numbering Plan; determine and study the respective markets for the purpose of determining SMP operators and make decisions regarding the imposing of specific obligations on them; assign the provision of universal telecommunications service.

There are three types of regimes under which the telecommunications operators may operate:

- **licensing regime** – operators are awarded individual licences for performance of specific telecommunications activities such as telecommunication networks with individually assigned scarce resources; networks for provision of fixed voice services or for provision of leased lines etc.

- **class licence regime** – there is a set of generally applicable requirements and all persons that want to perform the activity receive certificates of registration.

The activities include inter alia cable TV and other types of activities that do not require use of scarce resources as well as activities which are exercised through use of generally available scarce resources.

- **Free regime** – for private networks that do not use individually assigned scarce resources as well as access to Internet.

Presently a draft of new Electronic Communications Act was prepared by the Agency, approved by the Council of Ministers and submitted to Bulgarian Parliament for discussions and adoption. This Act should replace the current Telecommunications Act'2003. The aim of the policymaker in the field of telecommunications and the legislator is as of 01.01.2007 the new Electronic Communications Act to be in force providing full transposition of EU Acquis 2002 in the field of telecommunications.

**XVII.2. Fixed Lines Market**

- Nowadays Bulgaria has an open legislation for telecom investments (Telecommunications Act, 2003). Fixed telephony could be formally said as one liberalized service. From a legal point of view there are no essential barriers of entrance. The market is facing serious competition and develops shortly. However, the so-called alternative operators are relatively small in size and they still rely mostly on the incumbent operator's (the Bulgarian telecommunications company) infrastructure and wholesale services in order to provide their retailed services on the market.

- Based on the Law and license for BTC only as SMP operator both on fixed telephony and leased lines market there are several ongoing obligations to provide wholesale services under Reference

Offers as follows: for interconnection, including carrier selection and carrier pre-selection, leased lines, collocation and local loop unbundling. BTC only on the telecommunications market is obliged also to apply cost oriented pricing for all above services.

- In spite of the regulatory framework in force which seems to be aimed to foster so called “facility – based” competition the regulator tries to promote the “service-led” completion on the market. It seems that the current regulator is overly concerned with the welfare of current consumers by requiring prices to be set very low, then investments in network infrastructure and this could cause problems in the long term perspective. The competition in a network industry is not symmetric, because the alternative providers don't invest in network infrastructure.

- For the time being BTC is the only Bulgarian fixed operator that is investing in infrastructure – Digitalisation of the network is in process, as well as installation of new lines in remote areas. Another essential pressure for BTC is the asymmetric mobile termination charges. Mobile operators charge higher fixed-to-mobile call termination prices than mobile-to-mobile.

### XVII.3. Mobile Market

- At present there are four mobile operators that are active on the Bulgarian market- three of them operating under the GSM standard and one NMT operator.

- The NMT operator operating under the brand name Mobikom was licensed back in 1993 and at present it has constantly decreasing number of subscribers due to technical imperfection of the technology used.

- The GSM operators were licensed in 1994 (Mobiltel), 2000 (Globul) and 2004 (Vivatel). These operators are competing strongly against each other and as a result the prices of mobile services have dropped considerably especially after the launch of the third operator which commenced commercial operation in 2005.

- The GSM operators were awarded UMTS licences in April 2005 after conducting an open tender. Presently, only Mobiltel has started providing some initial UMTS services.

### XVII.4. Alternative Service Providers

The CRC has issued eighteen licences for provision fixed voice services. ■

## XVIII PERSONAL DATA PROTECTION – NEW DEVELOPMENTS

### XVIII.1 International Aspect

The Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of The Council of Europe<sup>1</sup> (Convention 108), adopted on January 28th, 1981 was ratified by Bulgaria in May 2002. The Convention is in force in Bulgaria since January 2003 and its text was promulgated in the State Gazette in March 2003.

The purpose of the Convention is to secure respect for rights and fundamental freedoms of individuals, and in particular their right to privacy, with regard to automatic processing of personal data related to them.

### XVIII.2. Applicable Bulgarian Legislation

The Bulgarian legislation provides a general data protection regime, contained in the Personal Data Protection Act (PDPA), in force from January 1st, 2002. The Act was adopted in the end of 2001 and promulgated in State Gazette issue #4, 2002. In general the Act follows the main standards set in Convention 108.

The PDPA text guarantees free collection and processing of personal data whenever that is necessary, provided expressly stated principles were followed:

- The data should be processed lawfully and in good will;
- Collected for concrete, precisely defined

and lawful purposes;

- The data should be proportional with the purposes for which they are processed;
- The data should be precise and are to be up-dated if necessary;
- The data should be extinguished or corrected when they were found incorrect or disproportionate to the purposes of their processing;
- The data should be kept in such a manner that allows identification of the respective individual for a period not longer than the one necessary for the purposes of the data processing.

The version of PDPA adopted in the year 2002 contained texts that generated a lot of practical problems. The latter were related mainly to the application field of the law and the registration of data controllers' regime.

End of the year 2005 the general regulation of personal data protection laid down in PDPA was substantially changed especially with respect to the personal data definition, the administrators of personal data registration regime, etc.

### XVIII.3. Definition Changes

One of the significant changes in PDPA was the new personal data definition in Article 2, para.1 „Personal data shall be any information referring to an individual that is or could be identified directly or indirectly with an identification number or by one or more specific indicators related to his/her physical, physiological,

<sup>1</sup> Convention № 108 of the Council of Europe from Jan. 28, 1981 for the Protection of Individuals with Regard to Automatic Processing of Personal Data – ratified by the 39th Parliament of Bulgaria on May 29, 2002. – State Gazette issue 56 June 7, 2002; published by the Ministry of Interior promulgated in SG issue 26 of 21.03.2003., in force as of 1.01.2003.

genetic, psychic, psychological, economic, cultural or social identity. From the definition dropped out data related to the participation of physical persons in civic associations and/or the management, control and supervision of bodies corporate, as well as in governmental bodies. That amendment guaranteed to the citizens a wider access to information especially regarding information about public persons in line with the Constitutional Court's perception in the interpretation of Articles 39 to 41 of the Bulgarian Constitution.

The second significant amendment to the definition, already mentioned above, was the express listing in paragraph 1 of Article 2 of the principles to be followed regarding the collected data.

#### **XVIII.4. Application Scope Changes**

With the new amendment PDPA is to be applied only with respect to the processing of personal data comprising of or designated to be part of a public registry. The processing is to be performed by a personal data administrator. Article 4, paragraph 2 expressly allows free collection and processing of personal data in cases when it serves journalism, literature or art expression.

#### **XVIII.5. Administrators of Personal Data Registration Regime Changes (article 17, paragraph 2)**

Subject to Article 3, para 1 of the PDPA administrator of personal data is any physical or body corporate, as well as governmental body, which according to the activity performed defines the type and volume of data processed, their aim, means for processing and protection.

The position of data administrator originates from the type of activities

performed by the respective person. Pursuant to the text of the PDPA prior to the amendment each person processing personal data was subject to registration at the Personal Data Protection Commission (the Commission). That general obligation resulted to be unnecessary and created practical problems to the business and to the Commission itself. The amended text of the law provides for obligatory registration only for administrators who:

- Process the so called sensitive personal data (disclosing racial or ethnical origin, political, religious or philosophical beliefs, etc.);

- Process personal data performing obligations under law;

- Support registry with data for more than 100 individuals;

- Were expressly obliged by the Commission.

The Bulgarian Personal Data Protection Act provides for the establishment of an independent body - the Personal Data Protection Commission, which overlooks the implementation of the Act. The Commission was elected by the Bulgarian Parliament on May 23, 2003. Subject to Article 10 of the PDPA the Commission was granted a number of rights, so that it may effectively ensure the data protection of individuals in cases of violation of their rights. The Commission is entitled to review appeals against personal data controllers, perform inspections, issue binding decisions, order temporary suspension of personal data processing and impose sanctions on persons, who process personal data against the provisions of domestic law. The Commission creates and keeps a register of data controllers. Under the PDPA the Commission is to adopt internal rules, regulating its activities, describing the structure of its administration, the procedures for keeping the data controllers

register and the procedures for considering appeals, issuing orders and imposing sanctions. The initially adopted Rules for the work and organization of the Commission provided for an administration of 76 officials, including its members. Until now most of the positions have not been filled in<sup>2</sup>.

misuse of personal data, transferred through electronic communication networks. ■

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**XVIII.6. Personal Data Protection in the Telecommunications and High Technology Sector**

The Telecommunications Act adopted in 2003 stipulates the confidentiality of the messages and the protection of personal data in long-distance telecommunications. Legal vacuum exists in the protection of personal data with regards to Internet technologies. This vacuum has not been filled in 2004. Nevertheless, the Council of Ministers adopted with its Decision # 885 dated November 10th, 2004 an Updated Policy for the Telecommunication Sector of Republic of Bulgaria. The Policy confirms the necessity for drafting and adoption of an amendment to the Telecommunications Act or a new Electronic Communication Act, which should provide for the protection of personal data contained in the electronic messages. Urgent amendment is required for the stipulation of the right of the subscribers to all kind of electronic services to decide whether they want to be included in a public directory or not.<sup>3</sup> It is expected that the scope of the personal data protection legislation will be enlarged. Legal safeguards are to be implemented against violation of people's privacy and

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<sup>2</sup> In comparison to the Bulgarian Commission, the Personal Data Commissioner of Ireland has an administration of 16 officials, while 40 people work for the Commissioner of Sweden.

<sup>3</sup> The current Telecommunications Act (Art.97) stipulates that all subscribers should be included in the public registers, despite of their will.

**XIX AUDIO-VISUAL SECTOR****XIX.1. Legal Framework**

The audio-visual sector is governed by the Radio and Television Act. Some relevant provisions can be also found in the Act for the copyright and related rights. Almost the whole legal framework is in accordance with the European standards and the legal rules contained in the international instruments related to the subject matter of this sector.

**XIX.2. Commercials, Radio and Television Market and Sponsorship****XIX.2.1 Commercials**

The commercials must be in accordance with the requirements for loyal competition under the legislation in force. The commercials cannot encourage behaviour harmful to the health or the personal security of the citizens, as well as behaviour damaging the environment. It is prohibited to broadcast commercials containing pornography or inciting violence and humiliation of the human dignity as well as behaviour that violates the public peace and good manners. Forbidden are commercials with erotic contents with participation of underage and minors or designated for them. It is also forbidden to broadcast commercials based on national, political, ethnic, religious, racial, sexual and other discrimination.

The commercials directed to underage persons must meet the following conditions:

- not to appeal to the underage to purchase commodities or use services taking advantage of their inexperience or trustfulness;
- not to use the special trust the underage have in their parents, teachers and other persons;
- not to show underage in dangerous situations.
- not to encourage directly the minors and the underage to convince their parents or

other persons to buy the commodities or the services which are advertized.

Prohibited are also commercials using means of subconscious suggestions as well as concealed commercials.

The owner of the commercials is obliged not to interfere with the contents of the programmes.

The commercials cannot use the state coat-of-arms, the anthem of the Republic of Bulgaria, persons occupying elective positions in the state government, as well as the voices and the images of journalists working for the operators - regarding news, political and economic broadcasts.

The commercials for commodities and services for whose production and trade special permit is required can be included in the programmes of the radio and television operators only after the commercial owner presents the necessary permit.

Prohibited are any commercials for cigarettes and for the smoking.

The commercials for all kinds of alcoholic drinks must meet special requirements.

The commercials for medical supplies and medical treatment can be included in the programme only if they are in accordance with the legal requirements. Commercials for medical supplies and medical treatment permitted for use only by a doctor's prescription is prohibited. Prohibited is also the radio and TV market of medicines and medical treatment.

The commercials must be clearly distinctive as such and to be separated from the other parts of the programme by visual or sound means. The commercials are included in the programmes in the form of commercial blocks. As an exception, the programmes can include individual commercials. In broadcasts consisting of individual parts the commercials can be included between these parts.

**XIX.2.2 Sponsorship**

The individual broadcasts of the operators can be sponsored entirely or partially.

Sponsors of broadcasts cannot be political parties and organizations, religious organisations or persons whose main activity is the production of commodities and services prohibited for commercials. Political and economic broadcasts cannot be sponsored if they contain analyses and commentaries or whose subject is similar to the subject of activity of the sponsor. News cannot be sponsored, with the exception of the sport news, if they are separated from the other parts of the programme by visual or sound effects or an individual broadcasting.

The sponsor doesn't have the right to influence the contents and the presentation of the sponsored broadcast. The sponsored broadcasts cannot appeal for sales, purchase or using commodities and services of the sponsor or of third person, particularly by showing these commodities and services in the broadcasts. The name of the sponsor and/or his trade mark can be mentioned, presented or indicated in another way, only at the beginning and/or at the end of the broadcasting.

### **XIX.3. Licensing And Registration of Radio and Television Operators**

#### **1. General information**

Radio and television activity by using available and/or construction, maintaining and using new telecommunication networks for ground broadcasting is carried out on the basis of licences issued by the Council for electronic media. Applicants for licence can only be natural persons-sole entrepreneurs and corporate legal persons registered under the Bulgarian legislation. They may also be foreign natural persons and corporate legal persons, registered as merchants under the legislation of a Member State of the EU.

The Bulgarian National Radio and the Bulgarian National television are licensed and registered for telecommunication and program activity under Law for the telecommunications

and RTA without a tender or a competition.

Applicants for issuance of licence cannot be:

- legal persons to whom it has been refused or withdrawn the licence for insurance activity;
- legal persons, natural persons-sole entrepreneurs who cannot prove the ownership of the property or of the capital according to the Law for the measures against money laundry;
- legal persons in which the persons under item 2 possess shares;
- natural persons-sole entrepreneurs and corporate bodies who, during the last five years preceding the application for licence have been declared insolvent or are under proceedings for insolvency or liquidation;
- legal persons with partners or share holders who are partners or share holders of corporate bodies with registered subject of activity "advertising" or carry out advertising activity;
- legal persons with partners or share holders who are partners or share holders of companies with registered subject of activity "guarding activity" or carry out guarding activity;
- telecommunications operators with monopoly status on the market.
- natural persons-sole entrepreneurs and legal persons who, during the last year, preceding the application for licence, have received a refusal for the same kind of licensed activity or the licence issued under RTA has been withdrawn.

The candidates for licence have to present to the Council for electronic media the following documents:

- certificate for good standing or respective document (regarding the foreign persons) having been issued not more than one month before the date of filing the application;
- documents proving the origin of the capital for the last three years, including endorsed accountancy report, considered from the date of filing the documents;
- a list of the media enterprises where they are stock holders or partners.

The licence is personal. The transfer of a licence may be permitted by the Council

for electronic media in accordance with the requirements for the persons for initial licensing. In case of transfer of a licence for radio and television activity Commission for regulation of the communications has to be informed. This Commission has to transfer the individual licence for telecommunication activity for using and/or construction, maintaining and using new telecommunication networks for ground broadcasting to the person to whom the respective licence for radio and television activity has been transferred.

At the time of presentation of the documents for receiving licences the applicants have to declare that they do not possess shares, stock or other rights of participation in radio and television operators above the admissible percentage according to the Competition Act.

The licences is issued for a period of up to 15 years. The term can be prolonged by the Council for electronic media upon request of the licensed person, as the total duration cannot be longer than 25 years. The term of the licences under the Telecommunications Act must correspond to the term of the licence under RTA. The licence for radio and television activity must contain:

- the name (the firm) and the headquarters of the radio operator or television operator;
- the kind (public or commercial);
- the date of issuing of the licence;
- the initial date of broadcasting of the programme;
- the range of broadcasting;
- the duration of the licence;
- the technical and other requirements for the programmes.

## 2. The procedure for licensing

The applicants for licence for radio and television activity must file written application to the Council for electronic media accompanied by:

- articles of incorporation;
- certificate for commercial registration or documents certifying the formation of the legal person;

- a certificate under the Tax-insurance Procedure Code for presence or absence of public obligations;
- proposal for method of broadcasting of the programmes;
- declarations under RTA;
- proof of availability of enough financial resources for performance of the activity;
- programme project, programme concept, programme profile, programme scheme, list of the additional radio and television services;
- proof of commercial and ceded copyright for protected work in the programmes and for ceded related rights for ceded broadcasting of foreign programmes.

The Council for electronic media has to inspect the regularity of the filed documents. When omissions and shortcomings are found in the documents the applicant has 7 days for their removal. If the omissions and shortcomings are not removed within that period the documents of cannot be considered.

The procedure of holding of competition can be opened upon request of an interested person or by initiative of the Council for electronic media. The Commission for regulation of the telecommunications must present to the Council for electronic media its decision on the request within three months, and when international coordination of the radio frequencies and radio frequency bands is necessary - within 6 months, following the requirements for the efficient use of the radio frequency spectrum. In case of approval the Commission for regulation of the communications must prepare a draft licence for telecommunication activity, as well as appendixes containing the respective technical parameters for the licences which can be issued by the Commission for regulation of the communications in accordance with the available free radio frequency spectrum. Within 14 days from receiving the reply the Council for electronic media must take a decision for opening competition or competitions in accordance with the available free radio frequency spectrum. The decision has to be

promulgated in the State Gazette and has to contain the date, the place and the hour of holding the competition, the term and the place of filing applications for participation, the place, the term and the order of purchasing the competition papers.

The competition papers contain:

- draft licence for telecommunication activity and the appendix to it containing the technical parameters in accordance with the available radio frequency spectrum;
- requirements regarding the rate of development and/or servicing;
- requirements for environmental protection;
- requirements for quality;
- requirements with regard to the creative, financial and technical capacities and experience;
- criteria for assessment and their relative importance in determining the complex assessment, by following the requirement for priority of the assessment of the programme project.

The Council for electronic media must appoint a chairman and members of an expert commission for conducting the competition which obligatorily includes members of the Council for electronic media and of the Commission for regulation of the communications. Participants in the commission can also be experts from other interested administrative agencies and structures. Within a period of three days from the enactment of the decision for issuing licence the Council for electronic media has to inform the Commission for regulation of the communications. Within period of ten days the Council for electronic media has to issue licence for radio and/or television activity and the Commission for regulation of the communications has to issue individual licence for telecommunication network for using available and/or construction, maintaining and using new telecommunication networks for ground radio broadcasting.

### 3. Supervision and termination of the licence

The supervision for the observance of the law and the requirements under the licence must be carried out by the respective officials from the Council for electronic media.

For established offences the Council for electronic media is obliged within one month to consider and discuss the presented documents and take decision for imposing proprietary sanctions and/or revoking of the licence.

The licence must be revoked in cases of:

- gross violation of the principles of the radio and television activity;
- systematic offences of the provisions of RTA

In case of revoking a licence for radio and television activity the Council for electronic media informs the Commission for regulation of the communications which, within 10 days, has to revoke the individual licence for telecommunication network for using available and/or construction, maintaining and using new telecommunication networks for ground radio broadcasting.

Not later than 6 months before the expiration of the term of the licence the licensee must declare intention for extending the term of the licence. The Council for electronic media has to consider the request for extension of the term of the licence.

## XIX.4. Registrations

Persons who wish to create radio or television programmes for broadcasting through technical methods other than ground radio broadcasting are subject to registration.

On the grounds of the decision of CEM a certificate has to be issued to the applicant containing:

- the name and the headquarters of the radio or television operator;
- the name of the programme;
- the type (public, commercial);
- the programme profile (format);
- initial date of broadcasting the programme. ■

**XX ENERGY SECTOR****XX.1. Introduction. Basic Legal Definitions**

The Energy sector is governed by the Energy Sector Act (hereinafter referred to as ESA). This Act settles the public relations with regard to the implementation of the activities of production, import and export, transfer, transit transfer, distribution of electric and heat energy and natural gas, transfer of oil and oil products through pipelines, trade with electric and heat energy and natural gas and using restorable energy sources, as well as the legal powers of the state structures in determining the state policy, regulation and control.

**XX.2. Regulation of the Activities in the Energy Sector****XX.2.1. State Commission for Energy and Water Regulation**

The regulation of the activities in the energy sector and in the water supply and sewerage is carried out by the State Commission for Energy and Water Regulation (hereinafter referred to as the Commission). The Commission is an independent, specialized state structure – a corporate legal person with headquarters in Sofia. It is a collective body consisting of 13 members, including a chairman and two deputy chairmen. The chairmen, the deputy chairmen and the members of the Commission are elected on the basis of a decision of the Council of Ministers and are appointed by the Prime Minister.

**XX.3. Licenses****XX.3.1. Issuing of Licenses.**

The activities subject to licensing under ESA are:

- production of electric and/or heat power;
- transfer of electric power, heat power or natural gas;
- distribution of electric power or natural gas;
- storing of natural gas;
- trade with electric power;
- organizing of market of electric power;
- public supply of electric power or natural gas;
- transit transfer of natural gas;
- supply of electric power or of natural gas by end suppliers;
- management of the electric power system;
- distribution of electric power to distribution networks of the railway transport.

The license allows the implementation of some of the above mentioned activities under conditions pointed by it and it is an integral part of the decision for its issuing.

If a license is issued before the construction of the energy site for performing the relevant activity, the license has to include the conditions for the construction of this site and a term of starting the licensed activity.

Issuing of license is not necessary for:

- production of electric power by a person-owner of electric power station with overall installed capacity up to 5 MW;
- production of heat power by a person-owner of a heat power station with overall installed capacity up to 5 MW;
- transfer of heat power by a person-owner of heat transfer network, to which are connected power stations with a overall installed capacity up to 5 MW;
- production of heat power for own consumption only.

License is issued to a corporate legal person registered under the Commercial Act which:

- has the necessary technical, financial, material and human resources and an organizational structure for meeting the legal requirements for performing the licensed activity;

- has real rights on the energy sites by means of which it will carry out the activity, if they are built;
- gives proof that the energy sites by means of which the licensed activity will be performed correspond to legal requirements for safety and for environmental protection.

License must not be issued if there is a danger of harming the life and the health of the citizens, the property of third persons and the interests of the consumers, lack of the reliable supply of electric or heat power or natural gas.

In case where the same person performs more than one of the licensed activities, individual licenses must be issued for every activity.

The license may also be given to a legal person incorporated and existing under the law of a Member State of the European Union or of another country – party to the European Economic Area Agreement in accordance with the above mentioned conditions.

The license is issued for a period of up to 35 years in correspondence with the legal rules of the respective ordinance. The term of the license may be prolonged for a period not longer than the above mentioned period if the holder of the license meets the relevant legal requirements and performs all obligations and requirements of the license, and it has filed a request in written form for extension at least one year before the expiry of the term of the initial license.

Only one license may be issued on the territory of the country for:

- transfer of electric power or natural gas;
- organizing market of the electric power;
- public supply of electric power or natural gas;
- management of the electric power system.

Only one license may be issued for one outlined territory for:

- distribution of electric power or natural gas;
- supply of electric power or natural gas by end suppliers;
- transfer of heat power.

One outlined territory of distribution of electric power has to comprise no less than 150 thousand consumers connected to the distribution network. This territory must include at least one region according to the administrative and territorial structure of the state.

For an outlined territory only one license for supply of electric power by end suppliers is issued.

One outlined territory of distribution of natural gas has to include no less than 50 thousand consumers who might be connected to the distribution network.

The holder of the license for management of electric power system, may not be granted another license for other licensed activity under ESA except for a license for organizing a market of electric power.

The licensee for transfer of natural gas may not be granted a license for another licensed activity under ESA, except for a license for storing natural gas and a license for transit transfer of natural gas. The holder of a license for transfer of natural gas may not trade with natural gas.

Persons to whom license has been issued for distribution of electric power may not be granted licenses for other licensed activities under ESA.

Persons to whom license has been issued for distribution of natural gas, may not be granted licenses for other activities subject to licensing under ESA, except for a license for public supply of natural gas or for supply of natural gas by an end supplier, if the consumers, connected to the gas transfer network on this territory are less than 100 000.

The license has to define:

- the title of the license;
- the licensed activity;

- the sites through which the licensed activity is carried out;
- the territorial range of the license;
- the period of the license;

### XX.3.2. Competition

Only if there is a necessity of a new capacity for production of electric power, established and announced in a public way, the holder of the license including an obligation for its construction has to be determined by a competition.

The holders of licenses for distribution of natural gas for the outlined territories have to be determined by competitions.

If the competition is won by a foreign person that is not registered in a Member State of the European Union or in another country – party to the European Economic Area Agreement then the license has to be issued to a company registered under the Commercial Act, in which the foreign person possesses at least 67 percent of the capital.

The public supplier has to conclude a contract for purchasing electric power with the person that has won the competition.

### XX.3.3. Amendments, Supplements, Termination and Withdrawal of Licenses

The license may be amended and/or supplemented by the Commission at a request of the licensee or at an initiative of the Commission.

The Commission has the right to an initiative for amendment and/or supplement of an issued license in the following cases:

- of guaranteeing the reliability or the uninterrupted and quality supply of the consumers with electric and heat power and natural gas;
- of changes in the legislation;
- of guaranteeing the national security and the social order in cooperation with the

respective competent state authorities;

- of danger of harming the life and the health of the citizens, of harming the environment or the property of third persons if it does not require withdrawal of the license and/or at the proposal of specialized state structures;
- of allowing transformation of a licensee or an administering transaction if this is not related to termination of the license.

The Commission has to inform the holder of the license for the start of the proceedings for amendment and/or supplement of the license.

The Commission permits reorganization of a licensee through merger, consolidation, division, separation if the person that will perform the licensed activity after the reorganization meets the requirements for issuing of license for the specific activity.

Transactions for transferring sites under construction or property by means of which the licensed activity is performed, may be concluded only in their entirety, upon a permit of the Commission.

The Commission also issues a permit in the cases of pledge or mortgage of a property by means of which the licensed activity is carried out.

Permit is not necessary in cases of replacement or modernization.

The transactions that violate the preceding rules may be declared void by the court at a request of the Commission or every interested person.

On privatization of a separate part of an energy enterprise a permit may not be required. The Commission issues a license to the new owner if he has requested the issuing of a license and meets the requirements for its issuing.

The license is terminated by the Commission:

- at a request of the holder of the license, including for a example a transfer of the property by means of which the licensed

activity is carried out;

- on a loss of the energy site by means of which the licensee carries out its activity;
- on reorganization of the holder of the license if the reorganization leads to termination of the corporate legal person – holder of the license;
- on entering into force of a court decision for declaring the licensee bankrupt or of a decision for termination of the activity due to liquidation of the licensee.

The Commission may also terminate the license if the licensee does not perform the licensed activity for a period of more than one year.

The licensee is obliged, at least one year before the expiry of the term of the license to submit an application for prolongation of the term, or to inform the Commission that the licensee will not carry out the licensed activity upon expiry of the term.

The Commission, upon a notification within a set period, shall withdraw the license if the licensee does not perform its obligations or violates instructions of the control structures of the Commission.

The Commission may withdraw a license for distribution of natural gas, issued after a held competition, if the licensee does not construct, within the period pointed in the license, the respective gas distribution network shown in its offer for participation in the competition.

## **XX.4. Electric Power Sector**

### **XX.4.1. General Review. Electric Power System.**

All electric power sites on the territory of the country are connected and functioning in a unified and integrated electric power system with a joint operational regime and an interrupted process of production, transformation, transfer, distribution and consumption of electric power. The

electric power system includes the electric power stations, the transfer network, the distribution networks and the electric utilities of the consumers.

“Electric transfer network” is a unity of electric power lines and electric equipment serving for transfer, transformation of the electric power of high voltage to medium voltage, redistribution of electric flows or transit of electric power to a third party.

“Electric power lines” are installations for connection of electric facilities for transfer, transport or distribution of electric power.

“Electric distribution network” is a unity of electric power lines and electric facilities of high, medium and low voltage serving for distribution of electric power.

### **XX.4.2. Production of Electric Power**

Production of electric power may be performed by energy enterprises having received license for production under ESA. The producers of electric power are obliged to maintain reserves of fuel, including local solid fuel in quantities guaranteeing a continuous and reliable production.

### **XX.4.3. Transfer of Electric Power and Management of the Electric Power System**

The transfer of electric power is performed by a transfer enterprise – owner of the transfer network, having received license for transfer of electric power. The holder of the license may assign by means of a contract the exploitation and the maintenance of the transfer network only to the electric power system operator, who has received a license for management of the electric power system. The transfer and the transformation of electric power is a universally offered service. The transfer enterprise has to provide the expansion, reconstruction and the modernization of the transfer network in

accordance with the long-term prognoses and plans for development of the electric power sector.

The electric power system operator provides:

- the united management of the electric energy system and the reliable functioning of the transfer network;
- the transit of electric power through the transfer network;
- the maintenance of the sites and equipment of the transfer network in accordance with the technical requirements and with the requirements for safety;

In order to draft the energy balance of the country, the electric power system operator has to:

- prepare prognoses for change of the consumption of electric power in the country;
- organize research of the possibilities of expansion and modernization of the transfer network, introduction of new technologies.

#### XX.4.4. Distribution of the Electric Power

The distribution of electric power and the functioning of the distribution networks is performed by distribution enterprises – owners of the distribution networks on a separate territory, licensed to perform the distribution of electric power to the respective territory of the country. The distribution of electric power is the universally offered service.

The distribution enterprise has to provide and guarantee:

- distribution of the electric power received in the distribution network;
- continuity of the electric power supply and quality of the supplied electric power;
- management of the electric distribution network;
- maintenance of the distribution network, sites and equipment in accordance with the

technical requirements;

- expansion, reconstruction and modernization of the distribution network and accessory networks.

#### XX.4.5. Trade Relations. Parties to the Transactions with Electric Power

Transactions with electric power may be concluded at prices regulated by the Commission, at freely negotiated prices between parties and on the organized market of electric power. Parties to the transactions with electric power are the following persons:

- the public supplier of electric power;
- the producers;
- the consumers, including the privileged consumers;
- the transfer enterprise;
- the distribution enterprises;
- the dealers of electric power;
- the electric power system operator;
- the end supplier.

The public supplier of electric power provides the supply of electric power to the public providers and to consumers connected to the transfer network, who have not chosen another supplier. The public supplier has an exclusive right to conclude contracts for import and export of electric power. The public supplier may buy up the electric power from producers, connected to the transfer network under contracts for long-term purchasing of availability and electric power, as well as the one, produced by restorable energy sources, by highly effective combined production of heating and electric power and the quantity of electric power. The public suppliers of electric power provides the supply of electric power to consumers connected to the distribution networks for whose territories the suppliers have license.

The dealers of electric power are person

licensed for their activity, meeting the requirements of financial guaranteeing of the transactions concluded by them for electric power.

#### **XX.4.6. Connection of Producers and Consumers to The Relevant Networks. Access to the Networks**

The transfer enterprise, respectively the distribution enterprise, is obliged to connect every producer of electric power located on the respective territory that:

- has concluded a written contract with the transfer or distribution enterprise at a price for connection determined in accordance with the applicable ordinance;
- has met the requirements for connection to the transfer or distribution network, and
- has constructed electric equipment within its own property or on the property on where it has a right of construction.

The transfer or the respective distribution enterprise are obliged to expand and reconstruct the transfer or distribution networks related to the connection of electric power stations to the place of connection.

The owners of electric equipment are obliged to provide access of the transfer enterprise, respectively the distribution enterprise, to their own installations for the purposes of transformation and transfer of electric power to other consumers.

### **XX.5. Heat Supply**

#### **XX.5.1. General Review**

The heat supply is a process of production, transfer, supply, distribution and consumption of heat power by means of a heat carrier of water steam and hot water for household and economic purposes. The heat supply is carried out through sites and

installations for production, transfer, supply and distribution connected to a heat supply system.

#### **XX.5.2. Production of Heating Power**

The production of heating power is carried out by an energy enterprise having received a license for production.

The production of heating power is carried out in:

- power stations for combined production of heating and electric power;
- heating power stations;
- installations for utilization of waste heating power and of restorable energy sources.

#### **XX.5.3. Connection to the Heat Transfer Network**

The heat transfer enterprise is obliged to connect to the heat transfer network producers and consumers located on the respective territory defined by the license for transfer of heating power. The connection of the consumers in a building -condominium by means of a junction or its individual branches has to be carried out on the basis of a decision of the general meeting of the condominium with the majority of two thirds of all owners and holders of real right of use of building – condominium.

#### **XX.5.4. Trade Relations**

The sale of heating power is carried out on the basis of written contracts under general conditions, concluded between:

- a producer and the heat transfer enterprise;
- a producer and directly connected consumers of heating power for economic purposes;
- a heat transfer enterprise and consumers

of heating power for economic purposes;

- a heat transfer enterprise and associations of the consumers of heating power in a condominium;
- a heat transfer enterprise and a provider of heat power;
- a provider of heat power and the consumers in a building – condominium.

The consumers of heating power in a building – condominium, may buy heating power from a provider, selected by the general assembly of the condominium.

## XX.6. Gas Supply

### XX.6.1. General Review

The gas supply is a unity of the activities of transfer, transit transfer, storing, distribution and supply of natural gas for meeting the needs of the consumers. The sites and the installations for carrying out the activities of transfer, storing and distribution of natural gas on the territory of the country, connected among each other, work in an integrated gas transport system of general regime of operation.

“Gas transfer network” is a system of gas pipelines of high pressure and the equipment to them, with a unified technological regime of functioning, for transfer of natural gas to the outlet of the gas measuring station or gas regulation station, having connected consumers and/or distribution enterprises.

“Gas distribution network” is a local or regional system of gas pipelines of high, medium or low pressure and the installations to them for distribution of natural gas to the respective consumers on a territory determined by a license.

“Gas transport system” is a system of connected networks for transfer, transit transfer, distribution of natural gas, as well as installations to and from gas storages

and production enterprises on the territory of the country.

### XX.6.2. Transactions with Natural Gas

The transactions with natural gas are carried out on the grounds of written contracts by observing the provisions of the law and of the rules for trade of natural gas adopted by the Commission.

The transaction with natural gas are supply, transfer along a transfer and distribution networks and storing of natural gas.

Parties to the transactions with natural gas are:

- a public supplier of natural gas;
- producing enterprises;
- operators of gas storages;
- a transfer enterprise;
- combined operator;
- a distribution enterprise;
- dealers of natural gas;
- privileged consumers;
- consumers who are not privileged.
- end supplier of natural gas;
- consumers – clients of the end supplier.

The producing enterprises may conclude transactions for supply of natural gas with the public supplier of natural gas, with the public provider of natural gas, with operators of gas storages, with dealers of natural gas and with privileged consumers. The producing enterprises may also conclude transactions for transfer of natural gas with the transfer and distribution enterprise.

They may also conclude transactions for storing natural gas with the operators of gas storages.

The producing enterprises, the public supplier of natural gas, the public providers of natural gas, the end suppliers, the operators of the gas storages, the dealers of natural gas and the privileged consumers may conclude transactions for supply of

natural gas with local persons in a Member State of the European Union, or registered in a country, with which the Republic of Bulgaria has reached an agreement by virtue of international instrument for mutual application of the respective law of the European Union:

- in case according to the legislation of the other country the right of free trade of natural gas is acknowledged to the producing enterprises, the dealers of natural gas the public supplier of natural gas, the public providers of natural gas, the end suppliers, the privileged consumers, and
- under the conditions of reciprocity, in case the legislation of the other country provides a possibility of free trade of natural gas for its privileged consumers.

The public supplier of natural gas is a legal person registered under the Commercial Act or under the legislation of a Member State of the European Union or of another country – party to the European Economic Area Agreement, who may conclude transactions for supply of natural gas with producing enterprises, with dealers of natural gas, with public providers of natural gas, with privileged consumers and with consumers directly connected to the transfer network. The public supplier of natural gas may conclude transactions for transfer of natural gas with the transfer and distribution enterprises. The public supplier of natural gas may conclude transactions for storing natural gas with the operators of gas storages.

The public providers of natural gas are legal persons registered under the Commercial Act or under the legislation of a Member State of the European Union or of another country – party to the European Economic Area Agreement, that conclude transactions for supply of natural gas with end consumers connected to the gas distribution network, on the territory for which they are licensed.

The end supplier is a person licensed

for its activity, that provides the supply of natural gas to household consumers and enterprises, which have less than 50 employees with annual turnover amounting up to 19, 5 million BGN.

Dealer of natural gas may be any Bulgarian and foreign corporate legal person registered as an entrepreneur under the Commercial Act or under its national legislation.

The dealers of natural gas may conclude transactions with producing enterprises inside or outside of the country, with privileged consumers, with other dealers of natural gas, with the public supplier of natural gas and with operators of gas storages.

The privileged consumers are consumers of natural gas meeting definite requirements set by the law, having the right to choose the persons from which they will buy natural gas in and/or outside the country. The privileged consumers are obliged to inform in advance the transfer enterprise and/or the distribution enterprise about the contracts concluded by them for natural gas.

The contracts for natural gas are concluded:

1. at prices regulated by the Commission for universally offered services related to the transfer, distribution and supply of natural gas or at freely negotiated prices between the parties on an organized market, administered and managed by the operator of the transfer system.

The producing enterprises, the dealers of natural gas and the privileged consumers conclude transactions for natural gas among themselves at freely negotiated prices.

The end supplier of natural gas sells natural gas under publicly announced general conditions. The general conditions must include:

- the terms of quality of the supply;
- information provided by the supplier;
- term of the contract;
- the responsibility of the energy enterprise

for non-performance of the general conditions.

The published general conditions enter into force for the consumers, who buy natural gas from an end supplier without explicit written consent.

The consumers of the end supplier conclude a contract with the distribution enterprise for the transfer to distribution networks of the natural gas, consumed by them under publicly announced general conditions. The general conditions must include:

- the terms of quality of the supply;
- the terms of termination or interruption of the supply;
- the responsibility of the energy enterprise in case of non-regulated interruption and low-quality supply.

The published general conditions shall enter into force for the consumers, who buy natural gas from an end supplier without explicit written consent.

### XX.6.3. Connection to the Gas Pipeline Network

The connection to the transfer and distribution networks is carried out under conditions and by an order defined by a special ordinance for connection to be issued by the Minister of Economy and Energy. The connection to the gas transfer and/or to the gas distribution networks of producing enterprises, enterprises storing natural gas, distribution enterprises and end consumers has to be carried out at prices determined by the respective ordinance and on the grounds of a written contract concluded between the transfer, respectively the distribution enterprises and the connected persons.

The transfer enterprise is obliged to connect to its network, at a point set by it, the distribution enterprises, the producing enterprises and the enterprises storing natural gas. Connected to the transfer

network may also be privileged consumers of natural gas via direct connecting gas pipelines.

The transfer enterprise may refuse the connection to the transfer network where:

- a capacity of the network is lacking, or
- there is no connection to the network,

and

- improvement of the network is not economically feasible.

The owner of the connecting gas pipeline is obliged to provide its servicing, maintenance and repair. The transfer enterprise may, at a request of the owner, against payment, service, maintain and repair the connecting gas pipelines.

Directly connected to the gas transfer network consumers are obliged to provide access to the respective gas distribution enterprise, having obtained license, through their own installations for the needs of the transfer of natural gas to other consumers on the territory determined by the license.

The distribution enterprises are obliged to construct for their account their distribution network to the point of connection determined by the transfer enterprise. The distribution enterprises are obliged to connect and provide the consumers with natural gas on the basis of the conditions of equality and by observing the technical requirements for reliability and safety.

The branches and the installations for connection of the consumers to the respective distribution network have to be constructed by the distribution enterprise. ■

## PPENDIX: SECTION XII.3.

### List of the Industry Areas that May be Subject to a Licensing Regime<sup>1</sup>

- Banking activities, issuance of electronic monies and operation of payment systems;
- Insurance activity and activity as an insurance broker;
- Activity as an organised securities market, an investment intermediary, an investment company or a managing company, as well as a special purpose company limited by shares;
- Carrying out of additional voluntary and mandatory pension insurance and carrying out of activity as an actuary to pension insurance companies;
- Carrying out of activities related to voluntary unemployment and/or professional qualification social security;
- Carrying out of activities related to health security;
  - Carrying out of activity as a stock exchange;
  - Carrying out of activity as a customs agent;
  - Carrying out of duty-free trade;
  - Carrying out of gambling activity;
  - Manufacturing, transportation, trade and export of weapons and explosives, as well as of certain goods and technologies of possible dual use;
  - Carrying out of private security services;
  - Design, production, import, trade, repair, installation and maintenance of anti-fire equipment and performing fire precautions activities;
  - Production of compact disks (optical disks) and/or matrix for the latter;
  - Carrying out of activity as a health institution for hospital care or a social care institution;
  - Conducting clinical tests, manufacturing, trade or import of medicines and medical products;
  - Manufacturing, processing, transportation, trade, import, export and storage of drugs for medicinal and veterinary purposes;
  - Industrial processing of tobacco and manufacturing of tobacco products;
  - Carrying out of technical supervision over risky facilities and checks over measurement devices;
  - Production of spirits;
  - Production and preparation of seeds from agricultural plants, testing different sorts of agricultural plans designated for production of seeds, distribution and trade in seeds which deviate from the minimum quality requirements;
  - Carrying out activity as a public warehouse for grain;
  - Extraction, processing and storage of sperm and ova, transplantation of embryos in institutions for artificial insemination and carrying out an activity as a breeding association for selection of production within the system of veterinary medicine;
  - Manufacturing and usage of veterinary medicine products and active ingredients for the latter, wholesale and retail trade in veterinary products, and transportation of animals;
  - Industrial fishing;
  - Trading in scrap from ferrous and non-ferrous metals;
  - Activities in the field of energy;
  - Carrying out of activities related to use of nuclear facilities and nuclear material and other sources of ionizing radiation;
  - Exercising construction supervision in construction activities;
  - Carrying out railway transportation of passengers and/or cargo and checking the technical condition of the vehicles and the professional qualification of the respective personnel;
  - Carrying out public transportation, including international transportation, of passengers and cargo by cars;
  - Carrying out checks of the technical condition of vehicles, repair and technical service of such vehicles;
  - Carrying out universal post service or part of it on the territory of Bulgaria;
  - Carrying out of an activity as an airport enterprise, terrestrial service operator or aircraft carrier;
  - Technical service and repair of aircraft equipment;
  - Manufacturing, import and/or distribution of radio transmission devices for civil needs;
  - Radio and television broadcasting activity;
  - Telecommunications activities;
  - Transportation of cargos along inland water roads; and
  - Delivery of social services for children.

<sup>1</sup> The list represents Appendix to Article 9, Section 1, item 2 of the **Restricting Administrative Regulation and Administrative Control over Economic Activities Act** (promulgated in State Gazette, Issue 55 of 2003, as subsequently amended).