



Penev LLP Guide to Doing Business in Bulgaria

A 3D graphic of an open book. The left page is dark blue and features a line graph with three lines: white, green, and red. The right page is dark grey and features the year '2011'. The book is shown from a perspective that makes it appear to be lying flat but with depth.

2011

Doing business in Bulgaria Guide is developed by Penev LLP as a basic guide to the legal aspects of establishing and/or acquiring business in Bulgaria. It has been created to provide a comprehensive overview for those interested in doing business in Bulgaria when taking steps to invest in Bulgaria. In addition, attention is also paid to fields like intellectual property, energy, media and telecommunications which may be of interest for potential domestic and foreign investors. Yet the Guide does not cover the entire legislation.

To build a complete picture of the business environment in the country, the Guide provides information about the legal and political system in Bulgaria. Furthermore, the Guide is divided in sections that cover most of the legal areas an investor would consider when taking a decision to invest in the country: types of business structures, investment law, ways of financing a business, the tax system, employment matters, and others.

The discussion in each section is intended to give general guidance. The Guide does not purport to be exhaustive or to provide extensive analysis of the law or legal advice. Therefore, we suggest you seek an advice from one of our lawyers prior to making specific investment decisions.

When you are starting or investing in a business in a foreign country, you need experienced advisors who can walk you through the whole process and help you avoid pitfalls along the way. Penev LLP is reputed for its premium quality legal services in virtually every field of the law. Our practice is primarily commercial in nature, with an emphasis on foreign investment and M&A, Corporate Restructuring, Real Estate and Renewable Energy, TMT, Labor Law, Litigation and Alternative Dispute Resolution. In the core of our high quality service lays a combination of legal expertise and business pragmatism. With almost twenty years of experience, Penev LLP has grown to become one of the key partners of foreign investors in Bulgaria.

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¹ Please note that all websites provided hereafter below are last accessed in November 2011

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List of Abbreviations

BNB	Bulgarian National Bank
CIA	Credit Institutions Act
CITA	Corporate Income Tax Act
CPC	Commission on Protection of Competition
ECA	Electronic Commerce Act
EEA	European Economic Area
EEAA	European Economic Area Agreement
EPA	Environmental Protection Act
ERSA	Energy from Renewable Sources Act
EU	The European Union
FSC	Financial Supervisory Commission
IDA	Industrial Design Act
IFRS	International Financial Reporting Standards
IPA	Investment Encouragement Act
ITNPA	Income Taxes on Natural Persons Act
MFIA	Markets in Financial Instruments Act
MPA	Municipal Property Act
PCA	Protection of Competition Act
PDPA	Personal Data Protection Act
POSA	Public Offering of Securities Act
PUMA	Patents and Utility Models Act
RIO	reference interconnection offer
RTA	Radio and Television Act
SME	Small or medium size enterprises
SPA	State Property Act
TFEU	Treaty on the Functioning of the European Union
VAT Act	Value Added Tax Act

Introduction

Some facts about Bulgaria

Located in Southeastern Europe, in the northern part of the Balkan Peninsula, Bulgaria has territory of 110,993.6 km² (approx. 42,855 square miles), which places it as the 15th biggest country in Europe. Bulgaria is also a transport crossroad, affording access to Western Europe, the Near and Middle East, the Mediterranean, and all Black Sea countries, including Ukraine and the Russian Federation. A series of major European transport corridors pass through Bulgaria. Bulgaria borders with Serbia and Macedonia to the west, with Greece and Turkey to the south, and with the Black sea to the east. Bulgaria borders with Romania to the north along the Danube River. The natural landscape of Bulgaria is diverse with about 30% of the country's territory occupied by mountains.

According to the 2011 census, the population of the country is 7,364,570. Most of the population (72.5%) resides in urban areas. The capital of the country is Sofia, which is also the largest city in the country. Among the biggest cities and regional centres are Plovdiv, Varna, Bourgas, Stara Zagora, Rousse, Pleven. The official language is Bulgarian. The currency in the country is lev (BGN) which is pegged to the euro.

Bulgaria is in the East European time zone, which is located two hours ahead of Coordinated Universal Time (UTC). The climate of the country is moderate with mountains and sea zones. Bulgaria is known for its picturesque nature - breath-taking mountain sceneries, lakes, sunny beaches, deep caves, rose valleys, and curative mineral hot water springs.

Being a crossroad of several civilizations, Bulgaria has rich historical and cultural heritage. The territory of the country was inhabited since ancient times. A peculiar fact is that the earliest European civilization grew up here. The remnants of the Thracian, Hellenistic, Roman and proto-Bulgarian culture are abundant and varied across the territory of the country. Statistical data shows that the country ranks third in Europe only after Greece and Italy for the number of its valuable archeological monuments. Some of the most famous treasures in the world were discovered in Bulgaria, including the world's oldest golden ornaments found at the Varna necropolis, Thracian tombs and sanctuaries, golden artifacts, ancient Roman monuments, stadiums and amphitheatres and many others remains which are of significant importance for the culture of Bulgaria and Europe. The unique historical and cultural heritage creates various opportunities for tourism.

Some useful facts in brief:

- Official language: Bulgarian
- Capital: Sofia
- Country phone code: +359
- Peculiar about Bulgarians: when they nod, they mean NO, when they shake head from side to side, they mean YES
- Shaking hand when you meet a friend and/or acquaintances is accepted.

- ISO 3166 code: BG
- € 1 = BGN 1.95583 (Bulgarian lev)
- Drives on the right side
- Country internet code: .bg

Brief Overview of the Government Structure and Legal System

Bulgaria is a unitary state and a republic with a parliamentary form of government. The Constitution of the Republic of Bulgaria, passed by the Grand National Assembly in July 1991, is the supreme law of the country and no other law may contravene it. Bulgarian legal system is continental, part of the civil law family. All international treaties, which are ratified pursuant to the constitutional procedure, are considered part of the domestic legislation. Bulgaria is a member of the European Union, NATO, the Council of Europe, and a founding state of the OSCE.

The political life of Bulgaria is based on the principle of political pluralism. There is a universal suffrage for citizens of 18 years or older.

The state authority is divided into the executive, legislative and legal branches. The head of the state is a democratically elected president who also is a commander-in-chief of the armed forces. The president is elected for a term of five years and can serve maximum of two terms. The Council of Ministers is the executive state body which directs the domestic and foreign policy of the country.

The supreme legislative power rests with a unicameral National Assembly, which consists of 240 directly elected Members of Parliament who serve a four-year term. Bulgaria is part of the Romano-Germanic law family and Acts of the National Assembly are recognized as the main source of law.

Separate and independent from the executive and legislative authority, the judiciary is overseen by the Ministry of Justice and represented by the courts, the Prosecutor's Office, and the investigation authorities. As a matter of principle there is a three-instance procedure although there are many exceptions. There are regional courts, district courts, courts of appeal, a Supreme Court of Cassation, and a Supreme Administrative Court, which are the highest courts that rule on the application of the law in the lower courts. There is also a Constitutional Court which is responsible for the judicial review of legislation, for deciding on the competency of the other government branches and for impeachments and elections law. Judges are appointed by the Supreme Judicial Council. Separate system of military courts handles cases with military personnel and national security issues.

The territory of the Republic of Bulgaria is divided into municipalities and counties. At the moment, there are 264 municipalities, 28 administrative areas and 6 planning regions. There is a national Ombudsman. Bulgaria accepts the compulsory jurisdiction of the International Court of Justice and is a state party to Rome Statute of the International Criminal Court.

The Economy in Brief

At the heart of the Bulgarian economy lays the free economic initiative. The economy of Bulgaria is an open market industrialized economy with a developed private sector and a limited number of state enterprises. According to the World Bank, Bulgaria is an upper middle income country.²

According to the International Monetary Fund, the GDP (nominal) of Bulgaria for 2011 is estimated to be 52.996 billion US dollars. The GDP per capita is 7,072.770 units.³ Despite the financial crisis, the banking system in Bulgaria is stable. The credit rating of the country remained unchanged during 2011.

It ranks 59th in the Ease of Doing Business ranking by the World Bank,⁴ which is a high position for a East European state. Furthermore, it has the lowest corporate tax in the EU (10%) and the lowest income tax for natural persons (flat rate of 10%). The national currency, lev (equals to 100 stotinki), is pegged to the euro at a rate 1.95583 lev for 1 euro.

Bulgaria has adopted a liberal investment regime and attracting foreign investments is one of the government's top priorities.

² World Bank, Data by country: Bulgaria at <http://data.worldbank.org/country/bulgaria>

³ IMF, World Economic Outlook Base, April 2011,

<http://www.imf.org/external/pubs/ft/weo/2011/01/weodata/weorept.aspx?sy=2011&ey=2011&scsm=1&ssd=1&sort=country&ds=.&br=1&pr1.x=93&pr1.y=9&c=918&s=NGDPD%2CNGDPDPC%2CPPP%2CPPP%2CPPP&grp=0&a=#cs1>

⁴ World Bank, Ease of Doing Business, Rank list benchmarked to June 2011, <http://www.doingbusiness.org/rankings>

1. Types of Companies

Bulgaria is the only country in Europe with a credit rating upgrade by Moody's since the beginning of 2010 (IvestBulgaria Agency, Country Presentation, November 2011)

Various legal arrangements may be used to carry out business activities in Bulgaria. According to the applicable Commerce Act the following types of companies can be established:

- general partnership;
- limited partnership;
- limited liability company;
- joint stock company;
- partnership limited by shares.

A company may be established by a Bulgarian or foreign natural or legal person. A person may participate in one or more companies as long as such participation is not prohibited by law. All companies have to be recorded in the Commercial Register within the Registry Agency. There is a requirement for public companies to publish annual financial reports.

General Partnership - SIE (in Bulgarian abbreviated as "СНЕ")

General partnership is a company formed by two or more persons for the purpose of effecting commercial transactions by occupation under a joint trade name. The partners are liable jointly and severally and their liability is unlimited. The trade name of a partnership should be unique and should consist of the surnames or trade names of one or more of the partners with the extension "събирателно дружество" (general partnership) or "съдружие" ("s-ie") (partners). Each partner is entitled to take part in the management of the partnership's business, except when management has been assigned with the articles of partnership to one or several of the partners or to a third party.

Limited Partnership - KD (in Bulgarian abbreviated as "КД")

A limited partnership is formed with Articles of partnership between two or more persons for carrying out commercial activities under a common trade name, whereby for the partnership's obligations one or more of the partners are liable jointly and severally, and their liability is unlimited. The remaining partners' liability does not exceed the amount of the agreed liability upon contribution. The company's trade name must contain the extension "командитно дружество" (limited partnership) or the abbreviation "KD" and the name of at least one of the general partners.

Limited Liability Company (LLC) –OOD (in Bulgarian abbreviated as „ООД“)

A limited liability company may be formed by one or more persons which are liable for the company's obligations with their contributions to the company's registered capital. The trade name of a company must be unique and must also contain the

extension "дружество с ограничена отговорност" (limited liability company) or its abbreviation "OOD". The minimum registered capital of a limited liability company is BGN 2 which is about € 1. It consists of the participating interests of the members, and no interest may be smaller than BGN 1. The total sum of the participating interests must be equal to the capital, and the value of each participating interest must be a multiple of 1. The interests of the individual partners may be of unequal value. The founders of a company are jointly liable and before the company for damages caused in the course of its formation, if they have not acted with due care. Limited liability company is established when the partners sign Articles of Association which duly describe, *inter alia*, the rights and liabilities of the partners and its main activities. Furthermore, the Articles of Association contain other details such as the seat, the sum of the registered capital, etc.

Solely Owned Limited Liability Company- EOOD (in Bulgaria abbreviated as „ЕООД”)

EOOD is a solely owned limited liability company in which a single legal or natural person is the owner of the company's capital. The manager of such a company may be different from and appointed by the owner of the capital.

Joint Stock Company (JSC) – AD (in Bulgarian abbreviated as „АД”)

A joint stock company is a company in which the capital is divided into shares. The company is liable before its creditors with its assets. The trade name of the joint stock company must be unique for Bulgaria and include the extension "акционерно дружество" (joint-stock company) or the abbreviation "AD". A joint stock company may be found by one or more natural or legal persons. When, however, a joint stock company is formed by one person, a constitutive deed approves the Statutes and appoints the first supervisory board or board of directors. The minimum registered capital of a joint-stock company is BGN 50,000 which is approximately € 26,000. The capital stock should be fully subscribed. The company may not subscribe shares from its capital. The minimum nominal value of a share must be BGN 1. A joint stock company is founded at a constituent meeting attended by all the persons subscribing for shares. The constituent meeting adopts Statues which contain, *inter alia*, information about the seat, the sum of the capital, manner of distribution of profits, etc. The General Meeting of the shareholders is the supreme governing body. A joint stock company may have one- or two-tier managing system. If it has two-tier managing system, a supervisory body is appointed along with a managing board while in companies with one-tier system only a board of directors is appointed.

Solely Owned Joint Stock Company - EAD (in Bulgarian abbreviated as „ЕАД”)

Solely owned joint stock company is a joint stock company in which the capital is owned by a single natural or legal person. The minimum registered capital is BGN 50,000 and it is divided into shares.

The above mentioned companies are the envisaged types of companies under the Commerce Act. There are no restrictions for foreign persons to establish a company in Bulgaria and the establishment process does not differ from the process when a Bulgarian citizen founds a company. A company must be registered in the Commercial Register and then it obtains Unified Identification Number (UIN or „ЕИК“ in Bulgarian) which is the code used to identify the company. Each company has a file in the Commercial Register and all actions pertaining to the company such as change of the sum of capital or owner can be traced through this file (visible also online now). No further registrations for establishment are required under the applicable legislation.

However, business activities may be carried out through holding companies, branches and representative offices which are also allowed under the applicable legislation. Besides, the activities of a sole proprietor performing commercial activities are also regulated in the Commerce Act. Brief information can be found below about these possibilities for conducting business.

Holding Company

A holding company may be a joint stock company, a partnership limited by shares or a limited liability company the purpose of which is to participate under any form in other companies or in their management, regardless of whether it carries on manufacturing or commercial activities of its own. Under the applicable law, at least 25 % of the capital stock of a holding company must be invested directly in subsidiary companies. Bulgarian law recognizes as a subsidiary company a company in which a holding company owns or controls, directly or indirectly, at least 25 % of the stocks or shares and is in a position to appoint, directly or indirectly, a majority of the directors. A holding company may be established with the following purposes: acquisition, management, valuation and sale of interest in Bulgarian or foreign companies; acquisition, management and sale of debentures; acquisition, valuation and sale of patents, assigning licences for the use of patents of companies in which the holding company owns an interest; financing of companies in which the holding company owns an interest. A holding company, however, may not be established to participate in a partnership which is not a legal person; or to acquire licences which are not intended for use by the companies controlled by it or acquire real property which is not required by its needs, but the acquisition of stock in real estate companies is permitted.

Representative Office

Foreign persons who are entitled to engage in business activity under the respective legislation of their own countries may establish a representative office in Bulgaria which is registered with the Bulgarian Chamber of Commerce and Industry. Representative offices are not legal persons and may not engage in economic activity.

Branch Company/ Subsidiaries

Foreign natural person or companies, which are not legal persons and are registered abroad, can also register a branch/ subsidiary in Bulgaria provided they are registered as commercial entities in accordance with the respective legislation in

their home country. There is not a requirement for minimum capital to establish a branch in Bulgaria. A branch is not a legal entity, it is part of the founding company. A branch of foreign person or company is to be registered in the Trade Register within the Registry Agency.

Joint Venture

Joint venture is a company formed by a Bulgarian and a foreign partner together. The size of the foreign participation in a joint venture is not limited. There is a requirement that joint ventures take one of the forms of companies allowed by the Bulgarian Commerce Act. Establishment of a joint venture is one of the most popular forms for investing in Bulgaria.

Sole proprietor

Any natural person residing in Bulgaria can register himself or herself as a sole proprietor and can conduct commercial activities. The liability of a sole proprietor is unlimited.

Corporate Governance

Corporate governance in Bulgaria is a developing area. The Commerce Act and the Public Offering of Securities Act set the Bulgarian standards for corporate governance. Bulgaria was first in South Eastern Europe to establish a special Commission for Corporate Governance in 2009 whose main task is to monitor and encourage the good practices of corporate governance. The Commission is an independent body under the auspices of the Commission for Financial Supervision and Bulgarian Stock Exchange. The Commission is a logical step after the National Code for Corporate Governance which was signed by a large number of companies that trade on the Bulgarian Stock Exchange. The text of the code can be found on the website of the Bulgarian Stock Exchange.⁵

When deciding on the most appropriate form of business organization, the specific needs of the business assessed. Factors which require consideration are, *inter alia*, the extent of liability, participation in management, separate legal existence, transferability of interest, financing aspects, complexity of organization, the nature of the business, and tax implications, etc. Therefore, we suggest that one considers all opportunities and to seek professional legal advice for the most suitable structure of your business.

⁵ National Code for Corporate Governance can be accessed at <http://download.bsesofia.bg/pdf/Codek sEN.pdf>

2. Investment Law

Bulgaria has macroeconomic and financial stability and most favourable EU taxes.

Investments in Bulgaria are governed by the Investment Promotion Act (referred below as “IPA”) and the regulations on its application. As the name suggests the main purpose of the Act is to stimulate investment in Bulgaria, to enhance the competitiveness of the Bulgarian economy through investment in scientific research, innovations and technological development in production and services adding high value while observing the principles of sustainable development and to improve the investment climate.

The governing regime is liberal and its main goal is to attract foreign investors.

Key advantages of Bulgaria as place for profitable investments are:

- the macroeconomic and financial stability;
- liberal investment regime;
- the EU most favourable tax regime;
- skilled labour;
- lowest operational costs in Europe;
- strategic geopolitical position allowing access to key markets like EFTA and Russia.

IPA aims at attracting prospective investors to Bulgaria by introducing a system of incentives for initial investments in tangible and intangible fixed assets and new job opportunities arising out of such investments. The system of investment encouragement is in accordance with EU requirements for state aid, in particular with Commission Regulation (EC) No 800/2008 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (hereafter referred as “TFEU”).

Companies that invest a large amount of money obtain special status and favourable treatment. There are certain requirements listed in IPA that have to be fulfilled by companies to receive the status of **certified investors**. Investments exceeding certain thresholds and satisfying particular criteria (see below) are considered as Priority Investment Projects. Apart from the priority investment projects, investments may be **Class A** or **Class B** depending on the value of the investment. To obtain certification, the investment must be related to the setting-up of a new enterprise, to the extension of an existing enterprise/activity, to the diversification of the output of an enterprise/activity into new products; or to a fundamental change in the overall production process of an existing enterprise/activity.

Additional requirement is that the investment must be implemented in specified economic activities:

- of the industrial sector: processing industry (except for certain economic activities mentioned in Chapter I, Article 1, Paragraphs 2 and 3 of Regulation No. 800/2008);
- of the services sector:
 - a. activities related to information technologies and services;

- b. scientific research and development and professional activities of head offices;
- c. education;
- d. human health and residential care activities;
- e. warehousing and support activities for transportation sector.
- all economic activities related to priority investment except for the economic activities under Chapter I, Article 1, Paragraphs 2 and 3 of Regulation No. 800/2008.

Besides implementation in certain economic activities, investments must comply with other requirements to obtain a certification, and namely:

- the classification of the economic activities in which the investment is implemented is determined on the basis of the products (goods and services) planned to be produced, which must be at least 80% of the future total revenue resulting from implementation of the investment in the said economic activities;
- the income from the implemented investment project must be at least 80% of the total income of the enterprise of the investor for the certain specified period;
- the period of implementation of the investment must not exceed three years from the date on which the work under the project started to the date of the completion of the project, including for large investment projects;
- an investment must not be below a certain threshold within a single establishment (depending on the classification of the investment);
- at least 40% of the eligible costs of the tangible and intangible investments must be financed by the investor's own resources or by external financing in a form excluding public support;
- they must create and maintain employment which satisfy certain cumulative conditions set out in Regulation (EC) No 800/2008;
- investment in the mentioned economic activities must be maintained in the corresponding area where it is located for at least five years, and in the case of small or medium enterprises (SMEs) three years, reckoned from the date of its completion;
- the tangible and intangible fixed assets acquired must be new and purchased at market conditions from third parties independent from the investor.

Depending on the value of the investment, it may be classified as Investment Class A or Class B. The threshold of an investment, within single establishment, in a general case for the entire country must be **BGN 20 million to be classified as Class A** and **BGN 10 million to be classified as class B**. Specific lower thresholds apply if an investment is made in municipalities with high unemployment rate, or investment is made in high technology in the service sector or in the industrial sector.

In order to obtain a certification, an investor must submit an application to the InvestBulgaria Agency prior to commencing any work related to the investment project.

The special certificate gives entitlement to use of **benefits** such as:

- shortened waiting time for administrative services;

- individualised administrative services needed for implementation of the investment project;
- acquisition of a right of ownership or limited rights *in rem* to corporeal immovables;
- financial support for training for attainment of professional qualification of people, including interns from the higher schools in Bulgaria, who are occupying the new jobs related to the investments.
- In addition, investors certified as Class A (or for investors implementing two or more certified investment projects within the territory of an industrial zone) also get financial support by the state in the form of the construction of elements of the physical infrastructure from the nearest constructed element of infrastructure to the boundaries of the property ;
- Training subsidy may also be awarded.

There are also **Priority Investment Projects**, which are related to all sectors of the economy in accordance with the requirements of Regulation (EC) No 800/2008 and are particularly important for the economic development of Bulgaria or for the regions in Bulgaria. Priority Investment Projects are stimulated through a package of measures which also includes the above mentioned benefits. However, they must satisfy one or more of the following requirements:

- the amount of the investment must exceed at least three times the threshold amount specified for Class A investment;
- the investment should create new job opportunities, the amount and conditions of which is specified by the Regulation on the Application of IPA;
- the investment must envisage the development of industrial zones with the technical infrastructure necessary for attracting of investments under conditions and according to a procedure specified in the Regulations for Application of IPA;
- the investment must envisage development of high technology parks with the technical infrastructure necessary for attracting of investments in scientific research and/or education and/or information technologies, including innovative activities for technological renovation of production products and technologies under conditions and according to a procedure specified in the Regulations for Application of the IPA.

A whole set of documents must be submitted to the Executive Director of InvestBulgaria Agency together with an application for priority investment certification.

Foreign investors which invest more than BGN 1 million in Bulgaria can benefit from permanent residence permit for them and their families. Such permit significantly facilitates the entry and the exit of the country.

3. Competition Law

A peculiar fact about Bulgarian legislation is that there are no criminal provisions for violations of competition law rules.

Protection of Competition in Bulgaria

The Protection of Competition Act (referred as “PCA”) ensures protection and conditions for expansion of competition and free economic initiative in business activities. Since 2007, Bulgaria is a member of the European Union and Bulgarian legislation in this area is harmonized with the European legislation, and certain EU rules on competition are directly applicable as well. Competition is regulated at national and European level. PCA regulates the relationships in connection with the application of Articles 101 and 102 TFEU, the cooperation with the European Commission, with regard to the application of Council Regulation (EC) No. 1/2003 and Council Regulation (EC) No. 139/2004 of 20 January 2004 on the control over concentrations between undertakings.

The Commission on Protection of Competition⁶ (referred as “CPC”) is the authority in Bulgaria that is empowered to apply and enforce the PCA. The CPC scope of activities covers all requests on ascertaining infringements of free market competition, direct enforcement of the provisions of Articles 101 and 102 TFEU, cooperation with the European Commission and the other national competition authorities of the EC Member States in conformity with EC Regulation No. 1/2003 and EC Regulation No. 139/2004, conducting sector analyses, and competition advocacy.

Unfair competition practices or actions are not allowed under PCA. A peculiar fact about Bulgarian legislation is that there are no criminal provisions for violations of competition law rules.

Prevention, Distortion or Restriction of Competition Is Prohibited

PCA prohibits all kinds of agreements between undertakings, resolutions of associations of undertakings, as well as concerted practices of two or more undertakings which have as their object or effect the prevention, restriction or distortion of competition within the relevant market. Such agreements may be direct or indirect price fixing, allocation of markets or sources of supply, enforcement of dissimilar conditions to equivalent transactions with certain trading parties and others. However, certain agreements may be exempted from the prohibition, but they have to satisfy certain requirements. Such agreements must contribute to improving the production or distribution of goods or the provision of services or to promoting technical and/or economic progress by allowing consumers a fair share of the resulting benefit. Furthermore, they must not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives, and must not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the relevant market.

⁶ Official website of the CPC: <http://www.cpc.bg/default.aspx>

Abuse of Dominant Position

PCA does not prohibit dominant or monopolistic position as such. Bulgarian legislation considers an undertaking to have monopolistic position if the undertaking has by law the exclusive right to pursue a certain type of business activity. On the other hand, an undertaking has dominant position if the undertaking, in view of its market share, financial resources, access to the market, technological level and business relations with other undertakings, may hinder competition within the relevant market due to being independent of its competitors, suppliers or customers. The monopolistic or the dominant position is not itself banned; however, the abuse of dominant or monopolistic position is prohibited and sanctioned by CPC.

Acquiring Business in Bulgaria

PCA also provides a comprehensive legal framework for reviewing and controlling mergers or acquisition of companies. Concentration between undertakings is considered to exist when a permanent change of the control occurs: in case of merger or acquisition between two or more independent undertakings or when one or more persons already controlling at least one undertaking gain, by means of purchasing securities, stakes or property, by means of a contract or in any other manner, direct or indirect control over other undertakings or any parts thereof. Concentration also means the establishment of a joint venture which permanently performs all functions of an economically independent subject.

CPC must be **notified always prior to concentration** of undertakings if the aggregate turnover of the undertakings realized in Bulgaria for the previous financial year exceeds BGN 25 million and the turnover of each of the undertakings participating in the concentration on the territory of Bulgaria for the previous financial year exceeds BGN 3 million. The turnover of an undertaking is calculated in accordance with the provisions of PCA. The CPC authorizes a concentration provided that it does not lead to the establishment or reinforcement of a dominant position which would significantly impede effective competition in the relevant market, or in a cases in which dominant position is established or reinforced, the concentration aims at modernising the relevant business activity, improving the market structures and promoting consumers' interests, and as a whole the positive effect outweighs the negative impact on competition in the relevant market.

When the concentration has EU dimension, the European Commission has to be notified. A concentration is considered to have EU dimension where:

- the combined aggregate worldwide turnover of all the undertakings concerned is more than EUR 5 000 million; and
- the aggregate EU-wide turnover of each of at least two of the undertakings concerned is more than EUR 250 million.

However, if each of the undertakings concerned achieves more than two-thirds of its aggregate EU-wide turnover within one and the same Member State (in Bulgaria), the

concentration will not be considered to have EU dimension, and hence, it has to be notified to the Commission for Protection of Competition instead of to the European Commission.

List with the notification form templates and necessary documents can be found at the website of the CPC.

Liabilities and Penalties for Violation of Competition Law

CPC may impose a pecuniary sanction amounting up to 10 % of an undertaking's or association of undertakings' total turnover for the previous financial year for violations of national competition law rules and Articles 101 and 102 TFEU, implementation of a concentration without prior notification, failure to enforce a resolution or ruling of the CPC, etc.

Natural persons who have violated PCA, unless their act constitutes a criminal offense, are penalized with a fine between BGN 500 and BGN 25,000. Such fine may also be imposed on a natural person or undertaking failing to provide requested information timely or providing false, misleading information. Upon imposition of such a fine, a deadline is specified within which the requested information must be provided to CPC. Periodic penalty payment may be imposed if the requested information is not presented in due time.

Leniency

The Commission may, upon request of an undertaking, give leniency to an undertaking (grant exemption from pecuniary penalty) for violation of PCA rule and/or Article 101 TFEU, amounting to participation in a secret cartel, provided that such undertaking is the first to provide evidence based on which the CPC can perform an on-the-spot inspection, subject to the condition that by that time the Commission has not possessed sufficient data and evidence allowing it to file a request for a court permission, or to prove the alleged violation, subject to the condition that by that time the Commission has not had granted a conditional exemption from penalties to another undertaking before an on-the-spot inspection or before it possessed sufficient evidence allowing it to file a request for court permission, and that it has not had sufficient evidence to pass a resolution ascertaining a violation.

The CPC may reduce the pecuniary penalty of an undertaking for a violation of the CPC rules and/or Article 101 TFEU, amounting to participation in a secret cartel, provided that such undertaking voluntarily, by the closure of proceedings, has presented material evidence in proving the violation and has complied with all conditions specified in the Leniency Programme.

More information about regulation of competition at EU level can be found at the website of the European Commission:

http://ec.europa.eu/competition/index_en.html

4. Financing Business in Bulgaria

Moody's defined the Bulgarian banking system stable with strong competition

There are number of ways a company can finance its business in Bulgaria. In terms of procedure, the simplest way is to take out a loan from a bank. Despite the financial crisis in Europe, Moody's defined the Bulgarian banking system as stable with strong competition, where most of the assets are owned by Western investors.⁷ Another possibility for financing business is to raise funds on the capital market. Sources of capital in Bulgaria are banks, other financial institutions, public markets and government agencies. Below you can find more information about these sources.

Financing through a bank loan

A full list of the banks that have license to operate in Bulgaria can be found on the official page of the Bulgarian National Bank.⁸ The operation of the banks is regulated by the Credit Institutions Act and the various regulations on its application. The Bulgarian National Bank (BNB) is entrusted with the task to supervise the banking system in accordance with the Credit Institutions Act (referred as "CIA") and the respective regulations. According to Moody's report for 2011, Bulgarian regulatory system is well-established with a good level of supervision exercised by the banking regulator. Currently there are twenty-four locally incorporated banks and seven branches of foreign banks. Peculiar fact is that lending to corporate clients and SME continues to comprise the largest portion of lending activity in the country.

Under the CIA, there are certain requirements with which the banks have to comply when granting loans in order to maintain the banking system stable. However, the procedure for applying for loans depends on the respective bank policy and is determined by the bank itself. More details how to apply and what are the particular conditions can be found on the banks' websites. The list of the licensed banks in Bulgaria together with contact details can be found on the website of BNB. There are no restrictions for the currency of the loan. However, most loans are in BNG and euro. Only few of them are in Swiss francs or British pounds. Note also that there is a currency board in Bulgaria in place since 1997 and the Bulgarian lev (BNG) is pegged to the euro at a rate 1 EUR= 1.95583 BGN.

Besides the traditional loans, many Bulgarian banks also provide funding to enterprises through factoring services.

Alternatives for Financing Business in Bulgaria

⁷ Source: http://www.novinite.com/view_news.php?id=124132

⁸ http://www.bnb.bg/BankSupervision/BSCreditInstitution/BSCIRegistrers/BS_CI_REG_BANKSLIST_EN

Besides banks, other financial institutions different from banks also provide loans to clients (e.g. investment brokers). The list with the licensed financial institutions can be found at the website of BNB.⁹

There are also non-government funds which can provide funding for business. Besides, the European Bank for Reconstruction and Development (EBRD) also aims at stimulating foreign investments in Bulgaria and provides support. Up-to-date information can be found at website of the EBRD.

Capital Markets

Another commonly used method for financing business activities is via registration of the company on the stock exchange. Issuance of securities and trade with them between investors are subject to state regulation in order to ensure stable capital market. The Financial Supervision Commission (FSC) is vested with the task to regulate and supervise these tasks. Bulgarian Stock Exchange – Sofia¹⁰ is the only functioning stock exchange in Bulgaria whose scope of activity includes organizing trade in securities and other financial instruments, operation and maintenance of information systems for trading in securities, establishment and maintenance of a clearing system guaranteeing the obligations assumed under securities transactions executed on the Exchange. The applicable legislation regulating the activities of the Bulgarian Stock Exchange - Sofia and the functioning of the capital market in the country are the Markets in Financial Instruments Act (MFIA) and the Public Offering of Securities Act (POSA). The aim of MFIA is to ensure protection of investors in financial instruments, *inter alia*, by creating conditions to supply them with full and more appropriate information regarding the market in financial instruments, to create conditions for the development of a transparent, open and efficient market in financial instruments, and uphold the stability and the public confidence in the market in financial instruments. Regarding taxation on income from trading in financial instruments, the Personal Incomes Tax Act and the Corporate Income Tax Act are currently governing these matters.

Registration of a company on the Bulgarian Stock Exchange is subject to various strict regulations which aim at ensuring a stable and sound capital market. An important requirement for a company to be listed on the Bulgarian Stock Exchange is that it is a public company. Furthermore, before trading on the Bulgarian Stock Exchange, a company needs to present a public offer prospectus which has to be approved by the FSC. Detailed information about the necessary steps, which have to be taken before trading on the Bulgarian Stock Exchange, can be found on the website of FSC.¹¹ The prospectus should contain all information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an accurate assessment of the economic situation and financial position, assets and liabilities, profit and losses, and prospects of development of the issuer and of the guarantors of the securities, as well as of the rights attaching to such securities.

⁹ http://www.bnb.bg/BankSupervision/index.htm?toLang=_EN

¹⁰ Official website of the Bulgarian Stock Exchange Sofia - <http://www.bse-sofia.bg/>

¹¹ Official website of the FSC: <http://www.fsc.bg/Home-en-1>

Securities according to POSA are any transferable rights entered on accounts with the Central Depository or any instruments materializing transferable rights (physical securities) which are negotiable on the capital market, with the exception of instruments of payment, such as: shares in companies and other securities equivalent to shares in companies, partnerships and other legal persons, as well as depository receipts in respect of shares, bonds and other forms of debt securities, including depository receipts in respect of such securities, any other securities giving the right to acquire or sell any such securities or giving rise to a cash settlement determined by reference to securities, exchange rates, interest rates or yields, commodities or other indices or measures. Supporting documents such as Articles of Association and annual reports should be added to the prospectus which is submitted to the FSC.

Important for investors is that capital gains from securities transactions realized on the Bulgarian regulated market are not subject to withholding tax. Dividends and liquidation proceeds payable by residents to foreign legal entities are subject to a 5% final withholding tax at the source.

For readers' information, currently there are four indexes on the Bulgarian Stock Exchange.¹² *SOFIX* is the first one which started in 2000 and is based on the market capitalisation of the included issues of common shares, adjusted with the free-float of each of them. The other index is *BG 40* that covers 40 issues of common shares of the companies with the greatest number of transactions and the highest median value of the daily turnover during the last 6 months as the two criteria have equal weight. The third index is *BG TR30* which is based on the price performance of the common shares included in the index portfolio, as each constituent issue has equal weight. The second, *BG REIT*, covers 7 issues of common shares of special investment purpose companies that operate in the field of securitisation of real estate and/or land, i.e. real estate investment trusts (REITs), with the greatest market value of the free-float and the highest median value of the weekly turnover during the last 6 months.¹³

Public Financing

The Bulgarian government has taken steps to help the business by developing various financing opportunities like funds and financing schemes. An example of a fund established by the Bulgarian government under the Energy Efficiency Act is the Energy Efficiency Fund, which provides loans financing energy efficiency projects.¹⁴ More information about available financing opportunities can be found at the following website: <http://investbg.government.bg/index.php?sid=73> .

EU funds are also available in Bulgaria for different business activities. In order to receive up-to-date information, please, visit the following official website which provides the latest news and opportunities for EU funds for Bulgaria.¹⁵

¹² http://www.bse-sofia.bg/?site_lang=en&page=Indices

¹³ Based on descriptions provided by the Bulgarian Stock Exchange Sofia

¹⁴ The website of the Fund is: <http://www.bgeef.com/display.aspx>

¹⁵ <http://www.eufunds.bg/en/?cat=2>

5. Tax System

Bulgaria has the lowest corporate tax in Europe – 10%.

Since 2007, Bulgaria is a member of the EU and it was necessary to adjust and harmonize its legislation with the *acquis communautaire* of the EU. The tax regime in Bulgaria can be classified generally in two categories: direct taxation (corporate tax, income tax for individuals, withholding tax) and indirect taxation (VAT tax and excise tax) which will be extensively reviewed below.

The applicable legislation is the Corporate Income Tax Act (CITA), the Income Taxes on Natural Persons Act (ITNPA), Value Added Tax Act, Excise Duties and Tax Warehouses Act, Common Customs Tariff of the EU.

National Revenue Agency is entrusted with the management of the taxes in Bulgaria.¹⁶

Direct Taxes

Corporate Income Taxes

Bulgaria is known for the lowest corporate tax in Europe – **10%** on the income. Note that special tax rate applies to companies engaged in shipping activities and companies engaged in gambling or games of chance activities. Persons that are subject to taxation are legal persons established under Bulgarian law, the non-resident legal persons which carry out economic activity in the Bulgaria through a permanent establishment, sole traders (subject to specific rules provided in ITNPA), merchants (natural persons). A company is considered to be resident in Bulgaria if it is incorporated under Bulgarian legislation, or it is incorporated under Council Regulation (EC) No 2157/2001, or it is a cooperative society incorporated under Council Regulation No 1435/2003, where its registered office is situated in the country and they are entered into a Bulgarian register.

For companies established under Bulgarian law, the whole income (including the income realized outside Bulgaria) is subject to taxation. However, for foreign companies that operate in Bulgaria, only this income realized in the country is subject to taxation and specified income accruing from a source inside Bulgaria. No group taxation is applied in Bulgaria and each company is a separate tax payer.

The corporate income tax applies to profits which are determined in accordance with the generally accepted accounting principles and adjusted where necessary for tax purposes. There is a requirement for persons subject to corporate taxes that they must apply the International Financial Reporting Standards (IFRS) adopted by the European Commission for accounting purposes and approved by the Bulgarian Council of Ministers. Companies that are classified as SME can choose to apply either

¹⁶ National Revenue Agency website: <http://www.nap.bg/en/>

the IFRS or the Bulgarian Generally Accepted Accounting Principles. The financial year ends in Bulgaria on 31 December and companies are required to file their reports (declaration and balance sheets) and pay their taxes by March 31 on the following year. The declaration and the accompanying documents are to be submitted to the National Revenue Agency. The companies are obliged to make advance payment based on the profit declared for the previous year.

The profit which is subject to taxation is determined in accordance with the accounting financial result adjusted for tax purposes for: the permanent tax differences; the temporary tax differences and specific amounts provided in the CITA. There is income and/or expenses which are not considered for tax purposes. For example, the following are not recognized for tax purposes: non-business related or not duly documented expenses, interest restricted under the thin capitalization rules, expenses for impairment of assets, dividends received from local or EU based companies. Under the thin capitalization rules, if the debt to equity ratio of a company exceeds 3:1 (some of) the interest expenses may not be tax deductible in the current year. However, they may become tax deductible in the following five consecutive years under certain conditions.

Assets that are tax depreciable are: tax tangible fixed assets; tax intangible fixed assets; the investment properties, with the exception of land; subsequent expenses associated with asset written off from the tax depreciation schedule. Depreciable assets are divided in categories and different annual depreciation rate applies which is determined once a year.

A person subject to taxation may choose to carry forward losses or not. The tax loss can be carried forward for five consecutive years to offset the taxable profit reported in these years. Losses cannot be carried back.

Under specific conditions stipulated by CITA, a person subject to corporate tax may take advantage of tax retention. Collective investment schemes, which have been admitted to public offering in the Bulgaria, and licensed investment companies of the closed-end type under the POSA, are exempt from the corporate tax. Special purpose investment vehicles under the Special Purpose Investment Companies Act are exempt from the levy of corporate tax, as well.

There are various general and regional tax incentives. General tax incentives are available for companies which hire unemployed persons and persons with disabilities.

Certain corporate expenses like business entertainment expenses, expenses incurred for social benefits of the staff, expenses relating to the use and the maintenance of company vehicles are subject to tax on expenses. The effective tax rate is 9%.

Withholding Tax

Only the income of resident and non-resident legal entities is levied with withholding tax whereas the income of natural persons is regulated by ITNPA. Withholding is levied on dividends and shares in a liquidation surplus, as distributed (apportioned) by any resident legal person in favour of non-resident legal persons, with the

exception of the cases where the dividends accrue to a non-resident legal person through a permanent establishment in the country, and in favour of any resident legal persons which are not merchants, including any municipalities. The withholding tax does not apply to non-resident legal persons that are resident for tax purposes in a Member State of the European Union or in another State which is a Contracting Party to the Agreement on the European Economic Area, with the exception of the cases of hidden profit distribution. The current rate of the withholding tax is 5%.

Part of business and investment income of non-resident legal entities earned from sources in Bulgaria are subject to flat final income tax, which is normally levied by means of withholding. Withholding tax is due on the following types of income when accrued to a non-resident entity:

- Dividends and liquidation quotas
- Interest, royalties, franchising and factoring fees
- Technical (including consultancy) and management services fees
- Income from the use of movable or immovable property
- Capital gains from transfer of real estate
- Capital gains from disposal of financial assets issued by resident entities or the State and municipalities (exemption for capital gains from disposal of shares on a regulated Bulgarian / EU / EEA market).
- Services fees, remuneration for the use of right and penalty or damages payments (except for insurance compensation) accrued to entities tax resident in low tax jurisdictions.

The current tax rate is 10%. However, income raised from the disposition of shares in public companies, negotiable rights attaching to shares in public companies, and shares in and units of collective investment schemes effected on a regulated Bulgarian securities market, is not subject to withholding tax at the source.

Taxes for Natural Persons

There is a flat rate of 10% that is levied on the income of natural persons. For tax purposes, there are resident and non-resident natural persons, who earn income from sources in Bulgaria, and resident and non-resident persons, who are obligated to withhold and remit taxes. Regardless of the nationality, Bulgarian law considers as “resident persons” persons who have permanent address in Bulgaria, or persons who are present at the territory of the country for a period exceeding 183 days in any twelve-month period, or sent abroad by the Bulgarian State, by bodies and/or organizations thereof, by Bulgarian enterprises, and the members of the family of any such person, or persons whose centre of vital interests is situated in Bulgaria.

The deadline for natural persons to file their declarations for income is 15 April on the following year. The income subject to taxation is defined as an aggregate of the total income received by a natural person during one calendar year with the exception of the income which is non-taxable by virtue of a law and the income specifically excluded from the annual income which is taxed separately under specific rules. If a person receives an income from more than one place, the income subject to taxation is calculated for each source of income separately under the terms and conditions stipulated by the applicable legislation.

Local Taxes

Taxes such as tax on real estates and vehicles, garbage collection fee, transfer taxes are determined by and paid to each municipality.

Indirect Taxes

VAT

The VAT regime in Bulgaria is governed by the Value Added Tax Act which reflects the EU legislation and Directive 2006/112/EC of 28 November 2006 on the common system of value added tax. Subject to taxation are all persons who carry out independently economic activity. Value added tax of 20% is an indirect tax imposed on:

- each taxable supply of goods or services effected for consideration;
- each intra-EU acquisition effected for consideration, whereof the place of transaction is within the territory of the country, by a person registered under this Act or by a person in respect of which an obligation to register has arisen;
- each intra-EU acquisition of new means of transport effected for consideration, whereof the place of transaction is within the territory of the country;
- the importation of goods;
- each intra-EU acquisition whereof the place of transaction is within the territory of the country of excisable goods.

Under the VAT Act certain persons are required to register with the National Revenue Agency, which maintains a VAT Persons Register. Particularly, taxable persons having turnover of BGN 50,000 or above are subject to compulsory registration. Other persons may voluntary register.

Zero rate of VAT applies to the following transactions:

- supplies of goods dispatched or transported to destination outside the EU;
- certain transactions related to international transportation;
- supply for handling of goods;
- supply related to duty-free goods;
- supply of goods provided by agents, brokers and other intermediaries;

The following transactions are exempt from levying with VAT:

- supply linked to health care
- supply linked to welfare and social security work
- transfer of the right of ownership of land, save for development land and land under buildings
- creation or transfer of limited rights *in rem* to land and lending and leasing
- transactions with buildings with buildings or parts thereof which are not new with building land, as well as the creation and transfer of other rights *in rem* thereto are an exempt supply.

Excise Duties

Bulgarian legislation of excise duties is harmonized with the legislation of the EU. Excise duties are levied on certain products which are listed in the Excise Duties and Tax Warehouses Act. Such products are spirits, beer, tobacco products, petrol and diesel fuel, heavy oil, certain types of cars, and electricity.¹⁷ Since 2005, there is a system of tax warehouse in Bulgaria and certain products like tobacco products, alcohol and energy products (subject to specific exceptions) can only be produced in such warehouses.

Excise goods may be imported, processed and stored in tax warehouses as well as transported under a deferred payment regime subject to specific eligibility and registration conditions.

Custom Duties

Bulgaria acceded to the European Union on January 1, 2007 and therefore, it harmonizes its legislation in accordance with the EU legislation and applies the Common Customs Tariff of the EU. Within the internal market, custom duties, tariffs, quotas and measures having equivalent effect are prohibited. EU Member States have common customs for third countries. Within the EU, four freedoms apply: free movement of goods, free movement of services, free movement of capital, free movement of people (which includes free movement of workers and freedom of establishment).

¹⁷ For example, the excise duty on gas oil and kerosene is BGN 50 (approx. € 25.6) per 1,000 liters; the excise on beer is BGN 1.5 (approx. € 0.77) per hectoliter, excise on cigars is BGN 270 (approximately € 138) per 1,000 items, excise on smoking tobacco (for pipes and cigarettes) is BGN 130 (approx. € 66) per one kilogram .

6. Employment in Bulgaria

Bulgaria strictly applies the EU regulations pertaining to the free movement of people

The right to labour is a fundamental right of citizens recognized in the Bulgarian Constitution. The state is under an obligation to facilitate the exercise of this right. The Labour Code is the principle source of law regulating the legal relationship between an employer and an employee. Some specific areas of employment law (e.g. health and safety at work, employment promotion, collective labour disputes etc.) are governed by specific legislation (for example Health and Safety at Work Act, Settlement of Collective Legal Disputes Act, etc.). Pursuant to the Labour Code, the Bulgarian labour legislation is applicable to all labour relationships between Bulgarian citizens, citizens of the EU and of the states parties to the Agreement of the European Economic Area or of the Confederation of Switzerland, and employers in the Republic of Bulgaria, as well as Bulgarian employers abroad, insofar as it is not provided otherwise in a law or a treaty to which Bulgaria is a party. Bulgarian employment legislation is harmonized with the EU legislation.

It is a fundamental principle of the Labour Code that the state must consult with employees, employers and their representative organisations before labour legislation is implemented. This concept is referred to as the “social dialogue” or the tripartite partnership. State control over the implementation of labour legislation is executed by the General Labour Inspectorate, the special executive agency to the Minister of Labour and Social Security Policy. Employment is a broad topic and only the most important issues will be covered in this section.

The standard statutory working time in Bulgaria is eight hours per day for a five-day working week.

Collective labour agreements are important part of the Bulgarian labour legislation. Such agreements regulate issues of the labour and social security relations of employees, which are not regulated by mandatory legal provisions.

There are currently three labour categories in Bulgaria: first, second and third and these categories are significant for the purposes of the right to retire as employees who come within the first or second labour categories are entitled to retire earlier than employees in the third category.

Incentives

Before the detailed discussion of the applicable Bulgarian legislation, it may be important for an investor to know any benefits which the Legislator has provided for employers.

Incentives in the field of labour law are outlined in the Encouragement of Employment Act and the regulations on its application. Some of the incentives are payment of funds from the Employment Agency to employers who open new job positions, preservation of opened job positions in case of decrease of the working

volume, hiring unemployed persons over the age of 50 years, engaging unemployed persons of decreased working ability, hiring unemployed mothers or single parents, employing permanently unemployed persons, etc.

Further, payment of installments for social security brings tax reliefs.

Work Permits

Bulgaria strictly applies the EU regulations pertaining to the free movement of people (free movement of workers and freedom of establishment). Citizens of the EU and EEA and the Swiss Confederation do not need a work permit to work in Bulgaria. They are allowed to enter freely into an employment relationship with a local employer; however, they will have to apply for a long-term residence permit. Other foreigners must follow the procedure prescribed by the Bulgarian Encouragement of Employment Act.

Contracts of Employment

The Labour Code sets freedom of contract. An individual labour contract is concluded between an employee and employer before the commencement of the job. The employer must introduce the employee to his or her labour obligations. Contracts of employment establishing terms and conditions which are less favourable for employees than mandatory provisions of law or collective agreements are null and void. Generally, neither the employer nor the employee may unilaterally modify the employment relationship, although there are some exceptions provided for by the law. There is an explicit requirement for a contract of employment to be in a written form.

It is not possible to contract out of the statutory protection conferred on employees, and contracts of employment or clauses of such contracts that are contrary to mandatory statutory provisions or to collective agreements are null and void.

Employment contract may be concluded for an indefinite period or for a fixed term. Fixed-term employees may not be treated in a less favourable manner than comparable permanent employees performing the same or similar work at the enterprise solely because of the fixed-term nature of the employment relationship except where certain rights are contingent on the possession of qualifications or the acquisition of skills as a matter of law. Fixed-term employment contracts for a period not exceeding three years and are normally entered into for casual, seasonal or short-term work, as well as with newly employed persons in enterprises that have been pronounced bankrupt or put into liquidation. As an exception, a fixed-term employment contract may be concluded for a period of more than one year for work that is not of a casual, seasonal or short-term nature.

An employer and an employee may agree on part-time employment provided that the part-time employee is not treated less favourably than a comparable full-time employee who performs the same or similar work in the enterprise. Part-time employment must be distinguished from “reduced working time”.

The Labour Code regulates contracts of employment with a trial period. Where the work requires the abilities of the employee to be assessed, his or her permanent appointment may be preceded by a contract of employment with a trial period of up to six months. Under the provisions of the Labour Code, an employee is obliged to be loyal to the employer, not to abuse the employer's trust, not to disclose any confidential data and to protect the reputation and goodwill of the enterprise.

Working Hours and Rest. Remuneration

A normal working day is eight hours as determined by the Labour Code. The normal work week is five days and the total week working hours are respectively forty hours. Work performed between 10 p.m. and 6 p.m. is considered as night work. The duration of the night working hours is 7 hours, with 35 hours night working per week. The work done out of the agreed working time is considered overtime.

There is a requirement for minimum one rest per day with a lunch break at least 30 minutes. In addition, there are various types of leaves provided in the Bulgarian legislation: paid annual leave and unpaid leave, maternity leave, leave for studies, leave in case of temporary disability. Currently the Bulgarian labour law provides for 410-day maternity leave, 45 days of which may be used before the childbirth. The father has also the right to use the rest of the maternity leave once the child is 6 months old, subject to the mother's consent.

As of September 1, 2011, the minimum monthly wage is BGN 270 (approx. EUR 138.05) and the minimum hourly wage is approx. BGN 1.60 (for an eight-hour working day, five-day working week).

Collective agreements in some industrial and business sectors may also establish more generous minimum remuneration levels for the relevant industry sectors.

Fringe benefits, such as company cars and mobile phones are not mandatory, though such benefits are normally provided for the managerial staff.

Social Security

Generally there are two groups of social security relations: relations regarding the state social security and relations regarding the supplementary social security.

The state social security covers the risks of general disease, labour accident, professional illness, maternity, unemployment, old age and death. There are respective funds collecting the resources allocated to each of them. The basic principles of the state social security are: equality of socially secured persons, compulsory compliance, universal coverage, solidarity of socially secured persons, and fund organization of the social insurance sources. Thus, all members of the society contribute to the collection of resources in the social security funds, but the social security compensations are paid only to those who needs.

Security installments for state social security which are on the account of social insurers are deposited simultaneously with the payment of remunerations. Social security installments on the account of socially secured persons are to be deducted and deposited upon payment of the remuneration. Security installments for self secured persons and persons employed under no employment relationships are deposited by the tenth day of the month following the month they refer to, i.e. they have to be paid in advance calculated on the basis of the insurance income chosen between the minimum and the maximum amount of monthly income, determined with the Budget of the State Public Insurance Act for the corresponding year.

Supplementary social insurance in Bulgaria is organised by compulsory and voluntary supplementary social insurance. It is implemented through participation in supplementary, compulsory, universal and/or occupational pension funds, supplementary voluntary retirement insurance funds and/or funds for supplementary voluntary retirement insurance under occupational schemes. It is also implemented through supplementary voluntary unemployment or vocational-training insurance funds, which are incorporated and managed by insurance companies or by companies for supplementary voluntary insurance for unemployment and/or professional qualification licensed according to the procedure established by the Social Insurance Code.

Current Bulgarian legislation gives employers the opportunity to pay social insurance contributions for their employees to supplementary voluntary social insurance companies and funds and many employers do so. Employers are not, however, legally obliged to pay such contributions for the supplementary voluntary social insurance of their employees.

Termination of Employment

Employment relationship starts with a contract in written form and ends also with a written document. An employment is terminated on grounds determined in the Labour Code. The termination procedures and grounds for termination of labour contracts are specified in detail in the Labour Code.

Preliminary Protection and Protection against Wrongful Dismissal

Certain categories of employees and workers are entitled to preliminary protection. The Labour Code provides a comprehensive list of the categories of employees and workers entitled to preliminary protection. For instance, such categories are mothers of children younger than 3 years; employees who have been reassigned due to reasons of health; employees who have commenced a period of permitted leave and others.

Termination of employment relationship is done only in writing on grounds provided for by the law. Where the termination of the employment agreement does not comply with the legal requirements, it can be challenged before the employer or a court.

Four types of claims are envisaged by the Labour Code: a claim for recognition of the dismissal as wrongful and respectively its repeal; a claim for reinstatement of the employee to her/his previous position; a claim for compensation for the period of unemployment due to the dismissal; a claim for revision of the grounds for dismissal, registered in her/his service record or other relevant documents.

Discrimination of Workers

The Labour Code prohibits direct or indirect discrimination on the grounds of ethnicity, origin, gender, sexual orientation, race, skin colour, age, political and religious beliefs, affiliation to trade union and other public organisations and movements, family and property status, mental or physical disabilities, as well as differences in the contract term and the duration of working time.

The Protection against Discrimination Act also prohibits direct or indirect discrimination on the grounds of gender, race, nationality, ethnicity, genetic disease, citizenship, origin, religion or belief, education, personal convictions, political affiliation, personal or social status, disability, age, sexual orientation, marital status and financial status.

Discrimination during the recruitment process is expressly prohibited.

However, different treatment will not constitute discrimination when the nature of a particular activity or occupation demands different treatment of persons on the grounds, for instance, on their gender or when different treatment of persons of persons with regard to occupation in religious institutions.

7. Real Estate

Bulgaria spans over a territory of 110,879 km² and is renowned for its beautiful nature and picturesque landscapes. Bulgarian land is fertile and offers opportunities for biological agriculture. Small villages in the Bulgarian mountains are quiet, peaceful and with clean fresh air. An amalgam of various factors makes Bulgaria an attractive place for acquiring real estate.

Real estate and transactions with it are regulated in Bulgaria by a comprehensive legal system which includes the Constitution of the Republic of Bulgaria, Ownership Act, State Property Act, Municipal Property Act, Agricultural Land Ownership and Use Act, Forestry Act, Civil Procedures Code, Encouragement of Investments Act, Territorial Development Act, Contracts and Obligations Act and Condominium Ownership Management Act. Transactions regarding real estate are recorded in the Property Register. For the purposes of this Guide, selected issues will be discussed below.

Ownership and Acquisition of Real Property in Bulgaria

Ownership may belong to the state, municipalities, cooperative societies and other legal persons and citizens. Ownership is classified as public and private. The right of ownership may be held jointly by two or more persons - the state, municipalities and other legal and natural persons. All kinds of ownership enjoy equal opportunities for development and protection by law. As a general rule, private property is inalienable. However, in certain exceptional cases it can be subject to alienation by state or municipal authorities. Alienation must have solid legal ground and must be done as a means of last resort. An owner must be compensated in a fair way. An example may be the alienation of land which is necessary for the construction of highways.

Individuals and legal entities can acquire real estate (land, buildings) and also limited property rights. In Bulgaria, foreign natural and legal persons can as well directly acquire buildings, premises within a building and limited property rights (e.g. construction right, right of use). The foreign person has to be registered in a special register.

Direct Acquisition

Article 22 of the Constitution guarantees that foreigners and foreign legal entities the right to acquire property over land. Foreign natural persons and legal entities may acquire the right of ownership over land under the terms of an international agreement ratified pursuant to Article 22(2) of the Constitution of the Republic of Bulgaria which has been promulgated and entered into force. Foreigners may acquire ownership title over land in case of legal succession.

The Treaty concerning the Accession of the Republic of Bulgaria to the European Union provides that Bulgaria may keep the restrictions for acquisition of land by citizens and entities from the member states for a period of five years (starting from

January 1, 2007) for second residence and for a period of seven years (again starting from January 1, 2007) for agricultural land, forests and forest land. Thus, foreign persons and entities may acquire land in Bulgaria in compliance with the requirements set in law and after the restrictive periods expire. These restrictions do not apply to resident citizens who are individually occupied farmers.

Non-resident natural and legal persons may acquire the right of ownership in premises and limited real rights in a real estate in the country unless provided otherwise by law.

A foreign country or intergovernmental organization may acquire the right of ownership in land, premises and limited real rights in a real estate in the country pursuant to an international agreement, law or act of the Council of Ministers. A foreign country can not acquire the right of ownership in a real estate in the country by inheritance.

Indirect Acquisition

Apart from the direct acquisition of real property outlined above, foreigners and foreign legal entities can acquire real property in an indirect way – through incorporation of a company in Bulgaria or through purchasing a part of the capital of a company which will act as an acquirer of real estate. This practice was used before the Bulgarian accession to the European Union. The duly incorporated and registered Bulgarian company can freely acquire and own real estate in Bulgaria and there are no restrictions for foreign individuals or companies to own Bulgarian companies.

Transactions with Real Estate

Bulgarian legislation provides that transactions with real estate (purchase, exchange, etc.) are executed with a notary deed signed by the two parties before a registered notary within the region where the property is situated. State or municipal real property is acquired by virtue of a written contract. The notary deed is a requirement for all the transactions of transfer of ownership over real estate as well as for transactions of establishment of limited property rights over real properties such as construction rights, right of use, etc. The notary deed specifies the purchase price paid by the acquirer of the real estate.

There is an additional legal obligation for the public notary to register the deed upon execution in the Property Register. This registration aims at making the title defensible against third persons.

For specific cases with acquisition of real estate arising from enforcement, insolvency or alike procedures and for in-kind contribution of real estate, special rules and procedures apply.

Taxes for transfer of real estate are determined by the respective Municipal Council where the property is located. The boundaries within which the tax can vary are between 0.1% and 3% of the higher of the purchase price agreed between the parties

and the tax valuation made by the tax authority prior to the transaction. The law provides for the acquirer to pay the tax. However, parties to the transaction may agree otherwise. Additionally, there is a fee for registration in the Property Register which is 0.1% of the purchase price agreed between the parties or the tax valuation made by the tax authority prior to the transaction, depending which is the higher price. There is no statutory regulation who shall pay the tax.

Lastly, there is a notary fee which is calculated in accordance with the statutory Notary Tariff and which must not exceed BGN 6,000 (approx. € 3050) per transaction. There is again no statutory regulation who shall pay the tax.

Acquisition of State-owned Real Property

Information how to acquire state-owned land is important for domestic and foreign investors and the following two sections are casting some light over this topic. The State Property Act (SPA) stipulates that the state-owned property is public and private. SPA defines what constitutes public property. All other property and objects that do not fall within the ambit of public state property are considered as private state property. The property and objects which constitute public state property may not be subject to disposition and may not be acquired by prescription. Property and objects that are private state property may be subject to disposition and acquisition through prescription. The provisions of the Ownership Act apply to them unless provided otherwise in the SPA.

The SPA requires the sale of private state property whose tax valuation exceeds BGN 10,000 (approx. € 5,100) must be carried out by the Privatisation and Post-Privatisation Control Agency under the terms and procedures specified in the Privatisation and Post-Privatisation Control Act. The Agency takes a decision to sell the property after the submission of a proposal by the director of the institution managing the property or by the Regional Governor.

The sale of property constituting private state property whose tax valuation is up to BGN 10,000 is carried out by the Regional Governor having jurisdiction over the region wherein the property is located under the terms and procedures specified in the SPA and the Regulation on the Implementation of the SPA.

A specific case is the sale of a property which constitutes private state property that has been entrusted for managing to the Ministry of Defence and its tax value exceeds BGN 500,000 (approx. € 256,000). Such a sale is performed by resolution of the Council of Ministers upon a proposal by the Minister of Defence. Based on the decision of the Council of Ministers, the Minister of Defence conducts a tender subject to terms and procedures determined in the Regulation on the Implementation of this Act, following which he/she issues an order and conclude a sale contract.

Private state property or leasehold on such property within the territory of Bulgaria cannot be exchanged for a property or leasehold owned by natural or legal persons, except in the cases provided for by the law. When such a transaction is allowed by law, the exchange is performed by the respective Regional Governor who has

jurisdiction over the location of the property constituting private state property. The exchange is performed based on valuations of the properties being the subject of exchange made by an independent valuer, at a price not lower than their tax value. In special cases where the tax value of the private state property or of the right to build in a property constituting private state property exceeds BGN 500,000, the exchange is done only following a decision of the Council of Ministers upon a proposal of the Minister of Regional Development and Public Works. On the basis of the decision of the Council of Ministers, the Minister of Regional Development and Public Works issues an order and concludes a contract for the exchange. In case such private state property is entrusted to the Ministry of Defence and its tax value exceeds BGN 500,000, the transaction can be performed by resolution of the Council of Ministers upon a proposal by the Minister of Defence. Based on the decision of the Council of Ministers, the Minister of Defence issues an order and concludes a contract for the exchange.

The establishment of limited real rights on a property constituting private state property of which the tax value exceeds BGN 500,000 must be subject to a decision of the Council of Ministers on the motion of the Minister of Regional Development and Public Works. In such cases and on the basis of the decision of the Council of Ministers, the Minister of Regional Development and Public Works conducts a tender following which he/she issue an order and conclude a contract.

Acquisition of Municipality-owned Real Property

As with the state-owned property, municipality-own property may be public and private. A separate act regulates municipal property - Municipal Property Act (MPA). MPA applies to those transactions which are not governed by the Post-Privatization Control Act.

The sale of real property and assets which are owned by the municipality can be performed upon a resolution of the Municipal Council by the Mayor of the municipality through a public tender or publicly announced competition. The municipal real property may be transferred without tender by the Mayor only in the cases explicitly specified by the law and following a procedure determined by an ordinance adopted by the Municipal Council where the property is located.

Building rights on any municipality-owned private real property are instituted upon a resolution of the respective Municipal Council by the mayor of the municipality through a public tender or publicly announced competition and as envisaged in an effective detailed master plan.

No municipality-owned private real property, building rights to real property held in municipal private domain ownership, or building rights set up in favour of the municipality may be exchanged for real property or building rights owned by individuals or by legal entities, except in the cases provided for by the law.

Contracts for the acquisition of ownership and for liens on real property, and for the disposal of real property in municipal ownership are executed in writing by the

Mayor of the municipality and are recorded upon the order of the registration judge in whose jurisdiction such real property is located. Contracts for the exchange of real property in municipal ownership against real property owned by natural or legal persons are recorded according to the jurisdiction in which the municipal real property is located, and in the case of real properties in eminent domain of the state, they are recorded according to the jurisdiction in which the state-owned real property is located. As of the date of execution of these contracts, the deeds for municipality-owned properties must be registered following the respective procedure within the Registry Office.

Disposal transactions with private real property or real rights on property owned by the municipality must be based on market prices, but not lower than their tax evaluation. The market prices of the property and of the real rights must be determined by the Municipal Council on the basis of market valuations prepared by valuers selected under the respective procedure, except where the law provides otherwise.

Condominiums

Management of the common parts of building as well as rights and obligations of the owners and residents in separate objects or parts of these buildings are regulated by the Condominium Ownership Management Act. This Act establishes a comprehensive system for the management of common parts of buildings under condominium ownership. Management can be performed either by a general assembly of the owners of the separate units or by an association of owners, which is a legal entity established under the Condominium Ownership Management Act.

8. Intellectual & Industrial Property

Intellectual and Industrial Property is protected by a comprehensive legal framework guaranteeing high level of protection

Intellectual and Industrial Property in Bulgaria is protected by a comprehensive legal framework which includes primary and secondary national legislation, international agreements and conventions, and EU regulations and directives. Various EU directives protecting inventions, trade marks, industrial design and plant varieties were transposed into national legislation which is a guarantee that intellectual property protection in Bulgaria is at the EU level.

Bulgarian law affords protection of copyright for the author's whole life and further, 70 years after his or her death. The copyright over literary, artistic and scientific works arise with the creation of the work. The author has exclusive right over his/her work.

The Patent Office¹⁸ is the state body entrusted with the task of assessing and deciding on matters related to the protection of intellectual property. The Patent Office maintains various registers.

Inventions and Utility Models

Creation, protection and use of patentable inventions and of utility models are governed by the Patents and Utility Models Act (referred as "PUMA"). PUMA explicitly states that its provisions apply to foreign nationals and legal persons from states parties to treaties to which the Republic of Bulgaria is also a party. PUMA applies to foreign nationals and legal persons from other states on the principle of reciprocity as assessed by the Patent Office.

The Patent Office maintains the State Patents Register, the State Utility Models Register and the State Supplementary Protection Certificates Register. All applications for reception of legal protection under Patents and Utility Models Act are recorded in these registers. The state registers are public. Applications for patents to the Patent Office must be submitted in person or through an authorized local industrial property representative. If a company is not permanently registered in Bulgaria, it needs to employ a local representative. Electronic applications are submitted only if the paper versions are handed in up to a month following the electronic submission.

The law recognizes as an inventor a person who has created an invention or utility model, and if the invention or the utility model is made by more than one person, they are considered as co-inventors.

Three major requirements should be present for an invention to be granted a patent - namely, the invention should be new, should involve an inventive step and should be susceptible to industrial application.

¹⁸ The official website of the Bulgarian Patent Office is <http://www1.bpo.bg/index.php?lang=en>

The patent grants legal protection to a patentable invention and certifies the exclusive right of the proprietor of the patent over the invention. The scope of the legal protection is determined by the claims. The patent applies with regard to third parties as from the date of publication about its issuing in the official journal of the Patent Office. The **term of a patent is twenty years** and starts from the date of filing the application. Bulgarian citizens who have permanent addresses in Bulgaria or legal persons with registered offices in Bulgaria can apply for patenting their invention abroad following the respective checks.

The exclusive right over the invention includes the right to use the invention, the prohibition for third parties to use the invention without the consent of the proprietor of the patent and the right to dispose with the patent. The exclusive rights over an invention that has been granted by virtue of a patent does not extend to actions undertaken with a protected product that has been released on the market of the European Economic Area by the holder of the patent or with his consent.

The right to use a patent includes the production, offering for sale, trade with the object of the invention, including its exportation, utilization of the object of the invention, as well as the application of the patented method. However, a person who has used in good faith an invention or has made the necessary preparations for its use prior to the date of filing of the patent application may continue to use the invention after the said date within the same volume.

The effect of the patent does not cover the use of the patented invention for non-commercial purposes with a view of satisfying the personal needs, as long as this does not result in significant financial losses for the holder of the patent; the use of the invention for experimental and research purposes related to the object of the invented invention; single and direct participation of a medicine at a pharmacy upon prescription; use of the patented invention in foreign land, maritime and air vehicles which cross the country's land, sea or air borders temporarily or accidentally, provided that the patented invention is used exclusively for the needs of the said vehicles.

Applications for European patent may be submitted to the Bulgarian Patent Office or to the European Patents Office in Munich, or its branch office in The Hague. The European patent which refers to the Republic of Bulgaria confers to its proprietor, as of the date of the announcement of its issuing in the European patents journal, the privileges under PUMA, if within three months of this date a translation in Bulgarian of the description and the claims is submitted in three copies and the publication fees are paid.

Supplementary protection certificates for products and means protected by a patent are issued under the conditions and by the procedure provided in Council Regulation 1768/92/EEC and Regulation 1610/96/EC of the European Parliament and the Council.

Legal protection of a **utility model** is provided through registration in the Patent Office. A utility model is considered new providing it is not part of the state of art. The term of validity of utility model registration is 4 (four) years from the date of the filing of the application.

Any disputes which are related to the creation, protection and use of inventions and utility models may be resolved by administrative proceedings, in court or through arbitration.

Marks and Geographical Indications

The registration of marks and geographical indications, the rights arising from the registration and the protection of these rights are regulated by the Marks and Geographical Indications Act. The Patent Office maintains the State Register of Marks and the State Register of Geographical Indications. These registers are public as well.

Mark is a sign that is capable of distinguishing the goods or services of one person from those of other persons and can be represented graphically. Such signs may be words, including the names of persons, or letters, numerals, drawings, figures, the shape of the article or the packaging thereof, a combination of colours, sound signals, or any combination of such elements. The right to a mark is acquired by registration, reckoned from the filing date of the application. The applicant enjoys a right of priority over subsequent applications for identical or similar marks in respect of identical or similar goods or services as from the date of filing of the application at the Patent Office. The applicant enjoys right of priority as from the date of a preceding application, provided that the application is filled in a due form in a member state of the World Trade Organization or in state party to Paris Convention for the Protection of Industrial Property, signed in Paris on 20 March 1883, as revised and amended. The right to a mark is an exclusive right.

Bulgarian law affords protection also for collective marks, i.e. marks held by an association of producers, traders or service providers, and the respective association is a legal person, and certification marks. Certification mark attests the material, manner of manufacture, quality or other characteristics of the goods or services produced or offered by persons with the consent and under the supervision of the proprietor of the mark. Some special rules regarding the use of these marks apply.

The right to a mark includes a right of the proprietor of the mark to use and dispose of the mark, and to prohibit other parties from unauthorized use in the course of trade of any sign which is identical with the mark of any goods or services that are identical with those for which the mark is registered; because of its identity with or similarity to the mark, and because of the identity or similarity of the goods or services covered by the mark with or to the sign, there exists a likelihood of confusion on the part of users, including the likelihood of association of the sign with the mark; or is identical with or similar to the mark of goods or services that are not identical with or similar to those for which the mark is registered, where the earlier mark has a reputation in the territory of Bulgaria and where the use of the sign without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier mark.

The right to a mark may be transferred, independently of the transfer of the commercial enterprise, in respect of all or some of the goods or services for which the mark is registered. In respect of jointly held marks, the right to a mark is transferred with the written consent of all joint proprietors, unless they agree otherwise. A transfer should be duly recorded in the State Register of Marks.

The proprietor of a mark may authorize the use of the mark in respect of all or some of the goods or services for which the mark is registered, and in respect of the whole or of part of the territory of Bulgaria by virtue of a written license agreement.

The duration of registration of a mark is ten years, reckoned from the filing date of the application. A registration may be renewed for an unlimited number of further ten-year periods according to the established procedures.

A community mark is a mark which is registered in the Office for Harmonization in the Internal Market (trade marks and designs) under the terms and according to the procedure established by Regulation (EC) No 207/2009. The Community trade mark has effect on the territory of Bulgaria and its proprietor enjoys the rights under respective national legislation. Application for Community trade mark may be filed either in the Office for Harmonization in the Internal Market or in the Bulgarian Patent Office.

Names of origin or indications for origin are considered **geographical indications**. First, a name of origin is the name of a country, or of a region or a specific location within that country, serving to designate goods that originate therein, and whose quality or characteristics are due essentially or exclusively to the geographical environment, including natural and human factors. Second, an indication of source is the name of a country, or of a region or a specific locality within that country, serving to designate goods that originate therein and whose quality, reputation or another characteristic is attributable to that place of origin. Geographical indications are granted legal protection through registration with the Patent Office.

The proprietor of a mark and the holder of an exclusive license have independent right of action for infringement. Administrative penalties are enforced on persons infringing rights under the Marks and Geographical Indications Act.

Industrial Designs

Industrial designs are covered by the Industrial Design Act (referred as “IDA”). In this respect, the Patent Office maintains the State Register of Industrial Designs which is public.

Industrial design is the visible appearance of the whole or a part of a product resulting from the characteristic features of the shape, lines, contours, ornamentation, colours, or a combination of all these.

A person who has created an industrial design has the right of authorship over this design. When an industrial design is created by more than one person, all persons are considered as joint designers and they all have authorship right. This right of authorship is unlimited in time and not transferable, and enjoys protection under IDA without prejudice to the protection it may be afforded under other legislation as well.

The right to an industrial design is acquired by means of registration of this design in the Patent Office as from the date of the filing of an application for registration. The right to an industrial design is exclusive. There are two prerequisites for an industrial

design to be registered by the Patent Office, namely, the design must be new and original.

All rights under the IDA may be transferred unless IDA specifies otherwise and any transfer is recorded in the State Register of Industrial Designs. The holder of the right to an industrial design may authorize the use of this design by means of a license agreement, where the license may be exclusive or non-exclusive.

Industrial designs may be internationally registered. By international registration, IDA recognizes, a registration effected by the International Bureau of the World Intellectual Property Organization according to the procedure established by the Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925, according to the Hague Act of 1960 or the Geneva Act of 1999 to the Hague Agreement.

A Community industrial design is a design registered with the Office for Harmonisation in the Internal Market (Trade Marks and Designs) under the terms and according to the procedure established by Council Regulation (EC) No 6/2002 on Community designs.

Administrative penalties are enforced to persons infringing rights under the IDA.

Topology of Integrated Circuits

The registration of topology of integrated circuits (referred in this section as “topology”), the rights arising out of such registration and the protection of these rights are covered by the Topology of Integrated Circuits Act. Protection is afforded to an original topology that is the result of its creators' own intellectual efforts and is not commonplace among the creators of topologies and manufacturers of integrated circuits at the time of its creation.

The State Register of Topologies is maintained by the Patent Office and contains data on all registered topologies and on all subsequent changes in relation thereto.

The right to a topology is acquired by registration in the Patent Office. The right to a topology is exclusive.

The right to a topology includes the right of the holder to exploit the topology, to dispose of it, and to prohibit third parties from exploiting it in the course of their commercial activities without his consent. The holder of the right to a topology may not prohibit the commercial exploitation of an integrated circuit or of a product incorporating such circuit in which the registered topology has been incorporated and which has been placed on the Bulgarian market by, or with the consent of, the holder of the right.

Further, the holder of the right in a topology may permit its exploitation by means of a license agreement.

The protection terminates ten years after the end of the calendar year during which it has become effective in accordance in accordance with the applicable legislation.

Claims under Topology of Integrated Circuits Act are within the jurisdiction of the Administrative Court of the City of Sofia.

New Plant Varieties and Animal Breed

Breeding, protection and use of new plant varieties and animal breeds are governed by the New Plant Varieties and Animal Breed Act. The bodies responsible for providing legal protection are the Executive Agency Plant Variety Testing, Approbation and Seed Control and the State Animal Breed Commission at the Ministry of Agriculture and Food Supply, and the Patent Office. The Patent Office maintains Register of Applications for Plant Varieties.

A person, who bred or discovered and developed a variety or a breed, is considered as the author (breeder) of the respective variety or breed.

Legal protection of a variety is granted when it is new, distinctive, uniform and stable. Legal protection of a variety is granted through a certificate. The exclusive right of the certificate holder in respect of reproductive or vegetative propagating material of a variety, protected by a certificate, includes the right of use, disposal of the certificate and the right of prohibiting other persons from using it without his consent. The right of use includes production or reproduction (multiplication); conditioning for the purpose of propagation; offering for sale; selling or other marketing; exporting; importing; stocking for any of the purposes mentioned before.

The applied for or protected with certificate variety may be subject to license agreement.

The application for certificate for a variety is submitted to the Patent Office and recorded in the Register of Applications for Plant Varieties.

International Agreements and Conventions to which Bulgaria is a Party and Date of Accession

- Paris Convention for the Protection of Industrial Property (13.06.1921)
- Convention Establishing the World Intellectual Property Organization (19.05.1970)
- Patent Cooperation Treaty (21.05.1984)
- Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (19.08.1980)
- Hague Agreement Concerning the International Deposit of Industrial Designs (11.12.1996)
- Madrid Agreement Concerning the International Registration of Marks (01.08.1985)
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (02.10.2001)
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (12.08.1975)

- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (12.08.1975)
- International Convention for the Protection of New Varieties of Plants (UPOV Convention) (24.04.1998)
- Strasbourg Agreement Concerning the International Patent Classification (27.11.2001)
- Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (27.02.2001)
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (27.02.2001)
- Locarno Agreement Establishing an International Classification of Industrial Designs (27.02.2001)
- Convention on the Grant of European Patents (European Patent Convention) (01.07.2002)
- Strasbourg Agreement Concerning the International Patent Classification (27.11.2001)

9. Energy and Mineral Resources

With installed capacity increasing more than fivefold in less than two years, Bulgaria is one of the fastest growing markets for wind energy in the world. Moreover, it has another 8,000 MW of wind projects in the pipeline. (Christian Kjaer, European Wind Energy Association Chief Executive, 2010¹⁹)

Energy

The Energy Act regulates the generation, import and export, transmission, transit transmission, distribution of electricity, heat and natural gas, oil and oil product transmission through pipelines, trade in electricity, heat and natural gas, as well as the powers of state bodies in formulating energy policy, regulation and control. The Ministry of Economy, Energy and Tourism is responsible for conducting the Bulgarian energy policy. Regulating State bodies in the energy sector are State Energy and Water Regulating Commission²⁰, Nuclear Regulatory Agency, and Energy Efficiency Agency. However, according to the Energy Act, the control in the sector is carried out by the Minister of Economy, Energy and Tourism and the State Energy and Water Regulating Commission.

The State Energy and Water Regulating Commission (referred in this section as “the Commission”) is vested with the powers to regulate the activities regarding electricity generation, transmission and distribution, natural gas transmission and distribution, trade in electricity and natural gas, heat generation and transmission. Among the powers of the Commission are the issuing, modification, supplement, suspension, termination and withdrawal of licences in the cases provided for in the Energy Act; drafting of the statutory instruments of secondary legislation in the energy sector and others. The Commission also regulates the prices at which producers sell electricity to the public provider and/or to public suppliers; at which producers sell heat to the heat transmission company and to directly connected consumers; at which the public provider sells any natural gas to end suppliers of natural gas and others.

Certain activities in the energy sector are subject to **licenses** under the Energy Act. These activities are the following:

- generation of electricity and/or heat;
- transmission of electricity, heat and natural gas;
- distribution of electricity or natural gas;
- storage of natural gas;
- trade in electricity;
- organizing an electricity market;
- public delivery of electricity or natural gas;

¹⁹ Source:

http://www.ewea.org/index.php?id=60&no_cache=1&tx_ttnews%5Btt_news%5D=1681&tx_ttnews%5BbackPid%5D=1&cHash=1c51ae8e8c

²⁰ The official website of State Energy and Water Regulating Commission:

<http://www.dker.bg/indexen.php>

- transit transmission of natural gas;
- electricity or natural gas supply from end suppliers;
- electric power grid management;
- traction power distribution over the railroad transportation distribution networks.

A license can only be issued to a legal entity that is duly registered in accordance with the Bulgarian Commerce Act. Further, license can be issued to legal entities incorporated and existing in accordance with the applicable legislation of a Member State of the EU or state party to the EEAA. In order to qualify for license, a legal person must also meet some additional requirements, *inter alia*, the entity must possess the technical and financial capabilities, material and human resources and organizational structure required to meet the regulatory requirements for performance of the licensed activity, holds real rights to the energy works whereby the activity is to be performed, furnishes evidence that the energy works whereby the licensed activity is to be performed meet the regulatory requirements for safe operation and environmental protection. The maximum term of a license is 35 years. It is important to note here that a single license may be issued for certain activities or detached area.

A license can be supplemented or amended on the Commission's own initiative (only in specific cases mention in the Energy Act) or following request by the holder of the license. If a person performs license activities without the necessary license, an administrative pecuniary penalty is imposed on such person.

Below the reader can found detailed information about the different energy sectors in Bulgaria and their regulations and specifics. A special emphasis is put on energy from the renewable sources.

Electric Power

All electric power objects on the territory of the state are interconnected and function in a single unified electric power system with common regime of operation and uninterrupted process of production, transformation, transmission, distribution and consumption of electric power energy. The electric power system comprise of power plants, transmission network, individual distribution networks and the electric installations of the consumers.

The production of electric power can only be carried out by companies which obtained license under the terms and procedures of the Energy Act. Electricity can be produced by various ways in Bulgaria. Currently, there is only one active nuclear power plant in Kozloduy with two active reactors. Second nuclear power plant in Belene is under construction. Besides, in a nuclear power plant, electricity in Bulgaria is produced in thermal power plants and hydropower plants. Further, Bulgaria is obliged by the EU by the year 2020 to produce at least 20% environmentally clean and renewable energy. Currently, various alternative energy sources are employed, for example, wind and solar light.

The transmission of electric power can be performed by a transmission company which owns the transmission network and which has obtained a license for transmission of electric power. The transmission and transformation of electric energy is a universally provided service which is managed by the electric power systematic operator. The distribution of electric power as well as the exploitation of the distribution network is performed by the distributor companies – owners of the distribution network for a detached area and holders of a license for distribution of electric power within the detached area. The distribution of electric energy is universally provided service.

Certain transactions with electric power specified in the Energy Act are done at prices regulated by the Commission while others are at freely negotiated prices and on an organized electric power market. Such transactions are effected in compliance with the provisions of the Energy Act and the respective trading rules (Market Rules) adopted by the Commission on a motion by the energy companies.

Heat Supply

The Energy Act defines heat supply as the process of generation, transmission, delivery, distribution and consumption of heat with water steam and hot water as a heat-transfer medium for household and business uses. Heat supply is implemented by means of facilities and installations. Below certain threshold of production capacity (up to 5 MW), no license is necessary for the heat production. The heat transmission network is operated by a heat transmission company. The operational management of the heat transmission system is performed by a heat transmission network operator which is a specialized unit of the heat transmission company. The heat transmission company is obligated to connect to the heat transmission network producers and consumers located within the relevant area specified by its licence for transmission of heat. Heat is distributed in a condominium project building on the basis of a share distribution system.

Heat is sold on the basis of written contracts under general conditions as the Energy Act explicitly specifies who can be a party to the contract.

Gas Supply

Gas supply refers to the sum of activities related to the transmission, transit transmission, storage, distribution and delivery of natural gas for the purpose of meeting the demand of consumers. The transmission of natural gas and the transmission network are operated by the transmission company licensed under the Energy Act. Transactions with natural gas are effected on the basis of written contracts in compliance with the provisions of the Energy Act and of the natural gas trading rules adopted by the Commission.

Energy from Renewable Sources

It may be useful for investors to know that Energy Efficiency and Renewable Sources Fund was established in Bulgaria under the Energy Efficiency Act adopted by the

Bulgarian Parliament in February 2004. This fund combines various capacities - a lending institution, a credit guarantee facility and a consulting company. More information about its activities and project can be found on its website.²¹

Apart from the Energy Act, there is Energy from Renewable Sources Act (ERSA), which regulates the production and consumption of electricity, heating and cooling from renewable sources; gas from renewable sources; and biofuels and energy from renewable sources in transport. Among the main purposes of the ERSA are promotion of production and consumption of energy produced from renewable sources and promotion of the production and use of biofuels and energy from renewable sources in transport.

Bulgaria is obliged by the EU that by year 2020, at least 20% of the produced energy would be of renewable sources. The state policy in this area is conducted by the Minister of Economy, Energy and Tourism whereas the Council of Ministers adopts a national action plan for energy from renewable sources.

Investment intentions for the construction of energy facilities for production of energy from renewable sources must be preceded by an assessment of availability and estimated potential resource of the energy from a renewable source which is intended to be used in the production of energy in the future energy facility.

Producers of electricity from renewable energy sources, whose energy projects are with total installed capacity over 30 kW conclude a contract for access with an operator of the transmission or the distribution electricity network under general terms and conditions approved by the Commission and announced on the website of the operator of the respective distribution network prior to concluding the contract for purchase of electricity.

Electricity from renewable sources is purchased by the public provider, the end suppliers respectively, at the preferential price set by the Commission, effective as of the date of preparation of a statement of findings on the completion of the energy project. Electricity from renewable resources is purchased based on long-term purchase contracts signed for a term of twenty years - for electricity produced from geothermal and solar energy, as well as for electricity, produced from biomass; twelve years - for electricity, produced from wind energy; fifteen years - for electricity produced by hydroelectric power plants with installed capacity up to 10 MW, as well as for electricity produced from other types of renewable sources.

The Commission sets on annual basis, by June, 30 of each year, preferential prices for purchase of electricity produced from renewable energy sources, with the exception of electricity produced by hydroelectric power plants with installed capacity over 10 MW.

Biofuels and their derivatives in transport are consumed either in pure form or as blending components of liquid fuels of crude oil origin. Under ERSA, bioliquids are

²¹The website of the Fund is <http://www.bgeef.com/display.aspx>

used for production of electricity, heating and cooling, provided they meet the sustainability criteria.

Blending of biofuels with liquid fuels of crude oil origin can only be done in the tax warehouses licensed pursuant to the Excise Duties and Tax Warehouses Act.

Control over the quality of biofuels and their blends with liquid fuels of crude oil origin, as well as of bioliquids, is exercised by the Chairman of the State Agency for Metrological and Technical Surveillance.

Mineral Resources

Bulgaria is rich in mineral resources such as lignite and anthracite coal, non-ferrous ores such as copper, lead, and zinc. It possesses large deposits of manganese ore and relatively smaller deposits of iron, silver, chromites, nickel and others. Bulgaria has abundant non-metalliferous minerals such as rock-salt, gypsum, kaolin, and marble.

Prospecting, exploration and extraction of subsurface resources on the territory of the Republic of Bulgaria, its continental shelf and the exclusive economic zone in the Black Sea is governed by the Subsurface Resources Act. Subsurface resources are considered mineral resources and mining waste resulting from extraction and primary processing which are grouped as:

- metalliferous mineral resources;
- non-metal mineral resources - industrial minerals;
- oil and gas;
- solid fuels;
- building materials;
- facing-stone materials;
- mining waste.

Licenses for prospecting and exploration and for exploration and concessions for extraction is granted to natural and legal persons who have been duly registered as engaged in commercial activity, and who can prove that they have the required management and financial capacity to pursue the relevant activities. Procedures for granting of licences for prospecting and exploration and for exploration and for granting of concessions for extraction must be carried out in compliance with the principles of transparency, publicity and competition. Licenses for prospecting and exploration can only be granted for one of the groups of subsurface resources listed above. Then, the concession for extraction is also granted for a specific deposit of subsurface resources mentioned above with established reserves and/or for separate parts thereof (sections).

10. E-commerce

“Bulgaria is ranked among Top 5 in the world, regarding the quality of its Internet. E-commerce in Bulgaria is speeding up.” Vladimir Sabev²²

Bulgaria is keeping pace with new developments in the information technology sector. Taking account of these developments and the ongoing globalization of the economy, e-commerce is speeding up and represents a fair part of the trade in Bulgaria.

The Electronic Commerce Act (referred as “ECA”) regulates public relations, which are related to the realization of the electronic commerce in Bulgaria. The Commission for Consumer Protection is vested with the task of controlling the observance of ECA. For the purposes of the ECA, electronic commerce means providing services for the information society. Services for the information society are defined in the Act as services, which are usually performed for consideration and are provided from a distance by electronic means upon an explicit declaration of the recipient of the service. The services for the information society must be provided freely, unless otherwise is provided by the ECA.

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

The service provider is required upon an offer for concluding a contract through electronic means to inform in advance the service recipient in a clear, comprehensible and unambiguous manner about the technical steps of the conclusion of the contract and their legal consequences, if or if not the contract will be kept by the service provider and what will be the way to access it; the technical means for identifying and correcting input errors, before the statement for conclusion of the contract has been made; languages, offered for the conclusion of the contract. The service provider is under the obligation to indicate the way for electronic access to the Ethic code for behaviour that he observes. Further, the ECA sets a clear obligation for the service

²² Vladimir Sabev, translation Zhivko Stanchev, *E-Commerce in Bulgaria speeding up*, October 18, 2011, available at http://bnr.bg/sites/en/Economy/Pages/181011_E_commerce.aspx

provider to place at recipient's disposal the general terms and the content of the contract in a way that allows him to store and reproduce them.

The requirements for commencement and performance of the activity for providing information society services are regulated by the law of the country where the place of business of the service provider is, if it is within the territory of a Member State of the European Union.

Persons who violate the ECA are subject to administrative penalty payments unless the act performed constitutes a criminal offence. There are different fines for the different violation which generally start from BGN 200 (approx. € 100) and the maximum imposed penalty is about BGN 4,000 (approx. € 2050).

11. Privacy and Data Protection

The privacy of every Bulgarian citizen is a constitutionally guaranteed right. Article 32 of the Constitution of the Republic of Bulgaria sets the general right for citizens to be protected against any illegal interference in their private or family affairs and against encroachments on their honour, dignity and reputation. Further, the Constitution sets that no one shall be followed, photographed, filmed, recorded or subjected to any other similar activity without his knowledge or despite his express disapproval, except when such actions are permitted by law.

The legal framework protecting privacy and personal data comprise of international instruments, EU Directives and national legislations. Among the landmark international instruments are the Universal Declaration of Human Rights (1948), Convention 108 of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981), the Convention for Protection of the of Human rights and Fundamental freedoms (1950). Relevant directives in this area are Directive 95/46/EC, Directive 2002/58/EC, and Directive 2009/136/EC. In order to provide comprehensive protection for its citizens, in 2002, Bulgaria adopted the Personal Data Protection Act. The Bulgarian Commission for Personal Data Protection is the state authority vested with supervisory power.

The Personal Data Protection Act (referred as “PDPA”) regulates the protection of rights of individuals with regard to the processing of their personal data, and guarantees the inviolability of personality and privacy by ensuring protection of individuals in case of unauthorised processing of personal data relating to them, in the process of free movement of data. This Act applies to the processing of personal data by automated means and non-automated means where the data form or are intended to form a part of a register.

The PDPA has broad scope of application. It applies to processing of personal data where the personal data controller (referred as “controller”):

- is established on the territory of the Republic of Bulgaria;
- is not established on the territory of the Republic of Bulgaria but the state is bound to apply this PDPA by virtue of international public law;
- is not established on the territory of an EU Member State, nor in another member country of the EEA but, for the purposes of such processing, making use of means located on the territory of Bulgaria, unless such means are being used exclusively for transit purposes; in such a case the controller must designate a representative having an establishment on the territory of the Republic of Bulgaria.
- the PDPA also applies to the processing of personal data for defence, national security and public order purposes as well as for the purposes of criminal justice; insofar as this is not governed by special laws. The data processing is to be monitored by the relevant state authority.

Personal data may only be processed provided that at least one of the following conditions is met:

- processing is necessary in order to comply with an obligation imposed on the controller by certain legislative act;
- the individual to whom such data relate has given their explicit consent;
- processing is necessary for the fulfilment of obligations under a contract to which the individual to whom such data relate is a party, as well as for any activities initiated by the same individual prior to the conclusion of such a contract;
- processing is necessary in order to protect the life and health of the individual to whom such data relate;
- processing is necessary for the performance of a task carried out in the public interest;
- processing is necessary for the exercise of an official authority vested by law in the controller or in a third party to whom the data are disclosed;
- processing is necessary for the realisation of the legitimate interests of the controller or a third party to whom the data are disclosed, except where such interests are overridden by the interests of the individual to whom such data relate.

The personal data controller must file an application for registration prior to commencing the processing of personal data and the Commission for Personal Data Protection registers the respective controller in a special register. A controller may only start processing the data following the filing of the application for registration.

The controller is obliged to take appropriate technical and organisational measures to protect the data against accidental or unlawful destruction, or against accidental loss, unauthorised access, alteration or dissemination, and against other unlawful forms of processing. In addition, the controller must take special protection measures where processing involves the transmission of data over an electronic network.

Personal data may be transferred by the controller to one or more processors. However, prior to the transfer the Protection of Personal Data Commission has to be notified. If the personal data is transferred to a processor outside the EU or EEA, the Protection of Personal Data Commission has to make an assessment whether this third country ensures adequate protection for personal data. A transfer may be carried out after the Commission has determined that the level of protection of personal data is adequate.

Individuals are entitled under the PDPA to access to personal data related to them. The provision of personal data by the controller to foreign natural or legal persons or to foreign government authorities is allowed upon approval by the Commission for Personal Data Protection, if the legislation of the recipient country guarantee a level of data protection that is better or equivalent to that provided under PDPA. The Commission for Personal Data Protection notifies the European Commission and respective authorities from other Member States for such issued decisions.

In case an individual's rights under PDPA are infringed, he or she may notify the Commission for Personal Data Protection within one year of the date when he has become aware of such infringement but not later than five years of the date when

such infringement has taken place. The Commission then issues a decision within 30 days from the date when the matter was referred to it and may issue binding prescriptions, set a time limit to remedy the infringement or impose an administrative penalty. The decision of the Commission is subject to appeal within 14 days of its receipt in accordance with the procedure provided for by the Code of Administrative Procedure. Any individual may, in case of an infringement of his or her rights under this Act, appeal against actions and acts of the controller before the relevant administrative court or the Supreme Administrative Court, as the case may be, in accordance with the general rules governing jurisdiction.

12. Concessions & Public Procurement

Concessions were a reliable stimulus for partnership between the public and the private sectors in Bulgaria as early as the end of the nineteenth century in Bulgaria.²³

This section covers the regulation of concessions and public procurements in Bulgaria.

Concessions

The applicable legislation which currently governs the the terms and procedure for the granting, performance and termination of concessions is the Concession Act which has been in force since June 2006. Bulgarian legislation in this field is harmonized with the EU legislation. National Concession Register keeps track of all the concluded agreements for concession.

The Concession Act defines a concession as the right to exploit a facility and/or a service of general interest, conceded by a concession granting authority to a merchant - concessionaire, under the concessionaire's obligation to construct and to manage, and maintain the subject of the concession or to manage the service at the concessionaire's own risk. A concession can only be granted on the basis of a long-term agreement in a written form involving a particular material interest, concluded between the concession granting authority and the concessionaire. Depending on its object, a concession may be: (a) public works concession; (b) public service concession; (c) extraction concession. The maximum term of a concession is 35 years.

First, the public works concession has as its object the partial or total building of the subject of the concession and the management and maintenance of the said subject after its commissioning, with the consideration consisting in the concessionaire's right to exploit the subject of the concession or in that right and compensation on the part of the concession granting authority under the respective provisions of the Concession Act. The concessionaire's right to exploit the subject of the concession includes the provision of a service of general interest and/or the performance of other economic activities in consideration of obtaining revenue.

Second, a service concession has as its object the management of a service of general interest at the concessionaire's own risk, with the consideration consisting in the concessionaire's right to exploit the service or in that right and compensation on the part of the concession granting authority under the respective provisions of the Concession Act. The concessionaire's right to exploit the service of general interest includes the provision of services and/or the performance of other economic activities against obtaining revenue.

Third, an extraction concession has as its object the exploitation of natural resources by means of extraction effected on resources ensured by the concessionaire and at the concessionaire's own risk. Subsurface resources extraction concession is granted under the terms and according to the procedure established by the Subsurface

²³ Source: <http://www.conces.government.bg/show?action=1&lang=2>

Resources Act. As a matter of principle, the Concession Act applies to the performance and termination of a subsurface resources extraction concession, save insofar as otherwise provided for in the Subsurface Resources Act.

The Concession Act specifies that a mineral water extraction concession has as its object the use of mineral water by means of water abstraction. Such a concession is granted under the terms and according to the procedure established by the Concession Act, save insofar as otherwise regulated in the Water Act.

A concession is granted for the following subjects of general public interest:

- facilities declared to constitute exclusive state property;
- facilities, estate or part of estate constituting public state property or public municipal property;
- facilities, estate or part of estate constituting private state property or private municipal property;
- facilities or parts of estate owned by a body governed by public law.

Grantor of any concession under the Concessions Act may be the Council of Ministers, for assets constituting state property; or the Municipal Council, for assets constituting municipal property; or a public law organization, represented by a body in accordance with its act of establishment – in regard to facilities in its ownership; or water supply and sewage associations established under the Water Act.

The granting of a concession includes taking preparatory steps, then, conducting a concession granting procedure, and lastly, conclusion of a concession agreement. The concession granting procedure includes adoption of a decision to initiate a concession granting procedure; conducting an open procedure for granting a concession, and finally a selection of a concessionaire. Below attention will be paid to the concession granting procedure, choosing of a concessionaire and concluding an agreement with a concessionaire.

Concession Granting Procedure

Some basic principles must be observed in the process of granting a concession, and namely, public openness and transparency, free and fair competition, and equal treatment of all participants in the concession granting procedure and non-discrimination. The law explicitly provides that the concessionaire must be elected through an open procedure. The commission responsible for conducting the concession granting procedure conducts a selection of all the candidates permitted to participate in the procedure on the basis of criteria set in the Concession Act. When conducting a concession granting procedure, the criterion applied in the evaluation of participants' proposals is the most economically advantageous proposal. The most economically advantageous proposal is determined on the basis of an integral evaluation of the tender under the criteria specified in the decision and in the notice of initiation of a concession granting procedure. The procedure and time limits for organizing and conducting a concession granting procedure is established by the Regulations for Application of this Act.

Choosing a Concessionaire

The authority which organizes the conduct of the concession granting procedure submits to the concession granting authority a report and a draft decision on selection of a concessionaire within a time limit determined by the order on appointment of the commission responsible for the concession. The memorandum of the commission, containing all reasoned decisions of this commission, is attached to the report. On the basis of the report and the memorandum of the commission, after an individual review of the facts and circumstances set forth therein, the concession granting authority adopts a decision on selection of the highest ranked tenderer as a concessionaire.

Concluding Concession Agreement

The concession agreement is concluded without conduct of negotiations in accordance with the draft included in the documents for the bid and with the tender proposal of the highest ranked tenderer. In the cases where the best-ranked participant in the concession procedure declines to conclude the concession agreement, the agreement may be concluded after holding negotiations with a view to improving the proposals as per the comprehensive tender evaluation criteria. The said negotiations are conducted with the second ranked participant. The concession agreement is concluded in writing in at least three originals: one for each of the parties and one for the National Concessions Register. The concession agreement is terminated upon expiry of the period of the concession.

Public Procurement

Public private partnership in Bulgaria is basically regulated by the Public Procurement Act. The Minister of Economy, Energy and Tourism carries out the state policy in this area. Public Procurement Agency assist the Minister of Economy, Energy and Tourism in the implementation of the state policy in the sphere of public procurement. All public procurements are recorded in the Public Procurement Register which is public.

The Public Procurement Act establishes the principles, terms and procedure for the award of public procurements for the purpose of ensuring efficiency in the spending of on-budget and off-budget resources, as well as of the resources associated with the carrying out of relevant public activities specified in the Act. As with concessions, the basic principles which must be observed in granting public procurements are public openness and transparency, free and fair competition, equality and non-discrimination.

Subject matters of public procurement can be:

- supply of goods, performed by means of purchase, lease, rental with or without option to buy, or hire purchase, as well as all preliminary operations as will be necessary for the actual use of the products, such as installation, testing of machinery and plants, etc.;
- provision of services;

- works, including:
 - (a) building or civil engineering (design and construction) of building works;
 - (b) realization or design and execution, by whatever means, of one or several construction and installing works covered under the Procurement Act annexes, related to the construction, redevelopment, remodelling, maintenance, restoration or rehabilitation of buildings or construction facilities;
 - (c) integrated engineering services and realization, by whatever means, of one or more activities related to construction of building works in compliance with the requirements of the contracting authority, such as feasibility study, design, organization of building, supply and installation of machinery, plants and technical equipment, preparation and commissioning of works.

The following may be contracting authorities:

- the state bodies such as the President of the Republic of Bulgaria, the Bulgarian National Bank, as well as other state institutions established by a statutory instrument;
- the diplomatic missions and the consular posts of the Republic of Bulgaria abroad, as well as the permanent missions of the Republic of Bulgaria to the international organizations;
- bodies governed by public law;
- the combinations formed by parties referred above;
- the public undertakings and any combinations thereof, where carrying out one or several of the specified by the law activities;
- the merchants and other persons which are not public undertakings, where carrying out one or several of the activities covered under Articles 7a to 7e herein on the basis of special or exclusive rights.

Contracting authorities are obligated to conduct a public procurement award procedure where the grounds provided for in the law exist. Contracting authorities or officials authorized thereby organize and conduct the public procurement award procedures and conclude public procurement contracts. Authorization may not be used to split public procurements for the purpose of circumventing the application of the law.

The terms and procedure for public procurement awards, established in the Public Procurement Act, are applied compulsory upon award of public procurements which have the following values, free of value added tax:

- in respect of works: not less than BGN 2,150,000 and, where the place of performance of the procurement is outside Bulgaria, not less than BGN 6,000,000;
- in respect of supplies: not less than BGN 180,000 and, where the place of performance of the procurement is outside Bulgaria, not less than BGN 250,000;
- in respect of services: not less than BGN 110,000 and, where the place of performance of the procurement is outside Bulgaria, not less than BGN 250,000;
- design contest: not less than BGN 110,000.

The value of a public procurement is fixed as of the date of the decision to initiate a public procurement award procedure.

Public procurements can be awarded by means of:

- an open procedure, in which all interested parties may submit tender proposals;
- a restricted procedure, in which only qualified candidates invited by the contracting authority may submit a tender proposal;
- a competitive dialogue, in which any interested party may request to participate and whereby the contracting authority conducts a dialogue with the qualified candidates admitted to that procedure, with the aim of developing one or more suitable alternatives capable of meeting the requirements of the contracting authority, and on the basis of which the contracting authority invites the candidates with suitable alternatives to tender.
- negotiated procedures can be:
 - (a) a negotiated procedure with publication of a contract notice, whereby the contracting authority conducts negotiation for determination of the terms of the contract with one or more qualified participants selected by the contracting authority;
 - (b) a negotiated procedure without publication of a contract notice, whereby the contracting authority conducts negotiations for determination of the terms of the contract with one or more specific persons.

Common Rules for Public Procurement Award

Contracting authorities dispatch a prior information notice of all public procurement award procedures which they envisage to initiate during the following twelve months to the State Gazette for publication on its Internet site and to the Agency for entry into the Public Procurement Register or publish such prior information notice on the buyer profile:

- for supply of goods and for services under specified under the Public Procurement Act, differentiated by category, where the total value, free of value added tax, for the relevant category of goods or services, is greater than BGN 450,000;
- for works, where the total value of the procurement, net of value added tax, is greater than BGN 2,150,000 and, where the place of performance of the procurement is outside Bulgaria, greater than BGN 6,000,000.

The contracting authority adopts a decision to initiate a public procurement award procedure, whereby the contracting authority approves the contract notice and the contract documents. Any such decision and notice is dispatched to the Public Procurement Agency for registering into the Public Procurement Register on an electronic data medium as well.

The contracting authority appoints a commission for the conduct of a public procurement procedure, designating its composition and choosing members.

The contracting authority selects the supplier, contractor or service provider of the public procurement on the basis of evaluation of the tender participants under one of the following criteria as indicated in the notice: the lowest price tendered, or the most economically advantageous tender.

Public Procurement Contracts

The contracting authority concludes a written public procurement contract with the tenderer who or which has been selected as supplier, contractor or service provider as a result of the procedure conducted. The public procurement contract includes compulsorily all proposals contained in the tender of the tenderer on the basis of which the said tenderer has been selected as supplier, contractor or service provider. Public Procurement contracts of indefinite period are not allowed. The parties to a public procurement contract may not amend the contract, subject to very restricted exceptions specified in the Public Procurement Act.

Common Rules for Participation in Public Procurement Award Procedure

Every candidate or participant that complies with the previously announced criteria of the public procurement procedure can participate in its award. In preparing the tender proposal, each tenderer must strictly observe the terms and conditions announced by the contracting authority. Each participant or candidate can submit only one tender proposal. The tender proposal must be submitted in an sealed opaque envelope by the tenderer or by an authorized representative thereof, in person or by registered mail with advice of delivery. Each candidate or tenderer provides a guarantee for participation in the public procurement award procedure, and the candidate or tenderer that has been selected as supplier, contractor or service provider, provides also a performance guarantee upon signature of the contract.

Framework Agreements

These are agreements concluded between one or more contracting authorities and one or more potential suppliers, contractors or service providers of public procurements. The purpose of these framework agreements is to pre-establish the terms governing the contracts which the parties intend to conclude during a given period not longer than four years, in particular with regard to the prices and, where appropriate, the quantity envisaged. In exceptional cases, the period of a framework agreement may exceed four years, and the contracting authority indicate the justification of this in the contract notice. A framework agreement may not be concluded or applied if it prevents, restricts or distorts competition.

Project Contest

The Public Procurement Act applies to project contests organized as part of a procedure for the award of a public procurement of service or with prizes and/or payments to participants in the contest. Such contest must be organized for acquisition of:

- a spatial-development concept for preparation of a spatial-development scheme, a spatial-development plan, a land-distribution plan, or a forest-management project;
- a conceptual project for the preparation of projects, including landscape, architectural, structural, technological, utility-system designs, as well as designs for works of art and for restoration and renovation of cultural property;
- designs in the sphere of data processing;
- other designs.

Control over the compliance of public procurements with the provisions of the Public Procurement Act is exercised by the National Audit Office and by the authorities of the Public Financial Inspection Agency.

Under the rules and procedures, envisaged by the Public Procurement Act and the Concessions Act, the Commission on Protection of Competition examines the appeals on lawfulness of a decision, actions or lack of actions/omissions of the contracting authorities or concessioners in the public procurement or concession awarding procedure.

13. Media and Telecoms

EU has passed several directives setting legislative framework for regulation of media services among which are the Audiovisual Media Service Directive and the Framework Directive 2002/21/EC that are of significant importance for the sector. Bulgaria, as part of the EU, transposed the directives into national legislation. In this regard, in order to comply with the Framework Directive 2002/21/EC, electronic communication and contents are governed by different legislative acts in Bulgaria – The Electronic Communications Act and the Radio and Television Act. Therefore, different bodies are also responsible for supervising the compliance with the applicable legislation. In this regard, the Communications Regulation Commission implements the state sector policy in the field of telecommunications services. Communications Regulation Commission is a specialized independent state authority, entrusted with the functions of regulation and control over the carrying out of the electronic communications. Whereas, the Council for Electronic Media²⁴ is an independent specialized body which regulates media services in Bulgaria.

Media Services

The Radio and Television Act (referred as “RTA”), defines media services as audiovisual media services and radio services. Audiovisual media service/radio service means a service a which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of audiovisual programmes/radio programmes in order to inform, entertain or educate the general public by electronic communications networks. A media service provider may be a sole-trader natural person or a legal person who or which has editorial responsibility for the choice of the content of the media service and determines the manner in which the said service is organized. Under the Radio and Television Act, there are two categories of media service providers: public and commercial.

Under the RTA broadcasters may be entities registered under Bulgarian legislation, or entities registered under the legislation of EU Member State or of another state party to the EEAA. There is no legislative prohibition for foreigners to participate in broadcasting activities in Bulgaria provided that they perform this activity in one of the above mentioned forms. Thus, they must register an entity in Bulgaria or in a member state of the EU or EEA.

Bulgarian law does not provide special regulation in relation to the cross-ownership of media companies. The RTA, however, provides that national radio and television broadcasting licences shall not be granted to entities or their related parties that hold local or regional licences, except in the event that they relinquish said licences.

Licenses

Radio and television broadcasting activities for the creation of programmes intended for distribution over electronic communications networks, where a scarce - radio spectrum is used is performed only on the basis of individual licenses issued for a

²⁴ Official website of the Council for Electronic Media: <http://www.cem.bg/en/>

period of 15 years, which may be further extended for up to 25 years. Licenses are issued by the Council for Electronic Media. Licenses are personal and can only be transferred upon permission of the Council for Electronic Media subject to satisfaction of the requirements to the persons for initial licensing. Licenses are issued upon submission of application by the candidate for license and when the respective accompanying documents are also submitted.

Licence for pursuit of radio and television broadcasting activities through use of existing and/or new electronic communications networks for analogue terrestrial broadcasting shall be granted after a contest is being held.

When radio frequency spectrum is needed for broadcasting, its availability is examined through coordination between the Council for Electronic Media and the Communications Regulation Commission and a tender procedure is only carried out for the issuance of a licence for broadcasting activities by the Council for Electronic Media .

Broadcasting through cable and satellite requires only registration made through an application submitted with the Communications Regulation Commission. Nonlinear services are subject to simple notification to the Council for Electronic Media. Licensing fees vary from € 564 to € 1,718 depending on the activity (radio or TV), the broadcasting level (local, regional or national) and the number of citizens in the area covered by the licensed or registered activity. In addition, there is an annual supervision fee of between € 1,026 and € 2,051. The annual licence fee is payable in four instalments due by 31 March, 30 June, 30 September and 30 November of the respective year. The licensing procedure usually takes about 10 month.

Content Requirement

The programme services are in the official Bulgarian language, according to the Constitution of the Republic of Bulgaria. There are exceptions to this rule in case, for example, when the programme is distributed for educational purposes or it is intended for Bulgarian citizens whose mother tongue is other than the Bulgarian language.

Pursuant to the RTA, at least 50 per cent of the total annual programme time, except for news, sport programmes, radio and TVgames and markets, advertisements and teletext, must be intended for European productions, if this is practically possible, and at least 12 per cent of the total annual programme time must be intended for European productions created by foreign producers. The Council for Electronic Media maintains a public register for all undertakings broadcasting Bulgarian and foreign programmes. Undertakings that distribute Bulgarian and foreign programme services are obligated to provide the CEM, once every six months, with an updated list of the programme services distributed and the documents related to acquisition of the distribution rights for programme services and acquisition of the distribution rights for works, phonograms and recordings of audiovisual works included in the programme services that are distributed. Failure of undertakings to provide information in a timely fashion or provision of misleading or incomplete information

is sanctioned with a property fine of BGN 3,000 to BGN 7,000. Distribution of programmes without duly established rights is sanctioned with a property fine of BGN 7,000 to BGN 30,000.

Advertising

Broadcast media advertising and related prohibitions are regulated by a number of acts such as the RTA, ECA, Competition Protection Act (CPA), Consumer Protection Act, Health Act, Gambling Act and Religious Beliefs Act.

The following advertising is not allowed:

- misleading and comparative advertising;
- hidden advertising;
- advertising based on pornography or discrimination, or advertising inciting violence or humiliation of human dignity;
- advertising that uses state symbols such as the coat of arms or the hymn;
- advertising that promotes behaviour which is harmful for health; or
- advertising that poses a threat to citizens security.

Advertising must comply with the free competition requirements and the Commission for Protection of Competition strictly observes the adherence to this legal obligation. Advertising cigarettes and smoking is not permitted under Bulgarian legislation. Besides, advertising alcoholic beverages is subject to special regulations such as the direct advertising is prohibited while the indirect advertising may be broadcasted only after 22 pm (excluding advertising of beer and wine).

Sector-specific laws provide additional restrictions. In addition to the restrictions, broadcasters have to comply with certain time limitations that refer to the length of the advertising and the admissible amount of interruption of a programme per hour. The same rules apply to online advertising.

Telecommunications

The Electronic Communications Act (referred as "ECA") regulates electronic communications which are performed by conveyance, emission, transmission or reception of signs, signals, written text, image, sound or message of any nature by wire, radio waves, optical or other electromagnetic medium.

The state bodies competent in the electronic communications sector are the Council of Ministers, the National Radio Frequency Spectrum Council, the Minister of Transport, Information Technologies and Communications and the Communications Regulatory Commission.

The Bulgarian electronic communications market was liberalized upon the expiration of the Bulgarian Telecommunication Company monopoly over provision of fixed voice telecommunications services, leased lines and cross-border voice transfer on 1

January 2003. Since then, there are no services that are granted exclusively to one operator, nor is the number of licences limited.

Electronic communications are provided after notification and after the receipt of an authorization for use of an individually assigned scarce resource, complying with the requirements of the ECA. The Communications Regulation Commission grants an authorization for use of an individually assigned scarce resource - radio spectrum after conducting a contest or tender in the cases where the number of candidates is greater than the number of persons that are eligible to obtain an authorization for the relevant available scarce resource.

Telecoms - fixed infrastructure

There are no restrictions under the Bulgarian legislation as to the ownership of cable networks by telecoms operators.

Providers are free to negotiate access and interconnection and conclude agreements to that respect in writing. A copy of the executed agreement must be provided to the Communications Regulation Commission. At its own discretion the Communications Regulation Commission may impose, maintain, amend or withdraw specific obligations on undertakings with SMP on a relevant market to provide efficient access, interconnection (or both) and interoperability of services in order to benefit end-users and encourage effective competition. The obligations may be imposed for the purposes of transparency, non-discrimination, accounting separation, access to and use of specific network facilities as well as price control and cost accounting obligations. If a transparency obligation is imposed together with a non-discrimination obligation, the Communications Regulation Commission may oblige the respective provider to publish a reference interconnection offer (RIO). The Communications Regulation Commission further approves the RIO or obliges the provider to amend it.

The Communications Regulation Commission may control the wholesale (interconnect) prices by issuing a decision to impose an obligation on a company with SMP.

The Communications Regulation Commission is entitled to resolve disputes between operators. Decisions of the Commission may be appealed before the Supreme Administrative Court within 14 days as of the date of notification of the interested parties.

Telecoms- mobile

In cases where the provision of electronic communications services requires an individually assigned radio spectrum, permission has to be issued by the Communications Regulation Commission. Permission is granted to the operators on a competitive basis following a tender or an auction. Permissions are issued on non-competitive basis in a number of cases explicitly specified in the ECA:

- for the needs of the state authorities;

- for foreign diplomatic missions;
- for carrying out electronic communication services for personal needs;
- if the number of candidates is smaller or equal to the number of persons that may be granted individual rights;
- for the provision of electronic communications through analogue terrestrial radio transmitters, following a decision of the CEM;
- and
- temporary permission (for a term not longer than six months).

Radio frequency spectrum is assigned after a frequency planning, examination of the electromagnetic compatibility and national and international coordination. According to the ECA, the number of the issued permissions for use of radio frequency spectrum could be restricted on grounds of effective spectrum usage, enhancing the advantages for consumers or promoting of competition. Additional individually assigned frequency resource could be granted only when operators have proven a necessity for extension, modernisation and development of their own electronic communication network, and the respective network allows it, and the assigned frequency spectrum has been already effectively utilised. Temporary permissions for use of radio frequency spectrum for a term no longer than six months may be granted by the Communications Regulation Commission for advertising, testing of new technical equipment or newly established electronic communication networks before their actual putting into operation or for testing of new technical methods or technologies, as well as for short-term events.

The distribution of the radio frequency spectrum is set out in the National Plan for Distribution of Radio Frequency Spectrum to radio frequencies and radio frequency bands for civil needs, national security and defence needs, as well as for their joint usage (the National Frequency Plan). The National Frequency Plan is prepared by the Council for National Frequency Spectrum and adopted by the Council of Ministers following a specific procedure involving national and international coordination and harmonisation. The concrete allocation of radio spectrum and radio spectrum bands for civil needs is made after a public discussion. The assignment of unused radio spectrum is not subject to regulation. However, the policy in the sphere of electronic communications envisages further development of the existing legislation in order to ensure more flexible and effective usage of the radio frequency spectrum. The CRC might modify the conditions of the issued permission in cases of ineffective utilisation of the radio frequency assigned. The ECA contains a general provision that, with respect to the right to use radio frequencies and radio frequency bands, there are no restrictions regarding the type of services or used technologies. Each particular permission for use of individually assigned radio frequency specifies the type of service or electronic communication network or technology for which the radio spectrum is assigned, the exact radio frequency assigned, the territorial range (if applicable) and the parameters for its effective utilisation. The allocation of radio spectrum frequencies for the needs of state authorities is set out in the National Frequency Plan but their assignment and use is not subject to regulation by the ECA.

Directly applicable in Bulgaria to the wholesale and retail charges of international mobile roaming is Regulation (EC) No. 544/2009 of the European Parliament and of the Council of 18 June 2009 amending Regulation (EC) No. 717/2007 on roaming on public mobile telephone networks within the Community and Directive 2002/21/EC. Recent changes in the ECA aimed at bringing it into conformity with the amended Regulation supplemented the variety of offences for which sanctions amounting up to 2 million leva may be imposed.

Currently, there are three mobile operators in Bulgaria and all of them operate operating under the GSM/ UMTS standard. A procedure for fourth operator has been launched. Mobile numbers are portable between the operators.

14. Environmental Law

The effective protection of the environment requires not only isolated local actions but interconnected multinational efforts. The EU, to which Bulgaria is a Member State, has some of the highest environment standards in the world, developed over decades and addressing a wide range of issues. Thus, environmental protection is regulated by various national, EU as well as international legal instruments.

The Constitution of the Republic of Bulgaria set forth that the state ensures protection and reproduction of the environment, the conservation of living Nature in all its variety, and the sensible utilization of the country's natural and other resources. The Environmental Protection Act is the general legal act that regulates the protection of the environment. Besides, there is a number of sector-specific legislative acts that cover the protection of these respective sectors such as the Biodiversity Act, the Medicinal Plants Act, the Genetically Modified Organisms Act, the Waters Act, the Waste Management Act, and others. The enacted legislation affect industry on various environmental matters such as pollution or contamination of the air, land and water, soil, toxic substances, hazardous wastes, and transportation of dangerous goods and spills.

As it is evident environmental protection is a very broad topic that is covered by a wide scope of legislation. For the purpose of this Guide, attention will be paid only to certain provisions of the Environmental Protection Act (referred as "EPA").

The Ministry of the Environment and Waters is responsible for implementing the state policy in this area and it is assist by various government authorities such as the Executive Environmental Agency, the Regional Inspectorates of the Environment and Water, the Basin Directorates, the National Parks Directorate. The authorities are vested with broad monitoring and inspecting powers and natural and legal persons are obligated to afford immediate access to all sites and areas and render assistance to the above mentioned authorities for the purpose of conduct of inspection, for measurement or sample taking from existing or potential sources of environmental pollution and/or environmental damage.

The EPA sets that environmental protection is based on the following principles:

- sustainable development;
- prevention and reduction of risk to human health;
- priority of pollution prevention over subsequent elimination of pollution damage;
- public participation in and transparency of the decision making process regarding environmental protection;
- public awareness regarding the state of the environment;
- polluter pays for damage caused to the environment;
- conservation, development and protection of ecosystems and the biological diversity inherent therein;
- restoration and improvement of environmental quality in polluted and disturbed areas;

- prevention of pollution and damage and of other adverse impacts on clean areas;
- integration of environmental protection policy into the sectoral and regional economic and social development policies;
- access to justice in environmental matters.

The Ministry of Environment and Water exercises control over components of the environment and the factors which have impact on these components. This control can be preventive, current and follow-up. At the national level, it is exercised by the Minister of Environment and Water, and at the regional level by the Regional Inspectorates of the Environment and Water directors, the Basin Directorate directors, the National Park directors, the municipality mayors or by officials authorized thereby.

Administrative penalty payments are imposed for violations of the provisions of the EPA. These sanctions can be preventive, terminative and remedial. EPA also provides for civil liability. Any person, who at fault inflicts environmental pollution or damage on another is obliged to indemnify the aggrieved party.

15. Restructuring and Bankruptcy

We live in times of financial and economic crisis when the running business meets various new challenges and obstacles. Thus, company restructuring may be necessary in response to the difficult business environment in which companies operate. In addition, bankruptcy is a pertinent topic to be addressed at the end of our Guide as well. This section will review bankruptcy of companies. In addition, the basics of the bankruptcy of banks will be discussed.

Restructuring

A company may generally be restructured by merger (e.g. take-over), demerger (e.g. spin off) or change of its legal form. It is important to note from the outset that all assets and rights, obligations and liabilities, as well as legal relationships, are transferred from the transferring company to the receiving or newly established company by way of universal succession.

The Bulgarian Commerce Act allows a company to be transformed into another type of company by changing its legal form, or by take-over, merger, split into several companies, spinning off and spinning off of a sole-owner company.

- Take-over - the entire property of one or more companies (transforming companies) is transferred to one existing company (receiving company), which then becomes their legal successor. Transforming companies will then be terminated without liquidation.
- Merger - the entire property of two or more companies (transforming companies) is transferred over to one newly established company, which then becomes their legal successor. Transforming companies will be terminated without liquidation.
- Split of a company into several companies - the entire property of one company (transforming company) is transferred to two or more companies, which then become its legal successors for the respective part. The transforming company will be terminated without liquidation.
- Spinning off - only part of property of one company (transforming company) is transferred to one or more companies, which then become its legal successor for that part of the property. The transforming company will not be terminated.
- Spin-off of a sole-owner company - only part of property of one company (transforming company) is transferred to one or more solely owner limited liability companies or solely owner joint-stock companies (newly established companies), whereby the transforming company then become the sole owner of their capital.

In all forms of transformation, the transforming, receiving and newly established companies (the companies involved in the transformation) may differ in type, unless the Commerce Act provides otherwise. There is a possibility for companies in liquidation or insolvencies to be restructured under specific conditions and when specific requirements are met. When a company is undergoing restructuring, the

partners or shareholders in this company will become partners or shareholders in one or more of the newly established and/or receiving companies. Interest stakes or shares acquired after the transformation must be equivalent to the fair price of interest stakes or shares held prior to the transformation in the transforming company. Members of managing bodies of the transforming and receiving companies are liable to the partners and shareholders in the company for any damages resulting from a failure to fulfill their duties in preparing and effecting the transformation.

Restructuring by Take-Over, Merger, Splitting, Spinning Off

Before taking a decision for restructuring of a company, the receiving and/or transforming companies involved in such restructuring enter into a transformation agreement. The transformation agreement may be concluded also after the decision has been taken. In such a case, the transforming and receiving companies prepare a draft agreement to which all rules concerning the transformation agreement apply. In cases of splitting by establishment, spinning off by establishment and spinning off of a sole-owner company, no agreement needs to be concluded. However, the transforming company is obliged to prepare a transformation plan. There are some formalities for the transformation agreement, the draft agreement and the transformation plan: they must be in a written form, signed by the respective persons and these signatures must be certified by a notary. Where the agreement is not approved under the decision to transform any one of the participating companies, it will be terminated. No liability for damages can be claimed in such a case. Besides, the governing body of each of the transforming and receiving companies prepares a written report for the transformation. For personal companies, the report will be drawn up by the partners with management rights. The transformation agreement or plan and the report of the governing body must be submitted for registration in the Commercial Register.

Restructuring by Change of Legal Form

A company (transforming company) may be restructured by change of the legal form, thus converting into a company of another type (newly established company). The newly established company will become the legal successor of the transforming company, which will be terminated without liquidation. In case of a change of the legal form, the governing body or the partners with management rights in a personal company draft a transformation plan in writing, sign it and their signatures are notary certified. The change of the legal form is a subject to registration in the Commercial Register not earlier than 14 days from the date of the filing. Change of the legal form takes effect as from the registration in the commercial register.

Transformation by Transfer of Property to the Sole Owner

The entire property of a sole-owner company (transforming company) may be transferred to the sole owner if he is a natural person and has been registered as a sole proprietor. The transforming company will be terminated without liquidation. The decision to transform must be taken by the sole owner in a written form where

the signatures are notary certified. The transfer of property to the single proprietor must be recorded in the Commercial Register both in that single proprietor's file and in the file of the transforming company which is deleted. Thus, the transfer of property to the single proprietor takes effect from the moment of its registration in the Commercial Register, in the file of the transforming company.

Specific provisions of the Commerce Act apply when there is a merger or merger by absorption where at least one of the transforming companies has registered seat in a Member State of the EU or EEA, in addition to that it is of a type specified in Article 1 of the First Council Directive (68/151/EEC) and the corporations participating in the transformation and having their registered offices in the Republic of Bulgaria are equity corporations, with the exception of the open-end type.

Bankruptcy

The purpose of the bankruptcy proceedings is to provide fair satisfaction of creditors and opportunities for reorganisation of debtor's enterprise. The Commerce Act explicitly sets out that bankruptcy proceedings must take into consideration the interests of the creditors, the debtor and his employees. Grounds for initiating bankruptcy proceedings are:

- (a) in case of merchants who are insolvent, which means that the merchant is unable to meet a due pecuniary obligation under a commercial transaction, or a public law obligation to the state or municipalities related to its commercial activity. Further, insolvency is presumed where the debtor has failed to perform.
- (b) over-indebtedness of a limited liability company, a joint-stock company, or a public partnership limited by shares- a company is considered over-indebted if its assets are insufficient to cover its liabilities.

The Commerce Act precisely specifies what shall be included in the bankruptcy estate. The bankruptcy estate is used to satisfy all creditors of the debtor for commercial and non-commercial receivables.

The court which has jurisdiction over bankruptcy is the district courts where the seat of the merchant was located by the time of filing the motion of institution of bankruptcy proceedings.

No preliminary state fees are collected upon filing the application to institute bankruptcy proceedings by the debtor. Such fees are collected from the bankruptcy estate prior to distribution of the assets.

Bankruptcy Proceedings

Bankruptcy proceedings may be instituted pursuant to a request in a written form submitted to the competent court by:

- the debtor
- the liquidator

- a creditor of the debtor under a commercial transaction
- the National Revenue Agency, for a public-law obligation to the State or municipalities related to the commercial activity of the debtor or an obligation under a private state receivable.

In case of over-indebted companies, proceedings may be initiated also by a member of the commercial company's managing body and by the liquidator.

However, there is a strict obligation for a debtor who becomes insolvent or excessively indebted to request within 30 days the institution of bankruptcy proceedings. The application may be submitted by the debtor himself, his heir in case of death, the managing body, respectively liquidator, of a company or a partner with unlimited liability. Should persons fail to observe their obligation for declaration, they are liable jointly and severally before creditors for damages caused by such delay. A petition for institution of bankruptcy proceedings, submitted by a debtor or, respectively, by a liquidator, is examined immediately by the court in camera. The petition must be announced in the Commercial Register as well.

When a court has established insolvency or over-indebtedness, as the case may be, by its ruling it:

- declares the insolvency or over-indebtedness, depending on the case, and determine the initial date thereof;
- institutes bankruptcy proceedings;
- appoints a temporary trustee in bankruptcy;
- allows for provision of security by means of imposing attachment or other security measures.
- fixes a date for the first meeting of creditors, not later than one month following the issue of the ruling.

Bankruptcy proceedings are deemed instituted as of the date such decision is taken.

All actions of the debtor, the creditors, the committee of creditors, the meeting of creditors, the trustee in bankruptcy as well as the court acting on the bankruptcy are recorded in a separate book which is public and available at the chancery of the competent court.

Upon institution of bankruptcy proceedings, a debtor may only continue his activities under the supervision of the trustee in bankruptcy. He may conclude new transactions only with the preliminary approval of the trustee in bankruptcy, and in compliance with the measures, determined by the ruling on institution of bankruptcy proceedings. However, the court may deprive the debtor of the right to manage and dispose of his assets and to grant this right to the trustee in bankruptcy, should it establish that by his actions the debtor jeopardises the interests of creditors.

The Commerce Act specifically regulates the protection of the bankruptcy estate as the main purpose of the bankruptcy proceedings is to provide fair satisfaction of creditors, and thus certain actions with the property of the debtor are not permissible by the Commerce Act.

Further, there is an obligation for the debtor to present to the competent court and the trustee in bankruptcy the following information within 14-day period:

- necessary information about the enterprises and its properties;
- list of payments in cash or by means of bank transfer that exceed BGN 1,200 and that have been effected within six months prior to the initial date of insolvency;
- list of payments effected by the debtor to persons related to him, for a period of one year prior to the initial date of insolvency;
- a list of creditors in accordance with the debtor's books, indicating also the amounts of their claims.

What is of particular importance for creditors is that upon initiation of bankruptcy proceedings, court and arbitration proceedings against the debtor will be generally suspended. The claims of the creditors who had already initiated court proceedings should then be claimed within the bankruptcy proceedings. Creditors must claim their due receivables before the competent court in a written form within one month following publication of the announcement for initiation of the bankruptcy proceeding.

There is also a possibility under Bulgarian law for a reorganization plan which may provide for deferral or rescheduling of payments, a remission of the debts in full or in part, a reorganisation of the enterprise, or undertaking other acts or making other transactions. Such a plan may be proposed within a specified deadline by:

- the debtor;
- the trustee in bankruptcy;
- the creditors holding at least one-third of the secured claims;
- the creditors holding at least one-third of the unsecured claims;
- the partners, the shareholders respectively, who hold at least one-third of the capital of the debtor company;
- an unlimited liability partner;
- twenty per cent of the total number of the debtor's employees.

More than one plan may be proposed in the bankruptcy proceedings. The plan approved by the court is mandatory for the debtor and the creditors whose claims have occurred before the date of the ruling to institute bankruptcy proceedings. With the ruling to approve the plan, the court terminates the bankruptcy proceedings and appoints the supervisory body, in cases where this is not envisaged in the reorganization plan for the enterprise.

The court declares the debtor to be bankrupt, in the event that a reorganization plan has not been proposed within the period provided by law or the plan proposed has not been accepted and approved. Such a ruling by the court is effective vis-à-vis all persons. The decision to declare a debtor bankrupt is also recorded in the Commercial Register.

The Commerce Act envisages that if no reorganization plan was approved or out-of-court agreement settled, or insolvency proceedings have been recommenced due to

non-compliance with the plan or agreement, the court will declare the debtor bankrupt and order the termination of its activity.

Then, the sale of the debtor's assets commences and the cash from the assets are distributed. The sale is carried out by the trustee in accordance with the law and a decision of the creditors' assembly is adopted to this end.

The insolvency proceedings are terminated by a court decision when all liabilities have been paid or the assets of the debtor have been depleted. In the latter case, the court orders the deletion of the company.

Bank Bankruptcy

Bank bankruptcy is regulated by a separate legislative act, namely Bank Bankruptcy Act. The bankruptcy proceedings against a bank must ensure, within the shortest possible period, fair satisfaction of the depositors and the other creditors of the bank. The bankruptcy proceedings takes into consideration the interests of the depositors and the other creditors of the bank, as well as the public interest with regard to the stability and credibility of the banking system.

The bankruptcy estate consists of the property rights of the bank at the date of the judgement on initiation of bankruptcy proceedings, and the property rights of the bank acquired after the date of the judgement on initiation of bankruptcy proceedings. It must be used for satisfaction of all creditors of the bank for commercial and non-commercial claims having arisen by the date of the judgement on initiation of bankruptcy proceedings against the bank, as well as of creditors on claims related to bankruptcy expenses made under the terms and procedures of the Bank Bankruptcy Act.

Bankruptcy proceedings against a bank are initiated when the Bulgarian National Bank (BNB) has revoked its licence for carrying out banking activity pursuant to Article 36 (2) of the Credit Institutions Act. Bankruptcy proceedings are also initiated against a bank in liquidation proceedings in respect of which it has been established under respective provisions of the Credit Institutions Act that it is in a state of insolvency. Initiation of bankruptcy proceedings against a bank may be requested from the court only by the BNB. The bankruptcy court for a bank is the district court at the registered address of the bank.

If BNB requests the competent court and meets all applicable requirements and fulfills the conditions set, the court, by its judgement:

- declare the insolvency of the bank and specify its initial date;
- initiate bankruptcy proceedings against the bank;
- declare the bank bankrupt and terminate the activity of its enterprise;
- terminate the powers of the bodies of the bank;
- rule a general attachment and distraint on the property of the bank;
- divest the bank from the right to manage and dispose with the property included in the bankruptcy estate;

- rule on the initiation of converting the bankruptcy estate assets into cash and distribution of the cashed assets.

The ruling of the court is recorded in the Commercial Register. Bankruptcy proceedings against a bank are considered initiated on the date of the this ruling of the court. The initiation of bankruptcy proceedings against a bank suspends court and arbitration proceedings on property civil and commercial cases against the bank.

As with commercial companies, in bank bankruptcy proceedings a trustee is appointed. Among his tasks are, for instance, representation of the bank, management of current affairs, collecting pecuniary claims of the bank and others.

Bank deposit insurance fund is also established and vested with the task of defending the interests of the creditors and exercising control over the lawful and expedient exercising of the powers of the trustee in bankruptcy. Among the powers of this fund are appointment and discharge of the trustee in bankruptcy of the bank, determination of the remuneration of the trustee, approval of the budget for the bankruptcy proceedings expenses and control over its fulfilment.

In order to ensure, within the shortest possible period, fair satisfaction of the depositors and the other creditors of the bank, the bankruptcy estate of the bank must be well protected. The Bank Bankruptcy Acts clearly sets out detail rules for preservation of the bank bankruptcy estate.

The creditors present their claims to the trustee in bankruptcy in a written form within two months from registration of the court's ruling.

Assets of the bank are also sold and the law envisages public sale. Besides, should there be interest by potential buyers, at the request of the trustee in bankruptcy, the bank deposit insurance fund may permit the initiation of a procedure for the sale of the bank as an enterprise. The sale of the bank as an enterprise is carried out through direct negotiations or through a broker, without observing the conditions and the procedure established by Chapter Six. In order to sell the bank as an enterprise the trustee in bankruptcy may reduce proportionally the amount of its liabilities, if this will not put its creditors in a less favourable position than in distributing the cashed property. The bankruptcy court approves the transaction upon receipt of a written opinion from the bank deposit insurance fund and from BNB. It must be presented not later than 30 days after its being requested. A bankrupt bank may be sold as an enterprise only to another bank having a licence for banking activity in the country.

Distribution will only be carried out when sufficient cash funds are accumulated in the bankruptcy estate.

The bankruptcy proceedings will be terminated by a judgment of the bankruptcy court where the liabilities have been paid, or the bankruptcy estate has been depleted.

16. Penev LLP Brief Profile

Penev LLP is a top-ranking law firm providing premium quality legal services in virtually every discipline of the law. With almost twenty years experience since its foundation, Penev LLP has grown to become one of the key partners of foreign investors in Bulgaria.

The roots of Penev LLP stretch back to the early 1990s. Founded in the capital, Sofia, by Mr. Sergey Penev, the Firm was previously known as Penev & Partners and prior to that, as Seplex Law Offices. The Firm has steadily grown to become one of a truly small group of Bulgarian law firms with a credible integrated network across Bulgaria and beyond, with offices in the three major cities (Sofia, Plovdiv, and Varna) and international support based in London and Geneva. Over almost 20 years in the market we have built trusted relationships with international clients (mostly European and North American), including global corporations, major investment and/or commercial banks and governmental institutions. We collaborate with leading European and US law firms on a daily basis to best satisfy the demands of our clients.

Our practice is primarily commercial in nature, with an emphasis on foreign investment and M&A, Corporate Restructuring, Real Estate and Renewable Energy, TMT, IP, Labor Law, Litigation and Alternative Dispute Resolution. With the recent changes in the economic landscape both globally and on a national scale, Penev LLP focuses its practice on Corporate Restructuring to help clients innovate their business and meet new challenges.

In the core of our high quality service lays a combination of legal expertise and business pragmatism. Our expertise covers the following areas of practice:

- Corporate and M&A;
- Tax, Finance, Banking and Capital Markets;
- Foreign Investments, Privatization, and PPP;
- Real Estate Acquisition and Development;
- Infrastructure project, Energy and Natural Resources;
- TMT;
- EU and competition;
- Intellectual property;
- Employment and Social Security Law;
- Disputes Settlement (Litigation and Arbitration).

Detailed information about our practice areas can be found at our website: <http://www.penev.eu/>.

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