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# Investment in Bulgaria

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KPMG in Bulgaria



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Edition 2015



# Preface

Investment in Bulgaria is one of a series of booklets published by firms within the KPMG network to provide information to those considering investing or doing business internationally.

Every care has been taken to ensure that the information presented in this publication is correct and reflects the situation as of March 2015 unless otherwise stated. Its purpose is to provide general guidelines on investment and business in Bulgaria. As the economic situation is undergoing rapid change, further advice should be sought before making any specific decisions.

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# Contents

<b>Chapter 1</b>	<b>General Information</b>	<b>13</b>
	Geography and climate	13
	Population and language	13
	Infrastructure	14
	Communications	17
	Currency	18
	Labor force	18
	Political system	19
	Opportunities created via EU funding	19
	Bulgaria and NATO	20
	Economy	21
<b>Chapter 2</b>	<b>Opportunities for International Investors</b>	<b>25</b>
	Protection and promotion of foreign investments	25
	Eligibility for investment incentives	29
	Profit and capital repatriation	30

	Establishment of new business entities or acquisition of shares in existing entities	30
	Branches	31
	Representative offices	31
	Capital markets	31
	Concessions	32
	Licensing	33
	Renewable energy	34
	Banking and finance	38/39
	International private law	40
<b>Chapter 3</b>	<b>Company Law</b>	<b>42</b>
	Rules applicable to all forms of business association	42
	Limited liability company (OOD)	46
	Joint-stock company (AD)	49
	Other forms of business association	52
	Commercial Register	53
<b>Chapter 4</b>	<b>Real Estate</b>	<b>55</b>
	Types of ownership over real estate	55
	Condominium ownership management	56
	Evidence of title	57
	Acquisition of real estate	57

	Project development	59
	Participants in the development process	63
<b>Chapter 5</b>	<b>Accounting and Auditing</b>	<b>66</b>
	Accounting	66
	Auditing	70
<b>Chapter 6</b>	<b>Taxation</b>	<b>73</b>
	Corporate tax	73
	Taxation of individuals	84
	EU social security	89
	Property transfer, gift, inheritance and tourist taxes	90
	Value added tax	91
	Customs duties	104
	Excise duties	106
	Insurance premium tax (IPT)	107
<b>Chapter 7</b>	<b>Employment Regulations</b>	<b>109</b>
	Legislation	109
	Employment contracts	109
	Working hours	111
	Holidays	112
	Medical check-ups	113



	Healthy and safe working conditions	113
	Termination of employment contracts	114
	Foreign nationals working in Bulgaria	114
<b>Chapter 8</b>	<b>Foreign Nationals</b>	<b>115</b>
	Legislative framework and general principles	115
	Visas	117
	Residence permits, residence certificates and residence cards	119
	Work permits	124
	“EU Blue Card” residence and work permit	126
<b>Chapter 9</b>	<b>Government Control</b>	<b>127</b>
	Public procurement	127
	Concessions	129
	Public-private partnerships	132
	Competition and antitrust regulations	134
	Supervision of the Bulgarian National Bank over the activities of credit and financial institutions	136
	Investment intermediaries in Bulgaria	137
	Insurance companies and insurance intermediaries in Bulgaria	137

Limitations of cash payments 138

Foreign exchange regime 138

**Appendix A 142**

Bilateral Agreements for the Mutual Protection and Encouragement of Foreign Investment

**Appendix B 143**

Double Taxation Treaties to which Bulgaria is a party

**Appendix C 146**

Bilateral Social Security Agreements concluded by Bulgaria





## Chapter 1

# General Information

### Geography and climate

Bulgaria is situated in South-Eastern Europe, in the eastern part of the Balkan Peninsula. It borders Romania to the north, the Republic of Serbia to the west, the Former Yugoslav Republic of Macedonia to the southwest, Greece to the south and Turkey to the southeast. The Black Sea is to the east of the country; it enables direct maritime links with the Russian Federation, Ukraine and Georgia. To the north, the Danube River separates Bulgaria from Romania. Bulgaria is strategically located along key land routes from Europe to the Middle East and Asia.

Bulgaria's total area is 110,910 sq km, with 1,808 km of land borders and 354 km of coastline. The country's terrain is partly mountainous, with lowlands in the north and the southeast. The climate is Continental Mediterranean, it is temperate, with cold, damp winters and hot, dry summers.

### Population and language

As per the results of the latest population census conducted by the National Statistical Institute in February 2011, Bulgaria's population is approximately 7.36 million. Nearly 73% live in urban areas. The capital – Sofia – is by far the largest urban center having nearly 1.20 million inhabitants. Approximately 18% of the population is under the age of 19, while 63% is between the age of 20 and 64, and 19% is over the age of 65.

Ethnic Bulgarians represent almost 85% of the population, while ethnic minorities of Turkish and Roma descent make up another 8.8% and 4.9% respectively according to statistics from the population census in 2011. Smaller ethnic groups in Bulgaria include Russian, Armenian and Jewish among others. Nearly 76% of the Bulgarian population is Eastern Orthodox Christian. Another 10% of the population state they are Islam. Catholicism and Judaism are also represented.

Since 1990, the country's net population growth has been negative (an average annual decrease of -0.7% was recorded for the period 2001 – 2011), in part as a result of significant outward migration, but also due to the country's aging demographics.

The trend of increase in the birth rate in the country in the period 2004 – 2009 reversed from 2010 onwards and the number of births cumulatively decreased by 17.7% in 2013 compared to 2009 levels further contributing to the decrease in the population.

The country's official language is Bulgarian. Secondary languages closely correspond to ethnic background. English, and to a lesser extent German and French, are used frequently in business.

## Infrastructure

### Roads and railways

A network of international highways connects Bulgaria to Western Europe, Russia, Asia Minor, the Adriatic, the Aegean, and the Black Sea.

The European corridors No. 4 (from Germany to Istanbul), No. 7 (Rhine, Main, and Danube), No. 8 (from Durres, Albania to Varna), No. 9 (from Helsinki, Finland to Alexandroupolis, Greece) and No. 10 (from Salzburg, Austria to Thessaloniki, Greece) pass through the territory of Bulgaria.

According to the 2013 annual statistics published by the National Statistical Institute, the total length of the country's road network managed by the Road Infrastructure Agency is 19,678 km, which includes 605 km of designated motorways, 2,975 km of category I roads, 4,035 km of category II roads, and 12,063 km of category III roads. In addition, there are approximately 20,000 km of category IV roads, which are managed by the respective municipalities. Road transportation across most of the country relies primarily on two-lane roads. The main transport corridors are Corridor No. 10 Kalotina-Svilengrad linking Serbia to Turkey, Corridor No. 4 Vidin-Sofia-Kulata linking Romania to Greece, Corridor No. 9 Ruse-Kazanlak-Kardzhali linking Romania to Greece and Turkey and Corridor No. 8 Kyustendil-Burgas-Varna linking Macedonia to the port of Varna.

Development plans focus on upgrades and investments, particularly of motorways, to further integrate the country's road system into the international network. According to data from the Ministry of Regional Development and Public Works, priority road infrastructure projects in Bulgaria until 2020 include construction of 620 km of motorways (Maritsa, Struma, Kalotina, Hemus and Black Sea motorways) and construction/ rehabilitation of speedways, two new bridges over the Danube River and the construction of Shipka Tunnel. The total budget for the planned road infrastructure projects listed above (excluding the two bridges) is estimated to amount to EUR 5,209 million until 2020. Financing sources for the planned infrastructure projects include Operational Program Transport and Operational Program Regional Development (European Union (EU) financing), the state budget, state investment loans, financing from the European Investment Bank and the World Bank.

In 2013, the second bridge on the Danube River at Vidin – Kalafat and the last section of the Trakia motorway were completed. The Trakia motorway is the first entirely completed motorway in Bulgaria with a total length of 360 km.

The motorway network will continue to develop in 2015 by the expected completion of Lot 2 and Lot 4 of Struma motorway and Lot 1 and Lot 2 of Maritsa motorway. In addition, the construction of Sofia's northern bypass highway commenced in early 2015. The bypass is expected to cost EUR 120 million and will connect four motorways – Trakia, Hemus, Lyulin and Kalotina, and three pan-European corridors – No. 4, No. 8 and No. 10.

Bulgaria's railroad network includes about 4,070 km of railway lines. Some 71.2% of them are electrified and 24.5% are double-track. The majority of the network is designed to support a running speed of up to 100 km per hour, with only 150 km supporting a speed of up to 130 km per hour.

Following the failed attempt for privatization of the state owned rail company BDZ Tovarni prevozi EOOD in 2013, the newly elected government announced in November 2014 its intentions to launch another process for the sale of the company.

Priority railway infrastructure projects in the country until 2020 include rehabilitation, overhaul and modernization works of more than 400 km of the existing railway infrastructure and construction of new high-speed railroads in the following directions – Sofia-Plovdiv-Burgas, Sofia-Vidin, Plovdiv-Svilengrad-Turkish border, Sofia-Dragoman, Sofia-Pernik-Radomir, Mezdra-Gorna Oryahovitsa, Sofia intermodal terminal and railroad junction and others. The total budget for the planned railroad infrastructure projects as listed above is estimated to amount to EUR 4,671 million, which will be financed mainly by EU funds and the state budget. The majority of the planned works on the Sofia-Plovdiv-Burgas and Plovdiv-Svilengrad-Turkish border high-speed railroad lines were completed in 2014, with some works due to be completed in 2015.

In August 2013, Sofia Municipality presented a draft of the third metro diameter project which is expected to cost EUR 680 million. According to Sofia Municipality, currently 280,000 people use the subway network daily and their number is expected to increase up to 550,000 people daily by 2020. The last sections of the Sofia first and second metro diameter are expected to be completed by 2015, while the construction of the third metro diameter is planned to start in 2015.

## Ports

Both sea and river routes – the Black Sea and the Danube River – offer reliable shipping transportation to and from the country. The largest Bulgarian seaports are Burgas and Varna on the Black Sea coast. Varna mainly handles containers, grain and bulk goods, while Burgas mainly deals with crude oil and some bulk commodities. A ferry connection from Varna to Odessa (Ukraine), Kavkaz (Russia) and Poti (Georgia) facilitates the transport of goods between the countries.

The Danube River is navigable during most of the year and supports inland water transport. With the Rhine – Main – Danube canal in use since 1992, Bulgaria has access to the large European ports on the North Sea. The main Bulgarian ports on the Danube River are Ruse, Lom and Vidin.

Bulgaria has 15 Black Sea and 13 Danube River ports for public transport with national importance consisting of a total of 84 and 74 wharves, respectively. The ports with regional importance for public transport are 9 on the Black Sea coast and 21 on the banks of the Danube River.

According to the National Concession Registry, a total of 13 ports with national importance are currently under concession.

In 2013, the government granted a 35-year concession for the port terminals Ruse-West, Nikopol, Vidin South and Lom.

In addition, according to the Ministry of Transport, Information Technology and Communications, concession calls for the port terminals Ruse-Center and Tutrakan took place at the end of 2012 and the beginning of 2013. Meanwhile, Nesebar port terminal is already under concession agreements.

The Ministry of Transport, Information Technology and Communications is currently performing a pre-concession evaluation on port terminal Ruse-East and port Vidin-Center and the concession call is expected to be issued in 2015.

## Airports

Bulgaria has four operating commercial airports – in Sofia, Plovdiv, Burgas and Varna. They handle both international and domestic flights. A tender for a 35-year concession for the management of Burgas and Varna airports was held in June 2006 and the government awarded the concession to a consortium between Fraport AG, Germany and a local company, named BM Star.

Furthermore, in response to the demand for cargo transport, the government has added the airports in Plovdiv (south-central Bulgaria), Gorna Oryahovitsa (north-central Bulgaria) and Ruse (northern Bulgaria) to the list of airports which accept international air traffic. In relation to the Plovdiv airport, the government is in the process of identifying concessioners for both the passengers and the cargo terminals of the airport. The newly formed government announced in January 2015 that it planned to launch a concession call for Sofia and Gorna Oryahovitsa airports. The purpose of the concession of Sofia airport is to further extend the cargo and passenger handling capacity of the airport and modernize its infrastructure.

Sofia airport, which handled more than 3.8 million passengers in 2014 (8.9% up from the 2013 level), has undergone significant investments in the last few years, including a new traffic control tower, thus increasing its capacity and providing modern facilities to respond to the growing demand for international air travel. The newly constructed terminal ensures a higher standard of passenger handling and landing of wide-bodied aircraft.

## Communications

### Fixed-line communications

The fixed voice services for 2013 reportedly had 1.90 million subscribers, while the level of equipment used to support the network has significantly improved in recent years. The overall telephone penetration is estimated at 26.1% in 2013, representing a decrease in recent years due to the shift in consumer preferences in favor of mobile phones.

There is an ongoing market trend for bundling fixed and mobile service offerings to subscribers.

### Mobile communications

Three mobile telephone companies currently provide services in Bulgaria: Mobiltel EAD, Bulgarian Telecommunication Company AD (BTC) and Telenor Bulgaria EAD – collectively doing business as M-Tel, Vivacom (former incumbent BTC) and Telenor – operating under the GSM 900 standard. In January 2013, Bulsatcom AD, 4G Com EAD (revoked in 2014) and Max Telecom AD were granted licenses to utilize the 1,800 MHz band network in the country. The market has grown quickly, with the number of mobile subscriptions rising from 8.2 million in 2006 to an estimated 10.5 million in 2013, representing a 144.7% penetration of the population of the country. Based on publicly available information and calculated on the basis of mobile telecommunications service revenues, M-Tel has a 42.3% market share for 2013, followed by Globul with 36.4% and BTC (Vivacom) with 21.3%.

The market has been impacted by the decrease in mobile voice termination prices of approximately 57.6% as imposed by the local regulator effective 1 July 2012. The trend follows EU market regulation requirements and continued in 2013 when termination prices further decreased.

In April 2013, it was officially announced that Max Telecom (the only WiMax company in Bulgaria) was sold to the investor Daniel Krupsin. As per publicly available information, Max Telecom plans to become the first nationwide 4G LTE network provider in the spectrum 1,800 MHz in Bulgaria. The commercial start of the operation is expected in mid 2015.

### Internet

As at the end of 2013, there were an estimated 3.8 million internet subscribers (both fixed and mobile) in the country which accounts for 56.7% of households. This is a vibrant market populated by numerous internet service providers (ISPs), whose rates and service quality vary widely. According to a market report issued by the Communications Regulatory Commission, there were 614 companies operating data-transfer services as at the end of 2013. The largest companies which provide such services are Bulgarian Telecommunication Company, Blizoo, Media and Broadband EAD, Mobiltel EAD and Bulsatcom AD.



In 2005, the Bulgarian Government granted the first point-to-multipoint wireless network licenses, which allowed operators to upgrade their infrastructure and provide high-speed wireless quality data, voice, video, and multimedia services based on the WiMAX standard. The companies providing WiMAX services were originally five, however, due to operational difficulties the licenses of Trans Telekom, Carrier BG and Nexcom were revoked, while Mobiltel sold its license to Max Telecom, the only remaining active participant in the sector.

### Electronic payment methods

Credit and debit card use is gaining popularity, with an increasing number of consumer retailers accepting payments via such means. Local banks are offering online banking services, debit card services, and various forms of electronic payment for utility and telephone charges.

A number of new electronic services facilitating the payment process are developing on the market, e.g. electronic invoice, electronic signature and other. They are driven both by changes in regulation and market innovation.

The Bulgarian National Bank (BNB) has granted a system operator license to System for Electronic Payments Bulgaria AD to develop and maintain a national mobile infrastructure for electronic payments in the country.

### Currency

The official currency in Bulgaria is the Bulgarian lev (BGN). The BGN is circulated in notes of BGN 2, BGN 5, BGN 10, BGN 20, BGN 50, and BGN 100, and coins of BGN 0.01, BGN 0.02, BGN 0.05, BGN 0.1, BGN 0.2, BGN 0.5 and BGN 1.

In July 1997, a Currency Board was introduced and the lev was pegged to the German mark at the rate of BGN 1 to DEM 1. Presently, the lev is pegged to the euro at a rate of BGN 1.95583 to EUR 1.

Exchange rates for other currencies are quoted daily by the BNB for statistical and accounting purposes.

### Labor force

Approximately 3.37 million individuals or around 53.9% of the population aged 15 and over comprised the country's labor force, as per the latest National Statistical Institute data. While the Bulgarian labor force is generally highly skilled and well educated, wage levels in the country are significantly lower than those in Western Europe, creating significant upside potential for labor-intensive investments. As per data provided by the BNB, the average gross monthly salary for the fourth quarter of 2014 was EUR 433, compared to EUR 412 for 2013.

Following four consecutive years of increase in the unemployment rate in the country, in 2014 the rate decreased from 11.8% in 2013 to 10.7%.

## Political system

Bulgaria is a parliamentary republic. It held its first multiparty elections in 1990 and its current Constitution was adopted on 12 July 1991. The national legislative body – a unicameral Parliament – is comprised of 240 members elected by popular vote who serve a four-year term. The president is the head of state and commander-in-chief of the army. The president and the vice-president are elected by a majority vote and serve a five-year term. The current president is Rosen Plevneliev and his term began in 2012. The President cannot initiate legislation but has a qualified power of veto.

Executive power rests with the government. It is headed by a prime minister, who is appointed by a parliamentary majority. The current prime minister is Boyko Borisov, who is also the chairperson of the Council of Ministers. The latest parliamentary elections in Bulgaria were held on 5 October 2014 and won by the center-right Citizens for European Development of Bulgaria (CEDB) party with 32.6% of the votes. Although CEDB did not have a parliamentary majority (it won 84 of 240 seats), it formed a coalition government with three other parties – the Reformers Block, the Patriotic Front and the Alternative for Bulgarian Renaissance party – on 7 November 2014.

The country is divided into 28 administrative regions headed by regional governors appointed by the Council of Ministers. Bulgaria has 262 municipalities headed by mayors elected every four years. Municipal Councils, the local legislative bodies, determine the mayors' executive functions.

## Opportunities created via EU funding

EU funding opportunities will continue to be available for businesses established and operating in Bulgaria. Since 2007, the country has been eligible for EU assistance in the field of infrastructure, innovations and competitiveness, human resource development, agriculture, rural development and fisheries and aquaculture.

Access to EU support will continue to be granted by means of implementation of national Operational Programs (OP) funded jointly by the national budget and EU funds as well as from two national programs in the field of rural development and fisheries.

***Innovations and Competitiveness OP*** is managed by the Ministry of Economy and is specifically targeted at supporting the development of private economic operators.

Public aid will be provided in the form of grants which are approved following a competitive project selection procedure. The supported activities will include technology modernization, introduction of quality management systems, implementation of energy saving measures, support for introduction of innovative products, processes or services and research and development (R&D) projects.

**OP Human Resources Development** is managed by the Ministry of Labor and Social Policy. It provides support to companies hiring interns and for vocational training of personnel.

Specialized financial instruments will also be available across OPs to support businesses through loans, guarantees, and venture and equity capital.

The **Rural Development Program** is managed by the Ministry of Agriculture and Food. It provides funding for the implementation of measures aimed at supporting the modernization of agricultural holdings, adding value to agriculture and forestry products, setting up of producer groups for increasing the production and supply of high-quality products as well as for provision of farmers' advisory services. The program also supports projects for diversification of farming sector activities, transition to non-agricultural activities, establishment and development of micro-enterprises to promote entrepreneurship in rural areas. Public aid is also envisaged for projects related to investment in rural tourism activities to create additional income and jobs in rural areas and to preserve the rural heritage. Specific measures are also targeted at food companies aiming to modernize their production/processing facilities.

The **Maritime Affairs and Fisheries OP** is managed by the Executive Agency of Fisheries and Aquaculture. The program provides assistance for reconstruction and modernization of the fishing fleet and infrastructure, protection and restoration of biodiversity, production of biological and environmentally friendly aquaculture, as well as partnerships with research organizations and development of innovations in the sector.

The **Science and Education for Smart Growth OP** is a new program managed by the Ministry of Education and Science. It will provide support for investment in scientific research and technology development, life-long learning, and improving the quality of education. Among the main beneficiaries are the Ministry of Education and Science, universities, the Bulgarian Academy of Science, schools, professional organizations and municipalities.

**Cross-border Cooperation (CBC) programs** are jointly managed and coordinated by neighboring countries. CBC programs support initiatives that aim to foster cooperation and tackle common challenges identified jointly between neighboring regions of Bulgaria and the Former Yugoslav Republic of Macedonia, Serbia, Romania, Turkey and Greece. The programs offer assistance to municipalities, non-governmental organizations (NGOs) and small and medium-sized enterprises (SMEs) in a number of different fields, such as small-scale infrastructure in border regions, environment protection, culture and education, business development, innovations and cooperation between entities on both sides of the borders.

## Bulgaria and NATO

Bulgaria, together with six other East European countries, joined the North Atlantic Treaty Organization (NATO) on 29 March 2004.

In order to become a NATO member, Bulgaria undertook a sizable modernization of the army and compulsory military service was abolished.

## Economy

The Bulgarian economy continued its recovery from the global economic and financial crisis at a faster rate in 2014, with an estimated real gross domestic product (GDP) growth of 1.6% compared to a growth of 1.1% in 2013 as estimated by the BNB. The faster GDP growth is mainly due to the retail trade, construction and industrial output which is beginning to recover, while credit growth is still low. The Economist Intelligence Unit forecasts the real GDP growth to remain flat at 1.6% in 2015. Driven by the plummeting oil prices and decrease in international grain prices, the Bulgarian economy recorded a deflation of 1.4% compared to 0.9% inflation in 2013. It is expected that inflation levels will return to healthy 2-3% annually in the short to medium term.

The current account surplus in 2014 shrank to the equivalent of 0.04% of estimated GDP, a decrease from 2% of GDP in 2013, when the surplus amounted to EUR 848 million. The deterioration in the current account balance in 2014 stemmed mainly from a worsening trade balance and declining payments from the EU. According to the Economist Intelligence Unit's forecast, the current account deficit is expected to be 0.9% of GDP in 2015.

Foreign direct investments (FDI) in the country reached EUR 1,182 million in 2014, which represents a 7.3% decrease compared to 2013 levels, which is less than one-fifth of the peak level of EUR 6,728 million reached in 2008. This trend could be attributed to the global financial crisis resulting in decreased investor activity in Central and Eastern Europe (CEE) markets, especially in the real estate sector, and the European debt crisis.

The Currency Board has a key role in sustaining the macroeconomic stability in the country. As a result of prudent government policy in recent years, the gross foreign currency reserves of the Bulgarian National Bank amount to EUR 16,534 million as at the end of 2014 compared to EUR 14,426 million a year earlier.

The table below lists some key Bulgarian macroeconomic indicators:

BULGARIAN KEY MACROECONOMIC INDICATORS					
Indicator	2010	2011	2012	2013	2014*
<b>Real sector</b>					
GDP (million EUR)	36,764	40,102	40,926	41,047	41,941
GDP per capita (EUR)	4,785	5,240	5,465	5,497	n.i.a.
Private consumption (% of GDP)	79.6	77.2	80.6	79.1	79.0
Annual real GDP growth (%)	0.7	2.0	0.5	1.1	1.6
Inflation (av.) (%)	2.4	4.2	3.0	0.9	(1.4)
Average monthly wages (EUR)	311	351	374	413	418
Unemployment rate (%)	9.2	10.4	11.4	11.8	10.7
<b>Foreign sector</b>					
Current account deficit (% of GDP)	(1.5)	0.1	(1.3)	2.0	0.0
Trade balance, FOB (EUR million)	(2,764)	(2,156)	(3,465)	(2,430)	(2,902)
Export, FOB (EUR million)	15,561	20,364	20,770	22,270	22,106
Import, FOB (EUR million)	18,325	22,420	24,230	24,701	25,009
Foreign direct investments (EUR million)	1,151	1,330	1,141	1,275	1,182
Foreign direct investments % (GDP)	3.1	3.3	2.8	3.1	2.8

Source: Bulgarian National Bank

\* Estimates for 2014.

### Trade agreements

Framework agreements liberalizing foreign trade between Bulgaria, the European Union, European Free Trade Association (EFTA) and Central European Free Trade Agreement (CEFTA) countries, as well as with Turkey and Macedonia have expanded the market presence of domestic manufacturers. Bulgaria's major trade agreements are with the following organizations:

#### WTO

Bulgaria has been a member of the World Trade Organization since 1996.

#### European Union

In March 1993, Bulgaria and the European Community and its Member States became signatories to the Europe Agreement of Association effective from 1 February 1995 and the Interim Agreement on Trade and Trade Related Matters covering various trade

components, effective from 31 December 1993. In accordance with the Agreement of Association, customs duties on industrial goods between Bulgaria and EU countries phased out by 2007. Since 1998, the EU import of industrial goods of Bulgarian origin has been duty-free. Significant relief for agricultural produce is also provided. The EU accession of Bulgaria and Romania in January 2007 expanded the export opportunities available to Bulgarian producers.

### *EFTA*

According to this 1993 Agreement, trade with EFTA countries (Iceland, Liechtenstein, Norway and Switzerland) enjoys preferential terms and conditions that are almost identical with those in the Europe Agreement of Association.

### *Bilateral Free Trade Agreements*

As of 1 January 2007, the bilateral free trade agreements signed between Bulgaria and other countries in the region were cancelled and the country adopted the preferential trade agreements of the EU with various countries. Presently, the EU has such agreements with countries from the Mediterranean region (Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Syria and Tunisia) and, EFTA member countries, Mexico and Chile. The EU has signed Stabilization and Association Agreements with Albania, Bosnia and Herzegovina, Macedonia, Montenegro and Serbia.

### *Foreign investment*

According to the Bulgarian National Bank, FDI in 2014 amounted to EUR 1,182 million (2.8% of GDP). The total value of FDI for 2013 was EUR 1,275 million (3.1% of GDP), whereas FDI for 2012 was EUR 1,142 million (2.8% of GDP).

The estimated top ten FDI contributing countries ranked by the total FDI inflow for 2014 were the Netherlands, Austria, UK, Russia, Switzerland, Belgium, Spain, Hungary, Czech Republic and USA. Based on preliminary data, the top three sectors that attracted the largest FDI in 2014 were real estate with EUR 478 million (40.5%), financial services with EUR 164 million (13.9%) and energy with EUR 103 million (8.7%).

### *Restrictions with regard to offshore companies*

The Act on the Economic and Financial Relations with Companies Registered in Preferential Tax Regime Jurisdictions, the Persons Related to Them and Their Beneficial Owners (the "Act") entered into force on 3 January 2014.

The Act imposes a prohibition for companies, registered in preferential tax regime jurisdictions, and the persons related to them to be directly or indirectly involved in the following activities:

- Procedures for obtaining licenses for credit institutions, insurance and re-insurance companies, pension insurance companies, payment institutions, mobile operators under the Electronic Communications Act, rendering of activities and services under

the Financial Instruments Markets Act and Collective Investment Schemes and Other Undertakings for Collective Investments Act and others, as well as participation in such companies

- Procedures for obtaining concessions and permits for exploration and research of mineral resources, public procurement, concessions, public-private partnerships and others
- Participation in privatization transactions, as well as in companies with state or municipal ownership, companies carrying out activities under the Independent Financial Audit Act, the Independent Valuers Act and the Renewable Energy Act
- Acquisition of state or municipal property, as well as ownership over land and forests from the state forest fund.

The prohibition is also applicable to any persons related to those companies that are registered in preferential tax regime jurisdictions, including companies that have direct or indirect control over such legal entities, as well as their subsidiaries.

Following the entry into force of the Act, companies registered in preferential tax regime jurisdictions are no longer able to be shareholders in companies that carry out licensing activity, participate in privatization, concession or public procurement, or acquire land and forests from the state forest funds and others.

There are certain cases where a company could claim to be excluded from the scope of the law, provided that it meets certain criteria and registers the circumstances for such exclusion in the Commercial Register.

The persons for whom the above prohibitions are applicable had the legal obligation to ensure compliance with the requirements of the Act by 1 July 2014.



## Chapter 2

# Opportunities for International Investors

### Protection and promotion of foreign investments

#### National treatment and most favored nation status

The Bulgarian Constitution stipulates that foreign persons (legal entities, individuals or civil partnerships registered in a foreign country) must enjoy equal rights with local persons when conducting economic activities in the Republic of Bulgaria except where otherwise provided by the law (“national treatment”). This principle covers the entire range of economic and legal forms used for business activity.

The Encouragement of Investment Act (EIA) provides for equal treatment of local and foreign investors in the Republic of Bulgaria. Foreign investors in Bulgaria can obtain the same assistance and use the same privileges and opportunities as granted by the law to local investors.

If a bilateral treaty, signed and ratified by the Republic of Bulgaria, provides for more favorable investment terms and conditions for international investors, the citizens or legal entities of the respective contracting country will enjoy preferential investor treatment (“most favored nation status”).

#### Protection of investments

The Republic of Bulgaria is a party to 63 bilateral agreements for mutual protection and encouragement of foreign investment (for a list please refer to Appendix A). It is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States. Every Bilateral Investment Treaty has a standard clause providing that, in the case of a dispute between the Republic of Bulgaria and a potential investor, this dispute shall be submitted before the World Bank’s International Center for Settlement of Investment Disputes. On these grounds, every investor in Bulgaria has the opportunity to protect their investment if adverse legislation is adopted.



## Incentives to investors

The EIA envisages different incentive measures and privileges for local and foreign investors who undertake significant investments in certain economic activities within the territory of Bulgaria. The aim of these measures, financed by the state, is to promote large investments and improve the business environment in the country.

The Regulation for Application of the EIA contains all detailed conditions, under which the investors may benefit from the incentive measures.

The EIA and the Regulation for its Application are the legislative basis for implementing a scheme for awarding state aid in conformity with EU legislation. All encouragement measures may be implemented by the state only in compliance with EU state aid legislation for granting state resources to private entities. Investors must therefore fulfill the conditions stipulated in the respective EU legislative acts in order to be eligible to receive state financing.

In order to benefit from the resources under the state aid scheme, investors must apply for a special certificate for class A investment, class B investment or a priority project with the Bulgarian Investment Agency.

The required minimum investment amounts for projects implemented in the industrial sector are:

- For class A investments – BGN 10 million
- For class B investments – BGN 5 million.

The required minimum investment amounts for projects implemented in the services sector are:

- For class A investments – between BGN 2 – 3 million depending on the type of the services sector
- For class B investments – between BGN 1 – 1.5 million depending on the type of the services sector.

Lower minimum investment amounts are envisaged in the case of investments in the industrial sector in economically disadvantaged regions and in high technology activities in the industrial and services sectors.

Investors implementing projects related to all economic sectors in Bulgaria may apply for a certificate for priority project if the project meets any of the criteria set out in the law, e.g. the amount of the investment exceeds three times the minimum amount for class A investment, or the project includes development of industrial zones or high-tech parks with technical infrastructure.

The investors awarded with certificates for priority projects can be supported by the state with a package of the incentive measures described below.

The certificates for class A investment, class B investment and priority projects are issued by the Minister of Economy and entitle the investors to benefit from the following incentive measures financed by the State:

- (a) Right to purchase state or municipal real estate property or to acquire limited property rights over state or municipal real estate property, located near the investment site, without tender procedures, upon evaluation of the real estate property by at least two licensed independent valuers and upon written consent of the Minister of Economy and the Minister of Regional Development and Public Works for those real estate properties owned by the State, and approval of the respective municipal council for any municipal real estate properties.

In order to take advantage of this incentive measure, the investors awarded with certificates for class A investment, class B investment and priority projects must apply to the relevant local authorities by submission of their investment projects and the documents set out in the law. Non-implementation of the investor's investment project within the implementation term and for the amount of investment, and non-commencing of project works within two years from the date of signing the contract are grounds for termination. The investor may not dispose of the real estate property (or the limited property rights), acquired according to the procedures under the EIA, prior to the expiry of a five-year term as from the date of implementation of the respective investment project.

Buildings and other sites financed with EU funds cannot be subject to the above incentive transactions, unless 10 years have expired from the completion of the construction to submission of the application by the investor.

- (b) Financing of construction of technical infrastructure elements, such as roads, drainage networks and facilities, and others. Investors awarded with certificates for class A investment or at least two or more investors awarded certificates for class investment where the investment is located in an industrial zone are eligible to receive such financing.

This procedure must be executed in accordance with the requirements of the EIA, the Regulation for Application of the EIA, the state aid legislation and the EU legislation regarding state aid. The Council of Ministers grants such financing only after a tender is held by the Ministry of Economy to evaluate all submitted investment projects.

- (c) Financing of professional training of persons, hired by class A and B investors in relation to certified investments, provided that the financing is implemented in accordance with the requirements of the EIA, the Regulation for Application of the EIA, and EC Regulation 800/2008. The Council of Ministers grants such financing only after a tender is held by the Ministry of Economy to evaluate all submitted investment projects.

- (d) Issuance by local or governmental authorities of administrative documents for the realization of the investment project within periods one-third shorter than the periods set out in the relevant legislative acts. The reduced periods for any administrative assistance of the investors contribute to the timely and efficient implementation of their investment projects.
- (e) Individual administrative assistance and service from the Bulgarian Investment Agency, relating to the submission and obtaining of the necessary documents required under Bulgarian legislation for completion of the investment.
- (f) Financing in the form of partial refunding of statutory social security contributions and health insurance contributions paid by the investor in their capacity of an employer for the newly hired employees for a period not longer than 24 months from the opening of the respective job positions.

Investors awarded with certificates for class A investment, class B investment and priority projects are eligible to benefit from the incentive measure provided that:

- They comply with all cumulative requirements set out in the law and
- The newly opened job positions are occupied by Bulgarian citizens, citizens of EU Member States, EEA states or Switzerland or by persons residing in Bulgaria on the legal grounds stipulated in the Employment Promotion Act.

The amendments in the EIA, promulgated in the State Gazette, issue 16 of 2013, enable municipal councils and mayors of municipalities to encourage significant investment projects realized on the territory of their municipalities where the amount of investment does not exceed the minimum amount for class B investment.

The municipal council of each municipality shall determine the terms and conditions for encouragement of projects with municipal significance and for issuance of a certificate for class C investment.

Investors awarded with certificates for class C investment shall be entitled to benefit from the following incentive measures:

- (a) Provision of administrative services by the respective municipality within periods shorter than the usual ones
- (b) Individual administrative assistance and service from the municipality and
- (c) Right to purchase municipal real estate property or to acquire limited property rights over municipal real estate property, located near the investment site, without tender procedures, upon evaluation of the real estate property by at least two licensed independent valuers and approval of the respective municipal council.

Furthermore, investments are encouraged according to the procedures established by the Corporate Income Tax Act, the Value Added Tax Act and the Employment Promotion Act, provided that they are in compliance with the requirements set out in these acts.

## Eligibility for investment incentives

According to the EIA, incentive measures and privileges shall be applied to initial foreign and local investments in tangible and non-tangible fixed assets plus new employment.

The investments must cumulatively fulfill the following conditions in order to be promoted under the EIA:

- They must relate to the establishment of a new enterprise, extension of an existing enterprise, diversification of the output from an enterprise into new products, or a material change in the overall production process of an existing enterprise
- They must be implemented in the following economic areas, according to the Statistical Classification of Economic Activities in the European Community (NACE Rev. 2), applicable in Bulgaria as Classification of Economic Activities (in Bulgarian “КИД 2008”), namely:
  - Industrial sector: manufacturing; or
  - Service sector: high technology activities in computer technology, R&D, accounting, tax and audit services, education and human health care, as well as storage of goods and auxiliary transport services
- At least 80% of the future aggregate income must arise from the products produced by the economic activities above, whose products are specified according to the Classification of Products by Economic Activities in the EC (CPA) (with PRODCOM/ NACE nomenclature or CPA nomenclature for projects in the service sectors), applicable in Bulgaria as Classification of Products by Economic Activities (in Bulgarian “КПИД-2008”)
- The period of project implementation, i.e. the period between the commencement and completion of the project, must not exceed three years
- Investment within any single establishment must not be below the minimum amounts specified above (there are incentives for investment in economically disadvantaged regions or high technology activities as cited above)
- At least 40% of the eligible costs for the investment must be financed by the investor’s own or borrowed resources (any resources allocated as state aid or involving an element of state aid, including retained corporation tax, are not considered own or borrowed resources)
- The jobs created in relation to the investment must be maintained in the relevant region for at least five years in the case of large enterprises and three years in the case of small and medium-sized enterprises
- The investment must be maintained in the relevant region for at least five years in the case of large enterprises and three years in the case of small and medium-sized enterprises, calculated from the date of completion of the investment project

- Any long-term tangible and intangible assets acquired shall be new and purchased under market conditions from third parties independent from the investor.

Any other requirements under the effective state aid legislation and EU aid legislation must be met.

### **Profit and capital repatriation**

Foreign investors can freely transfer, and purchase to transfer, foreign currency abroad after the corporate taxes due, including withholding taxes, have been duly paid. The following may be transferred:

- Income generated through an investment
- Compensation against expropriation of investments for state needs
- Liquidation quotas upon termination of the investment
- Proceeds from the sale of an investment
- Sums received as a result of enforcement proceedings.

This right may also be exercised by foreign individuals working in the country with respect to their remuneration, as well as those who have obtained a permanent residence permit and are registered as sole traders or participate in a co-operative, in an unlimited partnership or as unlimited partners in a limited partnership, after the payment of all taxes due.

### **Establishment of new business entities or acquisition of shares in existing entities**

Bulgarian law provides for the establishment of entities with foreign participation or for the acquisition of shares in existing local entities. Such companies must take the form of entities under the Bulgarian Commercial Act. There is no limitation on the share participation of foreign legal entities and individuals.

Under the Bulgarian Commercial Act, the following entities can be set up and have foreign investor participation:

- Unlimited partnerships
- Limited partnerships
- Limited liability companies (solely-owned limited liability companies)
- Joint-stock companies (solely-owned joint-stock companies)
- Limited partnerships with shares
- Sole traders.

Generally, no prior permission from governmental institutions is required for the establishment of an entity of the above types, except for cases involving banking or insurance activities, investment funds, management companies or investment intermediaries, or special concession rights and others.

## Branches

Foreign legal entities or unincorporated entities may register branches in the Republic of Bulgaria, if they have received permission to conduct business activities under the terms and conditions of the laws of their home country. Branches are entered in the Commercial Register at the Registry Agency.

Though part of a foreign company, branches are considered independent and therefore must keep separate accounting books and prepare balance sheets. However, registered capital is not required for the establishment of a branch.

## Representative offices

Foreign legal entities and individuals who have received permission to conduct business activities under the terms and conditions of the laws of their home country are allowed to establish representative offices in the Republic of Bulgaria. They are not treated as separate legal entities and are not entitled to conduct business activities as defined in Bulgarian law.

Representative offices are registered at the Bulgarian Chamber of Commerce and Industry and may engage in marketing, informational and promotional activities.

## Capital markets

The emergence of capital markets in Bulgaria is a direct result of the structural, economic and social changes in the country since 1989. The legislative basis of the capital market was established in 1991 with the adoption of the Commercial Act. Currently, the legislation comprises numerous laws and regulations, the most important of which are the Markets in Financial Instruments Act, the Public Offering of Securities Act, the Commercial Act, and ordinances on the activities of investment companies, management companies, investment intermediaries and others.

### Bulgarian Stock Exchange

The first trading session on the Bulgarian Stock Exchange took place on 21 October 1997 with shares in companies privatized as part of the mass privatization program.

The Bulgarian Stock Exchange (BSE) is a joint-stock company. The majority of its shareholders are private local or foreign legal entities and individuals. Its shareholders elect the Board of Directors, which is responsible for the day-to-day operations of the

BSE. More than two-thirds of its private shareholders are credit and financial institutions – banks, financial intermediaries, insurance companies and others.

### Market supervision

The Financial Supervision Commission (FSC) is responsible for stock market supervision. The Commission is an independent state authority whose mission is to protect investors' rights and to enhance the development of a transparent and efficient capital market.

The FSC has the exclusive right of approval in respect of prospectuses for public offerings of securities or take-over announcements. Issuers are obliged to file prospectuses and to register them with the FSC before going public. Once registered, they are required to periodically disclose information about their activities and financial status.

### Trading procedures

The BSE operates a continuous order-driven trading system. Orders are matched automatically according to time and price priority. The minimum lot size is currently one share. There are daily limits on share price movements for both the official and the free market.

The BSE's fully automated trading system, launched in 2008, is designed to provide market transparency, liquidity and reflect price announcements. The period of the trading session is from 10:10 to 16:55. Apart from the trading session there are also pre-trading and post-trading sessions. During these two sessions, the participants can enter, amend or delete their orders which shall be executed on the next trading session. The pre-trading session is from 9:30 to 10:00, while the post-trading session is from 17:00 to 17:30.

## Concessions

The Constitution of the Republic of Bulgaria, promulgated in 1991, states that under the conditions of a separate law the state can grant concessions for certain objects or activities that are exclusive state property or subject to sovereign state rights. These conditions are prescribed in the Concessions Act, effective from 1 July 2006.

The Concessions Act regulates the common terms for granting concessions. There are special rules set out in the Underground Resources Act, governing the terms for granting concessions for mining of underground resources, and the Waters Act, governing the terms for granting concessions for mining of mineral water.

## Licensing

### Licensing regime in electronic communications

The Electronic Communications Act, effective from 22 May 2007, reflects the need to establish unified rules for regulation of the common European electronic communications market, part of which is Bulgaria.

Under the Electronic Communications Act, electronic communications may be transferred, transmitted or accepted for all kinds of signs, signals, written text, pictures, sounds or information by conductor, radio waves, optical or other electromagnetic means.

Public electronic communications may be provided by any legal entity or individual who meets the general requirements set out in the law, after first notifying the Communications Regulation Commission.

Where legal entities want to use limited resource for the purposes of carrying out electronic communications, they have to obtain permission from the Communications Regulation Commission.

The Communications Regulation Commission may decide to hold a tender procedure to issue a permission for certain cases of use of limited resources.

Permissions for use of limited resources may be issued for a period of up to 20 years.

Radio and TV broadcasting activities require an individual license. Such licenses are issued by the Media Council, a special body designated under the Radio and Television Act.

The Radio and Television Act also regulates radio and television operators. The Media Council issues licenses to legal entities and individuals registered to perform terrestrial broadcasting. Licenses are issued after a tender process. The license term is up to 15 years and can be extended to a maximum period of 25 years.

Persons intending to create radio and television programs are to register with the Media Council.

#### Licensing regime in the energy and gas sector

The amendments to the Energy Act, effective from 2012, transpose the Third Energy Package into Bulgarian law thus opening the Bulgarian energy and gas market to liberalization.

The main regulatory body in the energy, gas and water supply sector is the State Energy and Water Regulatory Commission which is responsible for the issuance, amendment and withdrawal of licenses for activities in the energy and gas sector.

In general, the law requires an individual license for the specific energy activity, such as generation of electricity and/or heat, transmission of electricity, heat or natural gas, trading of electricity, organization of regulated energy exchange, supply of electricity and natural gas to final customers, and distribution of electricity and natural gas.

No license is required for:

- Generating electricity from persons owning plants with a total installed capacity not exceeding 5 MW
- Generating heat from persons owning plants with a total installed capacity not exceeding 10 MW or



- Transmission of heat from persons owning transmission networks to which plants with a total installed capacity not exceeding 10 MW have been connected or
- Generating heat for own use.

No license is required for trading with natural gas.

There are restrictions placed on those entities which have already received licenses for distribution of energy and distribution of natural gas to also be granted licenses for other energy activities. The entities which are licensed as distributors of natural gas on a particular territory may also be licensed as end suppliers of natural gas provided that the customers connected to the distribution network are less than 100,000.

Any local legal entity, fulfilling the requirements of the law, is eligible to receive a license for the activities listed above, as well as to perform gas trading activities.

Such license or the right to perform gas trading activities may also be granted to an entity registered under the legislation of one of the Member States or a country that is party to the European Economic Area Agreement.

For the purposes of issuance of a license, there is no formal requirement for foreign entities to be registered under the Bulgarian Commercial Act.

Licenses are issued for a period up to 35 years. The term may be extended for an additional 35-year period where the licensee performs all obligations and requirements under the license, and has applied for an extension at least one year prior to the expiration of the initial license term.

## Renewable energy

Pursuant to Directive 2009/28/EC on the promotion of the use of energy from renewable sources, Bulgaria is required to achieve a 16% share of renewable energy of total internal energy consumption by 2020. However, according to a non-binding resolution adopted in February 2014 by the European Parliament, by 2030 at least 30% of the total final energy consumption in EU countries is to be produced from renewable energy sources, achieved through individual national targets.

The production and promotion of renewable energy in Bulgaria is regulated mainly by the Energy Act and the Renewable Energy Act (REA). The REA revoked the Renewable and Alternative Energy Sources and Biofuels Act (RAESBA). The official purpose of the REA was to implement the provisions of the new Directive 2009/28/EC. The legislator introduced certain restrictions to the development of renewable projects in order to restrict the overwhelming development of such projects in the territory of Bulgaria and to ensure that the new electricity production capacities being built are adequate for the existing grid capacity of the country.

The sublegislative legislation concerning renewable energy in its major part is adopted by the State Energy and Water Regulatory Commission (SEWRC or “the Regulator”).

### Licensing of renewable energy producers

No electricity production license is required for renewable energy plants with a total installed capacity of up to 5 MW.

### National support measures for renewable energy producers

The major part of the REA regulates the development of projects for generation of electricity from renewable sources.

Pursuant to the REA, producers of electricity from renewable energy sources (RES) are entitled to the following incentive measures:

- Privileged connection of the renewable energy plants to the electricity grids
- Purchase of electricity produced by renewable energy sources at preferential prices, as determined in a feed-in-tariff.

#### *Privileged connection to the electricity grids*

The REA introduced mechanisms for limiting the previously limitless connection of renewable projects to the national electricity grid, thus attempting to resolve the insufficient grid capacity.

The SEWRC is to announce annually, by 30 June, on the basis of information provided by the grid operators (transmission system operator and distribution system operators), the maximum existing grid capacity for connecting new production facilities of electricity from renewable sources for the following twelve-month period. The maximum connection capacities shall be divided by: (a) areas of connection and (b) levels of voltage.

The SEWRC approved zero grid capacity for connecting new production facilities of electricity from RES for three subsequent periods, namely 1 July 2012 – 30 June 2013, 1 July 2013 – 30 June 2014 and 1 July 2014 – 30 June 2015.

Therefore, until 30 June 2015, only renewable energy projects with signed preliminary or final connection agreements may be connected to the national electricity grid.

Developers need to apply to the respective grid operator for connection to the grid in the area of development of the project. The grid operator shall estimate the admissibility of the relevant application. In general, the “first come – first served” principle shall be applied. If the application is approved (i.e. assessed as admissible), the grid operator is to issue a statement on the terms and conditions for connection of the respective project to the grid.

Once the maximum capacity is reached (i.e. the total amount of requested capacity, as per the submitted and approved applications, exceeds the maximum capacity as announced by the Regulator), any further applications for the respective year shall be rejected.

Upon submission of the application for connection to the grid, the applicant must provide a participation guarantee at the amount of BGN 5,000 for each MW of intended installed capacity.

Grid operators must connect the following categories of renewable energy projects, regardless of the available grid capacity:

- RES projects which shall not sell electricity at preferential prices
- RES projects with a total installed capacity not exceeding 30 kW which shall be constructed over roofs and/or walls of buildings located within urbanized territories
- RES projects with a total installed capacity not exceeding 200 kW which shall be constructed over roofs and/or walls of production or warehouse buildings located within urbanized territories
- Biomass projects with a total installed capacity not exceeding 1.5 MW which shall be constructed within urbanized zones, agricultural sites or production zones, and
- Hydro power plants with a total installed capacity not exceeding 1.5 MW.

The RES producers sign with the grid operators preliminary and final agreements for connection to the grid which provide for terms and conditions for connection of the respective projects to the grid.

Another financial filter is the requirement that investors must pay, as an advance payment, part of the fee for connection to the grid at an early stage of development of the project, namely upon signing the preliminary agreement for connection to the electricity grid. The amount of the advance is fixed, regardless of the specific conditions for connection of each project, and is as follows: (i) BGN 50,000 for each MW of intended installed capacity for projects with installed capacity above 5 MW, and (ii) BGN 25,000 for each MW of intended installed capacity for projects with installed capacity 5 MW and below.

#### *Feed-in-tariff (FIT)*

The REA retained the feed-in tariff (FIT) as the main operating subsidy for production of electricity from renewable sources. The principle of mandatory off-take of electricity produced from renewable sources on the basis of long-term power purchase agreements has been maintained. The persons obliged to purchase the electricity are the public provider (National Electricity Company EAD) and the end suppliers of electricity.

According to the latest amendments of REA, effective as of 1 January 2014, National Electricity Company EAD, in its capacity of public provider, and the three licensed end suppliers (EVN Bulgaria Electrosnabdyavane AD, Energo-Pro Prodazhbi AD and CEZ Electro Bulgaria AD) shall no longer purchase the entire volume of electricity produced by RES at the applicable FIT. They shall purchase at the applicable FIT only the electricity produced by RES up to the average annual production duration for the different RES producers as determined in the relevant decision of the Regulator with which the applicable FIT for the respective producer has been approved.

The volume of electricity produced by the RES exceeding the determined average annual production duration shall be purchased at lower prices than those at which the public provider sells electricity to the end suppliers and to the electricity distribution companies. This price is approved by the SEWRC.

The FIT is fixed for the entire period of mandatory off-take of the electricity produced from renewable sources. The Regulator shall determine the FIT levels annually or whenever a significant change of any of the price components is established as a result of analysis. The new prices shall be applicable to new projects only.

The period for mandatory off-take of electricity depends on the type of the renewable energy project, namely:

- 20 years for solar, geothermal and biomass projects
- 12 years for wind projects, and
- 15 years for hydropower projects with a total installed capacity up to 10 MW and other renewable energy projects.

According to the REA, the FIT shall be fixed as at the date of entry into exploitation of the renewable energy project, i.e. the date of issuance of the permit for use.

When a renewable project enters into exploitation in stages, the off-take price for electricity produced shall be amended as at the date of entry into exploitation of each subsequent stage (unit). This off-take price shall be calculated as an average price between the FIT applied until the entry into exploitation of the respective stage (unit) and the FIT which applies as of the date of entry into exploitation of this unit, in accordance with a methodology to be adopted by the SEWRC.

The REA does not specify a formula according to which the FIT is to be calculated. It is at the discretion of the Regulator to decide on the amount of the FIT for electricity produced from different sources and technologies. The REA only specifies the general criteria which need to be considered by the Regulator when determining the FIT. Additional criteria are specified in the Ordinance on regulation of the electricity prices.

Prior to signing long-term power purchase agreements, RES producers with projects with a total installed capacity over 30 kW have to conclude agreements with the grid operators for access to the grid under the general terms and conditions approved by the SEWRC.

The REA introduced a new fee for the production of electricity by solar projects and wind projects, which has been levied since 1 January 2014. The fee is determined by the following formula:  $\text{Fee} = \text{FIT price (net of VAT)} \times \text{Volume of electricity purchased by public provider and end-suppliers} \times 20\%$ .

The new fee is deducted monthly by the public provider or, respectively, by the end suppliers and is paid to the state budget on a quarterly basis.

### Certificates of origin

All RES producers which sell renewable energy at preferential prices, as determined in FIT, must apply for and obtain certificates of origin for the produced renewable energy. Certificates of origin represent electronic documents which verify that the electricity is produced from RES.

The public provider and end suppliers purchase at preferential prices only electricity from renewable sources for which certificates of origin have been issued and transferred to them.

The Sustainable Energy Development Agency is the authority responsible for certificates of origin. Certificates of origin for electricity produced from RES are issued and transferred on a monthly basis.

### Promotion of renewable energy for heating and cooling

The REA mentions the promotion of renewable energy for cooling and heating but does not specify the exact measures for promotion. The few provisions regarding the promotion of renewable energy for heating and cooling are of a general nature and do not contain specific requirements or steps to be performed by investors.

Projects for development of local heating distribution networks and small decentralized heating and/or cooling systems shall be subject to incentive measures which are not yet determined in the legislation.

The REA proclaims that, in the case of construction of new buildings or basic reconstruction of existing buildings, if technically possible and economically viable, at least 15% of the energy for heating and cooling necessary for the respective building is to be produced from renewable sources.

### Balancing the energy system

Each RES producer must submit to the transmission system operator (Energy System Operator) schedules for the foreseen volume of produced electricity and is financially responsible for any discrepancies between the foreseen and actually produced electricity. For this purpose, RES producers participate in balancing groups with coordinators which are licensed by the Regulator and registered with the transmission system operator.

## Banking and finance

The commercial activities of credit and financial institutions in Bulgaria are regulated by the Credit Institutions Act, effective from 1 January 2007.

As per the Credit Institutions Act, a Bulgarian bank must be established in the legal form of a joint-stock company, issuing only dematerialized shares and with a fully paid-up minimum registered capital of BGN 10,000,000. Banking activities in Bulgaria may be performed only upon obtaining a bank license issued by the BNB.

The Credit Institutions Act envisages two possibilities for a bank, licensed in a Member State or in a country that is part of the European Economic Area (EEA), to carry out banking activities on the territory of the Republic of Bulgaria:

- Through a branch, of which no more than one may be on the territory of Bulgaria, i.e. freedom of establishment

- Directly, after specifying the names and addresses of the persons who will represent it before the BNB, i.e. freedom to provide services.

Member State banks, including banks from the EEA may perform only those activities that are specified in their licenses. Activity can commence upon notification to the BNB by the competent bodies which have issued the license of the bank.

A foreign bank registered in a third country (i.e. not in a Member State or the EEA) may perform banking activities in Bulgaria only upon opening a branch in Bulgaria and obtaining a license issued by the BNB.

Financial institutions are legal entities other than credit institutions for which the main scope of business is carrying out one or more banking activities and/or granting credits with funds which have not been raised from receiving deposits or other repayable funds from the public. The financial institutions are subject to registration in a special register kept by the BNB provided that certain requirements have been met.

Following amendments to the Credit Institutions Act in 2014, Bulgarian financial institutions can no longer carry out activities which are not explicitly included in the Act (such as operational leasing activities).

A financial institution can take the form of a joint-stock company, limited liability company or limited partnership with shares. The minimum share capital of a financial institution, regardless of the services to be carried out, is BGN 1,000,000.

Financial institutions having their registered address in a Member State or a country that is part of the EEA are also entitled to carry out commercial activities on the territory of the Republic of Bulgaria directly or through a branch provided that they:

- Are subsidiaries of a bank licensed in a Member State, or
- Are jointly owned by two or more banks, all of which are licensed in a Member State
- Meet all requirements explicitly envisaged by the Credit Institutions Act.

The representative office of any bank in the Republic of Bulgaria is obliged to submit to the BNB a copy of the act for its registration with the Bulgarian Chamber of Commerce and Industry within 14 days after the date of issuance of the act. Such representative office may not carry out commercial activity in Bulgaria.

Significant amendments to the Credit Institutions Act were made in 2014 in order to align it with the requirements of Regulation 575/2013 of the European Parliament and of the Council.

## International private law

### International Private Law Code (IPLC)

The rules of the IPLC regulate the terms and conditions concerning the choice of applicable law in private legal relations, which have an international element as well as the recognition and enforcement of foreign court judgments and other official acts in Bulgaria.

### Competence of Bulgarian courts and other authorities

The international competence of Bulgarian courts and other authorities is exclusive only if it is explicitly provided for. For example, Bulgarian courts have exclusive competence on lawsuits concerning:

- Ownership title and property rights over real estates situated in Bulgaria
- Legal status of legal entities registered in the Republic of Bulgaria
- Claims regarding industrial property, where the patent has been issued or the registration made in the Republic of Bulgaria.

Where the dispute is outside the exclusive competence of the Bulgarian courts, any such action may be submitted to a foreign court or arbitration by an agreement in writing between the parties.

The Bulgarian enforcement authorities have exclusive competence to take action for compulsory enforcement against entities, individuals and assets located in Bulgaria.

### Applicable law

The legal status of legal entities and branches of foreign companies is regulated by the law of the state in which they are registered. Therefore, the legal status of legal entities and branches of foreign companies registered in Bulgaria shall be subject to Bulgarian law.

Since ownership rights over movable and immovable property are regulated by the law of the state within whose territory it is located, Bulgarian law shall be applicable to property located within Bulgaria.

Contracts, including employment contracts, are regulated under the law chosen by the parties.

However, the choice of applicable law for an employment contract must not deprive an employee of the protection under the mandatory rules of the law, which would be applicable in the absence of choice of applicable law. In the absence of choice of applicable law, an employment contract is governed by the law of the state in which the employee usually works, even if they are temporarily employed in another state.

Unfair competition and the restriction of competition are regulated by the law of the state in whose territory the interests of competitors or consumers are damaged or may be damaged.

## Recognition and enforcement of foreign awards in Bulgaria

Decisions and other acts of foreign courts and authorities, including courts of arbitration, can take legal effect in Bulgaria through their recognition and/or enforcement subject to the terms and conditions of the Bulgarian International Private Law Code (IPLC) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

According to the IPLC, decisions and other acts of foreign courts and authorities can be recognized and enforced if the foreign court or authority has been competent according to the Bulgarian law to issue the act subject to enforcement, and its recognition and enforcement does not contradict public policy in Bulgaria.

The New York Convention, to which Bulgaria is a party, provides rules for enforcement of foreign arbitration awards in contracting states.

## Procedure for enforcement of foreign court judgments and arbitration awards

The procedure for enforcement of a foreign court judgment or an arbitration award starts upon the filing of a claim with the Sofia City Court. Attached to the claim must be a copy of the foreign act verified by the court or by the arbitration which has issued it and a certificate of the foreign court or arbitration that the judgment has entered into force. These documents must be translated into Bulgarian by a sworn translator and certified by the Consular Department of the Bulgarian Ministry of Foreign Affairs.

The local court examines whether all pre-conditions for recognition and enforcement of the foreign act are fulfilled. However, the Bulgarian court does not review the case on the merits. As an exception, a debtor can make an objection before the Bulgarian court against subsequent payment of the debt after the foreign court judgment or arbitration award has entered into force abroad and, in this case, the Bulgarian court will have to consider this fact before enforcement of the act.





## Chapter 3

# Company Law



The primary law governing the formation, operation, transformation and termination of companies is the Commercial Act, effective from 1 July 1991.

There are five forms of business association in Bulgaria under the Commercial Act:

- Unlimited partnership (sabiratelno druzhestvo – SD)
- Limited partnership (komanditno druzhestvo – KD)
- Joint-stock company (aktsionerno druzhestvo – AD)
- Limited liability company (druzhestvo s ogranichena otgovornost – OOD)
- Limited partnership with shares (komanditno druzhestvo s aktsii – KDA)

All types of business association are recognized as legal entities. The founders may participate in one or more companies provided that the law does not prohibit such participation. Founders may be Bulgarian or foreign companies and/or individuals. Irrespective of the nationality of its founders, each type of company is considered to be Bulgarian.

The most usual forms of business association for foreign investors are the limited liability company (OOD) and the joint-stock company (AD).

### Rules applicable to all forms of business association

#### Articles of Association

The adoption of the Articles of Association is an initial step in the establishment of a company.

The Articles of Association must contain:

- Trade name, seat and address of the company
- Scope of the company's activities
- Management and representation of the company
- Identity of the partners/shareholders of the company (except for the AD)
- Type (cash or in-kind) and amount of partners' contributions (for SD and KD), and/or the amount of company's capital (for OOD, AD and KDA), and
- Other matters as regulated by the Commercial Act which may differ for each form of company.

In cases when a partner or a shareholder intends to make an in-kind contribution, the Articles of Association must state the name of the contributor, the full description of the in-kind contribution, its monetary value, and the grounds for the contributor's rights.

In the case of a limited liability company, a joint-stock company or a limited partnership with shares, the in-kind contribution must be valued by three experts appointed by a registration official from Commercial Register with the Registry Agency. The conclusion of the experts must contain a full description of the in-kind contribution, the method of valuation, the valuation and its consistency with the share of the capital or the number, the nominal and issuing value of the shares being subscribed for by the contributor. The monetary value of the in-kind contribution stated in the Articles of Association may not exceed the experts' valuation.

## Registration

A newly established company comes into legal existence with its entry in the Commercial Register with the Registry Agency. The standard registration application form must be filed by the appointed management body. The managing directors of the company have an obligation to notify the Commercial Register with the Registry Agency, within seven days, of any change in the circumstances already registered. If the managing director fails to perform their duties, they are subject to an administrative fine.

## Pre-company status

Prior to registration with the Commercial Register, the founders may reach an agreement on the actions that must be taken in preparation for incorporation. The founders' actions create rights and obligations for the persons who have undertaken the said actions. The latter are held liable jointly and severally for these obligations. Eventually, with the registration, these obligations are automatically assumed by the newly established company.

### Announcement of the annual financial statements

All forms of business associations under the Commercial Act, including sole proprietors, are obliged to present their annual financial statements for the previous financial year to the Commercial Register. The deadline for announcement is different for the different types of associations – by 31 May of the year following the reported year for sole proprietors, by 30 June of the year following the reported year for limited liability companies, and by 31 July of the year following the reported year – for all other forms of business associations.

### Termination of business associations

There are several grounds for the termination of a company:

- Expiration of the term of the company or other grounds/circumstances provided for in the Articles of Association
- Resolution by the shareholders/partners of the company adopted with the qualified majority prescribed by the law or the Articles of Association
- Resolution of the respective district court for declaring the company insolvent
- Transformation of the company in certain cases
- Termination by a resolution of the district court in cases provided by the law (e.g. where the company pursues objectives against the law)
- In the case of an AD – when the company's net asset value drops below the amount of the registered capital and, within one year, the company has not resolved to reduce its registered capital or to transform the company in accordance with the requirements of the law
- Other specific grounds regarding the SD, KD and KDA (e.g. insolvency of a partner).

When one of the above occurs, the company undergoes liquidation proceedings unless an insolvency procedure has already been initiated. The company loses its legal status being deleted from the Commercial Register.

### Transformation of business associations

Chapter 16 of the Commercial Act regulates mergers, consolidation of two or more companies, demergers into two or more companies, the spin-off of certain operations into a new company, and transformations whereby the type of the company changes.

The applicable provisions specify and classify the types of business transformations, the procedure for execution of the transformation, and the rights and obligations of the companies and their partners/shareholders.

Prior to adopting a resolution authorizing a transformation, companies must draft a transformation plan or conclude a transformation agreement, depending on whether initially there is one or more participating company. The transformation agreement/plan

must be in writing and it must be signed before a notary public by the official representatives of the participating companies. It must specify the terms and conditions of the intended transformation, as well as the obligations of the participating companies with regard to the transformation. The content of the transformation agreement/plan must be in compliance with the mandatory requirements of the Commercial Act.

The transformation agreement/plan must be reviewed by controllers appointed by the management bodies of each of the companies involved in the transformation. Upon a request from the companies involved, an official from the Registry Agency may appoint a joint controller for all companies. The controller must be a registered auditor. The controller must also meet other requirements set in the law, which guarantee the auditor's independence from the merging companies, e.g. the companies are not allowed to appoint auditors who have audited them during the last two financial years, or who have performed a valuation of an in-kind contribution to the capital of any of the companies. The controller is not allowed to audit any of the merging companies for a period of two years following the date of the merger.

The review of the transformation agreement/plan is not obligatory, if all shareholders of the companies participating in the transformation express their explicit written consent that no audit of the transformation is to be performed. In this case, the written consent must be announced at the Commercial Register with the Registry Agency.

The management body of a limited liability company, a joint-stock company, or a limited partnership with shares is required to adopt a report on the transformation. The report must contain a detailed economic and legal explanation of the terms and conditions of the transformation, as specified in the transformation agreement/plan.

The adoption of a report on the transformation is not obligatory, if all shareholders of the companies participating in the transformation express their explicit written consent that no adoption is necessary. In this case, the written consent must be announced at the Commercial Register with the Registry Agency.

The report and the transformation agreement/plan must be announced at the Commercial Register with the Registry Agency simultaneously by each participating company and at least 30 days prior to the date of the General Meeting which will vote on the resolution for transformation.

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

The transformation enters into force from the date of its registration into the Commercial Register with the Registry Agency.

The Commercial Act also outlines simplified transformation procedures, provided that certain conditions are met.

When all participating companies are solely owned and the sole owner of their capital is one and the same person, the transformation is performed on the basis of a resolution adopted by the sole owner. The rules regarding: (i) the appointment of an independent controller, (ii) the reports to be prepared by the management bodies of each participating company, and (iii) the approving resolution by the General Meeting of Shareholders/ Partners do not apply.

### Insolvency

A company is considered insolvent when it is unable to meet its monetary obligations or in the case of over-indebtedness. The company's management body must file an application with the relevant district court for commencement of insolvency proceedings within 30 days of becoming insolvent or over-indebted (the assets of the company are not sufficient to cover its liabilities). The application may also be filed by any creditor of the company.

If there are grounds to initiate insolvency proceedings, a trustee must be appointed by the court. Immediately upon appointment, the trustee represents and manages the current affairs of the company, collects its receivables and converts its assets into cash and subsequently distributes the cash to the company's creditors.

### Liquidation

The liquidation procedure, in contrast to insolvency, is voluntary, except for a liquidation by a court decision in cases provided for by law, and is initiated in the case of expiration of the term of the company as set out in its Articles of Association, or by a resolution of the members/shareholders of the company.

The General Meeting of Shareholders (or the Partners in an SD or KD) must appoint a liquidator. The latter is responsible for inviting the company's creditors to claim their receivables through announcement at the Commercial Register with the Registry Agency. After the satisfaction of the creditors' claims, the remaining assets are distributed to the partners/shareholders, but not before six months have elapsed from the date of announcement of the notice to the creditors at the Commercial Register. When all liabilities of the company have been settled and the remaining assets distributed, the liquidator applies for deletion of the company from the Commercial Register.

### Limited liability company (OOD)

The OOD is a commercial company whose shareholders' liability is limited to the unpaid portion of their shares<sup>1</sup>. An OOD is liable to its creditors only to the extent of its own assets.

This form of enterprise is convenient for small and medium-sized business activities because of the advantages it offers over the other types of business associations:

1 The English word "share" does not explain the difference between a share in an OOD and a share in an AD. The most important differences are that the share in an OOD is not freely transferable and is not necessarily of equal value, while the AD can issue only shares of equal value and these are more easily transferable. In addition, the shares of an AD are securities. For simplicity, shares in an OOD will be referred to as an "interest."

- The minimum capital required is relatively low – BGN 2
- Shareholders' personal assets are protected from business debt because their liability is limited to the amount of their contribution into the capital. By contrast, unlimited partnership partners are liable to creditors with their entire property
- The OOD avoids the higher publicity requirements and the complex incorporation procedures applicable to an AD company.

Because of these advantages, the vast majority of foreign-owned companies operate in this legal form.

The Bulgarian OOD resembles the German and Austrian "GmbH" (Gesellschaft mit beschränkter Haftung), the French "Sarl." and the English private company limited by shares.

### Formation

An OOD can be formed by one or more persons. The Bulgarian Commercial Act does not provide for a minimum or maximum number of shareholders in an OOD. It should be taken into account that a large number of shareholders will make the company's management cumbersome, since all important decisions must be taken unanimously or with a majority of shareholders representing 75% of the OOD's capital.

The specific formation rules applicable to the OOD are as follows:

- All the capital must be subscribed on incorporation and at least the minimum statutory capital (BGN 2) must be paid in before the standard registration application form is submitted to the Commercial Register
- The founders must appoint managing director(s) of the company. The managing director does not necessarily have to be an OOD shareholder, Bulgarian citizen or resident
- In the case of an EOOD (single member limited liability company), an Incorporation Deed must be drawn up instead of Articles of Association.

### Capital

The statutory minimum capital of an OOD is BGN 2. The capital of the company is divided into interests and the size of each shareholder's interest determines their rights and obligations concerning the company. It is possible for the interests of the individual shareholders to be of unequal value. The interests of shareholders in an OOD are not securities.

One of the main characteristics of the OOD is related to the transfer of shareholders' interests. The transfer of an interest from one shareholder to another is unrestricted but the transfer to a third party is subject to a more complex procedure. The new shareholder has to be admitted by the General Meeting of Shareholders of the company following a written application stating that they accept the terms of the Articles of Association. In the

case of admittance by the General Meeting of Shareholders, a Transfer of Interest Contract must be notarized and the transfer must be registered in the Commercial Register with the Registry Agency.

## Management

The OOD is managed by the General Meeting of Shareholders (the sole owner in case of an EOOD) and by the appointed Managing Director(s).

Each OOD must hold at least one General Meeting of Shareholders each calendar year (Annual General Meeting). It is usually convened at the Managing Director's discretion, but it can also be convened upon the written request of shareholders whose interests amount to at least one-tenth of the company's capital.

Apart from the Annual General Meeting, the Managing Director may convene additional meetings commonly referred to as Extraordinary General Meetings. An Extraordinary General Meeting must be called immediately when the losses of the company exceed one-fourth of the registered capital or if the company's net asset value falls below the amount of the registered capital. There is no limit to the number of General Meetings a company may hold each year.

The General Meeting is the company's highest management body. It is empowered to make key strategic and executive decisions regarding the company. The shareholders are authorized to decide on the admission and expulsion of shareholders, the appointment of Managing Director(s), a capital increase or reduction, approval of the annual report and balance sheet, distribution of profits, etc.

The day-to-day management of an OOD is conducted by at least one Managing Director. The Managing Director represents the OOD in court and in dealings with third parties. He/she is financially liable for damages caused to the company. For example, in the case of over-indebtedness or insolvency, the Managing Director must file an application initiating insolvency proceedings. If the Managing Director does not perform their duty, they commit a criminal offence and may be held liable for damages to both the company and its creditors.

The managing director(s) in an OOD is/are required to have written management contracts executed with the company. The management contract must be signed by a person authorized by the General Meeting of Shareholders or, in the case of an EOOD, by the sole owner of the capital.

In the case of an EOOD, the sole owner of the capital manages and represents the company either personally or through an appointed Managing Director(s). When the owner is a legal entity, the Managing Director of the legal entity or a person designated by him/her manages the company.

## Distribution of profits

Shareholders cannot claim their interest back while the company is in operation. They are only entitled to receive profits in proportion to their interest, unless otherwise agreed by the shareholders.

Payment of interest on the shareholder's profits is explicitly prohibited.

## Joint-stock company (AD)

A joint-stock company is a company whose capital is divided into shares. The AD's liability to its creditors is limited to the amount of its assets. Foreign investors prefer this type of business association when larger amounts of capital need to be raised, particularly when public capital markets need to be tapped. The Bulgarian AD resembles the French "Societe Anonyme," the German and Austrian "AG" (Aktiengesellschaft) and is similar to the English public company limited by shares.

## Formation

An AD is incorporated by a Constituent Assembly whereby all persons, who subscribe for shares into the capital of the new company, decide to constitute the company and adopt its Articles of Association. These resolutions must be unanimous if several legal entities and/or individuals are involved. An AD may also be formed by an individual or legal entity. In the case of a single member joint-stock company, the sole owner decides on the issues otherwise addressed by the Constituent Assembly.

The AD is registered in the Commercial Register with the Registry Agency by filing its Articles of Association and other documents evidencing that:

- Its capital is fully subscribed
- A portion of the value of each share stipulated by the Articles of Association, but not less than 25% of the nominal or issuing value, has been paid
- The Board of Directors or, respectively, the Managing Board and Supervisory Board have been appointed, and
- The remaining requirements of the law have been fulfilled (e.g. banks, insurance and investment companies have to obtain the necessary licenses granted by the Bulgarian authorities).

## Capital

### General rules

The statutory minimum capital of an AD is BGN 50,000. A higher statutory minimum is required for credit and financial institutions, investment companies, insurance and health insurance companies.



The capital of the company is divided into bearer or registered shares. Within these two types of shares, the AD may issue ordinary and preference shares. An ordinary share entitles its holder to one vote. Preference shares may provide a guaranteed or additional dividend or a specified share in the company's assets in the case of liquidation. Non-voting shares cannot represent more than 50% of the company's capital. Multiple voting shares are permitted only if provided for in the Articles of Association. ADs can issue dematerialized<sup>2</sup> shares.

The shares in an AD can be traded on the stock exchange if the company is registered as a public company under the Public Offering of Securities Act.

The AD must set up a reserve fund mainly to cover losses. At least one-tenth of the company's profit must be set aside until the fund's assets reach at least one-tenth of the company's registered capital. In addition, any premium over the par value for shares and debentures obtained upon their issuance must be included in the reserve fund.

The Bulgarian Commercial Act has a requirement that regulates the capital-credit ratio of joint-stock companies. The net value of the assets of a joint-stock company, i.e. the difference between the value of the assets and liabilities of the company according to its balance sheet, cannot fall below the amount of the registered capital of the company. If this ratio is not observed, then the shareholders are obliged to adopt a resolution either to decrease the company's capital, or to transform the joint-stock company into another form of business entity. If this is not done within one year, then a court ruling issued upon the request of the public prosecutor can terminate the company.

### *Increase of capital*

A company's capital may be increased in one of the following ways:

- Issuing new shares
- Increasing the nominal value of shares already issued, or
- Converting debentures into shares.

The resolution to increase the capital must be taken by the General Meeting of Shareholders.

The Articles of Association may empower the Management Board (Board of Directors) to increase the company's capital up to a specified amount. Under this provision, new shares may be issued within five years from the date of the company's incorporation. A resolution which allows for the issue of new shares may also be passed by amending the Articles of Association of the company. If this is done, then the Management Board (or Board of Directors) may increase the company's capital up to the amount specified in the amending resolution for up to five years from the date of registration of the amendment in the Commercial Register.

<sup>2</sup> Dematerialized shares have no physical substance and are issued in a book-entry form.

### *Decrease of capital*

A company's capital may be decreased through either of the following:

- Reduction in the nominal value of shares, or
- Cancellation of shares.

A capital decrease requires shareholders' approval. The resolution of the General Meeting of Shareholders on the capital decrease should be announced in the Commercial Register. By its announcement, it is presumed that the company is committed to secure or repay all creditor claims. Creditor consent is assumed if no written objections are filed within three months from the date of announcement of the resolution for capital decrease with the Commercial Register.

## Management

### *General rules*

The joint-stock company's governing bodies are the General Meeting of Shareholders and the Board of Directors (one-tier system), or the Supervisory Board and the Management Board (two-tier system). There are no requirements regarding the nationality or residence of members of either board. A member of the Management Board may not be a member of the Supervisory Board. The members of the Board of Directors, the Management Board and the Supervisory Board may be shareholders. All Board members are held liable jointly and severally before the company for damages caused in the course of their duties.

In a single member joint-stock company, the owner is empowered to decide on all issues otherwise handled by the General Meeting of Shareholders.

The General Meeting of Shareholders consists of all shareholders entitled to vote. The first General Meeting of Shareholders must be held within 18 months of incorporation. Subsequently, a regular General Meeting of Shareholders must be held at least once a year, not later than 30 June. General Meetings of Shareholders are usually called by the Board of Directors/Management Board or by the Supervisory Board, or upon a request of shareholders representing no less than 5% of the company's capital.

The General Meeting of Shareholders may amend and supplement the Articles of Association, transform and dissolve the company, elect and recall members of the Board of Directors or the Supervisory Board, appoint and dismiss registered auditors, approve the annual financial statements as certified by the appointed registered auditor and resolve other matters which fall into its prerogatives by law or by virtue of the Articles of Association.

### *Two-tier system*

The company's constituent Supervisory Board must be elected prior to company registration. Subsequent members of the Board are appointed by the General Meeting of

Shareholders. The total number of Supervisory Board members may vary from three to seven.

The Supervisory Board does not effectively take part in the management of the company. Its primary function is to represent the company in its relations with the Management Board. The Supervisory Board appoints the members of the Management Board and exercises control over its activities and resolutions. The Management Board must report on its activity to the Supervisory Board quarterly.

Members of the Supervisory Board and the Management Board are required to execute management contracts with the company. Management contracts with members of the Supervisory Board must be signed by a person authorized by the General Meeting of Shareholders or by the sole owner of the capital of the company, in the case of an EAD. All management contracts with members of the Management Board must be executed on behalf of the company by the chairperson of the Supervisory Board or by their authorized representative.

The day-to-day management of an AD with a two-tier management system is carried out by the Management Board under the control of the Supervisory Board. The number of members of the Management Board may not exceed nine and not be less than three. Subject to Supervisory Board approval, the Management Board may effectively delegate the company representation to one or several of its members.

If provided in the Articles of Association, certain resolutions of the Management Board may require prior approval from the Supervisory Board.

### *One-tier system*

One-tier system companies are managed and represented by a Board of Directors. It consists of a minimum of three and a maximum of nine persons. The Board of Directors delegates the actual management and representation of the company to one or more of its members who are subsequently designated as executive directors. They serve at the discretion of the Board of Directors and can be replaced at any time. The executive director of a joint-stock company is required to have a written management contract with the company. The management contract must be executed on behalf of the company by the chairperson of the Board of Directors.

Non-executive members of the Board of Directors can conclude management contracts with the company at the company's discretion.

## **Other forms of business association**

### *European forms of business association*

The European forms of business associations are unions of legal entities, individuals or both, from EU Member States. The EU legislation regulates the following forms of business associations: (i) European company, established as a European joint-stock

company; (ii) European cooperative society; (iii) European economic interest grouping. In Bulgaria, these entities are mainly regulated by the Commercial Act, the Cooperatives Act and the Commercial Register Act, all in conformity with EU legislation.

#### Unlimited partnership (SD)

The unlimited partnership is an entity formed by two or more partners who are jointly and severally liable to the entity's creditors. Their liability for the entity's debts is unlimited. There is no capital requirement.

The Bulgarian unlimited partnership (unlike the German and Austrian general partnerships for example) is a separate corporate entity from its partners.

Each partner is entitled to take part in the management of the partnership's business unless the Articles of Partnership have assigned the management to one or several of the partners or to a third party.

#### Limited partnership (KD)

Limited partnerships include general and limited partners. General partners are fully liable for the company's debts while the liability of limited partners does not exceed their contribution to the partnership. General partners must manage and represent the entity.

#### Limited partnership with shares (KDA)

Limited partnerships with shares are formed by at least three limited partners whose liability is limited to the amount of their contributions to the company's capital. There are also general partners with unlimited liability.

The formation of a KDA is initiated by the unlimited partners. They have the right to select the limited liability partners as subscribers of the company's capital.

KDAs are managed by a General Meeting of Partners and a Board of Directors. The General Meeting of Partners consists of all partners. Only limited partners have voting rights. The day-to-day management of the partnership is carried out by the Board of Directors which includes only general partners.

#### Sole proprietor – ednolichen targovets (ET)

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

## Commercial Register

While the Commercial Act regulates the method of incorporation of business associations in Bulgaria, the Commercial Register Act (CRA), which came into force on 1 January 2008, regulates the registration of business associations as each newly established entity begins

its legal existence with its entry into the Commercial Register.

The Bulgarian Commercial Register is a centralized electronic register where all mandatory registration matters, with regard to Bulgarian traders and foreign entity branches, are kept.

The registration procedure is assigned to the Registry Agency at the Ministry of Justice which is the registration authority. The Commercial Register is available to the public, including via the internet – [www.brra.bg](http://www.brra.bg). The Registry Agency also manages the reservation of company names and announcement of documents and facts such as annual financial statements, Articles of Association, invitations to shareholders and others. By virtue of the CRA, the need for promulgation of corporate documents in the State Gazette is replaced by documents being recorded at the Commercial Register.

The CRA determines the registration procedure of all five main forms of business associations, namely: unlimited partnership, limited partnership, joint-stock company, limited liability company and limited partnership with shares. Furthermore, the CRA regulates the registration procedure of sole proprietors, cooperatives and branches of foreign companies. It does not apply to partnerships, foundations, NGOs and others.

Following registration with the Commercial Register, companies obtain a registration number – Unified Identification Code (UIC) which is used for taxation, social security and statistical purposes. Once received, this UIC remains unchanged until termination and/or cancellation. Upon re-registration, the BULSTAT number of the existing companies is transformed into their UIC.

Apart from the registration of a company, the CRA also regulates subsequent corporate changes such as entry into the Commercial Register of a procurator, pledge of shares, pledge over a commercial enterprise, termination and liquidation of a company, transfer or transformation of a commercial enterprise, change of the company's representatives, seat or name and others.

However, the district courts retain their competency regarding insolvency procedures.

As from 1 January 2015, the Bulgarian Registry Agency provides free SMS notifications to traders and branches of foreign companies when an application for registration of changes has been submitted to the Commercial Register.



## Chapter 4

# Real Estate

The major legislative acts governing real estate and real estate transactions in Bulgaria are the Bulgarian Constitution, the Ownership Act, the State Property Act, the Municipal Property Act, the Privatization and Post-Privatization Control Act, the Civil Procedure Code, the Encouragement of Investment Act, the Territorial Development Act, the Obligations and Contracts Act, the Condominium Ownership Management Act and the Ordinances on its implementation, the Constructors Chamber Act.

### Types of ownership over real estate

Ownership of real estate in Bulgaria may be public or private.

Public ownership includes properties of public interest and those designated for public use only and public functions, such as the coastal beach, national roads, forests and parks, streets, squares, museums and schools.

Public properties belong to the state and municipality and are operated by the respective administrative department. They can be granted for operation to third parties through concession, public-private partnership or lease upon satisfying conditions explicitly stated by law. In the latter case, the lease period for public state and municipal properties cannot exceed 10 years, as the granting of the lease in both cases is subject to public tender procedures.

Public properties cannot be disposed of (i.e. by sale purchase, donation, in-kind contribution, exchange) and cannot be acquired on the basis of possession and expired prescription period. However, limited property rights (e.g. construction right) may be granted for municipal public properties and for state public properties (except for properties related to national security and state defense), when provided by the law.

Private properties can belong to individuals, entities, the state and municipalities following the limitations provided above (see Section "Direct acquisition" and Section "Indirect acquisition" below). Private properties can be subject to real estate transactions. The sale and purchase of state and municipal property is usually executed by public tender or

as part of a public-private partnership (PPP) project. The exchange of ownership title or construction right over private state and municipal real estate property can be performed only in cases explicitly specified in the law. The lease period for state and municipal private property cannot exceed 10 years and the granting of a lease is subject to public tender procedures or PPP procedures.

When the property belongs to two or more persons, co-ownership is established. The co-owners decide operations by majority and each has a right of first refusal in case of disposal of the property. The co-owners can authorize one of themselves to represent their co-ownership before third parties.

Buildings can represent condominium ownership. In this case, floors or specific units of floors may be exclusively owned by separate persons while condominium ownership areas for all owners in the building are the façade, the roof, the construction and everything which is for common use. Condominium ownership is established when: (i) the building is completed, (ii) the floors in the building are two or more, and (iii) floors or specific units on the floors belong to different owners (see Section “Condominium ownership management” below).

## **Condominium ownership management**

The Condominium Ownership Management Act (COMA) in force as of 1 May 2009 regulates the regime of buildings under condominium ownership, namely the management of common areas, the rights and obligations of the owners and occupants of individual dwelling units or parts thereof, as well as adjacent areas (see Section “Regulation and planning” below) and the technical certificate (see Section “Execution of construction works and entering into exploitation” below).

The COMA shall be applicable to the management of common areas of buildings under condominium ownership, i.e. in case floors or separate units (apartments, shops, restaurants and others) of buildings are owned by different owners.

There are two exceptions in which the COMA shall not apply, namely: (i) in case of buildings under condominium ownership with up to three individual units, belonging to more than one owner (in this case the general rules of the Ownership Act shall apply); and (ii) in case of buildings under condominium ownership in closed-type residential complexes, the management of the common areas shall be agreed by written contract with notarized signatures, concluded between the investor and the owners of the individual units.

As per the COMA, condominiums shall be managed by a general assembly of owners and/or by an association of owners. Unlike the general assembly of owners, the association of owners is a legal entity which shall be established in accordance with the procedures set out in the COMA. The general assembly of owners or the association of owners may decide to transfer the maintenance of the building by means of contract to a third party – individual or legal entity.

For the purposes of maintenance of the common parts of a building, a special Repairs and Renewal Fund is to be created. The general assembly of owners/the association of owners adopt a plan for performance of repair works, reconstructions and reorganizations in the building.

By virtue of the COMA, the municipalities have established and maintain public registers of buildings or separate entrances under condominium ownership located on their territory.

## Evidence of title

The ownership title and limited property rights over real estate property in Bulgaria are evidenced by ownership title documents (usually in the form of a notary deed). In addition, the law requires that title documents are registered at the Land Registry. By virtue of this registration, the acquisition of the ownership title or limited property rights becomes defensible against third parties.

The register number of the property in the Land Registry is indicated on the front page of the title document. The register number, the signature of the Registry official and the stamp of the Land Registry entered on the title document are sufficient to evidence the current owner of the real estate property or the limited property rights over it.

## Acquisition of real estate

### Direct acquisition

In Bulgaria, foreign citizens and foreign companies can directly acquire buildings, premises within a building and limited property rights (e.g. a construction right and right of use). There are restrictions to foreigners owning land in Bulgaria, except for the cases reflecting the provisions of the Act of Accession of Bulgaria to the EU into the national legislation, as described below.

The Accession Act provides for restrictions for acquisition of land by EU citizens and entities as follows: (i) for land provided for second residence and (ii) for agricultural land, forests and forest land. Since the five-year transition period for second residence expired on 31 December 2011 and the seven-year transition period for the agricultural land, forest and forest land expired on 31 December 2013, EU residents and entities can acquire urban land, agricultural land, forest and forest land in accordance with the requirements specified by national law. The Ownership Act, regulating the acquisition of land, does not specify whether the general legislative provisions shall apply to the acquisition of land by EU residents and entities or specific rules are to be adopted for such acquisition.

In view of the principles of free movement of goods and services set out in the Treaty on the European Union, it might be assumed that the general provisions concerning transactions with real estate are to apply to EU acquirers as well. However, some documents that need to be provided by Bulgarian individuals and entities cannot be



applied directly to EU acquirers. Therefore, the possibility for introducing specific rules to be applied to EU acquirers cannot be excluded. Considering the significance of the issue, it is expected that the Property Register and the Notary Chamber will adopt a unified practice.

Citizens (non-resident citizens) and entities of countries which are not members of the EU and the EEA may acquire ownership title over land under the terms of an international agreement ratified under the terms provided for in the Constitution of the Republic of Bulgaria, which has entered into force.

Foreigners (non-resident or resident citizens) may acquire ownership title over land in case of legal succession. In case of inheritance of land by citizens and entities of countries which are not members of the EU and the EEA, if not otherwise provided for in an international agreement, they are obliged, within three years following the revealing of the inheritance, to transfer the ownership to persons who have the right to acquire such estates.

### Indirect acquisition

The restrictions on the acquisition of land by foreigners do not apply to Bulgarian legal entities involving foreign participation. Therefore, foreign legal entities and individuals can effectively acquire ownership rights over land through the acquisition of shares or an interest in existing Bulgarian companies, or through the establishment of such companies under Bulgarian law. It is possible for such a company to be 100% owned by a foreign investor.

Another possibility for indirect acquisition of a real estate in Bulgaria for a foreign company or a foreign citizen is to buy shares in the capital of an already existing Bulgarian company, which then may act as acquirer.

Foreign companies and foreign citizens, furthermore, can acquire shares in the capital of a Bulgarian company which already owns a real estate in Bulgaria.

In contrast to the above, the following legal entities may not acquire and possess ownership title over agricultural land:

- Trade companies in which the shareholders are direct or indirect legal entities registered in jurisdictions with preferential tax regimes
- Trade companies in which the shareholders are foreigners or foreign legal entities except for those individuals and legal entities which may acquire and possess land (see Section "Direct acquisition" above), as well as single member trade companies established by those individuals and legal entities
- Joint-stock companies which have issued bearer shares.

## Transaction documents

The general rule under Bulgarian law is that transactions involving real estate (e.g. a purchase and exchange) must be executed with a notary deed before a registered notary public in the region where the real estate is located.

The form of a notary deed is mandatory not only for transactions for transfer of ownership title over real estate properties, but also for establishment of limited property rights over real estate properties (e.g. construction right and right of use).

After execution of the deed, the notary public is obliged, by law, to register the transaction into the Land Registry in order to make the title of the acquirer defensible against third parties.

For other real estate transactions, such as in-kind contribution, the sale of a commercial enterprise containing real estate properties and a voluntary distribution agreement, notarization of the signatures is sufficient.

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.

## Project development

After the acquisition of the real estate, the owner can commence the project development, since Bulgarian legislation recognizes as an investor the owner of land, or the holder of a construction right. However, certain exceptions are provided for the cables and pipelines of the common technical infrastructure, such as electricity cables, water and sewerage pipelines, telecommunication cables and others.

Determining the feasibility of a real estate project is a complex process. It requires input and knowledge from different areas, such as urban planning, geodesy and geology, structure, and installation engineering. The process also considers the potential environmental impact of the project and examines the investor's ability to financially support the project. Due to the many elements in the project development process and because each project is unique, the process may vary from project to project.

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

- Regulation and planning stage
- Environmental impact assessment
- Permitting construction works and
- Execution of construction works and commencement of use.

The major legislation governing the development process in Bulgaria is made up of the Territorial Development Act (TDA), the Chamber of Constructors Act, the Chambers of Architects and Engineers in Investment Design Act, the Development of the Black Sea Coast Act and various sublegislative acts.

### Regulation and planning

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

The DDP can consist of a regulation part (plan for regulation) and/or a construction part (plan for construction). The plan for regulation transforms an unregulated land plot into a regulated land plot through determination of its borders (regulating lines) and provides access to the land plot from a street. In relation to the future construction, the construction part of the DDP specifies the construction parameters such as type and height of the building(s), the maximum density and intensity allowed, as well as the minimum green area.

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

There are specific rules regarding buildings under condominium ownership introduced by the COMA and the TDA.

Specific requirements to the DDP can be stipulated for leisure and possible land-slide areas, archeological areas and other similar zones.

The Cultural Heritage Act, in force as from 10 April 2009, provides for various measures for protection of the immovable cultural heritage, including special rules regarding the territorial planning and development of protected cultural zones.

By virtue of amendments to the TDA (SG, issue 82 of 26 October 2012), effective from 1 January 2016 new requirements regarding development of construction projects outside urban boundaries were established.

### Environmental impact assessments

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

- For projects which are presumed to impact the environment, such as chemical factories, oil refineries, thermal power plants and others, and
- For projects impacting existing protected areas (reserves, national parks and others) or existing and potential protected zones (Natura 2000).

For certain projects, procedures for assessing the need for environmental impact assessment need to be performed.

Protected areas are designated to conserve biological diversity in ecosystems and natural processes occurring in them, as well as typical or unusual non-living natural features and landscapes. Protected areas represent national parks, nature reserves, natural monuments, natural parks and protected sites.

Natura 2000 is an ecological system of protected zones in the European Union, namely zones for the conservation of wild birds and zones for the conservation of natural habitats. As an EU Member State, Bulgaria must comply with all relevant EU legislation and directives, including EU Directive 92/43 on the conservation of natural habitats and wild fauna and flora and EU Directive 2009/147 on the conservation of wild birds, which repealed Directive 79/409. The requirements of both directives were implemented in the Bulgarian Biodiversity Act.

Though the protected zones in Bulgaria are still not fully approved, the legislation requires assessment of projects impacting the potential protected zones to be completed.

At present, the Council of Ministers has adopted decisions for approval of 340 protected zones under Natura 2000.

The announcement of other protected Natura 2000 zones is still in process. Interested parties may appeal the draft orders within a one-month term of their publication.

More information on Natura 2000 zones in Bulgaria, including detailed lists and maps, is available on the internet at <http://www.moew.government.bg/>.

#### Permission of construction works

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

Chronologically, the process starts with the investor's assignment of a project for execution of an investment design. After that, preliminary contracts between the investor and the utility companies must be concluded and a valuation of the investment design must be obtained. In some cases, coordination with special controlling authorities (e.g. environmental inspection, fire safety department) is required.

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

The investor may apply for the construction permit simultaneously with the submission of the design for approval. If the construction permit is requested separately from the investment design approval, the permit must be issued within seven days of the request.

The construction permit may be issued for the entire project or, predominately for complex infrastructure projects – for different stages of the project which can be executed and used separately.

In general, the investment design is approved and the construction permit is issued by the chief architect of a municipality.

The construction permit issued by the chief architect of a municipality must be announced to interested third parties who are entitled to appeal the construction permit together with the approved investment design before the local department of the National Construction Supervision Directorate (NCSD), where the construction project will be situated. In addition, the NCSD is entitled to perform an ex officio inspection and to repeal the construction permit within 14 calendar days after the NCSD has been notified of the construction permit issued in cases where the construction permit does not comply with the legislative requirements. The NCSD decision is subject to court appeal. After issuance of a positive court resolution confirming that the issuance of the construction permit is lawful, the construction permit can be deemed valid and the investor can proceed with the preparatory stage of the construction process.

### Execution of construction works and entering into exploitation

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

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

The completion of the construction works is certified by the execution of a provisional Taking Over Certificate (the so-called Act, sample 15). With it, the participants certify that the works have been executed in compliance with the DDP, the approved design, the legal requirements to the construction works and the terms of the construction contract. Based on the provisional Taking Over Certificate, the construction project is entered into exploitation and the construction becomes feasible for use.

In general, before entering into exploitation, a technical passport of the construction works shall be prepared by the respective consultant/technical controller. Depending on the significance of the construction project, its complexity and the associated operational risks, it can enter into exploitation through a:

- Permit for exploitation issued by the director of the NCSD Directorate if it is a significant construction project, or
- Certificate for exploitation issued by the chief architect of a municipality if it is not a significant construction project.

A permit for exploitation is based on a complex procedure which includes a protocol signed by a special committee (the so-called Act, sample 16) and a report issued by the construction supervisor. A certificate for exploitation is issued under a simplified procedure which involves only a desktop review of the documents for the construction project.

## Participants in the development process

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

The **designer** of the construction works can be an individual with designer capacity, or an entity employing such individuals. Designers are responsible for the preparation of the investment design. They also exercise control to ensure that the construction works comply with the design (the so-called author's supervision), and are authorized to issue mandatory instructions to the contractor.

According to the Chambers of Architects and Engineers in Investment Design Act, effective from 8 February 2008, foreigners and nationals of EU Member States, other states of the European Economic Area and Switzerland, whose professional qualification has been recognized according to the Recognition of Professional Qualifications Act, have the right to practice as architects, landscape architects, urban planners or engineers in the field of urban planning and/or development design in the Republic of Bulgaria.

The **constructor** is responsible for execution of the works in compliance with the approved design and permits, and the legal requirements applicable to such construction works.

Construction works can be executed only by a constructor who: (i) is a trader duly registered under the Bulgarian legislation or under the legislation in the country of origin, and (ii) is registered in the Central Professional Constructors Register at the Bulgarian Construction Chamber. As per amendments to the Constructors Chamber Act effective from 23 February 2010, the registration of a constructor in a relevant register in a Member State or in part of the European Economic Area shall be treated as a registration in the Bulgarian Central Professional Constructors Register. Switzerland was added to the above-mentioned countries according to the amendments of the Constructors Chamber Act effective from 27 September 2013.

Based on the above amendments, on 9 February 2012 the Bulgarian Construction Chamber adopted a simplified procedure for registration with the Constructors Register of constructors from the EU who execute one-off specific construction projects in Bulgaria. From 27 September 2013, the simplified procedure is also applicable for constructors registered in Switzerland.

Exempted from registration are (i) those contractors deemed not to work on significant construction projects, such as villas, residences and mixed buildings with a height of no more than 10 meters, and (ii) foreign contractors who execute construction projects in Bulgaria according to NATO's program for investment in security.

The **consultant** is a trader who carries out valuations to ensure that the construction work complies with the investment design and exercises supervision over construction works.

As a construction supervisor, the consultant is responsible for the lawful commencement and execution of the construction works, the assessment of their energy efficiency, as well as for the fitness of the completed works to enter into exploitation. This person is also authorized by law to certify certain acts and protocols during the construction works and to issue instructions and orders which are mandatory for other participants in the development process.

Pursuant to amendments of the TDA, effective from 26 November 2012, the license regime applicable to consultants was revoked and replaced with registration of consultants at a special register with the NCSD.

On 11 December 2012, Ordinance No. RD-02-20-25 for the procedure and terms for issuance of registration certificates to consultants for carrying out compliance evaluations of investment designs and/or for exercising construction supervision was promulgated in the State Gazette. It provides that, upon registration at the register with NCSD, the consultant is granted a registration certificate with a five-year term of validity. Consultants who have been licensed by the Minister of Regional Development and Public Works can conduct their activity until the expiration of their licenses. The certificate for registration is to be issued by the Head of the NCSD.

No registration is required in case a consultant executes pre-investment research, preparation for the design process and coordination of the construction process until the project enters into exploitation.

Activities as a consultant can be rendered by persons having a document issued by respective competent authority in a Member State or in a state that is part of the European Economic Area ("Member State"), certifying the right to render such activity. In this case, a subsequent certificate issued by the Head of the NCSD is required.

Persons who are eligible to carry out compliance evaluations of investment designs and/or exercise construction supervision in a Member State, but for whom the legislation of the Member State provides for no equivalent regime, are temporarily entitled to act as consultants in regard to a one-off specific construction project after issuance of a certificate by the Head of the NCSD.

The **structural engineer** is an individual possessing the special skills to exercise mandatory technical control over the structural parts of the investment design. The structural engineer must be included in a promulgation in the State Gazette list, prepared and updated annually by the Chamber of Investment Design Engineers. As of 23 February 2010, the activities of the structural engineer can be performed by individuals entered in a relevant list or register kept by a respective competent authority in a Member State or in the European Economic Area.

The **technical controller** is a civil engineer who manages the execution of the construction works on behalf of the contractor. If the construction works are executed by the investor themselves, the investor is obliged to appoint a technical controller.

The **utility companies** are the suppliers of electricity, water, sewerage and others. Prior to issuance of the construction permit, the investor signs preliminary contracts for supply with the utility companies, followed by final contracts. When a construction project requires external connections to the technical infrastructure to be built, the utility companies become involved in the investment design.

Designers, consultants, contractors and structural engineers are obliged to insure their own professional liability for damages that may be caused as a result of unlawful acts or omissions in the course of the fulfillment of their obligations. As the mandatory insurance covers only the minimum liability of the insured under any construction project, the investor may require additional insurance. Extended insurance coverage (e.g. contractor's-all-risks and employer's liability), if required by the investor, has to be agreed contractually, as it is not mandatory under the law.





## Chapter 5

# Accounting and Auditing



### Accounting

#### Introduction

Bulgarian accounting rules are governed by the Accountancy Act, developed on the basis of the Fourth Directive of the Council of the European Union as part of the process of harmonizing the country's statutory accounting legislation with the laws of the European Union. The Commercial Act, the Credit Institutions Act, the Bulgarian National Bank Act, the Insurance Code, the Public Offering of Securities Act and certain other laws also contain regulations applicable to accounting and financial reporting requirements

Under the Bulgarian Accountancy Act, the applicable accounting standards for all entities except for small and medium-sized entities (as discussed below) in Bulgaria are the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) and adopted by the European Union. The requirements of the Act extend to all business organizations, including branches of foreign organizations, with representative offices being the only exception.

#### Accounting principles and standards

Enterprises in the Republic of Bulgaria, with the exception of small and medium-sized enterprises (SMEs), are required to prepare and present their annual financial statements on the basis of the IFRS as adopted by the EU (EU IFRS). SMEs are to apply either the National Financial Reporting Standards for Small and Medium-Sized Enterprises (NFRSSME) which are adopted by the Council of Ministers in Bulgaria, or they may opt to voluntarily apply EU IFRS. However, once having selected EU IFRS as an applicable framework, SMEs may not revert to NFRSSME.

Small and medium enterprises, according to the Accountancy Act, are those which do not exceed at least two of the following criteria in at least one of the previous two reporting periods:

- Average number of personnel for the preceding year: 250 persons
- Annual turnover: BGN 15 million
- Total assets as of 31 December: BGN 8 million.

Newly established entities are considered small and medium-sized in the year of their establishment and they prepare and present their annual financial statements on the basis of the NFRSSME for the year of their establishment and for the year following it. Newly established entities may voluntarily choose to apply EU IFRS from their establishment. However, listed entities, credit institutions, insurance and investment companies, pension and health insurance funds and funds managed by these companies have no choice and can only apply EU IFRS.

The underlying accounting assumptions and principles under NFRSSME are generally similar to those under IFRS. The basic principles adopted by the Accountancy Act are going concern and the accrual basis of accounting. The principles of consistency, prudence, matching and substance over form are also incorporated into Bulgarian accounting practices. The NFRSSME in their current version have been mostly derived from the 2003 version of IFRS with certain differences, while some of the standards, interpretations and recent changes have not been included in the NFRSSME.

Currently, there is no indication whether the IFRS for SMEs, which were issued by the IASB in 2009, will be considered for endorsement in Bulgaria.

### Financial reporting

All entities are required to prepare annual financial statements with a financial year end of 31 December. The financial statements are the responsibility of the company's management.

Pursuant to the Accountancy Act, companies prepare individual (non-consolidated) and consolidated financial statements (where required). For sole traders with an annual turnover of less than BGN 100,000, the requirement is only for an annual income statement.

In accordance with the requirements of the Accountancy Act, financial statements (interim, annual and consolidated) may be drawn up only by preparers of financial statements. Any individual or a specialized accounting enterprise can be a preparer of financial statements provided that they meet the requirements of the Accountancy Act for a minimum level of education and relevant professional experience.

### *Stand-alone financial statements*

The financial statements consist of a statement of financial position, statement of profit and loss and other comprehensive income, statement of cash flows, statement of changes in equity and disclosure notes to the financial statements.

Entities which, in accordance with the requirements of the Accountancy Act, are mandatorily subject to audit (see below) are additionally required to prepare an annual management report for the annual activity of the company. This report includes, but is not limited to, information about recent and future developments of the entity, a description of the major risks, important subsequent events, a description of financial instruments used by the entity and financial risk management.

The statement of financial position and the statement of profit and loss and other comprehensive income must be based on, and supported by, bookkeeping records. Comparative figures must be presented.

The prescribed format for the statement of financial position follows the format of the Fourth Directive of the European Union. On that basis, companies have a choice of format for the statement of comprehensive income between the nature of expenses method and the cost of sales (function of expenses) method. The Accountancy Act permits companies to adopt the model which they consider to be the most appropriate to the nature of their business.

Entities under the supervision of the Financial Supervision Commission, such as banks, insurance companies, investment companies, pension and health insurance funds and listed entities, are required to file certain additional reports with the Commission on a monthly basis.

Under the Accountancy Act, there are specific accounting rules to be followed by companies in liquidation and bankruptcy.

The disclosure notes must include additional information necessary to give a true and fair view of the financial position and results of the business. This includes an explanation of the accounting policies applied in the accounts and disclosure notes.

### *Consolidated financial statements*

Companies having a majority holding in, or exercising control over subsidiaries must generally prepare consolidated annual financial statements. Consolidated financial statements must present a true and fair view of the group's transactions with third parties. To this end, all intra-group transactions and balances are eliminated. The consolidated financial statements are prepared and presented on the basis of the accounting standards applied to prepare and present the annual separate financial statements of the parent company.

Under the Accountancy Act, a parent company is not required to prepare consolidated financial statements where the enterprises within the group which are subject to consolidation do not on an aggregate basis exceed two of the following criteria (according to their annual financial statements as of 31 December of the current year):

- Total assets as of 31 December: BGN 3 million
- Net sales revenue for the year: BGN 6 million
- Average number of personnel for the year: 80 persons.

However, consolidated financial statements are not required to be prepared by a parent which has only subsidiary/subsidiaries which is/are immaterial when reviewed individually and together.

The above exemptions from preparation of consolidated financial statements do not apply when an enterprise within the group is an entity with securities which have either been admitted for trading on a regulated market, or is a financial institution, or a joint-stock company.

Where prepared, the consolidated financial statements must comprise a consolidated statement of financial position, a consolidated statement of profit and loss and other comprehensive income, a consolidated statement of cash flows, a consolidated statement of changes in equity and appropriate disclosure notes. A consolidated management report on the annual activity of the parent and its subsidiaries must also be prepared.

### Equity requirements

Equity includes share capital, reserves (including revaluation reserves) and retained earnings. Joint-stock companies are required to allocate one-tenth of their after-tax profit to a statutory reserve until the amount of the statutory reserve exceeds one-tenth of the share capital of the company.

In accordance with the requirements of the Commercial Act, a joint-stock company may be dissolved when the net worth of the company (its net assets) becomes less than the amount of the registered share capital.

### Filing requirements

All enterprises are required to prepare their annual individual financial statements and annual management report on activity by 31 March of the following year. Management is responsible for the timely preparation of the financial statements and their content.

Companies which are registered with the Commercial Register (see Section "Commercial Register" above) are required to file their individual and consolidated financial statements, management reports for the annual activity and auditor's reports with the Commercial Register. The deadline for filing these documents is 30 June of the following year (31 July for joint-stock companies). Publicly traded companies and financial institutions must present their audited individual financial statements and certain additional reports to the Financial Supervision Commission within 90 days after the year end. In addition, such companies must present a financial report to the Financial Supervision Commission on a monthly basis within 30 days of the end of the previous month.

All enterprises are required to file their annual corporate income tax declaration with the tax authorities by 31 March of the following year. This declaration needs to be accompanied by certain statistical summaries as defined in the Statistics Act.

## Publication of financial statements

Entities which are not registered with the Commercial Register (e.g. non-profit organizations, foundations, consortiums) have to publish their annual financial statements, together with an audit opinion, in the financial press or on the internet (if free access is granted for a period not less than three years after the date of release) within three months of their approval, but not later than 30 June of the following year.

## Auditing

### General audit environment

The Bulgarian Accountancy Act requires that financial statements of those entities meeting certain criteria have to be audited by a registered auditor. The Independent Financial Audit Act in Bulgaria provides for the profession of independent auditors. It requires that the International Standards of Auditing be applied. The body which regulates the auditors' practice is the Bulgarian Institute of Certified Public Accountants. Since 2008, the Independent Financial Audit Act has been harmonized with the European legislation and introduced the requirements of Directive 2006/43/EC of the European Parliament and the Council on statutory audits of annual accounts and consolidated accounts.

The auditor issues an opinion on whether the annual financial statements give a true and fair view of the financial position, the results of operations, the statement of cash flows and the movements in equity of the entity, and a summary of significant accounting policies and other explanatory notes in accordance with the Bulgarian accounting legislation. If a management report is required, the audit report must contain a paragraph about the consistency between the annual management report on the activities of the company and the annual financial statements and/or consistency between the consolidated annual management report on the activities of the company and the consolidated financial statements for the period.

The general rule is that the entity subject to audit must appoint an independent auditor. The appointment of auditors is usually done at the General Meeting at which the previous year's accounts are approved. The selection of the statutory auditor has to be made after a recommendation from the Audit Committee for those companies required to have such a committee (as discussed below). The independent auditor must be an individual or a specialized audit entity registered with the Institute of Certified Public Accountants ("registered auditor"). If a specialized audit entity has been appointed auditor, an individual who is a registered auditor must be designated as the auditor responsible for performing the independent financial audit. KPMG in Bulgaria can be appointed auditor as it is a specialized audit entity registered with the Institute of Certified Public Accountants.

The Credit Institutions Act requires that the annual financial statements of banks as well as the supervision reports stipulated by the Bulgarian National Bank be audited and certified by a specialized audit entity which shall be a registered auditor under the Independent Financial Audit Act. Any bank must coordinate in advance with the BNB the appointment of an independent auditor.

An important requirement of the Independent Financial Audit Act is that each entity which performs activities of public interest is required to set up an Audit Committee. Pursuant to this Act, entities performing activities of public interest are:

- Public entities and issuers of securities in the country as well as in another Member State of the European Union, or the European Economic Area
- Credit institutions
- Insurance undertakings, reinsurance undertakings, health insurance and pension insurance companies
- Commercial companies which produce, transfer and sell electricity and thermal power
- Commercial companies which import, transfer, distribute and transit natural gas
- Commercial companies which provide water supply, sewerage and telecommunication services, and
- Bulgarian State Railways EAD and its subsidiaries.

The Audit Committee is elected by the General Meeting or the sole owner of the capital of the public-interest entity. The General Meeting or the sole owner of the capital determines the term of office and the number of members of the Audit Committee. The Audit Committee is required to perform the following functions:

- Monitor the financial reporting processes in the public-interest entity
- Monitor the effectiveness of the company's internal control systems
- Monitor the effectiveness of the company's risk management systems
- Monitor the independent financial audit in the company
- Review the independence of the registered auditor of the company in accordance with the requirements of law and the Code of Ethics of Professional Accountants, including monitoring the provision of additional services by the registered auditor to the audited entity.

The 2008 changes in the Independent Financial Audit Act introduced a system for public oversight of registered auditors and the public body which performs these duties is the Commission for Public Oversight of Statutory Auditors.

### Audit requirements

Under the Accountancy Act, the annual financial statements of the following are required to be audited by registered auditors:

- Joint-stock companies and partnerships limited by shares
- Enterprises which are issuers within the meaning of the Public Offering of Securities Act

- Credit institutions, insurance and investment undertakings, companies for supplemental social security and the funds managed by them
- Enterprises for which this requirement is established by law
- All enterprises not mentioned in the previous four items, with the exception of enterprises applying a simplified form of financial reporting and budget-funded enterprises. Enterprises applying a simplified form of financial reporting refers to enterprises which, over the current or the previous year, do not exceed two of the following criteria:
  - (a) Balance sheet assets as of 31 December: BGN 1.5 million
  - (b) Net income from sales for the year: BGN 2.5 million
  - (c) Average number of personnel for the year: 50 persons.

Consolidated financial statements and financial statements included in the consolidation are both subject to an independent financial audit.

In addition, annual financial statements of non-profit legal entities designated as operating for the public benefit and listed in the Central Register with the Ministry of Justice are subject to an independent financial audit by registered auditors where they exceed one of the following criteria for the current year:

- Total assets as of 31 December: BGN 1 million
- Revenue from for-profit and not-for-profit operations for the current year: BGN 2 million
- Total amount of financing received during the current year and financing received in previous reporting periods not absorbed as of 31 December: BGN 1 million.

The auditor's report on the annual financial statements has to be issued by 30 June of the following year because of the requirement to file the audited financial statements and audit report with the Commercial Register by that date.



## Chapter 6

# Taxation

### Corporate tax

The basic principles for the taxation of business profits are detailed in the Corporate Income Tax Act (CITA). The current taxes and levies imposed by the CITA are:

- Corporate income tax
- Lump sum tax levied on certain types of expenses accrued by local tax residents
- Withholding tax.

According to the provisions of the CITA currently in effect, the corporate income tax rate is 10%. Corporate entities, including subsidiaries of foreign companies incorporated under the Bulgarian Commercial Act, are considered Bulgarian tax residents. Upon registration in Bulgaria, these legal entities are subject to tax on their worldwide income, regardless of whether or not it is generated in Bulgaria. There is no withholding tax or income tax on undistributed profits.

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

### Taxable income

Generally, a taxpayer's tax base is the entity's financial result according to its income statement, further adjusted for corporate income tax purposes. These adjustments represent either items that increase the financial result for tax purposes, usually through an add-back of non-deductible expenses, or items that decrease the financial result for tax purposes. The latter are usually specific income items which are exempt from taxation, or tax incentives provided by the Government. There are expenses which are permanently non-deductible for tax purposes and expenses which represent a temporary tax difference, and therefore are non-deductible for tax purposes in the year when accrued for accounting purposes but can be claimed in a subsequent period.



### *Permanent tax differences*

The major permanent tax differences include:

- Expenses not related to the business activity of the company; costs incurred by an entity in favor of employees, managers, shareholders and others (private costs), as well as expenses for services that do not benefit the tax liable persons are not recognized for tax purposes
- Service costs and other costs accrued at levels that differ from market levels
- Penalties, fines and other sanctions for violation of the law
- Expenses which are not substantiated with proper documents
- Expenses for VAT charged in relation to items that are not tax deductible
- Expenses for VAT accrued by a supplier or by the revenue authorities with respect to a performed supply (unless the VAT expense is accrued in relation to an adjustment to the input VAT credit, in relation to supplies for no consideration or supplies performed upon VAT deregistration)
- Expenses classified as hidden distribution of profit
- Expenses for bribery and/or concealing bribery of a local or foreign public official
- Expenses in relation to waste and shortage of inventory (except when these are due to force majeure, technological losses, expiry of durability term and others)
- Expenses in relation to shortage of current and non-current assets (except when those expenses are due to force majeure, certain amount of shortage of goods in commercial outlets with direct physical access of the customers to the merchandise)
- Revenues accrued in relation to waste and shortage of assets up to the amount of the tax non-deductible expenses incurred for the same reason (insurance cover received, receivables in respect of shortage, theft and litigation)
- Income from dividends distributed by Bulgarian tax resident entities and by foreign entities that are tax residents in an EU/EEA Member State
- Expenses for travel and accommodation of shareholders or partners when these are performed by individuals in their capacity of shareholders/partners.

### *Temporary tax differences*

The major temporary tax differences comprise the following:

- Revenue and/or expenses in relation to subsequent revaluation/impairment of assets is taxable, respectively tax deductible, in the year when the respective asset is disposed of, respectively written off

- Expenses in relation to provisions for payables or unused annual paid leave of employees (including salaries and social security and health insurance contributions) are treated as tax non-deductible in the year when accrued, except when they are capitalized as tax depreciable assets in accordance with the applicable accounting legislation. Such expenses are recognized as tax deductible in the year when the payable is settled or when the employees effectively use their paid leaves
- Interest expenses exceeding the threshold established by the thin capitalization rule (see Section “Thin capitalization” below).

### *Tax depreciation*

The total amount of accounting depreciation charged to the income statement of an entity is added back to the entity’s financial result for tax purposes, while the annual depreciation charge as per the Tax Depreciation Schedule (TDS) is reported as a decrease to the entity’s financial result. Hence, only the depreciation charge established under the rules of the TDS will be recognized as an expense for income tax purposes. Specific rules exist for idle assets.

Tax depreciation must be accrued by multiplying the cost of acquisition of the respective depreciable asset by the tax depreciation rate. The CITA sets out the maximum annual tax depreciation rates for groups of assets to be used in the TDS. These maximum allowed annual tax depreciation rates are as follows:

1. For computers, computer peripherals, software and software licenses, cell phones: 50%
2. For machinery and production equipment: 30%. The rate can be increased up to 50% for new manufacturing machines and equipment in certain specific cases defined in the law
3. For automobiles: 25%
4. For transport vehicles other than automobiles, roads and runways: 10%
5. For buildings (including those held as investment properties), facilities, installations, electrical wiring and lines of communication: 4%
6. Up to 33.33% for long-term intangible and tangible assets where legal or contractual restrictions apply on the term of their use
7. For all other tax depreciable assets where specific rates are not provided: 15%.

### *Thin capitalization*

Interest expenses accrued by tax liable persons in relation to certain types of debt finance are tax deductible up to the limits set out in the CITA and known as thin capitalization rules. Certain interest expenses however are not subject to thin capitalization. These include interest in relation to finance lease and bank loans received from non-related

lessors/banks (unless the loan is guaranteed or secured by a related party, in which case the interest on them would be subject to thin capitalization). Penalty interest for late payment of taxes, interest expenses capitalized in the value of an asset, in accordance with the accounting legislation or other interest charges that are not tax deductible on other grounds do not count towards the interest expenses subject to thin capitalization.

No thin capitalization would apply where the average debt/equity ratio for the year of the tax liable person is smaller than three to one.

The maximum amount of interest expenses subject to thin capitalization that would be tax deductible in the year when accrued is equal to the interest income accrued for the year plus 75% of the profits before all interest income and interest expenses. If interest expenses subject to thin capitalization are accrued in excess of this amount, the excess must be added back to the financial result when determining the tax base. This adjustment represents a temporary tax difference and is reclaimable in the following five tax years up to the above-mentioned threshold calculated in those subsequent years.

### *Tax losses*

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

Foreign-source losses can be carried forward solely against foreign-source income deriving from the same operation unless the losses and the income were generated in an EU/EEA Member State and the tax credit method applies or upon termination of the foreign source in another EU/EEA Member State when the exemption with progression method applies.

### *Lump sum taxes*

Lump sum tax at a rate of 10% is levied on certain types of expenses accrued by Bulgarian tax resident entities as follows:

- Representation expenses related to the company's business activity
- Expenses for in-kind benefits provided to the company's personnel (e.g. subsidized canteen, food allowances, organized holiday, holiday allowances, subsidized vacation facilities, sports and recreational activities)
- Contributions to voluntary insurance exceeding BGN 60 per month for each hired person
- Vouchers for food provided in accordance with the provisions of the law and exceeding the amount of BGN 60 per month for each hired person (there is a list of requirements which must be fulfilled by both the persons entitled to receive vouchers for food and the persons acting as operators for issuance and payment with vouchers for food)

- Expenses related to maintenance, repair and exploitation of transport vehicles when these are used for the company's management activity.

The lump sum tax on expenses is recognized as a tax deductible expense for the company and is paid on an annual basis.

### Sources of income

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

- Interest including interest relating to finance lease
- Royalties
- Fees for technical services, i.e. services of an advisory nature, services for installation and maintenance of tangible assets and market research
- Franchise and factoring fees
- Rent
- Fees for management and control of local legal entities
- Income from securities issued by local legal entities, the Government or municipalities.

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

Gains made by foreign legal entities from the disposal of property belonging to a permanent establishment of that legal entity in Bulgaria or the permanent establishment itself are deemed to be of Bulgarian source and, as such, are taxable in Bulgaria.

Income generated from penalties and indemnities of all types, except those accrued under insurance contracts by foreign legal entities established in jurisdictions with a preferential tax regime listed in the CITA (i.e. offshore companies) are also considered to have a Bulgarian source.

### Withholding tax

Withholding tax at a rate of 10% (5% for dividend distributions and liquidation quotas) is to be deducted by the payer when Bulgarian source income (see Section "Sources of income" above) is accrued by a local tax resident entity to non-resident taxpayers without a permanent establishment in Bulgaria, unless a Double Tax Treaty (DTT) provides for lower withholding tax rates. No withholding tax is due on income from interest and royalties when accrued to associated companies tax resident in an EU Member State

(see Section “Interest and royalties” below) and on dividends and liquidation quotas distributed by local entities to companies that are tax resident in an EU/EEA Member State (see Section “Dividends and liquidation quotas” below). When foreign entities without a permanent establishment in Bulgaria realize capital gains from trading in Bulgarian securities or real estate properties, withholding tax of 10% is to be levied on the capital gain and remitted to the Bulgarian state budget by the entity realizing the gain, unless a DTT provides for exemption or lower withholding tax rates.

Foreign companies which are tax residents in the EU/EEA and which may not utilize the withholding tax paid in Bulgaria as a tax credit in their country of tax residence may choose an option to recalculate the withholding tax paid in Bulgaria so that the amount would equal the corporate income tax due if the income were derived by tax residents of Bulgaria. Hence, the tax base of non-residents could be reduced by the expenses attributable to the respective income whose source is Bulgarian. The difference between the withholding tax paid and the recalculated corporate income tax due may be reimbursed up to the amount that could not be used as a tax credit by the non-resident in their state of residence. This right is exercised by the foreign tax residents by filing a tax return by 31 December of the year following the tax year when the income was accrued.

### *Interest and royalties*

In accordance with Council Directive 2003/49/EC on a common system of taxation applicable to interest and royalty payments made between associated companies of different EU Member States (“the Interest and Royalty Directive”), interest or royalty payments arising in an EU Member State are exempt from any taxes imposed on those payments in that state, whether by deduction at source or by assessment, provided that the beneficial owner of the interest or royalties is a company of another EU Member State or a permanent establishment of an EU Member State situated in another EU Member State.

As of 1 January 2015, the transitional period for application of the maximum withholding tax rates of 5% under the Interest and Royalty Directive agreed following Bulgaria’s accession to the EU expired and no withholding tax is due on interest and royalty income derived in Bulgaria by companies that are tax resident in an EU Member State. Additional conditions must also be fulfilled by a foreign company in order to be able to benefit from the reduced withholding tax rate.

In addition, the following types of income generated by non-resident entities shall not be subject to withholding tax:

- Income from interest payments on bonds or other debt instruments issued by a resident legal entity, the state or municipalities and admitted to trading on a regulated market in the country or in an EU/EEA Member State
- Income from interest payments on a loan extended by a non-resident entity which is a tax resident of an EU/EEA Member State and is an issuer of bonds or other debt securities, where the bonds or the other debt securities are issued for the purpose of

lending the proceeds to a resident legal entity and have been admitted to trading on a regulated market in an EU/EEA Member State

- Interest income on loans that are not issued in the form of bonds under which the state or municipalities are borrowers.

### *Capital gains and losses*

Generally, capital gains are included in an entity's profit subject to corporate income tax, except in the following cases which are not subject to tax:

- Capital gains realized by non-resident taxpayers from the sale of real estate property situated in Bulgaria or from the sale of shares, securities and other long-term financial assets sourced in Bulgaria, that are in turn subject to a 10% withholding tax
- Liquidation proceeds attributable to non-resident taxpayers and local individuals exceeding the value of their initial investment that are taxed at the rate of zero percent for residents of EU/EEA Member States or 5% for all other non-residents; and
- (i) capital gains realized from the sale of shares in collective investment schemes and national investment funds, shares and rights of public companies traded on the Bulgarian or EU stock exchange within the meaning of the Bulgarian Markets in Financial Instruments Act, (ii) transactions with financial instruments concluded in accordance with the procedure for repurchase or redemption by collective investment schemes which have been admitted to public offering in Bulgaria or in another EU/EEA Member State, (iii) transactions with financial instruments concluded in accordance with the procedure for redemption by national investment funds which have been admitted to public offering in Bulgaria, and (iv) transactions with financial instruments concluded according to the procedure for tender offering under the Bulgarian Public Offering of Securities Act, or transactions of similar type in another EU/EEA Member State.

### *Dividends and liquidation quotas*

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

No withholding tax is due in Bulgaria on liquidation quotas and outbound dividends distributed by Bulgarian entities to tax resident companies in the EU/EEA without any participation or holding requirements, except for cases of hidden profit distribution.

Dividends distributed by local legal and unincorporated entities to local legal entities are tax-exempt except when they fall under the Special Investment Purpose Entities Act. In the case of dividends received as a result of a profit distribution made by such companies, for example a real estate investment trust, the dividend is taxed at the shareholder level in the same way as any other revenue received – at the corporate income tax rate of 10%.

### Payment due dates and filing deadlines

Companies subject to corporate income tax must file an annual return for each calendar year together with the company's annual activity report under the Statistics Act. Annual corporate tax returns must be filed and income tax liabilities must be finally settled by all taxpayers for a calendar year by 31 March of the following year. Tax liable persons who have not performed economic activities and have not reported income or expenses during the fiscal period are relieved from filing annual activity reports.

Advance corporate tax payments are due either on a monthly or on a quarterly basis and are calculated on the basis of the entity's forecast taxable profit for the current year. Both (i) tax liable persons whose net sales revenue for the previous year does not exceed BGN 300,000 and (ii) newly established companies (except when the establishment is a result from a corporate restructuring in accordance with the Commercial Act) do not have an obligation to remit advance corporate tax installments. Persons liable for tax with net sales revenue for the previous year exceeding BGN 3,000,000 are obliged to make monthly advance corporate tax installments, otherwise quarterly advance corporate tax installments are due.

Withholding tax is payable by the end of the month following the calendar quarter in which the income was accrued or the decision for distribution of dividends/liquidation quotas was made. The persons obliged to withhold and pay tax have to report the withholding tax due for the relevant calendar quarter by submitting a standard return by the end of the month following the respective quarter.

As of 1 January 2014, taxpayers are required to include in the withholding tax return for the fourth quarter of the respective year the following information regarding income accrued in favor of foreign tax residents:

- Fees received under management contracts and
- Rental income or other types of income from use of or the right to use immovable property.

This requirement also applies to foreign legal entities deriving the specified types of income from a permanent establishment in the Republic of Bulgaria.

Local companies accruing income to foreign tax resident entities not exceeding BGN 500,000 per annum for which a reduced withholding tax rate was applied under an existing DTT must submit to the revenue authorities a standard tax return reporting the amount of income accrued and the withholding tax relief granted. The deadline for submission of the tax return is 31 March of the year following the reporting year.

The lump sum tax on expenses is payable by 31 March of the year following the reporting year. It is reported in the annual corporate income tax return.

## Relief from tax

### *Foreign tax credits*

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

### *Tax treaties*

Bulgaria has entered into a number of DTTs with other countries. For a detailed overview of the withholding tax rates applicable under the DTT network, see Appendix B.

### Branch vs. subsidiary

Permanent establishments, including branches, are subject to tax on profits derived from Bulgarian sources. Effectively, there is no difference between the taxation of branches and subsidiaries with respect to business profits.

The repatriation of after-tax profits generated by a branch is not subject to withholding tax.

### Grouping/consolidated returns

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

### Partnerships

Partnerships are treated as incorporated entities for tax purposes. In other words, partnerships are non-transparent entities.

### Alternative assessment

When taxable income cannot be reliably determined, it is assessed by the revenue authorities on the basis of a number of factors including the type of activities undertaken, duties and fees paid, bank account transfers, capital, turnover, profits of entities with similar activities and others.

Instead of being subject to a corporate income tax, state budget enterprises are taxed on their proceeds generated from their activities as well as from lease of property. Specific taxation rules also apply to certain activities of gambling companies and ship operating companies.



## Anti-avoidance measures

### *Transfer pricing*

Transfer pricing rules allow the revenue authorities to adjust the tax base where transactions are not made on an arm's length basis or where transactions aiming at tax evasion have been performed. Therefore, when the transfer pricing rules are applied by the revenue authorities, additional income may be assessed or an expense may be disallowed.

The Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations of the Organization for Economic Cooperation and Development (OECD) have not been officially adopted for tax purposes in Bulgaria. However, in practice, the Bulgarian transfer pricing methods are, to a great extent, harmonized with the OECD methods.

The right to adjust profits extends to transactions involving Bulgarian branches and their foreign head offices as well as to foreign tax residents deriving income from a Bulgarian source that is subject to withholding tax in Bulgaria and Bulgarian tax resident entities which incur expenses subject to lump sum taxes in Bulgaria.

In addition, it is the obligation of taxpayers and not the revenue authorities to prove that the transactions are performed at an arm's length price which must be supported with documents.

### *Anti-avoidance provisions relating to business transformations*

Generally, according to the provisions of the CITA, transposing Council Directive 2009/133/EC on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States ("the Mergers Directive"), business transformations between Bulgarian entities or involving entities of other EU Member States must be tax neutral, meaning that no corporate tax effects are to arise on the date when the business transformation is performed.

However, the CITA includes certain provisions related to tax avoidance achieved through business combinations. It states that a business transformation will not be considered tax neutral if its purpose is to evade tax payment. Tax avoidance is also considered to exist in cases when the business transformation is not carried out for valid economic reasons or its purpose is to conceal the disposal of assets. In this case, following the general provisions of the CITA, it is possible that taxable gains may be realized upon disposal of the assets at market prices.

### *Hidden distribution of profits*

According to the provisions of the Bulgarian CITA, amounts accrued, paid or distributed in any form by Bulgarian tax resident companies to shareholders, partners or another related party must be evidenced as part of the business activity of the local company. In addition, they must be determined at market levels. If these circumstances are not proven, the respective amount may be classified as a hidden distribution of profits.

Furthermore, interest expenses accrued by taxpayers are considered a hidden distribution of profit provided that at least three of the following four conditions are met:

- The amount of the loan facility for which interest expenses are accrued exceeds the equity of the payer of the interest as at 31 December of the previous fiscal year
- The repayment of the principal as well as the related interest due is not limited in time
- The repayment of the principal and the related interest or the amount of the interest due is made conditional upon the amount of the profits realized by the borrowing entity
- The repayment of the principal is made conditional upon satisfying the claims of other creditors or upon distribution of dividends.

If certain amounts accrued, paid or distributed by local taxpayers are considered hidden profit distribution, these would be treated as dividend distribution. The respective amount would not be recognized as deductible for corporate income tax purposes and a penalty could be imposed at a rate of 20% of the amount classified as a hidden profit distribution. The penalty can be avoided if the local taxpayer which has made a hidden profit distribution reports this circumstance in the corporate tax return for the respective year. Additionally, a 5% withholding tax could be levied if the deemed dividend is distributed to a foreign tax resident entity.

### Corporate tax incentives

The corporate income tax incentives are granted in two forms – a corporate income tax retention and/or a tax reduction.

A corporate income tax incentive is granted to enterprises employing people with disabilities or unemployed people, and to those providing student scholarships which match certain criteria.

Agricultural producers are also entitled to a corporate tax rebate up to 60% in the form of state aid for profits derived directly from the production of unprocessed plant and animal products. For 2014, the tax relief for agricultural producers can only be applied if the European Commission approves the tax relief as compatible with state aid regulations by 31 March 2015.

Production companies investing in municipalities with an unemployment rate exceeding the average unemployment rate for Bulgaria by 25% are entitled to up to 100% corporate income tax retention. In order to benefit from the tax relief, a number of additional criteria have to be met. For 2014, the tax relief for production companies investing in municipalities with a high unemployment rate under the regional state aid regime can only be applied if the European Commission approves the tax relief as compatible with state aid regulation by 31 March 2015. The relief claimed under the *de minimis* state aid regime can be applied for the period 2014 – 2020.

In addition, a positive decision by the European Commission is required for large investment projects where the total amount of tax incentives exceeds EUR 37.5 million (or EUR 18.75 million for projects in the Southwestern region).

Other tax incentives include:

- Tax neutral capital gains and/or losses resulting from the disposal of qualifying financial instruments, performed on the Bulgarian stock exchange or on a stock exchange in an EU/EEA Member State
- 50% retention of the corporate income tax on social security and health insurance payments which is directly related or auxiliary to their main business activity, provided that the retained tax is invested in the main business activity by the end of the following year.

## Taxation of individuals

### Personal income tax

#### *Residence*

There are four criteria for determining the residence of an individual in Bulgaria for personal income tax purposes, of which three are mainly of significance for expatriates moving to Bulgaria: the permanent address, the 183-day rule and the center of vital interests.

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

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

Bulgarian tax resident individuals are subject to tax on their worldwide income whereas non-resident individuals are subject to tax on their income derived from Bulgarian sources. Different residence rules may be provided for in applicable DTTs.

#### *Income subject to tax*

Individuals are subject to the following taxes on income:

- Employment<sup>3</sup> income is levied with a flat 10% personal income tax rate. The tax on employment income is withheld by the employer at source on a monthly basis. Certain statutory tax deductions may be claimed against the gross income.

3 As of 1 January 2008, management income is considered equivalent to employment one for personal income tax purposes.

- Income received by partners in a partnership, cooperators and shareholders holding more than 5% of a company's capital in return for their personal involvement/work in the entity is treated as equivalent to employment income.
- Non-employment income (e.g. income received under civil contracts) is also subject to a flat 10% tax rate. Certain statutory tax deductions may be claimed against gross income (e.g. income received under civil contracts). The due tax is withheld and paid on a quarterly basis by the payer of the income if a legal entity duly registered under Bulgarian law. No tax is to be withheld and paid for the fourth quarter of the year unless specifically requested by the recipient of the income. In certain instances, the remittance obligation may also fall on the individual recipient themselves if (i) the payer is an individual or an entity not registered under Bulgarian law and (ii) the recipient of the income under a civil contract is a self-insured person for social security purposes and has reported themselves as such to the payer (in this case, the status of the entity is of no importance). Under this scenario, the personal income tax on that income is again remitted on a quarterly basis (with the exception of the fourth quarter).
- In case of receipt of rental income, no remittance obligation arises for the payer of the income if the payer is an individual. The full responsibility for payment of the due tax charge is borne by the recipient of the income. Advance quarterly personal income tax installments are to be made in case of receipt of such income (with the exception of the fourth quarter). The final assessment is performed at year end with the annual Bulgarian personal income tax return. When the payer of the rental income is an entity or a self-insured person, then they have the obligation to calculate, withhold and remit at source on a quarterly basis (without the fourth quarter unless specifically requested by the recipient) the due tax charge on the income. This does not waive the obligation of the recipient of income to file an annual Bulgarian personal income tax return at the end of the year. A different treatment is applied in the case of payment of rental income by Bulgarian entities to condominiums. In these circumstances, a final one-off tax will be calculated, deducted and remitted by the payer of the income and no obligation for filing of annual Bulgarian personal income tax arises for the recipient of the income.
- A 10% withholding tax applies to interest, rents, royalties, capital gains, management income, income received under franchise and factoring contracts, leasing installments under contracts according to which the ownership rights over immovable property are transferred, scholarships for studying in Bulgaria and abroad, indemnity for benefits lost, fees for technical services accrued to non-resident individuals as well as income accrued by local legal entities to foreign sportspeople, scientists and artists. A lower withholding tax rate of 5% is levied on dividends paid by Bulgarian entities to non-residents. Should there be an applicable DTT in force, the rate of the withholding tax on the above mentioned types of income may be reduced. The tax base is the gross amount of income received. As of 1 January 2010, Bulgarian legislation allows EU and EEA<sup>4</sup> nationals subject to Bulgarian withholding tax to calculate the tax base and the

4 Except Iceland and Liechtenstein.

due tax following the same rules applicable to local residents, i.e. the application of deductions from gross income is possible through the filing of an annual Bulgarian personal income tax return.

- A withholding tax of 8% is due on interest income accrued on all types of bank accounts.
- A one-off tax of 5% is levied on Bulgarian individuals receiving dividends from foreign entities.
- A one-off tax of 10/7% is levied on early withdrawal of accrued voluntary social security/insurance contributions depending on the circumstances.

Specific rules apply with regard to taxation of capital gains arising from disposal of movable and immovable property.

It is also specified that no withholding tax is due on payments to residents of other EU Member States regardless of the fact that the types of income may fall in the scope discussed above should this income be exempt for Bulgarian tax residents (e.g. interest on non-deposit accounts).

### *Deductions*

Certain payments decrease an individual's taxable income, including mandatory health insurance and social security contributions (made both to the local and foreign mandatory insurance systems), as well as personal voluntary pension, life and health insurance contributions to either local insurance funds or those registered under the jurisdiction of other EU/EEA Member States as of 1 January 2009. The deductibility of such voluntary contributions is limited up to certain maximum thresholds.

Statutory deductions are provided for the recipients of different types of non-employment income (e.g. 25% for free lancers; 40% for royalties, inventions and products of science or art; 10% for rental income; 10% for capital gains received from the disposal of immovable property).

Deductions for donations to a list of special beneficiary organizations are also allowed provided certain conditions are met. As of 1 January 2010, donations to EU organizations with an equivalent status to those listed in the local legislation are also deemed tax deductible.

Furthermore, provided that certain conditions are met, individuals may also deduct from their taxable income the value of the mandatory personal social security contributions paid during the year for accumulating additional length of service for pension (up to five years for the period of university education and/or in case of insufficient length of service upon pension).

As of 1 January 2009, the Bulgarian personal income tax legislation introduced a tax allowance for young families who have a mortgage. With this allowance, the total taxable base of the tax liable person may be decreased with the interest installments paid on

the first BGN 100,000 of the mortgage taken. There are certain requirements that have to be met in order for a young family to qualify for this allowance, e.g. at least one of the spouses must be under the age of 35 when the mortgage is entered into, the property must be the main residence of the family for the tax year and the mortgage agreement is in the name of at least one spouse. The fulfillment of these criteria must be evidenced by certain documents. The taxpayer is obliged to demonstrate that the necessary conditions have been met within the tax return form and will be responsible if that is not the case. As of 1 January 2014, the legislation specifies that individuals who are tax residents in other EU/EEA countries may also benefit from this allowance provided that the remaining conditions are met.

As of 1 January 2015, two further deductions are available: a child tax allowance which allows for the decrease of the tax base by up to BGN 200 annually for the first three children and a tax allowance for a disabled child which allows for an annual deduction of up to BGN 2,000 from the tax base. Taxpayers can benefit from these allowances through the annual reconciliation of employment income performed by the employer at year end or through the filing of an annual Bulgarian personal income tax return.

### *Exempt income*

Exempt income includes state pensions, scholarships, certain state welfare payments, benefits/income received from the Bulgarian mandatory social security and health insurance system, an equivalent foreign institution or under a voluntary social pension plan, provided that the latter is registered in Bulgaria or in another EU/EEA Member State. Capital gains may also be tax exempt provided that certain conditions are met.

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

### *Relief from tax*

A tax credit may be used for foreign taxes paid provided that the relevant conditions are met. Relief from tax may also be sought under the provisions of an existing DTT depending on the specific method, i.e. tax credit or tax exemption with progression.

### *Tax rates and payment dates*

The annual general flat tax rate applied for taxation of an individual's income is 10%.

Individuals who derive income from sources other than, or in addition to, income under an employment contract for which the employer has performed an annual reconciliation as at the year end (including dividends received from foreign entities which are taxed with a one-off tax) must file an annual tax return by 30 April of the following calendar year. A tax return must also be filed if the individual owns shares/allotment in foreign entities/permanent establishments/immovable property regardless of whether a transaction has

been made with them during the respective tax year. In addition, such tax returns must be prepared by individuals who withdraw accumulated voluntary personal contributions prior to the expiration of the term under an insurance policy as well as in instances where an individual has received/granted a loan from/to non-financial institutions or individuals (where certain conditions are met).

The outstanding personal income tax as reported in the annual Bulgarian personal income tax return, if any, must also be paid within this filing deadline.

If the annual personal income tax return is filed electronically by 31 March of the following calendar year and the individual does not have an outstanding public liability subject to enforcement, a deduction of 5% from the outstanding tax liability is granted. The outstanding tax must be remitted by 30 April of the following year after confirmation by the authorities of the submission of the return.

Sole traders determine their taxable base and make advance payments in accordance with the rules for corporate taxation. The tax rate applied to this type of income is 15%.

Individuals performing certain activities (e.g. hotel accommodation, restaurant services, taxicab transportation, and other services) whose turnover for the previous year is below BGN 50,000 are instead subject to a lump sum license tax which is regulated by the Local Taxes and Fees Act.

### *Fringe benefits*

Certain fringe benefits, such as canteen or food expenses like food vouchers provided to employees/assignees (under certain conditions), transportation cards, use of the employer's sports facilities or rest/holiday homes, are not taxable in the possession of the employee if provided as a social expense by the employer. However, pension and health insurance contributions are due on the amount of the fringe benefits provided.

Social expenses paid in cash are taxable as part of the individual's employment income as indicated above.

Other fringe benefits are treated as taxable for personal income tax purposes. The tax treatment of the specific benefit is to be considered on a case-by-case basis.

### *Payroll-related contributions*

The burden of payroll-related contributions is not split between the employer and the employee via a single unified ratio. Instead, the ratios vary depending on the fund to which contributions are made and are as follows:

- 55:45 with respect to pension and additional mandatory pension insurance contributions
- 60:40 with respect to all other funds (health insurance, unemployment, general illness and maternity).

It is an obligation of the employer to withhold from employees' remuneration and to remit to the state budget the amount of the mandatory social security and health insurance contributions at the general rates presented below.

Contributions	On behalf of employees	On behalf of employers	Total
Social security contributions	9.70%	13.10%*	22.80%**
Health insurance contributions	3.20%	4.80%	8.00%

\* The total amount of social security contributions withheld on behalf of employers varies within the range of 13.00-13.70% depending on the economic activity performed by the respective entity.

\*\* 5% of the mandatory social security contributions for individuals born after 31 December 1959 are payable to private pension funds licensed to provide additional mandatory pension insurance.

The above contributions are determined as a percentage of gross employment income, up to the monthly ceiling of BGN 2,600, or BGN 31,200 annually. The minimum monthly insurable income varies depending on the type of economic activity performed by the company and the qualifications of the employee.

## EU social security

Following Bulgaria's EU accession on 1 January 2007, the EU social security regulations (1408/71; 574/72) aimed at enhancing free movement of employees and prevention of double insurance of EU citizens entered into force and have precedence over the provisions of the local social security legislation and the already existing Social Security Agreements with other Member States. As of 1 May 2010, Regulation (EC) No. 883/2004 is applicable in Bulgaria to EU citizens. As of 1 January 2011, it became applicable to non-EU country nationals in most EU countries and it is currently also applicable with respect to cross border situations with Switzerland and EEA countries.

### Persons and territories covered

The EU social security regulations are applied on the territory of the Member States of the European Union and the EEA, which comprises Iceland, Norway and Liechtenstein, together with Switzerland for cross border situations with Bulgaria. Furthermore, it should be pointed out that the EU provisions on social security do not apply to all individuals moving within the EU and the EEA. Generally, the following individuals would be covered under the regulations:

In view of the above, no coverage under the EU social security regulations is provided to persons who are no longer insured under a social security system in any of the Member States and who are not considered immediate family to an employed or self-employed person or a pensioner. These individuals are deemed non-active persons.



- Employed workers
- Self-employed persons
- Civil servants
- Students
- Pensioners
- Unemployed under certain conditions
- Family members and heirs, regardless of nationality
- Third country nationals.

### Main principles

The main principle of the EU social security regulations is to ensure that individuals fall under the jurisdiction of only one Member State at a time. Usually, this is the Member State where the person is physically performing their work or where they act as a self-employed person. However, certain exceptions exist in instances where (i) the persons are moving within EU Member States on short-term assignments, (ii) they are simultaneously working in more than one state and (iii) they are simultaneously employed in one state and self-employed in another. In these cases, special rules apply with respect to determining the relevant social security system.

The EU social security regulations also aim to avoid discrimination in social security matters, i.e. individuals temporarily or permanently moving to an EU country for social security purposes must be treated no differently than local citizens of that Member State.

## Property transfer, gift, inheritance and tourist taxes

Local taxes and fees are determined and collected by municipalities within the ranges set in the Local Taxes and Fees Act.

As of 1 January 2015, exchange of information is introduced between municipalities and the Ministry of Finance on a daily basis.

### Transfer tax

Tax for the transfer of immovable property and automobiles is in the range of 0.1 – 3% and is levied on the value of the property. Transfer tax is also levied upon acquisition of real estate property or limited ownership rights related thereto as a result of the elapse of a prescribed time.

### Property tax and garbage collection fees

Owners of immovable property situated in Bulgaria are liable to property tax. The tax is levied on the assessed value of the property, depending on its area in square meters and its location and for non-residential property owned by companies – on the higher of the assessed value and the book value of the property. The tax is levied at a rate within the range of 0.01 – 0.45%. A 50% tax rebate is allowed if the property is the principal residential property of an individual taxpayer.

Owners of immovable property also pay garbage collection fees. Garbage collection fees are determined by the respective municipality. Properties which are not used for an entire year are exempt from garbage collection fee if this is declared in the previous year.

As from 1 January 2015, municipalities must notify tax liable persons of any tax liabilities by 1 March of the year in which they are due.

### Transport vehicles tax

Owners of transport vehicles, including motor vehicles, ships and aircraft registered in Bulgaria, are liable to transport vehicles tax. Various criteria are used for calculation of the tax depending on the type of the transport vehicle, e.g. engine power, load-carrying capacity, number of seats, and maximum take-off weight. The tax is payable in two equal installments by 30 June and 30 October of the year in which it is due.

### Gift and inheritance taxes

Certain individuals inheriting property situated in Bulgaria are subject to inheritance tax. The tax rates depend on the value of the property and the relationship of the beneficiary to the testator or donor. No inheritance tax is levied provided that the beneficiary is a spouse or immediate family member. A gift tax is levied on donated property, as well as on property transferred without consideration. No gift tax is levied on property donated to spouses and immediate family members.

The inheritance and gift tax rates are as follows:

- In the range of 0.4 – 0.8% for property inherited by/donated to brothers, sisters and their children
- In the range of 3.3 – 6.6% for inheritance/gifts (donations) between unrelated persons.

### Tourist tax

A tourist tax is due from suppliers of overnight accommodation services on a monthly basis within the range of BGN 0.20 – BGN 3.00 for each overnight stay. The applicable tourist tax rate is determined by the respective municipality. The deadline for payment of the tourist tax is the 15th of the month following the month when the overnight accommodation was supplied.

### Value added tax

The Bulgarian VAT legislation is generally harmonized with the EU VAT Directives. The current VAT Act became effective on 1 January 2007 and adopted the EU VAT rules based on the general principles of the Sixth VAT Directive and Directive 2006/112/EC. The latest amendments to the VAT Act came into effect on 1 January 2015.

Generally, VAT is due on any supply of goods or services with a place of supply in Bulgaria made by taxable persons in the course of their economic activities. "Supply" normally means goods or services provided in exchange for consideration. However, certain transactions carried out for no consideration are also considered to be supplies, for example, the private use of business assets.

The following transactions are generally subject to Bulgarian VAT:

- Supply of goods or services with a place of supply in Bulgaria
- Intra-Community acquisition of goods
- Import of goods into Bulgaria.

#### *Tax regime and place of supply of goods*

The location of goods at the time of the supply determines the VAT treatment. If the goods are located in Bulgaria, then the supply is subject to 20% Bulgarian VAT.

However, if goods are dispatched or transported, the place of supply is the place where the goods are located at the time when dispatch or transport of the goods to the customer begins.

Special rules apply for the supply of electricity, gas, heat or cooling energy which are treated as goods for VAT purposes.

#### *Intra-Community supplies*

If a Bulgarian VAT registered person sells goods to a customer who is registered for VAT in another EU Member State and the goods are physically transferred from Bulgaria (either by the supplier or by the customer) to another EU Member State, the supply is regarded as a zero-rated (exempt with credit) intra-Community supply. Documents, as prescribed by law, evidencing the physical movement of the goods from Bulgaria must be obtained in order to support the zero rating.

#### *Intra-Community acquisitions*

The acquisition of goods arriving in Bulgaria from another EU country by a taxable person or by a non-taxable legal entity when the goods are supplied by a taxable person identified for VAT in another EU Member State represents an intra-Community acquisition. VAT registered recipients of intra-Community acquisitions need to reverse charge VAT within the statutory term.

#### *Exports*

The export of goods to customers outside the EU is zero-rated, provided that certain transportation and documentation requirements are fulfilled.

### *Imports*

The import of non-Community goods from outside the EU is subject to Bulgarian VAT and is payable by the importer to the customs authorities. Under specific conditions, import VAT may be “reverse charged” if the importer is granted authorization to apply such a regime in connection with the implementation of an investment project.

### *Supply of goods with installation*

Goods coming from other EU Member States and delivered under supply and install arrangement are subject to VAT reverse charge by the Bulgarian recipient if (i) the supplier is established in another EU Member State and is not established in Bulgaria, and (ii) the recipient is identified for VAT in Bulgaria.

### *Place of supply and taxation of services*

The place of supply rules with regard to services follow the principles laid down by Directive 2006/112/EC as regards the place of supply of services.

Generally, supplies of services fall into two regimes – B2B services, i.e. services provided by one taxable person to another, and B2C services, i.e. services provided by a taxable to a non-taxable person. The place of supply under the two regimes is determined by different sets of rules.

### *B2B regime of services*

Under the B2B regime of services, the place of supply follows the place where the recipient is established or has a fixed establishment which receives the services. Thus, for cross-border supplies of services where the supplier is not established in the country of the recipient, VAT is usually due by the recipient through the reverse charge mechanism.

Exceptions to this rule include:

- The supply of services connected to immovable property is taxable where the property is located (including hotel and accommodation services)
- The supply of admission to cultural, artistic, sporting, scientific, educational, entertaining and other events is taxable where the event takes place
- The supply of passenger transport is taxable in the place where the transport takes place, proportionate to the distance covered
- The supply of services connected to short-term<sup>5</sup> hiring of vehicles is taxable in the country where the vehicle is placed at the disposal of the client
- The place of supply of restaurant and catering services is taxable where the services are physically carried out.

<sup>5</sup> Short-term hiring for all vehicles apart from vessels is 30 days. The applicable term for vessels is 90 days.

Services provided to taxable persons but used for non-business purposes by the owner or the employees are to be treated as services provided to non-taxable persons (B2C).

### *B2C regime of services*

Services provided to non-taxable persons are generally taxed at the place where the supplier is established. As exceptions to this, the following services provided to non-taxable persons are considered to have their place of supply in Bulgaria:

- Services connected to immovable property located in Bulgaria
- Services related to cultural, artistic, sporting, scientific, educational, entertaining and other events taking place in Bulgaria
- Services related to valuation, expert examination or work on a movable tangible property taking place in Bulgaria
- Short-term hiring of vehicles if the vehicle is placed at the disposal of the client in Bulgaria
- Telecommunication – broadcasting and electronic services when the recipient is established, has their permanent address or usually resides in Bulgaria
- Transport of goods within the Community, including forwarding, courier and postal services, when the transport begins in Bulgaria
- Intermediary services, when the underlying transaction has a place of supply in Bulgaria.

### *VAT rates*

The standard rate of VAT, which applies to most taxable supplies, is 20%. Two reduced rates are applicable for specific supplies.

### *Zero VAT rate*

Zero VAT rate applies to specific supplies such as:

- Intra-Community supplies of goods
- Supplies of goods transported or dispatched outside the European Community (exports)
- International transport of passengers and goods
- Certain supplies related to international transport
- Supplies of non-Community goods placed under a special customs regime (such as temporary warehousing, customs warehousing, inward processing, temporary importation with full exemption from duties)

- Services consisting in work on goods (such as processing or repair) when the recipient of the services is a person established outside the country and the goods are imported within the Community in order to be processed and after that re-exported
- Services rendered by agents, brokers and other intermediaries acting in the name and on behalf of a third person in relation to certain export transactions
- Import related services (such as commission, transportation and packaging) when their value is included in the customs value.

The application of the zero VAT rate needs to be substantiated by certain documents required by the law.

### *9-percent VAT rate*

A reduced rate of 9% applies to accommodation in hotels, sheltered housing and other places for accommodation.

### Exemptions

Exempt supplies include:

- Supplies related to health care
- Supplies related to welfare and social security
- Supplies related to education, sports and physical education
- Supplies related to culture and religions
- Non-profit activities of eligible institutions
- Certain transfers of land and buildings (with the option of charging VAT)
- Insurance services
- Financial services
- Gambling
- Valid postage stamps
- Supply of goods or services for which credit for input tax has not been used because of legislative provisions.

### Registration for VAT purposes

VAT can be charged only by VAT registered persons. VAT registration cannot be retrospective, unless it is performed at the initiative of the revenue authorities when the taxpayer fails to submit a registration application on time.

### *Mandatory VAT registration for local supplies*

Mandatory VAT registration applies for taxable persons, local or foreign, who perform taxable supplies with a place of supply in Bulgaria (excluding supplies for which VAT is to be reverse charged by the recipient) exceeding the registration threshold of BGN 50,000 for a period of 12 consecutive calendar months. Zero-rated supplies count toward the VAT registration threshold as well. The taxable person must complete an application for registration within 14 days from the end of the tax period when the registration threshold was reached.

### *Mandatory VAT registration for providing/receiving services*

Subject to mandatory VAT registration are all taxable persons who (i) receive services from suppliers established abroad or (ii) provide B2B services to another EU Member State. A claim for VAT registration needs to be filed with the revenue authorities not later than 7 days before the tax on the supply becomes due.

The registration for providing/receiving services is a specific registration which does not entitle the taxpayer to deduct input VAT.

### *Mandatory VAT registration for supply of goods with assembly and installation*

A taxable person established for VAT purposes in another EU Member State who is not established in Bulgaria and supplies goods assembled and installed by them or on their account in the country is obliged to register 7 days before the chargeable event takes place, irrespective of the threshold reached. This does not apply if the recipient is registered for VAT purposes in Bulgaria.

### *Mandatory VAT registration for intra-Community acquisitions*

A taxable person or a non-taxable legal entity not VAT registered on other grounds is subject to mandatory VAT registration when performing intra-Community acquisitions if their total amount during a calendar year exceeds BGN 20,000 (no threshold applies for intra-Community acquisitions of new means of transport and excise goods). The VAT registration needs to be effected not later than 7 days prior to the acquisition with which the threshold is exceeded. The movement of own goods from one EU Member State where the taxpayer is identified for VAT purposes to Bulgaria creates an identical registration obligation.

Entities which are VAT registered on these grounds are obliged to charge and pay output VAT upon the intra-Community acquisition but are precluded to deduct input VAT. Furthermore, entities registered under this regime are not obliged to charge output VAT on the subsequent sale of goods.

### *Mandatory registration for supply of telecommunication, broadcasting and electronic services*

Any taxable person who is not established in Bulgaria and provides telecommunications, broadcasting and electronic services to non-taxable persons who are established, have their permanent address or usually reside in Bulgaria is obliged to register in Bulgaria if:

- They are not registered for the application of the “mini one-stop shop” special scheme in Bulgaria or in another EU Member State
- They are not registered for VAT purposes on mandatory, supply-and-install, distance sales and voluntary grounds.

The application for the VAT registration must be filed not later than the 10th day of the month following the month in which the taxable event of the first supply occurred.

### *Voluntary registration*

Any taxable person not meeting the requirements for mandatory VAT registration has the right to register voluntarily without fulfilling threshold requirements.

### *“Mini one-stop shop” (MOSS) special registration and reporting scheme*

Taxable persons established and registered for VAT in Bulgaria and providing telecommunications, broadcasting and electronic services to non-taxable persons established in another EU Member State may register voluntarily for MOSS in Bulgaria.

Non-EU taxable persons providing telecommunications, broadcasting and electronic services to non-taxable persons established in the EU, including Bulgaria, may register voluntarily for MOSS in Bulgaria if they are not registered for MOSS in another EU Member State.

Registration for MOSS can be performed electronically through a dedicated web-based application available on the website of the National Revenue Agency.

### *VAT registration procedure*

Persons not registered for general tax purposes in Bulgaria may not register under the VAT Act. The general tax registration for local companies is automatic after registration with the Commercial Register is obtained. Foreign persons not established in Bulgaria need to obtain a tax number for this purpose.

In order to register for VAT (under the mandatory or voluntary procedures), an entity must file an application with the relevant territorial directorate of the National Revenue Agency (NRA). The application must state the grounds for registration and must be submitted together with information about the monthly taxable turnover for the preceding 12 consecutive calendar months.



Foreign persons who are obliged to or wish to register may do it only by securing the services of a fiscal representative in Bulgaria. The fiscal representative is jointly and severally liable for the Bulgarian VAT liabilities of the foreign person.

This does not apply for foreign persons from EU Member States who may register without appointing a fiscal representative. If, however, they decide to appoint such, the representative will not be jointly liable for the foreign person's VAT liabilities.

Persons applying for VAT registration need to designate an email address for official communications with the tax office.

### *Deregistration*

Voluntary deregistration following a mandatory registration is possible when, during the last 12 consecutive months before the current month, the taxable turnover of the registered person does not exceed BGN 50,000. However, voluntarily registered persons cannot apply for deregistration before the expiration of 24 months from the beginning of the calendar year following the year of registration.

Mandatory deregistration must be pursued in certain cases.

### *Obligations of VAT registered persons*

#### *Format of the VAT registration number*

The format of a Bulgarian VAT registration number for legal entities is as follows: BG 123456789, where 123456789 represents the unified identification code from the Commercial Register or the general tax number.

#### *Accounting records*

VAT registered persons must maintain detailed accounting records which must be adequate for the determination of their VAT liabilities. The VAT Act does not provide for the form or the level of detail of the accounting information that has to be kept. The Accountancy Act, however, regulates this matter for foreign persons that have a permanent establishment in the country.

#### *VAT returns*

Each VAT registered person must submit VAT returns accompanied by purchase and sales ledgers. The tax period under the Bulgarian VAT Act is the calendar month.

The purchase and sales ledgers have to be prepared in prescribed formats and include detailed information about all transactions having relevance to VAT. The sales ledger lists all tax documents on the basis of which output VAT is applied or not applied (i.e. includes exempt and zero-rated transactions and reverse charged VAT). The purchase ledger contains all tax documents on the basis of which input VAT is claimed or not claimed (including reverse charged VAT).

The VAT return must be prepared on the basis of the information from the purchase and sales ledgers for the respective month. The deadline for submission of the VAT return and ledgers is the 14th day of the month following the reference tax period. If, for a given month, either the Sales or the Purchases ledgers contain more than five entries, the VAT records must be submitted electronically with a qualifying electronic signature.

Taxable persons registered for MOSS in Bulgaria must file quarterly VAT returns by the 20th day of the month following the reference calendar quarter. The VAT return must be filed electronically through a dedicated web-based application available on the NRA website.

### *European Sales List – VIES return*

VAT registered persons have to file a VIES return if some or all of the following types of sales have been performed in a given month:

- (a) Intra-Community supplies of goods
- (b) Triangulation operations (if the supplier acts as an intermediary)
- (c) Taxable services provided to taxable persons established in other Member States (including cases of received advance payments on such services).

A VIES return is to be filed together with the VAT return. The deadline for submission of the VIES return is the 14th day of the month following the relevant tax period. VAT registered entities filing VIES returns must file these electronically along with the VAT return and Sales and Purchase ledgers using a qualifying electronic signature.

### *Intrastat Return*

The Intrastat system in Bulgaria is regulated by the Intra-Community Trade Statistics Act and applies to the collection of data of intra-Community trade in goods, including the movement of goods as a result of dispatches from and arrivals to the territory of Bulgaria to/from other EU Member States.

Persons registered for VAT purposes in Bulgaria which carry out intra-Community trade with goods have to file an Intrastat return if they have exceeded either of the following thresholds from intra-Community trade:

- BGN 220,000 for dispatches
- BGN 370,000 for arrivals.

Entities must submit Intrastat returns every month starting from the month when the relevant threshold was exceeded in the current year.

The Intrastat returns are to be filed with the NRA by the 14th of the month following the month when the arrival/dispatch occurred.

## Recovery of input VAT

A Bulgarian VAT registered person is entitled to recover input VAT in respect of taxable supplies from another VAT registered person or in respect of imported goods, if they are used for the purposes of:

- Taxable supplies liable to Bulgarian output VAT
- Zero-rated (exempt with credit) supplies such as the dispatch of goods to other EU Member States and the export of goods to third countries
- Supplies with a place of supply outside Bulgaria, insofar as input VAT would be deductible in relation to such supplies made in Bulgaria.

The input VAT claim must be supported with an invoice and also with a so-called reverse charge protocol (when the VAT is to be charged by the recipient of a supply) and/or with a Single Administrative Document (SAD) (in the case of import). The invoices and protocols must be issued in compliance with the Bulgarian VAT Act.

Special rules apply in respect to input VAT deductions in case taxpayers apply the cash accounting scheme. The latter is effective as of 1 January 2014. Specifically, eligible taxable persons applying this scheme can deduct input VAT once they have paid for the goods/services received. The input VAT deduction must be supported, in addition to the supplier's invoice, with a payment document and a special protocol issued by the supplier if the latter also applies the cash accounting scheme, or by themselves if the supplier does not apply the cash accounting scheme.

The right to input VAT of taxable persons receiving invoices from suppliers applying the cash accounting scheme will arise when they have paid for the goods/services received. In order to deduct input VAT on such invoices, the recipient need to have, apart from the invoice, also a payment document and a special protocol issued by the supplier.

A VAT registered person is not generally entitled to recover input VAT on:

- Purchases used for the performance of VAT exempt supplies
- Purchases used for the performance of free-of-charge supplies (there are certain exceptions) or transactions outside the scope of the independent economic activity of the taxable person
- Purchases of passenger cars and motorcycles; fuel, repair and maintenance of such cars and motorcycles; excluding the acquisition of a passenger car or a motorcycle used for certain qualifying activities such as resale, leasing, security and taxi/courier service. If the passenger cars and motorcycles are not used solely for qualifying services, the taxpayers will be entitled to full input VAT deduction if the qualifying services represent more than 50% of the revenue generated by the taxpayer in the last 12 months
- Purchases used for representation or entertainment purposes.

A VAT registered person is entitled to pro-rata VAT deduction in respect of purchases which are used to perform both supplies qualifying for deduction and exempt supplies. The pro-rata deduction is based on the ratio of taxable supplies to total supplies calculated for the previous calendar year and adjusted on the basis of the current year's ratio calculated with the December VAT return.

Registered persons may claim a VAT deduction within 12 months from the end of the month in which the output VAT for the supply became chargeable. No specific limitation applies to supplies subject to reverse charge, but notifications to the tax office are needed for deductions claimed after this 12 months period.

### Reimbursement of VAT

If, in a given month, the input VAT deduction declared by the registered person exceeds the amount of output VAT charged, the excess amount is subject to reimbursement.

The VAT for reimbursement is offset against VAT payables in the following two months. If, after the two-month period, there is still an outstanding balance for reimbursement, it is due for refund by the revenue authorities within 30 days together with any other VAT for reimbursement declared in the monthly VAT returns in this two-month period.

Accelerated refunds are available to registered persons who during the last 12 months have performed the following supplies amounting to 30% or more of their total taxable turnover for the same period:

- Zero-rated supplies, and
- The following supplies having their place of supply in another EU Member State where the customer is VAT registered:
  - Intra-Community transport of goods, forwarding, courier, postal and cargo handling and direct agency services related to such transport
  - Valuations of and work on movable goods.

The term for the VAT refund is 30 days from the date of filing the VAT return.

The VAT is usually refunded after a tax review or tax audit by the revenue authorities, which could defer the refund until after the audit is completed. The tax audit could last up to five months. However, refund of VAT is allowed within five days despite any ongoing audit after a collateral in the form of cash deposit, government securities or irrevocable bank guarantee in favor of the revenue authorities. If any refund is postponed until the completion of the audit, the authorities owe interest for the period of delay.

### VAT refund to persons identified for VAT in the EU and businesses outside the EU

Bulgaria has implemented the general provisions of the EU Directives in respect of VAT refunds to entities (i) established and registered for VAT purposes in other

EU Member States (Directive 2008/9/EC), or (ii) established outside the Community (13th Directive 86/560/EEC).

Refunds of input VAT incurred by foreign EU entities are available for purchases/imports made in Bulgaria, provided that the input VAT deduction would have been available if the foreign entity was identified for VAT purposes in Bulgaria.

The maximum period of time for which VAT reclaims can be made cannot exceed one calendar year. The minimum period cannot be less than three months unless this period comprises the remainder of the calendar year.

#### *Refund under the 13th Directive*

The 13th Directive refunds are based on reciprocity – the condition is that the country in which the person is established refunds VAT or similar tax to Bulgarian companies.

Bulgaria has reciprocity agreements with the following countries: Canada, FYR Macedonia, Iceland, Israel, Moldova, Norway, Republic of Korea, Serbia, Switzerland and Ukraine.

Taxable persons have a right to a refund if, during the year for which refund is claimed:

- They have neither a seat of their business nor a fixed establishment in Bulgaria and
- During the same period they have not performed transactions with a place of supply within Bulgaria except:
  - International transport and ancillary to it services
  - Supplies of goods and services for which the tax is due by the recipient.

The application must be made in the Bulgarian language and filed with the authorities by an appointed Bulgarian agent; the name and address of the person has to be written in the official language of the country where the person is established.

Applications must be accompanied by:

- A declaration that the person claiming refund is not established on the territory of the country
- A certificate issued by the competent tax authorities from the country in which the person is established, which proves that the person performed economic activity during the calendar year when the right to reclaim VAT arose (this certificate must be translated into Bulgarian by a certified translator and legalized)
- The original invoices/SADs on the basis of which the VAT refund is claimed
- Written power of attorney.

Applications must be sent to the territorial director of the NRA Territorial Directorate – Sofia, located at 21 Aksakov Street, 1000 Sofia.

The right to reclaim VAT on purchases made in 2014 must be exercised by 30 June 2015.

### *Refund under Directive 2008/9/EC*

Taxable persons have a right to refund Bulgarian VAT if during the period when VAT was incurred they:

- Have neither a seat of their business nor a fixed establishment in Bulgaria and
- Have not performed transactions with a place of supply Bulgaria except:
  - Zero-rated supplies
  - Transport and ancillary services
  - Supplies of goods and services for which the tax is due by the recipient.

Refund is claimed by home state applications filed electronically with the local revenue authorities in the Member State where the respective person is established.

Applications to refund Bulgarian VAT and all accompanying documents must be completed in Bulgarian or English. Applications must be accompanied by:

- Codified description of the economic activities of the person
- Codified description of the goods and services purchased in Bulgaria
- Copies of invoices and SADs are not required but these should be detailed in the application.

The right to refund is exercised personally or through an authorized representative.

The home state applications are referred to the Bulgarian Revenue Agency which has four months to issue its decision to accept or deny the claim. If additional documents are requested, the term for issuing the decision is extended by up to 8 months from the submission of the claim. Following a positive decision, the claimed VAT must be reimbursed within 10 days to a bank account indicated by the person. The Bulgarian Revenue Agency owes interest for any delay after the 10-day term.

The right to reclaim VAT on purchases made in 2014 must be exercised by 30 September 2015.

### **Penalties**

Penalties can be imposed by the revenue authorities in various cases of non-compliance, most notably for failure to charge output VAT, late charging of output VAT or failure to submit application for VAT registration.

Penalties in these cases are generally set at the amount of the underlying VAT not charged as a result of the failures (except for late charging of VAT – if the delay is within one month, the potential penalty is 25% of the underlying VAT).

In addition to this, penalty interest on the unaccrued output VAT liability may be calculated for the period of non-payment. The penalty interest rate varies with the prime rate of the Bulgarian National Bank and is 10.01 % per annum as at the beginning of 2015.

In the case of a failure to apply the reverse charge mechanism, the penalty amounts to 5% of the underlying VAT, provided that the taxable person is entitled to input VAT deduction. The penalty is 2% of the underlying VAT if the reverse charge mechanism is applied with a one-month delay.

## Customs duties

Following Bulgaria's EU accession, the EU Customs Regulations 2913/92/EEC and 2454/93/EEC became directly applicable in the country. Furthermore, as a member of the European Union, Bulgaria became a part of the Customs Union of the EU, which has two major consequences:

- Non-Community goods imported in Bulgaria from countries or territories not forming part of the customs territory of the EU are generally subject to the same customs duties and formalities as those applicable to goods imported in any other EU Member State
- Community goods in free circulation in the EU move from Bulgaria to other EU Member States and vice versa without application of customs formalities and without customs duty payment obligations.

## Community and non-Community goods

*Community goods* are:

- Goods fully produced or manufactured within the customs area of the EU
- Goods imported from outside the customs area of the EU and released in the EU customs territory for free circulation
- Goods produced or manufactured within the customs area of the EU from the above mentioned categories of goods.

*Non-Community goods* are goods which do not meet the criteria for Community goods. If Community goods are exported outside the customs territory of the EU, they lose their Community status. If Community goods are exported and subsequently re-imported within the customs territory of the EU, they will be treated as non-Community goods (i.e. subject to customs duties) unless it is proved that:

- The goods imported are the same as those previously exported, and
- While outside the EU, the goods were not subject to any operations except for such aimed at preserving their good condition.

## Import procedures

### *General procedures*

When entering the customs territory of the EU, all goods must be declared to the customs authorities and assigned a customs-approved treatment or use. If the goods are to be imported, the clearance procedure can be initiated either at the border Customs Office (i.e. where the goods initially enter the EU customs territory) or at the local Customs Office (i.e. where the goods will be used). In the second case, when entering the customs territory of the EU, the goods must be cleared by a border customs office for transit procedure. Usually, the Bulgarian customs authorities require that the importer is also the owner of the goods subject to import.

### *Customs value*

Usually, the customs value of the goods is their transaction value, i.e. the price paid or payable for the goods. Certain adjustments to this price might be necessary (e.g. freight and insurance costs following the entry of the goods into Bulgaria must be excluded from the customs value). Alternative methods may be used, for example, where there is no sale, or where the relationship between the parties influences the sale price (e.g. related party transactions).

### *Classification of goods*

The applicable Integrated Tariff of the European Community (TARIC) is based on the Community Combined Nomenclature and on the international Harmonized System used by many industrialized nations in the world. The respective classification of the goods within the tariff determines the rate of duty applicable upon import and whether any special preferential treatment is available.

### *Origin of goods*

The origin of imported goods and the route they take to the EU have considerable influence on their customs duty liability. If they originate in, and are directly consigned from a country which has a preferential agreement with the EU, the duty rate is reduced significantly or possibly to 0%. The EU has such agreements with other country groupings such as the African, Caribbean and Pacific states, Overseas Countries and Territories, Mashraq, Maghreb, Brazil, Russia, India and the Balkan countries. Suspension of the full rate of duty may be available from specified countries at certain times of the year for particular goods. Similarly, a quota may be in force which allows predetermined quantities of goods of certain tariff headings to be imported at lower than full duty rates.

### *Charges at importation*

Customs duties are mainly charged on the customs value of the goods (ad valorem), although many agricultural products are also liable to specific duties, assessed according



to weight or quantity, under the Common Agricultural Policy of the EU. A few items are subject to compound duties, i.e. a mixture of value-based and specific duties. The rate and type of duty applicable to an item is determined by its classification.

VAT is also charged on import. Any such VAT paid may be recovered as input tax provided that (i) the importer is registered for VAT purposes in Bulgaria, (ii) the goods are for use in their VAT taxable business activities, (iii) the importer has a proper import customs declaration issued in their name which is properly recorded in their VAT ledgers and (iv) the import VAT was effectively paid to the budget.

### Export procedures

Goods to be exported must also be declared to the customs authorities. Only persons established on the territory of the EU can be considered exporters for customs purposes.

From a VAT perspective, the export of goods to a destination outside the EU can be zero-rated provided that (i) the goods are transported outside the EU by or on behalf of the supplier or by or on behalf of the customer if not established in Bulgaria and (ii) the exporter can produce the necessary evidence for export.

### Other procedures with economic impact

A number of other procedures with economic impact including *temporary importation* and *exportation*, *inward* and *outward processing*, *customs warehousing* and *processing under customs control* cover the movement, warehousing and processing of goods under specific circumstances.

The opening and discharging of the above procedures follows a number of rules and requirements and is administered by the customs authorities.

## Excise duties

The Excise Duty and Tax Warehouses Act (EDTWA), which follows the concepts laid down in the EU excise duty legislation, was ratified by the Bulgarian Parliament and became effective on 1 July 2006. The Act was amended several times following Bulgaria's EU accession, the latest changes came into effect on 1 January 2015.

Taxable persons for the purposes of excise duties are authorized warehouse keepers, importers of excisable goods and other designated persons listed by the EDTWA.

Excise duty is charged on the following goods: alcohol and alcoholic beverages, tobacco products, energy products and electricity. Excise duty is usually charged on the basis of weight, volume and quantity of products. Exceptions are cigarettes for which the excise duty is calculated as a combination of specific duty (based on number of pieces) and ad valorem duty (as a percentage of the sales price). The changes effective from 1 January 2015 provide for a gradual increase in the ad valorem excise rates of cigarettes throughout the period 2016 – 2018.

Standard tax rates for various groups of products are explicitly determined in the law. Products for which no tax rate is specified in the law are taxed at the rate of equivalent products.

The excise goods are subject to excise duty at the time they are produced or enter the territory of Bulgaria. The obligation for payment of the duty occurs when the respective goods are released for consumption. The accrual and payment of excise duty can be postponed, if the goods are produced, stored or moved under an excise duty suspension regime. Usually, the goods are considered eligible for duty suspension, if produced or stored in a tax warehouse. At the same time, certain excisable goods (alcohol, tobacco and some energy products) cannot be produced outside the territory of such a warehouse. Furthermore, the goods can move under duty suspension within and out of the territory of Bulgaria in the following cases:

- Movement of excisable goods between Bulgarian tax warehouses
- Movement of excisable goods between Bulgarian and EU tax warehouses
- Movement of excisable goods from a Bulgarian tax warehouse to an exit customs office in case of export
- Imported goods transported to a Bulgarian tax warehouse
- Other movements specifically listed in the EDTWA.

The movement of goods under duty suspension within the EU is monitored by the computerized Excise Movement and Control System (EMCS).

### **Insurance premium tax (IPT)**

Insurance premium tax (IPT) at the rate of 2% was introduced in Bulgaria effective 1 January 2011. The latest amendments to the Bulgarian IPT Act were introduced on 1 January 2015.

Bulgarian IPT is charged on insurance premiums covering risks located in Bulgaria with the exception of exempt premiums collected on certain types of insurance contracts (e.g. life insurance, international transport and others). Taxable persons are local insurance companies and Bulgarian branches of foreign insurance companies established outside the EEA, Bulgarian branches of foreign insurance companies established in the EEA operating under the 'freedom-of-establishment' principle and foreign insurers established in the EEA and acting by way of the 'freedom-of-services' principle (FOS). The tax basis is the gross premium received by the insurer adjusted for certain discounts and/or fees. The tax event is the moment when the premium payment is collected by the insurer. IPT must be paid on a quarterly basis by the end of the month following the reference calendar quarter.

IPT liabilities are reported in standard tax returns each calendar quarter. IPT returns must be filed by the end of the month following the respective calendar quarter.

Registration of FOS insurers in Bulgaria is made on the basis of the first quarterly submitted IPT return in Bulgaria.

FOS insurers can appoint a fiscal representative who will be jointly and severally liable with them. Alternatively, they may settle their IPT liabilities directly or assisted by a local service provider as all reporting documentation is in the Bulgarian language.

## Chapter 7

# Employment Regulations

## Legislation

The major item of legislation that governs employment relations in Bulgaria is the Labor Code. The Labor Code regulates all main aspects of employment relations, namely:

- Conclusion, amendment and termination of employment contracts
- Working hours, absences and holidays
- Employment discipline
- Compensation and contractual liabilities of the parties to an employment contract
- Special protection for some categories of employees,
- Procedure for collective redundancy of employees.

Legal requirements are also provided in the Healthy and Safe Working Conditions Act, the Encouragement of Employment Act, the Protection of Personal Data Act, as well as in a number of ordinances adopted on the basis of the Labor Code and the above laws.

One of the main goals of the Bulgarian employment legislation is to create a minimum level of protection for employees. Therefore, the Labor Code, as well as the other relevant Bulgarian legislation, contains numerous rules and regulations which are mandatory for an employer hiring employees in Bulgaria.

## Employment contracts

### Form of contracts and obligation for notification

Employment contracts must be in writing.

An employer is obliged to notify in writing the respective division of the National Revenue Agency of the following circumstances:

- The signing of each employment contract – within three days from the date of signing
- An amendment to the position of the employee or the term of the employment contract – within three days from the date of signing of the respective amendment or annex to the contract, and
- The termination of an employment contract – within seven days after its termination.

The Labor Code provides that a fine of BGN 1,500 to BGN 15,000 will be imposed on an employer for each case of non-performance of one of the above obligations for notification.

### Types of employment contracts

The Labor Code regulates the following major types of employment contracts:

- Contracts concluded for an indefinite period of time (contracts with an indefinite term)
- Contracts concluded for a fixed period of time (fixed-term contracts), and
- Contracts with a probation period.

The most common and generally accepted type of employment contract in Bulgaria is the contract with an indefinite term. It gives better protection to the employee's rights and interests because it provides for more stable and long-term employment. Therefore, an employment contract concluded for an indefinite period of time cannot be transformed into a fixed-term contract without the prior written consent of the employee.

Under the fixed-term employment contract, the parties stipulate the period during which the contract shall be valid and binding. In order to better protect employees' rights and interests, the Labor Code provides that employment contracts can only have a fixed term in exceptional cases, as expressly specified in the law (e.g. for performance of seasonal or temporary activities, for completion of a specific project, for temporary substitution of absent employees and others).

If a contract is concluded for a fixed-term in breach of the relevant provisions of the Labor Code, it is deemed to be a contract of indefinite term.

A contract with a probation period is a specific type of "temporary" employment contract that gives the employer the opportunity to assess whether the employee is capable of performing the work required under the contract. It can precede the conclusion of a "final" employment contract, which can be a fixed-term contract, or a contract with an indefinite term. The type of "final" contract which follows the expiration of the probation period must be specified in the "temporary" contract.

The probation period can be in favor of the employer, the employee or in favor of both parties. If the probation period is in favor of the employer, the employer will be entitled, during the probation period, to unilaterally terminate the contract without prior written notice to the employee and without the need to present any grounds for termination of the contract. If a contract with a probation period is not terminated by the employer as described above, then upon its expiration it will become the "final" contract that has been specified.

## Youth employment

Since March 2014, the internship contract has been explicitly regulated by the Bulgarian labor law and set out in the Labor Code as a separate type of employment contract. Internship contracts can be concluded with high school or university graduates, persons younger than 29 years of age, who have no work experience related to their education or acquired qualifications. The internship contract may be concluded for a term of between six to twelve months. Young people shall be hired in internship positions corresponding to their qualifications and education and, after the termination of the contract, the employer shall provide the interns with recommendations, certifying the skills acquired during the internship.

Additional measures in relation to youth unemployment are included in the Encouragement of Employment Act. If certain requirements are met, employers who hire persons younger than 29 years of age, who are registered as unemployed, as well as primary school, school or university graduates without qualifications are entitled to receive financial resources for set periods.

## Temporary employment through external agencies

The Labor Code contains provisions regarding the temporary work of external employees, according to which a company (temporary employer) has the right to temporarily employ an employee (temporary employee) of another company (temporary work agency). Temporary work agencies have the right to perform activities only upon registration before the Employment Agency.

Temporary work agencies have the right to sign with their employees only two types of employment contracts: (i) until completion of specific work and (ii) for temporary replacement of an employee who is absent from work. The individual employment contract must contain a clause that the employee will be seconded to work with the temporary employer, under its management and supervision. The total number of temporary employees may not exceed 30% of the total number of employees of the temporary employer.

The Labor Code regulates in details the rights and obligations of temporary work agencies and temporary employers. The relations between both companies shall be regulated by virtue of a written agreement, with contents specified in the Labor Code. The temporary work agency and the temporary employer are jointly liable for the obligations to the temporary employees, related to the work assigned.

## Working hours

The Labor Code contains mandatory provisions which determine the regular working hours under an employment contract in Bulgaria. The regular working week is 40 hours, five working days of eight hours each.

These are in fact the maximum working hours that the parties to an employment contract can negotiate, unless otherwise provided for in the Labor Code. The law sets out mandatory limits for working hours within the working day and week in order to protect the rights of the employees and to prevent an employer from imposing extended working hours.

All exceptions from the regular working week are expressly stipulated in the law. A requirement to work more than the regulated hours is always compensated for by the employer, in a way provided for under the law.

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

## Holidays

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

The employee is entitled to use annual paid leave at one time or in parts during the calendar year for which the leave applies, in accordance with a schedule approved by the employer. The employer is obliged to allow the use of annual paid leave of the employee when requested, for the period specified in the schedule, unless its use is postponed on the grounds specified in the Labor Code.

Use of a part of the annual paid leave, up to 10 working days, can be postponed to the following calendar year either upon written request of the employee with the employer's consent due to a valid reason, or upon the initiative of the employer for important reasons related to the business activities of the employer.

When the employee was not able to use fully or partly the annual paid leave within the calendar year for which it applies, due to use of temporary disability leave, leave for pregnancy, delivery, adoption or raising of a child, or any other leave provided for in the law, the use of annual paid leave can be postponed.

When the annual paid leave or part of it has not been used within two years from the end of the year for which the leave applies, irrespective of the reasons, the right to use the leave shall be terminated.

Upon termination of the employment relationship, the employee is entitled to monetary compensation for the unused part of the annual paid leave, the right of use of which has not been terminated due to expiry of the prescription period of two years.

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

## Medical check-ups

All employees must undergo periodical medical check-ups. Their frequency depends on the labor category, working conditions and the employees' age, as determined by the Minister of Health. The associated expenses shall be incurred by the employer.

## Healthy and safe working conditions

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

The labor legislation sets forth strict obligations of the employer in relation to the provision and maintenance of healthy and safe working conditions, which include but are not limited to:

- An assessment of risks to the health and safety of employees, which is to be performed by an independent specialized company
- Development of an overall and annual program to achieve the required healthy and safe working conditions based on the risk assessment
- Planning and performance of measures necessary for the prevention of possible risks, including but not limited to: constant technical maintenance of equipment, provision of collective and personal protective means for employees, informing employees of possible risks, providing protective food and/or antidotes for employees who work under unhealthy and harmful conditions
- Providing special training for employees on healthy and safe conditions.

The due performance of the above obligations by employers is subject to inspection and control by the competent authorities, which are entitled to impose fines in case of non-compliance with the rules and the standards for healthy and safe conditions.

The Labor Code empowers the Minister of Labor and Social Policy to issue regulations regarding work-related health and safety conditions. These regulations may also be drawn up jointly with other ministries. Employers shall act in compliance with these regulations.

The Labor Code provides for a fine of between BGN 1,500 to BGN 15,000 for employers and a fine of BGN 1,000 to BGN 10,000 to the responsible persons at the employer company for each case of non-performance of obligations to provide healthy and safe working conditions.



## Termination of employment contracts

Employment contracts may be terminated on general and/or other termination grounds which may or may not require advance notice. No notice is required if employment contracts are terminated by either party on one or more of the explicit grounds listed in the Labor Code.

When notice is required for termination, it may vary from 30 days up to three months. If the required notice period is not observed, compensation is due.

In case the employer decides to unilaterally terminate the employment contracts of 10 or more employees, the procedure for collective redundancy must be observed. This procedure is applicable in case of liquidation, staff reduction, decrease of the workload and other grounds for termination of employment by the employer. The procedure for collective redundancy includes mandatory obligations for the employer such as:

- To notify trade unions and employees of its intention to terminate the employment contracts
- To initiate consultations with employees in order to mitigate or avoid the consequences of redundancy
- To notify the Employment Agency and to participate in teams comprised by representatives of employees, the municipal authorities and the Employment Agency for the purposes of training of employees, initiating own business by the employees, participation of employees in alternative employment programs.

According to the Labor Code, a fine of BGN 1,500 to BGN 5,000 will be imposed on an employer and a fine of BGN 250 to BGN 1000 will be imposed upon the responsible official of the employer for each case of non-performance of any of the above obligations on notification to the employees.

## Foreign nationals working in Bulgaria

The Bulgarian Labor Code provides no special treatment for expatriate personnel. In most cases, foreign nationals seeking employment in Bulgaria must obtain work permits. Employment contracts executed by foreign nationals working in Bulgaria must contain provisions which regulate accommodation expenses, medical treatment, insurance, transportation costs to and from the country of permanent residence and others. For a discussion of work permits, please refer to Chapter 8.

## Chapter 8

# Foreign Nationals

## Legislative framework and general principles

The legal status of foreign nationals in Bulgaria is governed by the Constitution of the Republic of Bulgaria, the Foreign Nationals Act (1998), the Regulation on the Application of the Foreign Nationals in the Republic of Bulgaria Act (2011), the Ordinance on the Terms and Procedure for Issuing Visas and Determination of the Visa Regime (2011) and the Ordinance on the Terms and Procedure for Issuing of Work Permits to Foreign Nationals in Bulgaria (2002). Generally, the Bulgarian legislation concerning foreign citizens is in compliance with the EU legislation as related to immigration policy. Effective from 31 January 2012, Bulgaria unilaterally applies the Schengen acquis.

The Foreign Nationals in the Republic of Bulgaria Act applies to the foreigners who are not citizens of any Member State of the European Union, the States which are a party to the European Economic Area Agreement and the Swiss Confederation (“foreigners”).

The legal status of citizens of any of the Member States of the European Union, the States which are a party to the European Economic Area Agreement and the Swiss Confederation (“European citizens”) in Bulgaria is governed by the Entry, Residence and Departure of European Union Citizens and Members of Their Families from the Republic of Bulgaria Act, 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. Foreigners are divided into two categories – those who must secure a visa when crossing the borders of the Republic of Bulgaria and those who are exempt from that requirement.

Visa requirements and the exemption of such requirements for foreigners are governed by EU legislation, agreements of the European Union with third countries for visa regimes and the effective Bulgarian legislation.

Foreigners who wish to reside in Bulgaria on a long-term basis (in any case more than three months within each six-month period) shall be issued a residence permit. European citizens who intend to stay in Bulgaria longer than three months are issued residence certificates instead of residence permits.

Foreigners may work in Bulgaria only after obtaining a work permit, unless otherwise stipulated by the law.

The Constitution of the Republic of Bulgaria provides that foreign nationals have all the rights and obligations accorded under Bulgarian law and international agreements ratified by Bulgaria, except in respect to those rights for which the laws explicitly require Bulgarian citizenship.

Under Bulgarian law, foreign nationals are restricted in exercising the following rights:

**Ownership rights:** Foreign nationals do not have the right to acquire ownership title over land except: (i) under the terms of an international agreement ratified under the terms provided for in the Constitution of the Republic of Bulgaria, which has been promulgated and has entered into force, or (ii) through legal inheritance.

Since the seven-year transitional period from the date of accession of Bulgaria to the European Union expired on 31 December 2013, the citizens of EU/EEA Member States, regardless of whether they reside in Bulgaria or not, can acquire ownership title over agricultural land, forests and forestry land in Bulgaria.

According to the Bulgarian legislation, no special permissions are required for individuals who want to acquire ownership over premises and/or limited property rights over immovable property. This regime does not differ for citizens of EU/EEA Member States and citizens of other countries.

**Political rights:** Foreign nationals cannot be candidates for positions such as those of mayors, Members of Parliament, the president.

Pursuant to Article 42, paragraph 3 of the Bulgarian Constitution, the terms and conditions for participation of citizens of EU Member States in local elections in Bulgaria are set forth in a special law, namely the Bulgarian Election Code (2011).

As from the date of Bulgaria's accession to the EU, citizens of EU Member States are entitled to vote for municipal councilors and mayors in Bulgaria. In order to take part in the elections, the citizens of EU Member States over the age of 18 must have a long-term or permanent residence status in Bulgaria and must have resided in the respective municipality for at least six months preceding the date of elections, and they must not be exempt from the right to vote in another EU Member State, including Bulgaria. In addition, they must express their will to vote in writing.

A citizen of an EU Member State over the age of 18 can be elected as a municipal councilor provided that they meet the following conditions: (i) do not have citizenship in a non-Member State, (ii) have a long-term or permanent residence status in Bulgaria, (iii) have resided in the respective municipality for at least six months before the date of the elections, (iv) have not been deprived of the right to be elected in any EU Member States in which they are a citizen. However, only Bulgarian citizens are eligible to be mayors in the country.

There is a general rule that foreign nationals are obliged to observe Bulgarian laws and the established legal order, that they must be loyal to the Bulgarian state, and not derogate the prestige and dignity of the Bulgarian people. In this respect, foreign citizens residing in Bulgaria bear the same civil, administrative and penal responsibilities as Bulgarian citizens, unless otherwise provided for under a special law, or an international agreement to which the Republic of Bulgaria is a party.

## Visas

According to the effective Bulgarian legislation, foreigners who are citizens of certain countries must obtain a visa before entering the territory of the Republic of Bulgaria. The visa is a clearance, issued to foreigners, for entry and stay on the territory of the Republic of Bulgaria for a certain period of time.

The Ordinance on the Terms and Procedure for Issuing Visas and Determination of the Visa Regime, referring to Council Regulation 539/2001 of 15 March 2001 /L81/2001, and the relevant Regulations for its amendment determine the list of those countries whose nationals must be in possession of a visa when crossing the borders of the Republic of Bulgaria and those whose nationals are exempt from that requirement. In addition, there are certain countries whose nationals are exempt from the requirement of possession of a visa when crossing the borders of the Republic of Bulgarian by virtue of agreements concluded between the European Union and the said countries for granting exemption from the visa requirement. For foreign nationals of certain countries, the exemption from the requirement of possession of a visa when crossing the borders of the Republic of Bulgaria depends on the holding of a special type of a passport (e.g. a biometric passport).

On the grounds of a resolution of the Bulgarian Council of Ministers, until the date of Bulgaria's full accession to the Schengen zone, Bulgaria shall unilaterally apply a visa-free system for holders of valid Schengen visas and residence permits, and thus Bulgaria shall apply the Schengen acquis. Effective from 31 January 2012, holders of Schengen visas and/or residence permits shall be allowed to enter and reside short term in the Republic of Bulgaria without needing to have a Bulgarian short-stay visa.

Bulgaria unilaterally recognizes short-stay and long-stay visas and residence permits issued by Croatia, Cyprus and Romania. The holders of such types of documents may enter and stay short term in Bulgaria without needing to have a Bulgarian short-stay visa.

Foreigners who are exempt from the requirement for obtaining a visa can enter and stay in the Republic of Bulgaria without a visa for up to 90 days within a period of six months. The entry and the short-term residence in Bulgaria of holders of Schengen visas and/or residence permits is limited to the period and the entries allowed in the respective visa/permit, but in any case holders of such documents may not reside in Bulgaria for more than 90 days in any six-month period. This also applies to holders of national short-stay and/or long-stay visas and residence permits issued by Croatia, Cyprus and Romania.

A valid visa is not a guarantee of entry into Bulgaria. The border control officers are entitled to determine whether a foreigner meets the requirements for admission. If the border

control officers establish that a foreigner does not meet the requirement of the law, then the foreigner may be refused entry in the Republic of Bulgaria.

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

An air transit visa is issued to a foreigner who travels by aircraft from a certain country and stays in the international transit zone of an airport on the territory of the Republic of Bulgaria with the aim of continuing their travel with the first next flight to a different country. Air transit visa allows a foreigner one, two or, as an exception, multiple entries in the territory of Bulgaria. An air transit visa can be with a validity term of up to three months from date of issuance. A foreigner traveling with an air transit visa is treated as not admitted to the territory of the Republic of Bulgaria.

A short-stay visa is issued to a foreigner for the purposes of transit or planned stay in the territory of the Republic of Bulgaria. The short-stay visa can be issued as one-entry, two-entry or multiple-entry visa. The term of validity of the short-stay visa and the allowed period of stay are determined on the basis of examination of the conditions of entry and risk assessment during the examination of the visa application. The term of validity of the short-stay visa cannot exceed five years.

A short-stay visa for transit allows a foreigner who is on their way from one country to another to enter and stay in the territory of the Republic of Bulgaria for a period of up to two days, unless otherwise provided in an international agreement. The total length of stay of a holder of a short-stay visa for transit may not exceed three months within every six-month period.

A short-stay visa for planned stay allows a foreign national single or multiple entries into Bulgaria for up to 90 days within a period of six months. This type of visa is issued to foreigners who wish to enter and stay in Bulgaria for the purpose of short-term personal, business or other related visits. The purpose of the visits is usually proved with written invitations.

A long-stay visa allows a foreigner to enter into Bulgaria and thereafter to apply for a residence permit in order to stay long-term in the country. The validity of the long-stay visa is six months and it allows its holder a stay up to 180 days. For certain categories of foreigners, the validity of the long-stay visa is up to one year and allows the holder to stay up to 360 days (e.g. foreigners conducting scientific research, foreigners on business trips on behalf of a foreign employer for performing specific tasks related to control and coordination of the implementation of a tourist services contract, foreigners on business trips on behalf of a foreign employer for making investments in accordance with the Encouragement of Investment Act and others).

The long-stay visa allows its holder multiple entries into the territory of the Republic of Bulgaria within its validity term.

All visa applications must be submitted to the respective Bulgarian diplomatic missions and consular departments around the world. In case there is no diplomatic mission or

consular department in a certain country, visa applications can be submitted to such authorities of a Member State of the European Union with which Bulgaria has an agreement for representation in acceptance of visa applications and issuance of visas. In exceptional cases (e.g. the state's interest or extraordinary circumstances), border control officers can issue single short-stay visas for transit visits with an allowed period of stay not exceeding two days, unless an international agreement provides otherwise, and single short-term visas for a planned stay of up to 15 days. The State Agency for National Security shall be immediately notified of the issuance of such visas.

An application for issuance of a long-stay visa is submitted only to the Bulgarian embassy or consular office in the country where the applicant permanently resides, or to such diplomatic missions and consular departments, which are accredited for the respective country. In exceptional cases (humanitarian reasons or extraordinary circumstances), the application for issuance of a long-stay visa can be submitted to Bulgarian diplomatic missions and consular departments in other countries.

An important condition upon applying for a visa is for the applicant's passport to be in compliance with certain requirements of the law, namely: (i) the validity term of the passport shall expire at least three months after the planned date of leaving the territory of Bulgaria, (ii) the passport shall have at least two empty pages, and (iii) the passport is issued within the past 10 years.

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

Foreigners who are family members of European citizens may enter and leave the territory of the Republic of Bulgaria with a valid passport and visa, if such is required. Family members of a European citizen, who are not European citizens themselves, are exempt from the requirement of a visa only if they are in possession of a residence card issued by an EU Member State.

### **Residence permits, residence certificates and residence cards**

Foreigners who wish to reside in Bulgaria on a long-term basis (in any case more than three months within each six-month period) are issued a residence permit.

European citizens who intend to stay in Bulgaria longer than three months are issued residence certificates.

Family members of European citizens, who are not European citizens themselves, who wish to reside in Bulgaria for a period longer than three months, must be granted residence permits and obtain Bulgarian residence document (residence permit or residence card).

The certificates for European citizens, the residence permits for foreigners and the residence cards for European citizens' family members, who are not citizens themselves, are issued by the Migration Directorate at the Ministry of the Interior, the respective division as per the applicant's address of residence in Bulgaria.

### Residence permits

The Foreign Nationals in the Republic of Bulgaria Act provides for three types of residence permits:

- A. Extended residence permits – with a term of validity of up to one year and the option of renewal after submission of an application
- B. Long-term EU residence permits – for an initial period of five years and the option of renewal after submission of an application, and
- C. Permanent residence permits – for an indefinite period of time.

In order to apply for an extended or permanent residence permit, a foreigner must initially obtain a long-stay visa.

The most common grounds for issuance of extended residence permits are:

- A foreigner has been issued a work permit by the Bulgarian Employment Agency
- A foreigner is a member of the management or supervisory body of a Bulgarian company, provided that such company has employed at least 10 Bulgarian nationals
- A foreigner is a trade representative of a representative office of a foreign company registered with the Bulgarian Chamber of Commerce and Industry.

Following amendments to the Bulgarian laws and regulations which took place in February 2013, additional grounds for issuance of extended residence permit to foreigners who make investments in Bulgaria were introduced in the local legislation. Thus, foreigners can obtain an extended residence permit in Bulgaria, if they invested:

- Over BGN 600,000 in acquiring immovable property directly or through a Bulgarian company, in which the foreigner has invested BGN 600,000 as capital
- Over BGN 250,000 in economically disadvantaged areas through a Bulgarian company, in which the foreigner has invested BGN 250,000 as capital, and as a result the company acquired fixed tangible and intangible assets amounting to BGN 250,000 and has employed at least five Bulgarian nationals for the term of the foreigner's residence in Bulgaria.

The documents required for issuance of an extended residence permit include: (i) a valid international passport of the applicant with a validity term which exceeds the term of the requested residence permit by not less than six months; (ii) document(s) evidencing that the applicant has been provided with a place to live during their stay in Bulgaria (e.g. rental contracts); (iii) a standard application form; (iv) document(s) evidencing

payment of the relevant state fees; (v) documents evidencing that the foreigner has health insurance in compliance with the Bulgarian legislation; and (vi) document(s) evidencing that the applicant has sufficient financial means to meet the costs of their stay in Bulgaria. Upon submission of their first application for an extended residence permit, foreigners over the age of 18 must also submit a conviction status certificate issued by the state in which the foreigner is a citizen or from the state of their habitual residence. Additional documents are required depending on the specific grounds for issuance of the permit.

The application for obtaining an extended residence permit must be filed before the Migration Directorate not later than 14 days prior to the expiration of the term of the long-stay visa. Applications are considered and reviewed within 14 days of their submission and, if the case is complicated from a legal or factual perspective and if additional documents need to be presented by the applicant, this term can be extended by one month.

The extended residence permit can be renewed if the grounds for issuance still exist at the time of the renewal.

Once the foreigner is granted an extended residence permit, they may live, reside and travel in the Republic of Bulgaria while the permit is valid. The Foreigner may freely choose and change their place of residence, or leave the country and enter it again.

Pursuant to the amendments to the Foreign Nationals Act in December 2013, foreigners who intend to reside in Bulgaria for the purposes of employment shall be able to apply for a single work and residence permit.

Foreigners who have been granted status of a long-term resident in the Republic of Bulgaria can obtain long-term EU residence permits. Long-term resident status can be granted to foreigners who have resided legally and continuously (i.e. uninterrupted) on the territory of the Republic of Bulgaria for five years prior to the submission of the application for obtaining a long-term residence status. The expiration of the validity term of a long-term EU residence permit does not result in losing the long-term resident status.

Permanent residence permits are issued to foreigners:

- Of Bulgarian descent
- Who have been married for more than five years to a foreigner with a permanent residence status in Bulgaria and have resided legally and continuously on the territory of Bulgaria for a period of five years
- Minor or underage children of a foreigner with a permanent residence status in Bulgaria, who are not married
- Members of the family of a Bulgarian citizen if they have resided continuously on the territory of the Republic of Bulgaria in the last five years
- Who have invested in Bulgaria over BGN 1 million or increased their investment with such amount, through acquisition of shares in Bulgarian companies which are traded



on the Bulgarian stock exchange, through acquisition of rights under concession agreements on the territory of the Republic of Bulgaria, or through acquisition of other securities or rights explicitly provided by the law

- Who have invested in Bulgaria over BGN 6 million in the capital of a Bulgarian company whose shares are not traded on the Bulgarian stock exchange
- Who are shareholders, representatives or employees occupying key or controlling position in a Bulgarian company which conducts business activity in Bulgaria and obtained a special certificate for class A investment, class B investment or priority project from the Bulgarian Investment Agency.

Following amendments to Bulgarian laws and regulations in February 2013, additional grounds for issuance of permanent residence permits to foreigners who make investments in Bulgaria were introduced. Foreigners can obtain permanent residence permits in Bulgaria if they invested over BGN 500,000 through a Bulgarian company in which the foreigner has invested the amount as capital, and as a result the company acquired fixed tangible and intangible assets amounting to BGN 500,000 and has employed at least 10 Bulgarian nationals for the term of the foreigner's residence in Bulgaria.

The extended, long-term or permanent residence status of a foreigner is evidenced by the issuance of a Bulgarian personal document (residence permit) evidencing the right of residence in the Republic of Bulgaria.

### Residence certificates

European citizens are issued two types of residence certificates:

- A. Long-term residence certificates – with a term of validity of up to five years, and
- B. Permanent residence certificates – for an indefinite period of time.

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

- A European citizen is employed or self-employed in the Republic of Bulgaria
- A European citizen has medical insurance and sufficient financial resources to cover the expenses for their residence and that of their family members without being a burden to the Bulgarian social security system, or
- A European citizen has enrolled in a school/college/university in Bulgaria for study, including professional training, and has medical insurance and sufficient financial resources to cover their expenses and that of family members without being a burden to the Bulgarian social security system.

In order to apply for a long-term residence certificate, the European citizen must submit an application to the Migration Directorate at the Ministry of the Interior within three months of their first entry in the Republic of Bulgaria.

The documents which must be enclosed with the application include: (i) a valid identity card or passport of the applicant; (ii) document(s) evidencing the existence of the grounds on which the European citizen applies for their residence certificate (e.g. employment contract, documents proving registration of the applicant as a self-employed, documents proving that the applicant currently studies in Bulgaria); (iii) document(s) evidencing the payment of the relevant state fee; and (iv) document(s) evidencing that the applicant has medical insurance and has sufficient financial means to meet the costs of their stay in Bulgaria (when required). Additional documents may be required depending on the specific ground for issuance of the permit.

Applications are considered and reviewed and the certificate must be issued on the day of submitting the application. The certificate contains the person's full name and the registration date. Upon their request, the applicant may receive a long-term residence certificate in the form of an ID card with their photo and personal number on it.

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

The right of entry and the right of residence of a European citizen in the Republic of Bulgaria 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 or who meet other special requirements set forth in the law. In order to apply for a permanent residence certificate, the European citizen must submit an application to the Migration Directorate at the Ministry of the Interior enclosing documents evidencing the necessary circumstances.

### Residence cards

Family members of European citizens, who are not European citizens themselves, and who accompany or live with a European citizen, are entitled to receive an extended or permanent residence permit in the Republic of Bulgaria, on the basis of their relationship with the European citizen.

A foreigner, who received an extended or permanent residence permit in Bulgaria, is issued a Bulgarian residence document (residence card) evidencing their right of residence in the Republic of Bulgaria.

## Work permits

### General rules

Foreigners may work in Bulgaria only after obtaining a work permit, unless otherwise stipulated by the law. The grounds for obtaining a work permit are a foreigner signs an employment contract with a Bulgarian employer, or a foreigner is sent on a business trip for undertaking of certain activities in Bulgaria.

As from the date of Bulgaria's EU accession, European citizens may be employed, self-employed or sent on a business trip and may work in Bulgaria without restrictions and without the need of work permits.

Work permits required for foreigners must be requested by a local employer and are issued by the Bulgarian Employment Agency. A number of legal terms and conditions must be met for the permit to be issued. Work permits are issued for a maximum duration of one year. If a work permit is granted to a foreigner on the basis of a signed employment contract with a local employer, generally, such a permit can be extended if the terms and conditions for its issuance are still valid, but the total duration may not exceed three years, unless in specific cases provided by the law. The term of validity of a work permit issued to a foreigner who is sent on a business trip, cannot be extended for further one-year periods, unless by exception.

Bulgarian employers must report signed labor contracts with foreigners and European citizens at the National Revenue Agency within three days from their signing.

European citizens, who are sent on a business trip to Bulgaria, are subject to one-off registration at the Bulgarian Employment Agency, which is performed by the local person accepting the respective employees.

### Single work and residence permit

The amendments to the Foreign Nationals Act dated December 2013 were designed to comply with Directive 2011/98/ of the European Parliament and the Council of 12 December 2011. The amendments enable foreigners to obtain a single residence and work permit ("single permit").

A single permit shall be issued to:

- Foreigners who apply to reside in Bulgaria for the purpose of work
- Foreigners who, pursuant to the Bulgarian legislation, have obtained for purposes other than work a valid residence permit in accordance with Council Regulation (EC) No. 1030/2002, of June 2002, laying down a uniform format for residence permits for third-country nationals
- Foreigners who hold valid work permit issued in accordance with the Bulgarian legislation.

The procedure for issuance of a single permit shall not apply to:

- Foreigners who are seasonal workers
- Foreigners who are members of the family of a foreign national who has obtained a long-term or permanent residence permit
- Foreigners sent on a business trip to Bulgaria for the term of their assignment
- Foreigners who apply to work on the basis of internal corporate transfer.

The single permit shall be issued by the Migration Directorate at the Bulgarian Ministry of the Interior after permission from the Employment Agency, provided that the foreigner

- i) meets the requirements of the Bulgarian legislation for issuance of a work permit and
- ii) the foreigner has obtained the necessary visa or residence permit issued for purposes other than work pursuant to Council Regulation (EC) No. 1030/2002, of June 2002 laying down a uniform format for residence permits for third-country nationals.

The single permit shall be valid for a period of one year. If the foreigner's employment contract has been executed for a term shorter than one year, the single permit shall be valid for the term of the contract.

#### Foreigners who generally do not require a work permit in Bulgaria

The following are the main categories of foreigners who may work in Bulgaria without the need to have a work permit:

- Managers of companies or branches of foreign legal entities
- Members of the Management Board or Board of Directors of local companies who are not employed with an employment contract
- Shareholders and partners in Bulgarian companies – for the activity of managing company's affairs
- Trade representatives of representative offices of foreign companies registered at the Bulgarian Chamber of Commerce and Industry
- Foreigners granted a long-term or permanent residence status in Bulgaria
- Family members of a European citizen or a foreigner who has been granted long-term residence status in Bulgaria.

#### Foreigners who may work on short-term assignments without a work permit

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

- Their habitual residence remains abroad
- They are sent on a business trip to Bulgaria by their foreign employer

- The assignment in Bulgaria is no longer than three months within a period of one year
- The assignment encompasses any of the following: installation or warranty repair of imported machinery and equipment; training in operating equipment, or the delivery of ordered equipment, machines or other items; training as part of an export contract for supply of goods or training under a license agreement.

For this purpose, a one-off registration of the foreigner must be performed at the Bulgarian Employment Agency before commencement of the assignment.

For all other categories of employees, work permits are required. They are issued provided that all requirements of the law are met.

### **“EU Blue Card” residence and work permit**

Amendments to the Bulgarian laws and regulations in January and June 2011 introduced additional grounds for work and stay of foreigners relating to employment under an employment contract for the purpose of highly-qualified work.

The main precondition for a foreigner to obtain a permit for work and residence type “EU Blue Card” is that the foreigner shall have a university degree or for education at least a three-year educational course.

In order to apply for an EU Blue Card, the foreigner must first obtain permission to perform highly-qualified employment and a long-stay visa. The permit for performing highly-qualified employment is issued by the Bulgarian Employment Agency within 15 calendar days following the submission of the relevant application and required documents. The procedure for obtaining the permit from the Employment Agency must be initiated by the local employer of the foreigner and the employer is to pay the due stated fee.

For the purpose of obtaining an EU Blue Card, the foreigner must file an application to the Migration Directorate at the Ministry of the Interior not later than seven days prior to expiration of the term of the long-stay visa. The foreigner must enclose with the application (i) a copy of their valid international passport, including the issued long-stay visa, and (ii) documents evidencing that the foreigner has health insurance in compliance with the Bulgarian legislation. The permit for exercising highly-qualified employment is ex officio provided to the Migration Directorate by the Employment Agency. Applications for issuance of an EU Blue Card are considered and reviewed within seven days of their submission.

EU Blue cards are issued for a period of up to one year and can be renewed for further one-year periods without limitation, as long as the grounds for their issuance still exist.

According to the law, the family members of a foreigner, who has been granted an “EU Blue Card”, are entitled to obtain extended residence permits in the Republic of Bulgaria for a period equal to the term of residence permitted to the holder of the “EU Blue Card”, if certain conditions of the law are met.

## Chapter 9

# Government Control

## Public procurement

The Public Procurement Act is the main legislative act governing the principles, terms and procedures for awarding public procurements and ensuring efficiency in the spending of budget resources. The amendments to the Public Procurement Act from 2006 brought it in compliance with the European public procurement directives.

The public procurement regulations are applied by the Bulgarian contracting authorities in the process of spending resources not only from the state and municipal budget, but also from the European Structural and Cohesion Funds.

### Public procurement activities

The range of activities included in the scope of public procurement are explicitly listed in the law and divided into three areas:

- Works
- Supply of goods
- Provision of services.

The legislator has established certain thresholds, above which the contracting authorities are obliged to award public procurement contracts according to the terms and procedures stipulated in the Public Procurement Act. The thresholds are:

- BGN 264,000 for construction activities and BGN 1.65 million when the said activities are carried out abroad
- BGN 66,000 for delivery of goods, provision of services and design contest and BGN 132,000 when the public procurement is performed abroad.

Public procurement below the above thresholds can be awarded under the simplified terms and conditions provided in the law by publication by the contracting authority of a public invitation for submission of offers at the Public Procurement Register.

## Main participants

Public procurement award procedures usually involve many stakeholders, among which are the contracting authorities, candidates and tenderers, contractors, subcontractors, suppliers and service providers.

The contracting authorities are:

- State and municipal authorities, and other state authorities, established by virtue of law, including diplomatic and consular missions and institutions abroad
- Public organizations incorporated to provide services of community interest
- Public enterprises which conduct certain activities including those related to drinking water; electricity, gas or heat energy; public transport; postal services; exploitation of oil, gas fields, coal or other solid fuels
- Entities which are not public enterprises and which conduct their activities described in the previous bullet point, when the said activity is carried out on the basis of an exclusive or special right.

Any Bulgarian and foreign legal entities and individuals, as well as any combinations of them, meeting the legal requirements set out in the Public Procurement Act, may participate in public procurement procedures and be awarded public procurement contracts. The application process usually requires provision of many corporate and financial documents by the applicants to the contracting authorities, certifying the fulfillment of certain conditions, called selection criteria. The criterion for selection of the successful participant in the public procurement procedure can be either the lowest price or the economically most advantageous tender.

## Types of public procurement procedures

The public procurement procedures envisaged in the Public Procurement Act are:

- Open procedure – where all interested candidates may submit an offer
- Restricted procedure – where only short-listed candidates invited by the contracting authority may submit an offer
- Competitive dialogue – where all interested candidates may submit an application for participation and, after a dialogue with the contracting authority, short-listed candidates may submit an offer
- Negotiated procedure with or without a prior notice – where the contracting authority negotiates the terms of the contract with one or more short-listed candidates
- Design contest – a procedure whereby the contracting authority acquires a plan or design selected by an independent jury after being placed in a competition with or without the awarding of prizes.

Competitive dialogue cannot be applied by contracting entities operating in the water, energy, transport and postal services sector.

### Appeal of public procurement procedures

Any decision, action or omission of the contracting authorities in a public procurement procedure until conclusion of the contract or the framework agreement can be appealed by the interested parties before the Commission on Protection of Competition.

The appeal, except an appeal against a decision for selection of a contractor, does not suspend the public procurement procedure unless a temporary measure of suspension has been imposed by the Commission for the Protection of Competition.

Where the Commission for the Protection of Competition identifies that the appealed decision, action or omission of the contracting authority is illegal, it shall annul it and instruct the contracting authority to proceed with the procedure as from the last legal action or decision.

The resolution of the Commission for the Protection of Competition can be appealed before the Supreme Administrative Court. The resolution of the court shall be final.

### Public Procurement Agency and Public Procurement Register

The Public Procurement Agency is the authority which is responsible for the state policy in the area of public procurement. It exercises prior control over certain public procurement, such as public procurement financed by EU funds and public procurement awarded through the negotiated procedure without a prior notice.

The Public Procurement Agency also keeps the Public Procurement Register which contains the following documents and information with regard to each public procurement:

- Decisions for initiation, amendment and termination of public procurement procedures
- Announcements of public procurement procedures
- Information on awarded public procurements
- Information on completed public procurement contracts
- Information on the development of the appeal procedure (if any).

### Concessions

The conditions and procedure for granting, implementation and termination of concessions in Bulgaria are mainly regulated by the Concessions Act, effective from 1 July 2006. The concession regime applicable to underground resources is established in the Underground Resources Act, effective from March 1999, while the mineral waters production concession is subject of regulation by the Water Act, effective from August 2000. The amendments made to the Concessions Act in 2008 introduced the possibility that concessions can be awarded to a mixed public-private company, where shareholders are a state/municipality/public company and a private entity.



A concession is defined as the right of the concessionaire to operate a facility which is in public ownership and/or manage a service of public interest against the obligation to build, manage and maintain the facility or to manage the service at its own risk.

Granting of concessions is an appropriate method for governmental and municipal authorities to manage state or municipal properties by way of involving business entities in that management.

### Objects of concession agreements

The objects of concession agreements are:

- Exclusive state properties
- Public state or municipal properties
- Private state or municipal properties
- Properties owned by public organizations.

The concession does not transfer an ownership title over properties; it only gives the concessionaire the right to use the said properties against concession payments (if envisaged by the grantor of the concession), which ensure revenues for the state or municipal budget. The grantor of the concession can also resolve that the concessionaire shall receive compensation from the state/municipal budget depending on the economic efficiency from the operation of the object of the concession agreement.

### Types of concessions

The types of concessions are:

- Public works concession – for implementation of a construction project and management and maintenance of the completed facility
- Service concession – for management of a service of public interest
- Production (mining) concession – for extraction of natural resources by means of their exploitation.

### Parties to the concession agreements

The public authorities that are grantors of concessions are:

- The Council of Ministers, for state concessions where the object of the concession is state ownership
- Municipal councils, for municipal concessions where the object of the concession is municipal ownership
- Public organizations, for public concessions where the object of the concession is ownership of the public organization and

- The Council of Ministers, the municipal council(s) and the public organization, for joint concessions where the object of the concession is joint ownership of the state, one or more municipalities and/or public organizations.

Any Bulgarian or foreign individual, legal entity or a partnership between individuals and/or legal entities meeting the legal requirements set out in the Concessions Act may participate in a concession procedure and be granted a concession. However, the concession agreement can be concluded only with a limited company (i.e. a joint-stock or limited liability company). Where a participant(s) awarded with a concession is/are not limited company(ies), they need to establish such company which shall be a concessionaire under the concession agreement.

### Concession procedure and concession agreement

The Concessions Act provides that concessionaires are selected only through an open procedure, where any interested candidate can submit an offer. The open procedure is also applied by the contracting authority for selection of the private partner in cases where the concession is awarded to a mixed public-private company.

The offers submitted by candidates are evaluated by an evaluation committee appointed by the grantors of the concession. The evaluation criterion which is applied by the evaluation committee is the economically most advantageous offer, which is selected on the basis of different criteria determined in the resolution for opening of the concession procedure, such as: the quality of construction, the rendered service, price of construction, term of the concession and others.

According to the Underground Resources Act, the production concession can be granted through (i) a tender or competition, (ii) direct nomination in the case of a registered commercial discovery by the holder of an oil and gas prospecting and exploration permit, or (iii) by virtue of the law, to a company under a privatization transaction.

The maximum term of the concession agreement is 35 years. The term can be extended for a period which shall be no longer than one-third of the initial term of the agreement provided that the conditions set out in the Concessions Act are met.

In view of the long validity terms for which they are typically concluded, the law allows the possibility that concession agreements may be amended, by virtue of written annexes but only in cases explicitly provided by the law.

### Appeal of the concession procedure

Any decision adopted by the contracting authorities within a concession procedure, including the decisions of the evaluation committee, can be appealed before the Commission for the Protection of Competition by any interested party within 10 days from the date on which it was informed for the respective decision.

Any appeal against a decision for awarding a concessionaire suspends the concession granting procedure until the final settlement of the dispute. In all other cases, the appeal

does not suspend the concession granting procedure unless a temporary measure of suspension has been requested by the appellant.

Where the Commission for the Protection of Competition identifies that the appealed decision of the contracting authority is illegal, it shall annul it and instruct the contracting authority to proceed with the concession procedure as from the last legal action or decision.

The resolution of the Commission for the Protection of Competition can be appealed before the Supreme Administrative Court. The resolution of the court shall be final.

### Concessions Register

The Council of Ministers keeps a public Concessions Register which contains information on each concession procedure from its initiation until the termination of the concession agreement.

## Public-private partnerships

The Public-Private Partnership Act (PPPA) which entered into force on 1 January 2013 regulates for the first time in Bulgarian legislation the public-private partnership as a legal concept as well as the terms and conditions for implementation of projects as public-private partnerships.

### Scope of the PPPA

A public-private partnership (PPP) is defined in the law as a long-term contractual cooperation between one or more public partners, on the one side, and one or more private partners, on the other side, to implement projects of public interest through obtaining better value from the invested public resources and allocation of risks between the partners.

PPPs are established only where the following conditions are met:

- The activity of public interest cannot be implemented under the terms and conditions of the Public Procurement Act since the public partner is not able to ensure financing and better value from the invested public resources would be achieved through the allocation of the risks between the partners and
- The activity of public interest cannot be implemented through a concession since no revenues are expected to be received from the end users of the activity or from other third parties or, where such revenues are expected to be received, the private partner is not entitled to them.

The main purpose of the PPPA is to encourage private investments in the provision of services of public interest through financing, construction, maintenance and exploitation of the technical and social infrastructure.

### Parties and main characteristics of PPPs

The parties of a PPP are public partners (ministries, agencies, municipalities, state or municipal public-private organizations) and the private partner (an existing legal entity or a newly established project company).

A PPP is characterized by the following:

- The project is financed wholly or partially by the private partner
- It represents a long-term cooperation between the public and private partner – between five and 35 years
- The risks for project implementation are allocated between the partners in the PPP contracts to achieve economic balance.

According to the PPPA, the risks are allocated between the public and private partner in each particular case depending on the capacity of each partner to evaluate, control and manage the risks.

The private partner always takes on the construction risk, implements the public interest activity and provides its portion of the financing. The private partner participates in the PPP for a particular rate of return on its own capital, guaranteed by the public partner.

### Procedure for selection of the private partner. PPP agreement

A private partner is selected through an open procedure, a restricted procedure, competitive dialogue or a negotiated procedure with prior publication of a contract notice under the terms and conditions of the Public Procurement Act.

The decisions adopted by the public partner during the procedure for selection of private partner(s) are subject to appeal before the Commission for the Protection of Competition under the terms and conditions of the Public Procurement Act.

The PPP agreement is concluded between the public partner and the selected private partner if the latter is a limited company (e.g. a joint-stock company or a limited liability company).

Where the selected private partner is not a limited company or where such a condition is specified in the announcement or in the tender of the private partner, the PPP agreement shall be concluded with a newly established limited company, called a project company, in which the selected private partner(s) is/are shareholder(s).

Where envisaged in the announcement, the PPP agreement shall be concluded between the public partner and a newly established limited company, called public-private company, in which the public partner and the selected private partner(s) are shareholders. The public-private company shall be managed by the private partner but the public partner shall be entitled to veto rights for the decisions adopted by the company regardless of the amount of its share.

The PPPA allows the possibility that PPP agreements may be amended, by virtue of written annexes but only in cases explicitly provided by the law.

## Competition and antitrust regulations

The major competition and antitrust legislation in Bulgaria is the 2008 Protection of Competition Act (PCA).

The PCA applies to all enterprises engaged in activities in or outside Bulgaria if they prevent, restrict or distort competition within the country, or if they create risk to prevent, restrict or distort competition.

An independent state authority, the Commission for the Protection of Competition ("the Commission"), monitors the compliance of the actions of enterprises, carrying out activities on the territory of the country, with competition rules.

The Commission is empowered to impose sanctions in cases of prohibited agreements, decisions and concerted practices, unfair competition or abuse of monopoly or dominant market position.

The Commission is also responsible for issuance of authorization of concentration of economic activities (e.g. mergers, acquisition of control, joint ventures).

### Prohibited agreements, decisions and concerted practices

The PCA expressly prohibits and declares void all types of agreements between undertakings, decisions by associations of undertakings, as well as concerted practices of two or more enterprises having as their object or effect the prevention, restriction or distortion of competition, which:

- Directly or indirectly fix prices or other trading conditions
- Share markets or sources of supply
- Limit or control production, trade, technical development or investments
- Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage
- Make the conclusion of contracts subject to acceptance by the other party of additional obligations or to the conclusion of additional contracts.

The Commission can initiate proceedings in case the undertakings conclude and apply such agreements, decisions or concerted practices upon its decision, upon request of an interested party or request of the prosecutor.

In case of the above infringements, the Commission is entitled to impose a sanction at the amount of up to 10% of the aggregate turnover of the undertakings or association of undertakings for the preceding financial year.

### Abuse of monopoly or dominant position

The PCA generally prohibits granting of a monopoly position to any enterprise except in cases where such a position is authorized by the state by virtue of the law in accordance with the Constitution of the Republic of Bulgaria.

The PCA does not prohibit acquisition and holding of a dominant position on a relevant market; however, certain actions of enterprises, enjoying a monopoly or dominant position, are deemed abuse and therefore are prohibited by the law, namely:

- Imposing directly or indirectly purchase or sale prices or other unfair trading conditions
- Limiting production, trade and technical development to the prejudice of consumers
- Applying different conditions to identical types of contracts with regard to certain partners, thereby placing them at a competitive disadvantage
- Concluding contracts subject to acceptance by the other party of additional obligations or concluding additional contracts
- Unjustified refusal to supply a good or to provide a service to an existing or prospective client, aimed at hindering the economic activities performed by it.

In case the Commission finds in formal proceedings that an undertaking performs abuse actions, it is entitled to impose to the said undertaking a sanction of up to 10% of its turnover for the preceding financial year.

### Control on concentration of economic activities

Concentration of economic activities may have the following forms:

- Merger or takeover of two or more independent enterprises
- Acquisition of direct or indirect control over a particular enterprise
- Creation of a joint venture that performs all functions of an autonomous economic entity on a lasting basis.

The law imposes on the enterprises participating in the concentration an obligation for a prior notification to the Commission, where the aggregate turnover of the enterprises realized in Bulgaria in the preceding financial year exceeds BGN 25 million and provided that at least one of the following conditions has been met:

- The turnover of each of at least two of the participants in the concentration realized in Bulgaria in the preceding financial year exceeds BGN 3 million, or
- The turnover of the enterprise – subject to acquisition realized in Bulgaria in the preceding financial year exceeds BGN 3 million.

If the participants in the concentration fail to notify the Commission, although they have the obligation to do it, a sanction can be imposed on them of up to 10% of the turnover of the participants for the preceding financial year.

In a simplified procedure, the Commission authorizes the concentration within 25 business days from initiation of the concentration proceedings, provided that the concentration does not result in the creation or strengthening of a dominant position that would significantly impede effective competition on the market.

Where the Commission identifies in the simplified procedure that there are serious doubts that the concentration will result in the creation or strengthening of a dominant position that would significantly impede effective competition on the market, it can initiate thorough proceedings lasting for a period of four months in order to further investigate the consequences of the concentration.

## **Supervision of the Bulgarian National Bank over the activities of credit and financial institutions**

The Bulgarian National Bank is the state body which exercises supervision over banks and financial institutions and the compliance of their activities with the rules established by the Credit Institutions Act and the respective ordinances of the BNB.

The BNB issues licenses for banking activities.

In order to perform services, financial institutions are obliged to register with the BNB for the performance of their activities.

The BNB has supervisory competencies with respect to banks, including but not be limited to:

- Requiring all necessary financial documents
- Performing on-site inspections
- Appointment of external independent auditors
- Attending the meetings of management and supervisory bodies of the banks.

In cases of violation of provisions of the law or other acts, the BNB is empowered to impose certain measures on the banks, such as: issuance of written warnings and orders to eliminate violations, prohibition of certain transactions, prohibition on foreign banks to carry out activities on the territory of Bulgaria and the appointment of conservators for a certain period. As a final and exceptional measure, the BNB also has the right to withdraw banks' licenses or other permits.

The BNB supervision also covers those activities of Bulgarian banks carried out abroad, as well as local activities of branches of banks from Member States or third countries. In exercising its supervisory powers, the BNB shall cooperate with the relevant supervision authorities of the Member States/countries concerned.

## Investment intermediaries in Bulgaria

The activities of investment intermediaries in Bulgaria and the supervision exercised over them by the Financial Supervision Commission are regulated by the Markets in Financial Instruments Act, effective as of 1 November 2007, which introduced the requirements of MIFID, i.e. Directive 2006/43/EC of the European Parliament and the Council on the Markets in Financial Instruments.

In order to comply with the legislation, investment intermediaries must meet the following requirements before starting their activities:

- Be registered as a joint-stock company or a limited liability company with a seat and registered address in Bulgaria
- Be granted a license by the Bulgarian Financial Supervision Commission
- Pay the initial capital of not less than BGN 100,000 before issuance of the license.

Depending on the type of intermediary services offered, the share capital of the investment intermediary must be at least BGN 250,000.

As per the law, investment intermediaries may not conduct any other commercial activity as a regular occupation or business on a professional basis.

Foreign investment intermediaries having their seat in a Member State, which have obtained licenses for performing such activities by competent authorities in the respective Member State, may provide services as investment intermediaries in Bulgaria. The activity can commence only after the Bulgarian Financial Supervision Commission obtains the necessary information from the competent home state authorities.

In the course of undertaking activities in Bulgaria, investment intermediaries must comply with the Bulgarian legislation, publish in the Bulgarian language and provide the respective documents and information to the Financial Supervision Commission.

## Insurance companies and insurance intermediaries in Bulgaria

The insurance activity in Bulgaria, including the requirements for undertaking activity by an insurer from a Member State on the local market is regulated by the Insurance Code (IC), which has implemented all insurance directives of the European Union.

Pursuant to the provisions of the IC, an insurance company licensed in a Member State may carry out activity in Bulgaria on the basis of freedom of establishment or freedom to provide services only if this activity is covered by its license. Before commencing activity, the insurer must perform a regulatory procedure which involves notification to the Bulgarian regulator – the Financial Supervision Commission. The notification must be performed by the home Member State regulator upon request of the insurer.

Pursuant to the IC, an insurance intermediary may be an insurance broker or an insurance agent, who carries out insurance intermediation against remuneration.



The insurance broker is a legal entity or sole proprietor (individual) who performs insurance intermediation upon the assignment of a consumer of insurance services and following the assignment of an insurer.

The insurance agent is an individual or a trader who performs insurance intermediation under assignment of an insurer, carried out on behalf and at the expense of the insurer. There are two types of insurance agents – tied and untied; a tied insurance agent may not collect premiums and effect payments to consumers of insurance services.

A mandatory requirement for performing insurance intermediation activities is registration of the broker/agent into a special register maintained by the Financial Supervision Commission.

### **Limitations of cash payments**

Limitations on the cash payments are imposed by the Cash Payments Act to ensure that payments are recorded in their real amounts.

As a result of its enactment, all payments in Bulgaria of an amount equal to or exceeding BGN 15,000 must be executed only via transfer or deposit to a payment account. The same rule shall be applied to cases where the payment is of an amount lower than BGN 15,000, but represents part of a monetary obligation under an agreement whose total amount is equal to or exceeds BGN 15,000. The limitations are also applicable for payments in a foreign currency equal to or exceeding the equivalent of BGN 15,000 as per the Bulgarian National Bank's exchange rate as of the date of payment.

The scope of the Cash Payments Act excludes cash withdrawals/deposits from/to personal payment accounts (including from/to personal payment accounts of spouses, lineal relatives, legally incapable individuals or individuals with limited capability), as well as payments of employment remuneration due as per the Labor Code and cash transactions with foreign currency carried out by an exchange bureau.

### **Foreign exchange regime**

Generally, the foreign exchange regime in Bulgaria is regulated by the Foreign Exchange Act and regulations, issued by the BNB, the Minister of Finance and others.

#### **Registration regime**

Certain types of transactions have to be declared at the Bulgarian National Bank not later than 15 days after their execution. These include:

- Granting of loans between local and foreign entities
- Remitting securities abroad by a local entity and/or purchasing securities without the assistance of a local intermediary

- Granting of financial loans by opening of a bank account abroad, regardless of the amount of money transferred to the account
- Making initial direct investments of local persons abroad, regardless of the amount of the investment.

### International payments and transfers

Commercial banks can execute cross border bank transfers and payments between local persons and foreign persons from a third country (a country which is neither an EU Member State nor part of the EEA) only after being presented with documents evidencing the purpose of the transfer and a declaration in a prescribed template.

For money received from abroad or for transfers made abroad, as well as for payments and transfers between local and foreign persons, equal to or exceeding BGN 100,000, a form for statistical purposes must be filled in and submitted to the commercial bank in question.

The Payment Services and Payment Systems Act, effective as of 1 November 2009, introduced the possibility of entities other than banks, called “payment institutions,” to act as providers of payment services. Pursuant to the Payment Services and Payment Systems Act, a payment institution is a joint-stock company or limited liability company, conducting one or more payment services under a license issued by the Bulgarian National Bank.

Depending on the type of payment services offered, the initial share capital could vary between BGN 40,000 and BGN 250,000.

Pursuant to the provisions of the Payment Services and Payment Systems Act, a payment institution licensed in a Member State is entitled to carry out activities in Bulgaria included in its license through a branch, representative or directly, provided that the BNB has been notified by the relevant Member State regulator.

### Customs foreign exchange register

Customs authorities are obliged to keep registers of commercial credits, financial leasing between local and foreign persons, and of export and import of Bulgarian levs, foreign currency in cash and bearer payment instruments which are subject to declaration.

Local and foreign individuals may import and export unlimited amounts of Bulgarian levs, foreign currency in cash and bearer payment instruments, provided that they observe the requirements established under the Foreign Exchange Act.

If the imported/exported currency amount does not exceed EUR 10,000, no customs declaration is required. In case the amount exceeds EUR 10,000 and shall be imported/exported to a country which is not part of the European Union, the individual is obliged to declare the owner and the receiver of the amount, its kind, value, origin and purpose, as well as the transport vehicle and route. If currency at the amount equal to or exceeding

EUR 10,000 shall be imported/exported to an EU country, the declaration is necessary only upon request from the custom authorities.

In cases of export of amounts in excess of BGN 30,000 in cash, local and foreign individuals are obliged to declare before the customs authorities the amount and origin of such cash and bearer payment instruments included, by presenting a certificate issued by the respective territorial directorate of the National Revenue Agency, certifying that they do not have any outstanding or overdue liabilities. In the latter case, if the amount is exported by a foreign individual and does not exceed the amount of currency imported and declared by them, only the amount and type of cash bearer payment instruments must be declared.

The export and import of Bulgarian levs and foreign currency in cash by mail is forbidden, except for mailings of declared value. This limitation does not apply to the BNB and commercial banks.

The Foreign Exchange Act also includes specific requirements regarding the production, processing and trading of precious metals and gemstones, and their import and export.

### Reporting to the Bulgarian National Bank

Local companies and sole traders are required to report the following to the Bulgarian National Bank on a quarterly basis: (i) operations and changes in the amount of a financial loan, received by or granted to a foreign person, in case the loan is equal to or larger than BGN 500,000, or its foreign currency equivalent; (ii) operations of bank accounts opened abroad; (iii) receivables from and obligations to foreign persons with regard to commercial loans and other transactions, which are not financial loans, which exceed BGN 200,000 or its foreign currency equivalent; (iv) operations with foreign persons, related to services, remunerations and gratuitous revenues and payments, in case a written request by the Deputy Governor in charge of the Banking Supervision Department, or a person authorized by them, has been introduced; (v) direct investments abroad.

Local companies and sole traders are required to report on an annual basis:

(i) the operations, residues and other changes in the amount of the received/granted financial loans, whose amount is between BGN 50,000 and BGN 500,000 or its foreign currency equivalent, and (ii) direct investments in real estate abroad.

Local individuals must provide the BNB with annual reports on their receivables from, and liabilities to, foreign parties for financial credits, their receivables with regard to bank accounts opened abroad, as well as investments in securities, which have been made without a local investment intermediary, provided that the total amount of the said receivables, bank accounts and investments in securities exceeds BGN 50,000 as of 31 December of the previous calendar year.

The following must be reported to the BNB on a monthly basis:

- Real estate transactions between local and foreign persons, where the statistical forms must be submitted by the notaries who recorded the deeds
- Information for any securities owned by local legal entities, which belong to the Financial Corporations sector (within the meaning of Regulation (EU) No. 549/2013, for example credit and financial institutions, insurers, investment companies and others).



# Appendix A

## Bilateral Agreements for the Mutual Protection and Encouragement of Foreign Investment

Albania	Hungary	Slovenia
Algeria	India	Spain
Argentina	Indonesia	Sweden
Armenia	Iran	Switzerland
Austria	Israel	Syria
Bahrain	Italy	Thailand
Belarus	Jordan	Tunisia
Belgium-Luxembourg	Kazakhstan	Turkey
China	Korea	Ukraine
Croatia	Kuwait	United States
Cuba	Qatar	Uzbekistan
Cyprus	Moldova	Vietnam
Czech Republic	Mongolia	Yemen
Denmark	Morocco	Yugoslavia (i.e. Serbia, Montenegro, Bosnia and Herzegovina)
Egypt	Netherlands	
Finland	Poland	
France	Portugal	
Georgia	Romania	
Germany	Russian Federation	
Greece	San Marino	
Great Britain and Northern Ireland	Singapore	
	Slovakia	

# Appendix B

## Double Taxation Treaties to which Bulgaria is a party

State	Dividends (%)	Interest (%)	Royalties (%)
Albania	15/5*	10/0*	10
Algeria	10	10/0*	10
Armenia	10/5*	10/5/0*	10/5
Austria	5/0*	5/0*	5
Azerbaijan	8	7/0*	10/5*
Bahrain	5	5/0*	5
Belgium	10	10/0*	5
Belarus	10	10/0*	10
Canada	15/10*	10/0*	10/0*
Czech Republic	10	10/0*	10
China	10	10/0*	10/7*
Croatia	5	5	0
Cyprus	10/5*	7/0*	10
Denmark	15/5*	0	0
Egypt	10	12.5/0*	12.5
Estonia	5/0*	5/0*	5
Finland	10	0	5/0*
France	15/5*	0	5
Georgia	10	10/0*	10
Germany	15/5*	5/0*	5
Greece	10	10	10
Hungary	10	10/0*	10

State	Dividends (%)	Interest (%)	Royalties (%)
India	15	15/0*	20/15*
Indonesia	15	10/0*	10
Iran	7.5	5	5
Ireland	10/5*	5/0*	10
Israel	10/7.5*	10/5*	7.5
Italy	10	0	5
Japan	15/10*	10/0*	10
Jordan	10	10/0*	10
Kazakhstan	10	10/0*	10
Kuwait	5/0*	5/0*	10
Latvia	10/5*	5/0*	5/7*
Lebanon	5	7/0*	5
Lithuania	10/0*	10/0*	10
Luxembourg	15/5*	10/0*	5
Macedonia	15/5*	10/0*	10
Malta	0	0	10
Moldova	15/5*	10/0*	10
Mongolia	10	10/0*	10
Morocco	10/7*	10	10
Netherlands	15/5*	0	5
North Korea	10	10	10
Norway	15	0	0
Poland	10	10/0*	5
Portugal	15/10*	10/0*	10
Republic of South Africa	15/5*	5/0*	10/5*
Qatar	0	3/0*	5
Romania	15/10*	15/0*	15
Russia	15	15/0*	15
Serbia and Montenegro	15/5*	10	10
Singapore	5/0*	5/0*	5
Slovak Republic	10	10/0*	10
Slovenia	10/5	5/0*	10/5
South Korea	10/5*	10/0*	5

<b>State</b>	<b>Dividends (%)</b>	<b>Interest (%)</b>	<b>Royalties (%)</b>
Spain	15/5*	0	0
Sweden	10	0	5
Switzerland	10/0*	5/0*	5
Syria	10	10/0*	18*
Thailand	10	15/10/0*	15/5*
Turkey	15/10*	10/0*	10
UK	10	0	0
Ukraine	15/5*	10	10
United Arab Emirates	5/0*	2/0*	5/0*
USA	10/5/0*	5/0*	5
Uzbekistan	10	10/0*	10
Vietnam	15	10/0*	15
Zimbabwe	20/10*	10/0*	10

*Note*

\* The reduced rate can be applied under specific circumstances.



# Appendix C

## Bilateral Social Security Agreements concluded by Bulgaria

Albania	Netherlands*
Austria*	Poland*
Canada	Serbia
Czech Republic*	Slovakia*
Croatia*	Spain*
Germany*	Switzerland*
Hungary*	Republic of Korea
Israel	Romania*
Libya	Russia
Luxembourg*	Turkey (for pensions only)
Macedonia	Ukraine
Moldova	Yugoslavia**

\* Superseded by EU Regulation 1408/71 and subsequently 883/2004

\*\* Effective with respect to Serbia, Montenegro, Bosnia and Herzegovina

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