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In the last few years, Bulgaria has been the focus of significant investor interest. The political stability arising from NATO membership and EU accession, the stable economic perspective and the improving credit rating of the country and its institutions, are some of the elements attracting investors’ interest. External investors have also been attracted by the rapidly developing national industry, a highly-skilled workforce and a significant new domestic market.

In the present situation, with upcoming Schengen membership, the macroeconomic framework of Bulgaria remains favorable for the entry of new investments. The Bulgarian government has taken considerable steps to meet the challenges of the global economic crisis, to maintain Bulgaria’s financial and macroeconomic stability and to improve the business climate.

To be successful in the world of business and investments requires compliance with the laws. A good understanding of the legal system is key to optimizing new and existing opportunities, for doing business in Bulgaria. The current Bulgarian legal system is dynamic and constantly improving, by adopting the modern patterns which reflect economic progress, globalization and political development. The process of harmonization of our legal system with the acquis communitaire, has finished successfully. In Bulgaria, investors will find out that many legal provisions are similar to those regulating other markets, in which they are used to conducting business. In many areas, investors will be pleasantly surprised by the reduced number of bureaucratic requirements and their tendency to operate in an efficient manner and often ahead of schedule. They may also benefit from the establishment of special measures to foster projects where more significant amounts are being invested. The equal treatment of local and foreign investors is a legally determined principle and the areas where this is not currently the case, such as the ownership of land, are in process of reform. The development of the banking sector, the securities’ legal regime and the privatization policies all improve investor confidence by removing areas of uncertainty and risk.

The efficient protection of intellectual and industrial property rights in Bulgaria, is often one of the preconditions for the attraction of investments to the country. A good investment climate in this respect is determined, not only by the accordance of local laws with international standards, but also by the existence of the requisite institutions for the implementation of these legal provisions to prevent the infringement of rights.

The answers to these and to many other questions, which investors pose, can be found in the following Legal Guide.

InvestBulgaria Agency.
I.

INVESTMENT LEGISLATION

I.1. Certification measures and procedures

The Investment Promotion Act (IPA) introduces a system of promotion measures for initial investments in tangible and intangible fixed assets and new employment linked thereto, according to Commission Regulation (EC) No. 800/2008 on the application of Articles 87 and 88 of the Treaty to national regional investment aid, and is applied as a multi-sector regional aid scheme and training aid scheme.

The main target of the Investment promotion act is to enhance the competitiveness of the Bulgarian economy through increase of investments in scientific research, innovations and technological development in production and services adding high value while observing the principles of sustainable development.

For attainment of Certificate for class Investment (Priority investment project) the following requirements must be fulfilled:

- the investments must be related to the setting-up of a new enterprise, to the extension of an existing enterprise or activity, to diversification of the output of an enterprise or activity into new additional products or to a fundamental change in the overall production process of an existing enterprise or activity;

They must be implemented in the following economic activities:

- of the industrial sector: manufacturing industry;
- of the services sector:
- high technology activities in the field of information technologies and services;
- scientific research and development and professional activities of head offices
- education
- human health care
- warehousing and support activities for transportation, which includes supporting production activity services (operation of warehouses and transport infrastructure - airports, ports etc.)
- program products
- accounting and auditing services, tax consultations and call centers
- architectural and engineering activities, technical testing and analysis;
- at least 80 per cent of the future income must be from the products produced by the economic activities listed above;
- at least 40 per cent of the eligible costs of the investment must be financed by the investor’s own or borrowed resources;
- the investment must be maintained for at least five years for large enterprises and three years for SMEs, reckoned from the date of implementation of the investment;
- the investment project must lead to a net increase in the number of employees in the establishment/organisation concerned, compared with the average number of employees over the previous 12 months;
- employment must be created and maintained for at least three years for SMEs and five years for large enterprises;
- the period of implementation must not exceed three years, reckoned from the date of award of an investment class certificate;
- the tangible and intangible fixed assets acquired must be new and purchased at market conditions from third parties independent from the investor.

Priority investment projects shall be 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 the Republic of Bulgaria or for the regions in Bulgaria.

Promotion according to the procedure established by the Investment Promotion Act is not extended to enterprises in difficulty, for implementation of privatisation contracts or concession contracts under the Privatisation and Post-privatisation Control Act, respectively, under the Transformation and Privatisation of State-Owned and Municipal-Owned Enterprises Act as
superseded and the Concessions Act, and in implementation of compensatory (offset) arrangements, as well as investments for production of products in the coal and steel industry, the shipbuilding and synthetic fibres sectors, fisheries and aquaculture, as well as in activities linked to the primary production of agricultural products listed in Annex I to the Treaty establishing the European Community, according to Commission Regulation (EC) No 800/2008 on the application of Articles 87 and 88 of the Treaty to national regional investment aid.

Depending on their value, investments are divided into classes A, B and Priority investment projects.

The required threshold amount for acquisition of fixed tangible and untenable assets, stipulated in the Regulations for Application of the Investment Promotion Act for Class A and B is as follows (in BGN):

**General case** of investments within a single establishment in the economic activities of the industrial sector – manufacturing industry:

- **Class A:** BGN 10 million;
- **Class B:** BGN 5 million.

**●** The threshold amount of investments within a single establishment in the economic activities of the services sector as: warehousing and support activities for transportation, which includes supporting production activity services (operation of warehouses and transport infrastructure - airports, ports etc.)

- Technical analysis and outsourcing, accounting services and call centers; administrative, office support and business support service activities not classified elsewhere is:
  - **Class A:** BGN 3 million;
  - **Class B:** BGN 1.5 million.

**TWhere the initial investment is implemented entirely within the administrative boundaries of municipalities where the rate of unemployment for the year last preceding the current year is equal or higher than the national average, the threshold amount of investments within a single establishment is:**

- **Class A:** BGN 4 million;
- **Class B:** BGN 2 million.

The threshold amount of investments within a single establishment in the high technology activities of the industrial sector of the economy is:

- **Class A:** BGN 4 million;
- **Class B:** BGN 2 million.

The threshold amount of investments within a single establishment in the high technology activities and knowledge based activities of the services sector is:

- **Class A:** BGN 2 million;
- **Class B:** BGN 1 million.

Criteria for certification of investment projects class A and class B when new jobs are created:

- Where the investment project planes to create and maintain full time jobs, the threshold amounts for the Investments are decreased, as follows:
  - **For the economic activities from the industrial sector:**
    - **Class A:** BGN 4 million and 150 new jobs;
    - **Class B:** BGN 2 million and 100 new jobs.
  - **For the economic activities from the services sector:**
    - **Class A:** BGN 1 million and 150 new jobs;
    - **Class B:** BGN 0.5 million and 100 new jobs.

Where the initial investment is implemented entirely within the administrative boundaries of municipalities where the rate of unemployment for the year last preceding the current year is equal or higher than the national average, the threshold for certificate issuance is only the number of people employed in connection with the investment within a single establishment which has to be not less than:

- **25 new jobs** – for Class A
- **10 new jobs** – for Class B

Where the initial investment is implemented in the high technology activities of the industrial sector of the economy the threshold for certificate only the number of people employed in connection with the investment within a single establishment which has to be not less than:

- **25 new jobs** – for Class A
- **10 new jobs** – for Class B
Where the initial investment is implemented in the high technology activities of the services sector of the economy the threshold for certificate issuance is only the number of people employed in connection with the investment within a single establishment which has to be not less than:

- 50 new jobs – for Class A
- 25 new jobs – for Class B

**For priority investment projects:**
The threshold amount of investments within a single establishment and the minimum average annual number of people employed, as from the date of the completion of the investment are as follows:

General case (for the entire country):
- BGN 100 million and 200 employees;
- For the development of an industrial zone and its development into an industrial park through attracting of investments:
  - BGN 50 million and 70 employees;
- In the field of high technology of the industrial sector and within the administrative boundaries of municipalities with high unemployment rate:
  - BGN 50 million and 100 employees;
- For the development of high-tech parks:
  - BGN 30 million and 50 employees;
- In the field of high technology and knowledge-intensive services – education, R&D, human healthcare etc.
  - BGN 20 million and 50 employees;

The threshold amounts for the investments can be decreased as much as 2 times with the increasing of the employed personnel with the following parameters:

- When hiring one hundred employees more, the threshold is decreasing with 10% in the general case, in the municipalities with high unemployment rate, in investments in the field of hi-tech of the industrial sector
- For fifty employees more, the threshold is decreasing with 10% for the development of industrial zones.

The certificate determines the investment class and the rights of the investor under the law.

According to the measures established by the Investment Promotion Act, investments are promoted through:

1. Shorter term for administrative services:  
   **Class A and B**;
2. Personalised administrative services for implementation of the investment project:  
   **Class A**;
3. Sale or establishing, against a consideration of limited real rights of private state or private municipal property, without a tender procedure or competitive bidding:  
   **Class A and B**;
4. Sale, exchange of property or establishing, against a consideration, of limited real rights over immovables of Sole proprietor companies with state or municipal participation, as well as commercial companies, whose capital is owned by sole proprietor companies with state participation without a tender procedure or competitive bidding, at market or lower price  
   **Class A and B**;
5. Financial support for construction of physical infrastructure elements needed for the implementation of one or more investment projects:  
   **Class A (or two projects class B in an Industrial zone)**;
6. Financial support for vocational training for attainment of professional qualification by the hired staff, including interns from the higher schools in Bulgaria, who have occupied the new jobs created upon implementation of the investment project (only for investments in municipalities with high unemployment rate or in the field of Hi tech activities):  
   **Class A and B**.
7. Financial support for partial reimbursement of the contributions made by the investor for obligatory state social insurance, supplementary pension insurance and mandatory health insurance for newly hired employees for the implementation of the project:  
   **Class A and B**.

**Priority investment projects** – all the measures that apply for class A and B plus the following:

1. Sale or establishing, against a consideration, of limited real rights over
immovables - private state or private municipal property without a tender procedure or competitive bidding, at market or lower price but not lower than the tax assessment of the property and no state fees shall be paid in the event of changing the land use for the purposes of implementation of the project;

2. Sale, exchange of property or establishing, against a consideration, of limited real rights over immovables of Sole proprietor companies with state or municipal participation, as well as commercial companies, whose capital is owned by sole proprietor companies with state participation without a tender procedure or competitive bidding, at market or lower price, but not lower than the tax assessment of the property;

3. Different types of transactions closed between the investor and a commercial company established for the purpose of construction and development of industrial zones;

4. Providing grant in the following cases and under the following conditions:

- up to 50 percent maximum aid intensity for investments in education and research (Codes P 85 and M 72 according to CEA 2008), where at least 25 percent of the threshold amount of the investment implemented up to the third year from the start of the works/activities under the investment project;

- up to 10 percent maximum aid intensity for investments in the manufacturing industry where at least 50 percent of the threshold amount of the investment is implemented up to the third year from the start of the works/activities under the investment project;

**Award of investment class certificate**

The promotion measures under the Investment Promotion Act (IPA) apply only in respect of investors who have been awarded an investment class certificate/priority investment project. The certification procedure and the requirements of the plan for implementation of the investment project are provided for in the Regulations for Application of the Investment Promotion Act (RAIPA) and IPA.

The Investor wishing to obtain an investment class certificate shall submit an application to the Executive Director of the Invest Bulgaria Agency prior to commencing any work related to the investment project.

**Progress of the procedure**

Upon receipt of an application for certification, the Executive Director of the Agency or an official empowered by him/her designates officers of the Invest Bulgaria Agency to verify the plan for implementation of the investment project and the documents attached. On the basis of the assessment performed, the empowered person prepares an opinion on the award of an investment class certificate conforming to the terms established by the Investment Promotion Act and the Regulations for Application of the Investment Promotion Act. On the basis of the opinion so prepared, the Executive Director provides the Minister of Economy, Energy and Tourism with a reasoned proposal to award or to refuse to award a certificate within thirty days after receipt of the application.

The Minister of Economy, Energy and Tourism or an official empowered by him/her examines the proposal and awards or refuses to award a certificate, or returns the proposal and the documents attached thereto for re-assessment in the cases of non-conformity with any of the requirements of the Investment Promotion Act and the Regulations for Application of the Investment Promotion Act.

The relevant investment class certificate is awarded by the Minister of Economy, Energy and Tourism or by an official empowered by him/her.

The procedure for awarding of Priority investment project is identical to the procedure for Investment class certificate up to the point where the empowered official from the agency has prepared the positive opinion on the conformity of the project with the requirements of IPA and RAIPA for Priority investment project. After that The Minister of Economy, Energy and Tourism puts forward before the Council of Ministers a proposal for approval of
a memorandum or agreement of understanding between the government of the Republic of Bulgaria and the investor applying for the implementation of a priority investment project with the proposed package of measures under IPA. On the basis of the memorandum or agreement approved by a Council of Ministers Decision a certificate for a priority investment project is issued by the Minister of Economy, Energy and Tourism or another/other authorised person/s, including a Regional Governor or a Mayor, a representative of an organisation from the academic community for technological parks, pursuant to the Council of Ministers Decision.
II. ENTRY, STAY AND WORK OF FOREIGN NATIONALS IN BULGARIA

II.1. General Principles


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

The legal status of the citizens of any of the Member States of the European Union, the States which are parties to the European Economic Area Agreement and the Swiss Confederation (hereinafter “European citizens”) in Bulgaria is governed by the Law on Entry, Residence and Departure of European Union Citizens and Members of Their Families from the Republic of Bulgaria, as well as by the applicable Acts of the EU legislation.

European citizens who wish to enter and stay in Bulgaria do not need a visa. Foreigners are divided into two categories – such who must be in possession of visa when crossing the borders of the Republic of Bulgaria and such who are exempt from that requirement.

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

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

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

II.2. Visas

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

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

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

Foreigners who are exempt from the requirement for obtaining a visa can enter and stay in the Republic of Bulgaria without visa for up to 90 days within a period of six months, starting from the date of the first entrance. The entry and the short-term residence in Bulgaria of holders of Schengen visas and/or residence permits shall be allowed to enter and reside short term in the Republic of Bulgaria without needing to have a Bulgarian short-stay visa.

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of the implementation of a tourist services contract, foreigners on business trips on behalf of a foreign employer for effecting investments certified under the procedure of the Investment Promotion Act, etc.).

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

All visa applications should be submitted to the respective Bulgarian diplomatic missions and consular departments around the world. In case there is no diplomatic mission or consular department in a certain country, visa applications can be submitted to such authorities of a Member State of the European Union, with which Bulgaria has an agreement for representation in acceptance of visa applications and issuance of visas. In exceptional cases (e.g. the state’s interest or extraordinary circumstances) border control officers can issue single short-stay visas for transit with an allowed period of stay not exceeding two days, unless an international agreement provides otherwise, and single short-stay visas for planned stay with an allowed period of stay up to 15 days. The State Agency “National Security” shall be immediately notified of the issuance of such visas.

The application for issuance of long-stay visa are submitted only to the Bulgarian embassy or consular office in the country where the applicant permanently resides, or to such diplomatic missions and consular departments, which are accredited for the respective country. In exceptional cases (humanitarian reasons or extraordinary circumstances) the application for issuance of long-stay visa can be submitted to Bulgarian diplomatic missions and consular departments in other countries.

An important condition upon applying for a visa is the passport of the applicant to be in compliance with certain requirements of the law, namely: (i) the validity term of the passport shall expire at least three months after the planned date of leaving the territory of Bulgaria, (ii) the passport shall have at least to two empty pages, and (iii) the passport is issued within the past 10 years.

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

Members of the family of European citizens, who are not citizens of any of the Member States of the European Union, the States which are parties to the European Economic Area Agreement or the Swiss Confederation, enter and leave the territory of the Republic of Bulgaria with a valid passport and a visa, if such is required. Family members of a European citizen, who are not European citizens themselves, are exempt from the requirement of a visa only if they are in possession of a residence card, issued by a Member State of the European Union.

II.3. Residence permits, residence certificates and residence cards

Foreigners who wish to reside in Bulgaria on a long-term basis (in any case more than three months within each six-month period) should apply for and obtain a residence permit.

European citizens who intend to stay in Bulgaria longer than three months are issued residence certificates.

Family members of European citizens, who are not European citizens themselves, who wish to reside in Bulgaria for a period longer than three months, should be granted residence permits and should obtain Bulgarian residence document (residence permit or residence card).

The residence permits for Foreigners, the certificates for European citizens and the residence cards for European citizens’ family members who are not European citizens themselves, are issued by the Migration Directorate at the Ministry of Internal Affairs.

II.3.1. Residence permits

The Foreign Nationals in the Republic of Bulgaria Act provides for three types of residence permits:
CHAPTER TWO: ENTRY, STAY AND WORK OF FOREIGN NATIONALS IN BULGARIA

A. Extended residence permit – with a term of validity of up to one year
B. Long-term EU residence permit – for initial period of five years and option for renewal, and
C. Permanent residence permit – for an indefinite period of time.

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

The most common grounds for issuance of extended residence permits are:

- The Foreigner has been issued a work permit by the Bulgarian Employment Agency
- The Foreigner is a member of the management or supervisory bodies of a Bulgarian company, provided that such company has employed at least 10 Bulgarian nationals, and
- The Foreigner is a trade representative of a foreign company registered with the Bulgarian Chamber of Commerce and Industry.

With amendments to the Bulgarian laws and regulations, which took place in February 2013, additional grounds for issuance of extended residence permit to Foreigners who make investments in Bulgaria were introduced in the local legislation. Thus, Foreigners can obtain extended residence permit in Bulgaria, if they invested:

- over BGN 600 thousand in acquiring immovable property directly or through a Bulgarian company, in which the Foreigner has invested BGN 600 thousand as capital, or
- over BGN 250 thousand in economically disadvantaged areas through a Bulgarian company, in which the Foreigner has invested BGN 250 thousand as capital, and as a result the company acquired fixed tangible and intangible assets amounting to BGN 250 thousand and has employed at least 5 Bulgarian nationals for the term of the Foreigner’s residence in Bulgaria.

The documents required for issuance of an extended residence permit include: (i) the valid international passport of the applicant with a validity term, which exceeds the term of the requested residence permit with not less than six months; (ii) document evidencing that the applicant has been provided with a place to live during his/her stay in Bulgaria (e.g. rental contract); (iii) a standard application form; (iv) document evidencing of payment of the relevant state fees; (v) documents evidencing that the Foreigner is health insured in compliance with the Bulgarian legislation, and (vi) document evidencing that the applicant has sufficient financial means to meet the costs of his/her stay in Bulgaria. Upon submission of their first application for an extended residence permit, Foreigners over the age of 18 submit also a conviction status certificate issued by the state whose citizens they are or by the state of their habitual residence. Additional documents are required depending on the specific ground for issuance of the permit.

The application for obtaining an extended residence permit must be filed before the Migration Directorate not later than 14 days prior to the expiration of the term of the long-stay visa. Applications are considered and reviewed within 14 days of their submission. If the case is complicated from legal or factual perspective and if additional documents need to be presented by the applicant, this term can be extended with one month.

The extended residence permit can be renewed, if the grounds for its issuance still exist at the time of the renewal.

Once the Foreigner is granted an extended residence permit, he/she may live, reside and travel in the Republic of Bulgaria while the permit is valid. The Foreigner may freely choose and change his/her place of residence, or leave the country and enter it again.

Foreigners who have been granted status of a long-term resident in the Republic of Bulgaria can obtain long-term EU residence permits. Long-term resident status can be granted to Foreigners who have resided legally and continuously (i.e. uninterruptedly) on the territory of the Republic of Bulgaria for five years prior to the submission of the application for obtaining a long-term residence status.
The expiration of the validity term of a long term EU residence permit does not result in losing the long-term resident status.

Permanent residence permits are issued to Foreigners: (i) of Bulgarian descent, (ii) who have been married for more than five years to a Foreigner with a permanent residence status in Bulgaria and have resided legally and continuously on the territory of Bulgaria for a period of five years, (iii) minor or underage children of a Foreigner with permanent residence status in Bulgaria, who are not married, (iv) members of the family of a Bulgarian citizen, if they have resided continuously on the territory of the Republic of Bulgaria in the last five years, etc. Permanent residence permits are issued also to Foreigners who have made certain investments in Bulgaria, such being Foreigners (i) who have invested in Bulgaria over BGN 1,000,000 (one million Bulgarian Leva) or have increased their investment with such amount, through acquisition of shares in Bulgarian companies which are traded on the Bulgarian stock exchange, through acquisition of rights under concession agreements on the territory of the Republic of Bulgaria, or through acquisition of other securities or rights explicitly provided by the law, (ii) who have invested in Bulgaria over BGN 6,000,000 (six million Bulgarian Leva) in the capital of a Bulgarian company whose shares are not traded on the Bulgarian stock exchange, or (iii) who are shareholders, representatives or employees occupying key or controlling position in a Bulgarian company, which conducts business activity in Bulgaria and obtained special certificate for class A investment, class B investment or priority project from the Bulgarian Investment Agency.

With amendments to the Bulgarian laws and regulations, which took place in February 2013, additional ground for issuance of permanent residence permit to Foreigners who make investments in Bulgaria was introduced in the local legislation. Foreigners can obtain permanent residence permit in Bulgaria, if they invested over BGN 500 thousand through a Bulgarian company, in which the Foreigner has invested the amount as capital, and as a result the company acquired fixed tangible and intangible assets amounting to BGN 500 thousand and has employed at least 10 Bulgarian nationals for the term of the Foreigner’s residence in Bulgaria.

The extended, long-term or permanent residence status of a Foreigner is evidenced by the issuance of a Bulgarian personal document – a residence permit, evidencing the right of residence in the Republic of Bulgaria.

II.3.2. Residence certificates

European citizens are issued two types of residence certificates:

A. Long-term residence certificate – with a term of validity of up to five years, and
B. Permanent residence certificate – for an indefinite period of time.

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

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

In order to apply for a long-term residence certificate, the European citizen should submit an application to the Migration Directorate at the Ministry of Internal Affairs within three months after his/her first entry in the Republic of Bulgaria.

The documents, which should be attached to the application, include: (i) a valid identity card or a passport of the applicant; (ii) documents evidencing the existence of the ground on which the European citizen applies for his/her residence certificate (e.g. labour contract, documents proving registration of the applicant as a self-
employed, documents proving the applicant currently studies in Bulgaria, etc.); (iii) documents evidencing the payment of the relevant state fee, and (iv) evidence that the applicant has medical insurance and has sufficient financial means to meet the costs of his/her stay in Bulgaria (when required). Additional documents may be required depending on the specific ground for issuance of the certificate.

Applications are considered and reviewed and the certificate should be issued on the day of submitting the application. The certificate contains the full name of the person and the registration date. Upon his/her request, the applicant may receive a long-term residence certificate in the form of ID card with his/her photo and personal number on it.

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

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

Permanent residence certificates are issued to European citizens who have resided continuously in the Republic of Bulgaria for a period of five years or who meet other special requirements set forth in the law. In order to apply for a permanent residence certificate, the European citizen should submit an application to the Migration Directorate at the Ministry of Internal Affairs enclosing document evidencing the necessary circumstances.

II.3.3. Residence cards

Members of the family of European citizens, who are not European citizens themselves, and accompanies or joins a European citizen, are entitled to obtain an extended or permanent residence permit in Bulgaria on that ground, is issued a Bulgarian residence document – residence card, evidencing his/her right of residence in the Republic of Bulgaria.

II.4. Work permits

II.4.1. General rules

Foreigners may work in Bulgaria only after obtaining a work permit, unless otherwise stipulated by the law. The grounds for obtaining a work permit are: signing by the Foreigner of an employment contract with a Bulgarian employer, or sending of the Foreigner to a business trip for undertaking of certain activities in Bulgaria.

European citizens may be employed, self-employed or sent to a business trip and may work in Bulgaria without restrictions and without the need of work permits.

Work permits required for Foreigners must be requested by the local employer and are issued by the Bulgarian Employment Agency. A number of legal terms and conditions must be met for the permit to be issued. Work permits are issued for a maximum duration of 1 year. If a work permit is granted to a Foreigner on the basis of a signed employment contract with a local employer, generally, such a permit can be extended, if the terms and conditions for its issuance are still valid, but the total duration may not exceed 3 (three) years. The term of validity of a work permit issued to a Foreigner, who is sent on a business trip, cannot be extended for further one-year periods, unless by exception.

Bulgarian employers must report signed labour contracts with Foreigners and European citizens at the National Revenue Agency within 3 days from their signing.

European citizens, who are sent on a business trip to Bulgaria, are subject to one-off registration at the Bulgarian Employment Agency, which is performed by the local person accepting the seconded employees.
II.4.2. Foreigners who generally do not require a work permit in Bulgaria

Outlined below is a list of the main categories of foreigners who may work in Bulgaria without the need of possessing a work permit:

- Managers of companies or branches of foreign legal entities
- Members of the Managing Board or Board of Directors of local companies, who are not employed on a labour contract
- Trade representatives of foreign companies registered at the Bulgarian Chamber of Commerce and Industry
- Foreigners who have obtained long-term or permanent residence status in Bulgaria, and
- Family members of a European citizen or of a Foreigner who has been granted long-term residence status in Bulgaria.

II.4.3. Foreigners who may work on short-term assignments without a work permit

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

- They are sent on a business trip to Bulgaria by their foreign employer
- The assignment in Bulgaria is no longer than 3 months within a period of one year
- The assignment encompasses any of the following: (i) the installation or the warranty repair of imported machinery and equipment; (ii) training in the operating of equipment or the delivery of ordered equipment, machines or other items; (iii) training as part of an export contract for the supply of goods under a license agreement.

For this purpose a one-off registration of the Foreigner should be performed at the Bulgarian Employment Agency before commencement of the assignment.

II.5. “EU Blue Card” residence and work permit

With amendments to the Bulgarian laws and regulations, which took place in January and June 2011, additional ground for work and stay of Foreigners was introduced in the local legislation, namely employment under a labour contract for the purpose of highly-qualified work.

Major precondition for obtaining by a Foreigner of a permit for work and residence type “EU Blue Card” is that the Foreigner shall have a university degree of education obtained on the basis of at least three-year educational course.

In order to apply for an EU Blue Card, the Foreigner should first obtain a permit for exercising of highly-qualified employment and a long-stay visa. The permit for exercising of highly-qualified employment is issued by the Bulgarian Employment Agency within fifteen calendar days following the submission of the relevant application and required documents. The procedure for obtaining the permit from the Employment Agency should be initiated by the local employer of the Foreigner and the employer should pay the due state fee.

For the purpose of obtaining of an EU Blue Card the Foreigner must file an application to the Migration Directorate at the Ministry of Internal Affairs not later than 7 days prior to expiration of the term of the long-stay visa. The Foreigner should enclose to the application (i) a copy of his/her valid international passport, including the issued long-stay visa, and (ii) documents evidencing that the Foreigner is health insured in compliance with the Bulgarian legislation. The permit for exercising of highly-qualified employment is ex officio provided to the Migration Directorate by the Employment Agency. Applications for issuance of an EU Blue Card are considered and reviewed within 7 days of their submission.

EU Blue cards are issued for a period of up to one year and can be renewed for further one-year periods without limitation, as long as the grounds for their issuance still exist.

According to the law, the family members of a Foreigner, who has been granted an “EU Blue Card”, are entitled to obtain extended residence permits in the Republic of Bulgaria for a period equal to the term of residence permitted to the holder of the “EU Blue Card”, if certain conditions of the law are met.
III. OWNERSHIP OF REAL ESTATE

III.1. Legislative Framework and General Rules

III.1.1. Legislative framework

The major legislative acts governing the real estate and real estate transactions in Bulgaria are the Bulgarian Constitution, Ownership Act, State Property Act, Municipal Property Act, Privatization and Post-privatization Control Act, Agricultural Land Ownership and Use Act, Forestry Act, Civil Procedure Code, Encouragement of Investments Act, Territorial Development Act, Contracts and Obligations Act and Condominium Ownership Management Act.

III.1.2. Direct acquisition of real estate in Bulgaria by foreigners and foreign companies

In Bulgaria foreign citizens and foreign companies can directly acquire buildings, premises within a building and limited property rights (e.g. construction right, right of use). The foreign acquirer has to be registered in a special Register.

As a result of the accession of Bulgaria to the European Union (“EU”), specific rules related to acquisition of land were provided for EU citizens (“resident citizens”) and entities registered in the member states of the EU and the European Economic Area (“EU residents and entities”). Relevant changes were implemented in the Bulgarian Ownership Act, Forestry Act, Protected Areas Act and Agricultural Land Ownership and Use Act.

According to the effective legislation, EU residents and entities may acquire ownership title over land in Bulgaria in accordance with the requirements specified by law and in compliance with the provisions of the Accession Act of Bulgaria to the EU. The Accession Act provides that Bulgaria, upon its discretion, can keep the restrictions for acquisition of land by citizens and entities from the member states: (i) for five years starting from 1 January 2007 – for the land provided for second residence, and (ii) for seven years starting from 1 January 2007 – for agricultural land, forests and forest land. The five year transition period has expired on 31 December 2011 (save for the agricultural land, forests and forest land). Therefore, the EU residents and entities can acquire urban land in accordance with the requirements specified by law. The Ownership Act, regulating the acquisition of land does not specify whether the general legislative provisions shall apply to the acquisition of land by EU residents and entities or specific rules shall be adopted for such acquisition. In view of the principles of free movement of goods and services set out in the Treaty on European Union, it might be assumed that the general provisions concerning transactions with real estate should apply to the EU residents and companies as well. However, some documents that should be provided by the Bulgarian individuals and entities cannot be applied directly to EU residents and entities. Therefore, the possibility for introducing specific rules to be applied to EU residents and entities cannot be excluded. Considering the significance of the issue discussed, it is expected that the Property Registry and the Chamber of the notaries public will adopt a unified practice in short terms.

The above restrictions are not applicable to resident citizens, who are self-employed farmers who wish to settle and reside permanently in the Republic of Bulgaria and who are registered in that capacity in the BULSTAT Register with the Bulgarian Registry Agency. They may acquire ownership title over agricultural and forestry lands for agricultural purposes as from 1st January 2007 - the date of the entry into force of the Accession Act of Bulgaria to the EU.

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

Foreigners (non-resident or resident citizens) may acquire ownership title over land in case of legal succession.

In case of inheritance through legal succession of agricultural land, forests or forest land, if the foreigners do not fulfill the conditions provided for in the Accession Act of Bulgaria to the EU, or when something else is not provided for in an international agreement, they shall be obliged, within three years following the revealing of the inheritance, to transfer the ownership to persons who have the right to acquire such estates.

III.1.3. Indirect acquisition of real estate in Bulgaria by foreign companies or foreigners

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

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

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

III.1.4. The transaction

The general rule under Bulgarian law is that transactions involving real estate (e.g. a purchase, exchange, etc.) should be executed with a notary deed before a registered notary public in the region where the real estate is located. The form of notary deed is mandatory not only for transactions for transfer of ownership title over real estate properties, but also regarding establishment of limited property rights over real estate properties (e.g. construction right, right of use, etc.). Specific rules are provided for establishment of servitudes.

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

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

The deed for sale purchase of real estate should specify the purchase price of the estate payable by the buyer. According to the Limitation of Cash Payments Act (“LCPA”), in force as of 25 February 2011, all payments in Bulgaria (including with regard to real estate transactions) of an amount equal to or exceeding BGN 15,000 (approximately EUR 7,600) should be executed only via a bank transfer or deposit to a payment account. The same rule shall be applied to cases where the payment is of an amount lower than BGN 15,000, but represents part of the purchase price, the total value of which is equal to or exceeding BGN 15,000.

III.1.5. Legitimacy of the buyer

III.1.5.1. Direct acquisition by foreign companies or foreigners

Where foreign companies or foreign citizens acquire directly buildings, premises or limited property rights they should ensure that at least the following documents are presented:

- Resolution of the competent corporate body approving the acquisition of the targeted real estate (applicable only
in case of acquirer - company). The resolution has to be translated in Bulgaria by a certified translator

- Certificate of Good Legal Standing of the foreign company (applicable only in case of acquirer - company) – duly legalized
- Declaration for citizenship and civil status signed before a notary public and duly legalized (if the foreign acquirer is an individual)
- Declaration for the origin of money under the Measures against Money Laundering Act, and
- Power-of-attorney, signed before a notary public and duly legalized, for the person who will represent the foreign acquirer before the Bulgarian notary public (if the acquirer is not represented in person or by its legal representative).

III.1.5.2. Indirect acquisition by foreign companies or foreigners

Where foreign companies or foreign citizens indirectly acquire real estate in Bulgaria through a Bulgarian subsidiary company, they should ensure that at least the following documents are presented:

- Resolution of the competent corporate body of the Bulgarian subsidiary approving the acquisition of the targeted real estate
- Declaration for the origin of money under the Measures against Money Laundering Act, and
- Power-of-attorney signed by the legal representative(s) of the Bulgarian subsidiary before a notary public for the person who will represent the foreign acquirer before the Bulgarian notary public (if this is not the person referred to in the Certificate for Good Legal Standing as the person representing and binding the Bulgarian subsidiary) who will represent the Bulgarian subsidiary before the Bulgarian notary public executing the transaction. If the power of attorney is signed before a foreign notary public, it should be duly legalized.

III.1.6. Statutory costs and expenses for execution of a notary deed

- Transfer tax – specified by the Municipal Council of the respective municipality, where the real estate is located, which transfer tax may vary between 0,1% and 3% over the higher of the purchase price agreed between the parties and the up-to-date tax valuation issued by the tax office. According to the law the transfer tax is due by the acquirer. The parties may agree that the tax is split between the parties or is paid by the seller
- Fee for registration in the Property Registry – 0.1% over the higher of the purchase price agreed between the parties and the tax valuation issued by the tax office. The fee may be shared between the parties or be borne by just one of them, and
- Notary fee – according to the statutory Notary Tariff, but not more than BGN 6,000 (approx. Euro 3,100) per transaction. The fee may be shared between the parties or be borne by just one of them.

III.2. Verification of title

III.2.1. Notary verification

According to Bulgarian legislation, prior to the execution of the notary deed, the notary public is obliged to verify the title rights of the current owner (e.g. the seller), to review the corporate resolutions of the parties under the transaction, powers of attorney, etc. Following such verification, the notary public is entitled to execute the notary deed.

When the real estate transaction is related to an in-kind contribution and sale of the commercial enterprise containing real estate properties, the verification is executed by the Commercial Register with the Registry Agency.
III.2.2. Title review
(Real estate legal due diligence)

The notary public is not obliged to review the ownership title history, i.e. to review the title rights of the predecessors of the current owner.

As a general legal rule, the ownership title of the current owner depends on the rights of his predecessor while the rights of the predecessor, in turn, depend on the ownership title of the predecessor of the predecessor. Thus, if one of the previous owners did not have a clean and undisputable ownership title, this will reflect on the current owners, i.e. a third rightful party can claim the property right against the current owner.

The possibility of third party property claims is precluded by the so called prescription period of possession. According to the effective legislation, after the expiration of the prescription period of possession, the current owner of the property is considered the rightful owner, regardless of the rights of their predecessors. The absolute (maximum) prescription period is 10 years.

With this regard, it is recommended before purchasing real estate, the buyer to undertake title review of the targeted real estate, including the title's history. The purpose of such a review is to verify that there is/are:
- a clean, valid and marketable ownership title held by the seller. The seller has to be, and his predecessors should have been the valid owner of the targeted real estate in order to avoid any risk of termination or annulment of the transaction. Usually, this title review covers the last 10 years since the maximum acquisitive prescription term in Bulgaria is 10 years
- no liens or encumbrances over the property. The buyer should be fully aware as to whether there are any registered liens and/or encumbrances over the targeted real estate, e.g. mortgages, interlocutory injunctions, going-concern pledges, limited property rights established in favor of third parties. A general principle in Bulgarian law is that liens and encumbrances “follow the property”, i.e. the registered liens and encumbrances can be enforced against the new owner
- no other registered rights in favor of third parties – if there are registered rental or lease agreements over the targeted real estate then the buyer shall be bound by them until the expiration of their term
- no court or restitution claims, and
- no public debts of the seller, which could lead to a forcible sale of the real estate by the state authorities.

III.3. Special cases

III.3.1. Acquisition of ownership title and limited property rights over marketable state owned real estate properties

The ownership title or limited property rights (e.g. construction right, right of use, etc.) over marketable state owned real estate can be acquired through:

- a sale purchase transaction
- exchange with other real estate owned by the foreign investor or its Bulgarian subsidiary only in the cases explicitly provided in the law, or
- an in-kind contribution into the capital of a Bulgarian company in cases of public-private partnership with the Bulgarian state.

In the general case, the acquisition is executed by virtue of a written contract (i.e. notary deed is not required). The acquisition of state owned real estate has to be registered in the Property Registry in order to make the ownership title (or the limited property right) of the acquirer defendable against third parties.

The sale of marketable state owned real estate with tax valuation over BGN 10,000 (approx. Euro 5,200), shall be performed
by the Privatization and Post-privatization Control Agency under the rules of the Privatization and Post-privatization Control Act ("PPCA"). According to the PPCA, in case of sale of marketable state owned real estate with tax valuation over BGN 10,000 to Bulgarian individuals, to Bulgarian legal entities with up to 50% state and/or municipal owned share in the capital or to foreign persons, the procedures under the PPCA shall apply, except for explicitly specified cases (e.g. in case of sale of state owned residential real estates, sale to investors with class certification, etc.).

As per the PPCA the Privatization and Post-privatization Control Agency shall adopt a decision for sale of state owned marketable real estate with tax valuation over BGN 10,000 upon proposal by the competent director of the state administration, to which the management of the real estate was granted, or by the respective Regional Governor (in case the management of the real estate was not granted), after confirmation procedure with the Minister of Regional Development and the Minister of Finance. The method of sale (i.e. public tender or auction) should be determined by the Privatization and Post-privatization Control Agency in a resolution, which is promulgated in the State Gazette, and the sale shall be performed according to the rules provided in the Tenders and Auctions Ordinance. In case of sale of state owned real estate with tax valuation over BGN 500,000 (approx. Euro 256,000), instead of confirmation procedure, a decision of the Council of Ministers is required, determining the privatization method and conditions, based on which the Privatization and Post-privatization Control Agency shall perform the privatization procedure. In this case no fees are due for the registration of the sale-purchase contract with the Property Registry.

Regarding the sale of marketable state owned real estate with tax valuation up to BGN 10,000 and of state owned residential properties, garages, studios, etc., the State Property Act shall apply. In general, in this case the competent authority is the respective Regional Governor, who shall perform the tender procedure and conclude the sale-purchase contract. The contract has to be registered in the Property Registry in order to make the ownership title (or the limited property right) of the acquirer defendable against third parties.

Special rules are provided for power plants, allowing construction right for their development to be established against remuneration, without performing a tender or an auction.

Another exception from the tender rule enables the legitimate acquirer of lawfully constructed building on the said real estate to acquire ownership title over the land without performance of a tender.

General principle provided for in the State Property Act is that an exchange of marketable state owned real estate or of the construction right over such real estate with other real estate owned by individuals or legal entities may not be performed, except for explicitly defined in the law cases (e.g. termination of co-ownership, fulfillment of international treaty, etc.).

An in-kind contribution of marketable state owned real estate is executed: (i) on the ground of proposal of the Minister with relevant sector competence and a decision of the Council of Ministers or (ii) in accordance with the provisions of the Public Private Partnership Act ("PPPA").

As a general rule, the State Property Act provides that construction right or right of use up to 10 years over marketable state owned real estate shall be established as a part of a public-private partnership project or on the ground of a tender procedure performed by the respective Regional Governor. In case of establishment of limited property rights over marketable state owned real estate with tax valuation over BGN 500,000 (approx. Euro 256,000), a decision of the Council of Ministers is required, based on which the Minister of Regional Development shall perform the tender procedure and conclude the sale-purchase contract. In the cases when
the construction right is established as part of public-private partnership project, no decision of the Council of Ministers is required.

Specific rules are provided in the Agricultural Land Ownership and Use Act for the conditions and procedure for disposal with state owned agricultural lands. Regarding the disposal with state owned forestry territories (e.g. forestry lands and forests), there are special rules provided in the Forestry Act.

III.3.2. Acquisition of ownership title and limited property rights over marketable municipality owned real estate properties

Municipal properties and limited property rights can be acquired under the conditions and procedure of the PPPA, of the PPCA or of the Municipal Property Act. Like the acquisition of state owned real estate, in the general case the acquisition of municipal property and property rights is executed via written contract. The acquisition has to be registered in the Property Registry in order to make the ownership title (or the limited property right) of the acquirer defendable against third parties.

The PPPA applies in all cases of development of public-private partnership projects.

The PPCA applies in case of sale (not representing part of a public-private partnership project) to Bulgarian individuals, to Bulgarian legal entities with up to 50% state and/or municipality owned share in the capital or to foreign persons, of the following marketable municipality owned real estates: (i) non-residential properties used for business purposes (e.g. shops, warehouses, workshops, etc.), which are not included in the patrimonium of municipality owned legal entities, and (ii) real estate projects under construction, which are not included in the patrimonium of municipaly owned legal entities. In this case the sale of municipally owned real estates shall be performed by the respective Municipal Council through a tender/auction according to the procedures provided in the Tenders and Auctions Ordinance.

Regarding transactions with marketable municipaly owned real estates outside the scope of the PPCA and PPPA (e.g. residential properties, properties with non-business purpose, etc.) the Municipal Property Act shall apply. In this case the Municipal Council of the respective municipality should pass a resolution for performance of a tender/auction procedure, on which basis the Mayor concludes the sale-purchase contract. The contract has to be registered in the Property Registry in order to make the ownership title (or the limited property right) of the acquirer defendable against third parties.

The ownership title or limited property rights over marketable municipal real estate may be transferred without tender by the Mayor in the cases explicitly specified by the effective legislation within a procedure determined by an ordinance adopted by the Municipal Council where the property is located. The establishment of construction right over marketable municipaly owned real estate for development of power plants (like the case of state properties) is executed without performing a tender or an auction.

General principle provided for in the Municipal Property Act is that an exchange of marketable real estate owned by a municipality or of the construction right over such real estate with other real estate or of the construction right thereof owned by individuals or legal entities may not be performed, except for explicitly defined in the law cases (e.g. termination of co-ownership, fulfillment of international treaty, etc.).

Specific rules are provided in the Agricultural Land Ownership and Use Act for the conditions and procedure for disposal with municipal owned agricultural lands, e.g. there are certain additional requirements related to disposal of municipal pastures and grasslands. The disposal with municipal owned forestry territories (e.g. forests and forestry lands) is regulated by the Municipal Property Act, in compliance with the Forestry Act.
III.3.3. Sale of real estate properties without tender/auction under the Encouragement of Investments Act

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

Investors with certificate for class A or class B investment are entitled without tender/auction to:

- purchase marketable real estate owned by the state or municipality, or
- acquire, against remuneration, limited property rights over real estate owned by the state or municipality

Rights over the above real estate properties may be transferred or established at prices lower than the market ones, where the price cannot be lower than the tax evaluation of the real estate property, for priority investment projects, provided that all conditions for implementing the regional investment aid scheme under Regulation (EC) No 800/2008 have been fulfilled. In addition, in order property or limited property right to be purchased under the EIA, the amount of the envisaged investment in terms of costs of tangible fixed assets should be more than five times higher than the market appraisal of the property.

There are special rules for priority investment projects and for real estates managed by the Ministry of Defense.

The contracts must be registered in the Property Registry in order to make the ownership title (or the limited property right) of the investor defendable against third parties.

Non-implementation of the investment project of the above investor within the implementation term and regarding the amount of the investment is included in the relevant contract as termination grounds. As non-implementation is considered the incompliance with the minimal amount of the investment specified in the EIA. The contract shall be terminated also in case the work on the implementation of the investment project has not started within two years as of date of signing the respective contract.

The investor may not dispose of the real estate property (or of the limited property rights), acquired according the procedures under the EIA, prior to the expiry of a five-year term as from the date of implementation of the respective investment project, and in case of medium- and small-sized enterprises - within three-year term as from the date of implementation of the respective investment project.

III.4. Condominium Ownership Management

The Condominium Ownership Management Act ("COMA") regulates the management of the common parts of the buildings, as well as the rights and obligations of the owners of and the residents in separated objects or parts thereof of the said buildings.

The COMA applies to the management of common parts of buildings under condominium ownership, i.e. in case floors or separate units (apartments, shops, restaurants, etc.) from buildings are owned by different owners.

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

The COMA provides that the management of the common parts of the building may be performed either by the general assembly of
the owners of separate units in the building or through an association of the owners. Unlike the general assembly of owners, the association of owners is a legal entity, which shall be established in accordance with the procedures set out in the COMA.

For the purposes of maintenance of the common parts of a building a special “Repairs and Renewal” Fund should be created. The general assembly of owners/the association of owners adopts a plan for performance of repair works, reconstructions, reorganizations and others in the building. In case the competent authorities give instructions, related to such activities, the repair works, reconstructions, reorganizations or others should be complied with them.

By virtue of the COMA the municipal administrations shall create and maintain public registers of buildings or separate entrances under condominium ownership arrangements located on their territory.

III.5. Construction

III.5.1. Legislative and Administrative Framework. Categories of Construction Works

III.5.1.1. Legislative framework

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

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

III.5.1.2. Administrative bodies

The issuance of the principal documents in the construction process – visas, approvals of project designs and construction permits (with a few exceptions) – typically falls within the competence of the chief architect of the respective municipality, against payment of a fee that is determined by each municipality on the basis of the type and size of the works. Where projects concern more than one municipality, or more than one district, these documents are issued by the relevant district governor, or by the Minister of Regional Development and Public Works, respectively. The Minister of Defense, or the Minister of the Interior, respectively issue the same documents with respect to special projects related to national defense and security.

Administrative control for observing and applying the relevant laws and regulations is split between the National Construction Supervision Directorate (“NCSD”) and the municipal authorities. The NCSD excersises control over first to third category construction projects (see V.1.3. below), while the municipalities exercise control over forth to six category construction projects (see V.1.3. below). Both authorities have powers that cover all phases of the construction process, including inspection of sites and all construction documents, issuance of mandatory instructions to all project participants, suspension of works, demolition of illegal construction works, restriction the operation of construction projects, which are not properly put into operation, imposition of penalties, prohibition of access, etc. In addition NCSD is entitled to review appeals against construction permits issued.
III.5.1.3. Categories of construction projects

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

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

II - smaller projects of national or regional significance such as roads of class III; facilities and installations for treatment of waste; public service buildings and facilities for over 1000 visitors; industrial plants with 200–500 working places including the infrastructure thereto; 25–100 MW electric power plants and heating plants, mines, quarries, etc.;

III - projects of local significance such as municipal roads and low class of primary streets; tall residential and multi-purpose buildings; public service buildings and facilities of more than 5000 m² or for 200–1000 visitors; industrial buildings with 100–200 working places including the infrastructure thereto; electric power plants and heating plants with installed capacity higher than 30 kW and up to 25 MW; parks and gardens of over 1 ha, etc.;

IV - private roads; medium-height residential and multi-purpose buildings; public service buildings and facilities of 1000–5000 m² or for 100–200 visitors; industrial buildings with 50–100 working places including the infrastructure thereto; parks and gardens of up to 1 ha, cultural monuments of local significance, etc.;

V - low-height residential and multi-purpose buildings; villas; public service buildings and facilities of less than 1000 m² or for less than 100 visitors; industrial buildings with less than 50 working places including the infrastructure thereto, cultural monuments of ensemble significance, etc.;

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

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

III.5.2. Participants in the construction process. Insurance

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

III.5.2.1. Investor

Generally, the investor is the person, individual or legal entity, that has ownership title, construction right or easement (servitude) over the land plot on which construction works are to be carried out.

III.5.2.2. Designer

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

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

III.5.2.3. Constructor

The constructor is a registered trader that executes the construction works under a contract with the investor. The constructor can be local trader registered under the Bulgarian Commercial Act or a foreign trader registered under its national legislation. A precondition for execution of construction works by the constructors is the registration at the Central Constructors Register, administrated by the Bulgarian Chamber of Constructors. The body competent to register constructors at the Constructors Register is the Commission with the Constructors Chamber.

As per amendments to the Constructors Chamber Act, effective from 23 February 2010, the registration of a constructor in a relevant register in a Member State or in a State part of the European Economic Area, shall be treated as a registration in the Bulgarian Central Professional Constructors Register.

Based on the above amendments, on 9 February 2012 the Commission with the Constructors Chamber adopted a resolution for applying of a simplified procedure for registration with the Constructors Register of European constructors that execute one-off specific construction project in Bulgaria.

Exempted from registration are: (i) constructors executing villas, residential and commercial-residential buildings with 10 meter height, executing VI category construction projects, and performing repair or reconstruction of V category construction projects, and (ii) foreign constructors who execute construction projects in Bulgaria according to NATO’s program for investment in the security.

The constructor is responsible for execution of the works in compliance with the approved design and permits, and the legal requirements concerning construction works, methods, materials and products, as well as for preparing the “as-built” documentation for the works, if this role is explicitly assigned to him under the construction contract.

III.5.2.4. Consultant

The consultant is a trader who carries out compliance evaluations of project designs and exercises independent supervision over construction works.

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

Activities as a consultant can be rendered by persons having a document, issued by respective competent authority in a Member State or in a state that is part of the European Economic Area (“Member State”), certifying the right to render such activity. In this case a subsequent certificate issued by the Head of the NCSD is required. Persons who are eligible to carry out compliance evaluations of investment designs and/or exercise construction supervision in a Member State, but the legislation of the Member State provides for no equivalent regime, are temporarily entitled to act as consultants in regard to an one-off specific construction project after issuance of a certificate by the Head of the NCSD.

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

- is responsible for the lawful commencement and execution of the
construction works, the completeness and correctness of all acts and protocols executed during the construction;
- is obliged to inform the regional branch of NCSD of any breach of the technical norms and regulations it has identified in the course of the construction works;
- is authorized by law to certify the order book for the construction works and to issue mandatory instructions and orders to the constructor, that can be appealed within 3 days before NCSD;
- must sign almost all of the acts and protocols executed in the course of the construction works and issue a final report to the investor upon their completion;
- is jointly liable with the constructor for any damage resulting from breach of the technical norms and regulations, or deviation from the approved designs.

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

III.5.2.5. Structural engineer

The structural engineer is an individual possessing the special capacity for exercising mandatory technical control over the structural part of detailed project designs (technical and execution designs). He must also countersign the "as-built" documentation. The structural engineer should be included in a promulgated list in the State Gazette, prepared and updated annually by the Chamber of Engineers in Investment Design. According to amendments of the TDA, effective from 23 February 2010, the activities of the structural engineer can be performed by individuals entered in a relevant list or register kept by respective competent authority in a Member State or in a State part of the European Economic Area.

III.5.2.6. Technical controller

The technical controller is an individual with technical education managing the execution of the construction works on behalf of the constructor. If the works are executed by the investor himself, he is obliged to appoint a technical controller. Technical controllers are also responsible for the supervision of projects in category V, where no consultant has been appointed by the investor.

III.5.2.7. Insurance

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

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

III.6. Preliminary research and investigation. Visa

III.6.1. Preliminary research and investigation

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

III.6.2. Visa

In specific cases listed in TDA the investor must, before commencing the design of the project, obtain permission for drafting the project design entered on an excerpt from the detailed development plan covering the plot and the surrounding properties (a visa). In case a cadastre map enters into force after the effective detailed development plan for the land plot, the visa shall be issued on a combined excerpt from the detailed development plan and the cadastre map. As per TDA, the visa should be issued by the chief architect of the municipality within 14 days after being requested.

III.7. Project design

III.7.1. Execution. Compliance valuation

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

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

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

Compliance valuation for projects in category I or II must be made by a consultant (different from the designer), who issues a report on its findings. In addition, the structural part of the project design must be evaluated by a structural engineer and the compliance of the requirements for energy efficiency must be executed by traders entered into public register maintained by the Energy Efficiency Agency.

In lower construction categories the consultant’s activities can be performed by the municipal Expert Council. In practice, this option is not utilized frequently.

III.7.2. Approval of the project design. Validity

Project designs must be approved by the respective administrative bodies before commencement of the construction works. In general case the competent body is the chief architect where the real estate is located.

For the purpose of getting an approval, the investor must present to the competent authorities the design itself, the compliance valuation report, preliminary agreements with the utility companies for connection to their technical infrastructure networks, as well as approvals/assessments from the controlling authorities (e.g. fire safety department, sanitary inspection agency, environmental authorities), if such are necessary.

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

- for projects which are presumed to impact the environment, such as chemistry factories, oil refinery, thermal power plant, etc., and
- for projects impacting existing protected areas (reserves, national parks, etc.) or existing and potential protected zones (Natura 2000).

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

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

Natura 2000 is an ecological system of protected zones in the European Union, namely zones for the conservation of wild birds and zones for the conservation of natural habitats. As an EU Member State, Bulgaria must comply with all relevant EU legislation and directives, including EU Directive 92/43 on the conservation of natural habitats and of wild fauna and flora and EU Directive 79/409 on the conservation of wild birds. The requirements of both directives are included in the Bulgarian Biodiversity Act adopted in 2002. The criteria for including the separate land properties in the protected zones relate to the ecological characteristics of the region and are based on the scientific analyses, research and prognoses.

The chief architect of the municipality where the real estate is located approves the design or refuses the approval within 14 days after submission of all required documents, or 1 month – in the event that the compliance valuation was not made by a consultant.

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

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

III.8. Construction permit


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

For issuance of a construction permit the investor must submit an application to the respective authority, supported with the ownership title/construction right documents, the visa (if applicable), preliminary agreements with the utility companies, three copies of the valued project design, the environmental assessment (if necessary), along with the approvals of the controlling authorities (if applicable).

As per TDA, the permit should be issued within 7 days after the request. The approved project design is an integral part of the construction permit.

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

III.8.2. Appeals

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

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

III.8.3. Changes in the project design after the issuance of the construction permit

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

III.9. Commencement and execution of construction works

III.9.1. Acts and protocols executed during construction works

The date of commencement of the construction works is deemed to be the date on which the protocol of opening of the construction site and of determining the construction line and level (Protocol 2) is signed by the supervisor. A precondition for signing of Protocol 2 is signing of a construction contract with a constructor entitled to execute construction works. Within 3 days of signing of Protocol 2, the supervisor certifies the order book for the works and informs the municipality, NCSD and the utility companies of certification. The book will contain all orders and instructions of the competent persons and authorities concerning the works.

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

III.9.2. Legal requirements concerning construction works

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

In case where construction works do not comply with the legislative requirements, they can be postponed, the access to the project site can be restricted and to the investor can be imposed a monetary sanction.

III.10. Completion

III.10.1. “As-built” documentation

Upon completing the works the constructor (or another person appointed by the investor) must prepare the “as-built” documentation which contains a full set of drawings of the works as they were actually executed. The “as-built” documentation is countersigned by the investor, the constructor, the supervisor, the designer that has executed author’s supervision and the structural engineer, and is submitted to the administrative body that has issued the construction permit (municipality in the general case), which must stamp each page.

III.10.2. Acceptance of the completed works by the investor and the supervisor

The completion of construction is certified by execution of a protocol (the so called “Act 15”)
which is signed by the investor, the designer, the constructor and the supervisor. Act 15 is the document evidencing the delivery and acceptance of the completed works between the constructor and the investor. With it, they certify that the works have been executed in compliance with the approved design, the “as-built” drawings, the legal requirements for the construction works and the terms of the construction contract.

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

III.10.3. Technical passport

After completion of the construction works a technical passport of the construction works shall be issued by the supervisor (consultant) or technical controller (for category V construction projects). The technical passport contains terms for execution of repairs and data for all certificates issued for the construction project. Issuance of a technical passport is not required for some minor construction projects (e.g. temporary constructions, fences), explicitly specified by the TDA.

III.11. Permitting the use of completed works. Warranty periods

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

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

All costs related to the committee’s work are borne by the investor.

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

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

Projects of VI category can be used without issuance of permit for operation, respectively — certificate for operation.

The constructor remains responsible for the works executed by him for a specified period after putting into operation. The minimum warranty periods are prescribed by the law and vary from 3 to 10 years, depending on the type of work. The warranty period for street repair works is usually 1 year. Longer periods can be determined contractually.

III.12. Limitation of Liability

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

IV. General Review.

Bulgarian law recognizes the following types of commercial companies exhaustively listed in the Commerce Act 1991 (“Commerce Act”): (i) limited liability company (“LLC”), (ii) joint stock company (“JSC”), (iii) general partnership, (iv) limited partnership and (v) company limited by shares. All of them are recognized as separate legal entities. Regardless of the nationality of its founder(s), each company registered in Bulgaria is considered as a Bulgarian legal entity and is governed in compliance with the effective Bulgarian laws and regulations.

Business may also be conducted in the form of a sole trader, a holding, a branch, a trade representative office of a foreign company in Bulgaria (“TRO”) and a co-operative. Of these, most commonly used by foreign investors are the branch and the TRO. Both branches and TRO’s may be registered in Bulgaria by foreign companies and/or individuals (where a branch is concerned) provided they are entitled to conduct business under the national law of their registration/home country.

In terms of shareholders’ liability to company creditors, partners in general partnerships and unlimited partners in limited partnerships and companies limited by shares have unlimited personal liability to company’s creditors. On the other hand, the shareholders’ exposure in LLCs and JSCs and in companies limited by shares is capped at the amount of their shareholding in the company’s capital.

IV.2. Establishment

All types of commercial companies and all branches are established by way of registration in the Commercial Register administered by the Registry Agency with the Ministry of Justice. This is a one-stop shop registration upon which the registered company obtains a unified identification code (“UIC”) which serves for all commercial, tax, social security, statistics and other public purposes. The company is identified by the UIC throughout its entire existence. No other secondary registration is required from newly incorporated companies and branches to start effectively performing their business activity.

The requirements for the registration of each particular company or branch are set forth in the Commerce Act. Registration comprises submission of a standard application form with all necessary documents appended to it. The registration procedure varies in terms of its duration depending on the type of organisation that is to be registered - up to 5 business days for a LLC and a JSC and around 2 weeks for a branch. The established company or branch comes into legal existence as of its registration.

A TRO is established after a registration in the Commercial Register with the Bulgarian Chamber of Commerce and Industry and is subject to secondary registration in the BUSLTAT Register, a united national administrative register also held by the Registry Agency. This secondary registration serves as tax, social security and statistics registration for the TRO.

IV.3. Most Commonly Used Forms of Business Organisations.

The types of business organisations most commonly used for establishment of foreign presence in Bulgaria are the LLC, the JSC, the branch and the TRO. Following is a brief comparison between them:
<table>
<thead>
<tr>
<th></th>
<th>LLC</th>
<th>JSC</th>
<th>Branch</th>
<th>TRO</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Corporate Veil</strong></td>
<td>Shareholders’ liability is capped at the amount of their shareholding in the company’s capital.</td>
<td>Not considered to be separate legal entities. Both branches and TROs keep accounting books and prepare a separate balance sheet, but their assets and liabilities are of the parent company. Branches qualify as a “permanent establishment” of the foreign parent company, thus triggering corporate income tax liability of the foreign parent in Bulgaria. TROs may not generate income in Bulgaria and are not subject to corporate tax in Bulgaria; however, for tax purposes would qualify as “permanent establishment” if they engage in business activities, thus triggering corporate income tax liability of the foreign parent in Bulgaria on the profit made as a result of the TRO’s business.</td>
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<tr>
<td><strong>Capital Requirements</strong></td>
<td>Very low minimum capital requirements BGN 2 (appr. EUR 1)</td>
<td>High minimum capital requirements. BGN 50,000 (appr. EUR 25,000). Higher capital may be required for carrying out certain activities (banking, insurance).</td>
<td>No capital requirements.</td>
<td></td>
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<tr>
<td></td>
<td>Capital may be collected by both cash and in-kind contributions. An in-kind contribution is subject to mandatory appraisal by 3 independent experts appointed by the Registry Agency following a specific procedure determined in the law.</td>
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<tr>
<td><strong>Corporate Governance Structure</strong></td>
<td>Simpler corporate governance structure as compared to the JSC. In addition, shareholders must be registered in the Commercial Register.</td>
<td>More complex corporate governance structure, however lower extent of publicity of shareholders, as they are not registered in the Commercial Register, unless in cases where there is only one shareholder. JSCs may be private, or publicly traded.</td>
<td>Do not have a distinct management structure, except for a manager, who is subject to registration in the Commercial Register.</td>
<td>Have an authorised representative of the parent company appointed for managing parent’s activity in Bulgaria through the TRO. Authorised representative is subject to registration.</td>
</tr>
<tr>
<td>Shareholders</td>
<td>Up to 100% of the registered capital may be held by one or more foreign persons. Shareholders are personally engaged with company operations and are even subject to expulsion, if not active in company management. Low flexibility in company operations due to qualified majorities required for certain shareholder decisions.</td>
<td>Up to 100% of the registered capital may be held by one or more foreign persons. Lack of personal engagement of shareholders in company operations. However, higher flexibility in company operations may be achieved.</td>
<td>No shareholders, only parent companies.</td>
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<tr>
<td>Scope of Activities</td>
<td>LLC and JSC may perform any activity not prohibited by law, regardless of its registered scope of activity (exceptions include activities which require a prior licensing, like banking and insurance activities).</td>
<td>The scope of business activity of the branch is registered in the Commercial Register.</td>
<td>TRO may not conduct business activities, but only non-proprietary activities, such as organising promotions, exhibitions, training or advertising of products or services.</td>
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<tr>
<td>Registration Fees</td>
<td>BGN 160 (appr. EUR 80) or BGN 80 (appr. EUR 40), depending on whether submission is of documents on paper copy or electronically</td>
<td>BGN 460 (appr. EUR 230) or BGN 230 (appr. EUR 115), depending on whether submission is of documents on paper copy or electronically</td>
<td>BGN 430 (appr. EUR 215) or BGN 215 (appr. EUR 108), depending on whether submission is of documents on paper copy or electronically</td>
<td>EUR 120</td>
</tr>
</tbody>
</table>
### Shares. Transfer of Shares

| Shares in LLCs are not tradable instruments. LLC shares may be transferred by a notarised share transfer agreement. The transfer to a third party requires a shareholders' resolution and an approval for the admission of the new shareholder. The transfer must be registered into the Commercial Registry. | JSC shares are tradable instruments. They are evidenced by interim share certificates / printed shares issued by the JSC. Registered JSC shares are transferred by endorsement placed on the back of the share certificate or the interim share certificate and the transfer must be entered into the book of shareholders of the JSC to have effect against the company. JSC bearer shares are transferred by mere delivery of the printed share. In most cases new shareholders may easily enter the JSC. Nevertheless, restrictions on share transfers may be provided for in the company’s by-laws. | No shares. |

### Audit Requirements

| The annual financial statements of JSC must be mandatorily audited by an independent auditor. The financials of the LLC, the branch and the TRO are subject to a mandatory audit only if 2 out of the following 3 criteria are exceeded for the current year or for the previous year: ● balance sheet asset value as at 31 December of BGN 1.5 million (appr. EUR 750,000), ● net income from sales for the year of BGN 2.5 million (appr. EUR 1,250,000) and ● average number of personnel for the year of 50. Otherwise, the LLC, branch or TRO financials may be audited if the company’s or parent company’s management, respectively, so decides. |  |

### Reserves

| No rules set forth in the law for formation of a reserve fund. | The law sets forth mandatory rules governing the formation of a reserve fund and distribution of profit. | No reserve funds may be formed, as the branch is not a separate legal entity. | No reserve funds may be formed, as the TRO is not a separate legal entity and may not generate profit. |
### IV.4. Corporate Governance of LLC and JSC.

Following are some specifics of the corporate governance of the LLC and the JSC, which are also relevant when deciding on the most appropriate organisational form to conduct business through a commercial company in Bulgaria:

<table>
<thead>
<tr>
<th>Corporate Governance Structure</th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>● General Meeting of the shareholders, or sole shareholder; and</td>
<td>● General Meeting of the shareholders, or sole shareholder, and</td>
<td></td>
</tr>
<tr>
<td>● one or more General Managers, who manage the company and represent it before third parties jointly or severally.</td>
<td>● Board of Directors (3-9 members) in the event of one-tier system, or Supervisory Board (3-7 members) and Managing Board (3-9 members) in the event of two-tier system.</td>
<td></td>
</tr>
</tbody>
</table>

The Supervisory Board monitors and controls the activities of the Managing Board. The Supervisory Board does not take part in the management of the company and it represents the company only in its relations with the Managing Board.

<table>
<thead>
<tr>
<th>Must directors be physical persons or can they be legal entities?</th>
<th>Must directors be physical persons or can they be legal entities?</th>
</tr>
</thead>
<tbody>
<tr>
<td>The General Manager must always be a physical person.</td>
<td>Board members of JSC may be physical persons or (only if expressly provided in the bylaws of the company) legal entities. A legal entity appointed as board member must designate an individual as its representative on the board.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Specific requirements in terms of residence or nationality of managers/board members</th>
<th>Specific requirements in terms of residence or nationality of managers/board members</th>
</tr>
</thead>
<tbody>
<tr>
<td>No such requirements or restrictions.</td>
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</table>

<table>
<thead>
<tr>
<th>Is there a maximum term for which managers/board members can be appointed / must they be reappointed periodically?</th>
<th>Is there a maximum term for which managers/board members can be appointed / must they be reappointed periodically?</th>
</tr>
</thead>
<tbody>
<tr>
<td>No maximum term for the General Manager(s) of LLC.</td>
<td>JSC board members must be reappointed periodically. The term of board members sitting on the first board of a newly incorporated JSC is 3 years. Thereafter, board members are appointed for 5 years.</td>
</tr>
</tbody>
</table>

Terms are renewable. Any General Manager / board member may be replaced at any time by resolution of the shareholders / sole owner (in the event of two-tier system in JSCs, members of the Managing Board are appointed and dismissed by decision of the Supervisory Board).
Bulgarian law contains a list of issues that are vested in the exclusive authority of the General Meeting of the shareholders or, respectively, of the sole shareholder. The statutory list of powers of the owner in case of JSC and a LLC largely coincides; however, given the nature of the LLC (considered to be a more “personalized” corporate vehicle than the JSC) the law vests some powers to the shareholders in the LLC, which in the case of a JSC would normally be exercised by the managing body (the board).

In both cases, in addition to the said exclusive powers, the company’s articles of association can vest other matters within the owner’s competence. A catalogue of the major exclusive powers (by law) of the owner in case of LLC and JSC is provided below.

### Major Powers of the Shareholders / Sole Owner

**Common powers for both LLC & JSC**

- to amend and supplement the articles of association (founding act / bylaws) of the company.
- to approve the company financials, to resolve on the distribution of the profit and on payment thereof.
- to resolve on the increase or decrease of the registered capital of the company.
- to resolve on the reorganisation and winding-up of the company.
- to appoint the General Manager / the members of the Board of Directors or, respectively, of the Supervisory Board, and determine their remuneration. In JSCs with two-tier management system, the members of the Managing Board are appointed and dismissed from office by the Supervisory Board, which also determines the Managing Board members’ remuneration.
- to release the General Manager / the members of the board(s) from liability for their activities as such.
- to appoint the liquidator(s) if the company is undergoing dissolution.

**Specific powers for LLC/JSC**

<table>
<thead>
<tr>
<th>LLC’s</th>
<th>JSC’s</th>
</tr>
</thead>
<tbody>
<tr>
<td>In LLC’s the shareholders are competent to resolve on the acquisition or disposal by the company of real estate and rights in rem.</td>
<td>In JSCs it is normally the board(s) to decide on such issue and not the shareholder(s).</td>
</tr>
<tr>
<td>In LLC’s the shareholders are competent to resolve on participation of the company in other companies and opening or closing of branches.</td>
<td>In JSCs it is normally the board(s) to decide on such issue and not the shareholder(s).</td>
</tr>
<tr>
<td>No restrictions in case of JSC, no corporate resolutions required.</td>
<td>In LLCs the shareholders are competent to approve new shareholders and expel shareholders, and give consent for the transfer of shares to a new shareholder.</td>
</tr>
<tr>
<td>LLCs may not issue bonds.</td>
<td>In JCSs the shareholders are competent to resolve on the issuance of bonds.</td>
</tr>
<tr>
<td>Representation</td>
<td>In the event of more than one General Manager, each of them may act severally, unless the Articles of Association of the company provide that the General Managers shall act jointly.</td>
</tr>
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<td>------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>The Board of Directors (in the case of one-tier governance system) or the Managing Board subject to the approval of the Supervisory Board (in the case of two-tier governance system) may authorize one or more persons among their members (Executive Director(s)) to represent the company jointly or severally before third Parties.</td>
</tr>
<tr>
<td></td>
<td>The joint representation is the only restriction that can be imposed with a binding effect on third parties on the representative powers of General Manager(s) / the board members authorised by the respective board to represent the company. Any other restrictions would be valid only with respect to the company itself, and if breached would not affect the validity of the transaction, but would form grounds for triggering the liability of the General Manager / the respective board member to the company in the event the latter has incurred damage as a result of the breach.</td>
</tr>
<tr>
<td>“Four-eye principle”</td>
<td>The “Four Eye” principle (joint signature of 2 persons) may be introduced both in LLCs and JSCs. Joint representation, if introduced, would be effective with respect to third parties in both cases.</td>
</tr>
<tr>
<td>Executive and non-executive general managers/board members</td>
<td>The LLC may not have non-executive General Managers. In case of a JSC with one-tier governance system the law requires that at least one executive board member be appointed. In case of a JSC with two-tier system of governance, the whole Supervisory Board comprises non-executive board members.</td>
</tr>
</tbody>
</table>
V. RESIDENCE AND CITIZENSHIP THROUGH INVESTMENT IN BULGARIA

V.1. Legal framework

The rules and procedures for entering, residence and leaving the Republic of Bulgaria are provided mainly in the Foreigners in the Republic of Bulgaria Act (‘FRBA’). FRBA applies to individuals who are not citizens of other Member States of EU and their family members, as well as the nationals of states party to the Agreement on European Economic Area and of the Swiss Confederation and their family members, as the terms and the procedures for them are provided in the Entering, Residing and Leaving the Republic of Bulgaria Act. FRBA provisions are developed and explicated in the subordinate legislation: Regulations for Implementation of the Foreigners in the Republic of Bulgaria Act (‘the Regulations for its implementation’) and the Ordinance for the Conditions and Procedures for Issuance of Visas and Determination of the Visa Regime. Also applicable are the Investments Promotion Act, Civil Registration Act and Bulgarian Personal Documents Act.

A decisive amendment in the Bulgarian legislation as of May 2009 is one of the significant government measures to encourage foreign direct investments by providing considerable advantages for foreign individuals in Bulgaria. Under this legal framework, foreigners and their families can receive Permanent Residence Permit and have the unique benefit to be exempted from physical residency as per Art. 40, para 1, sub para 6 of the Foreigners in the Republic of Bulgaria Act (FRBA).

In February 2013, important amendments in the Investment Promotion Act and the Regulations on its implementation, the Foreigners in the Republic of Bulgaria Act, and the Bulgarian Citizenship Act were promulgated. In general, these complement the existing legislative framework, but also give new opportunities to foreign individuals who wish to obtain permanent and/or continuous residence on the grounds of passive and active investment. Among the most attractive changes are the new investment option leading to fast track citizenship application and the waiving of the compulsory exam to demonstrate knowledge of the Bulgarian language and the requirement to denounce the current nationality in the citizenship application.

V.2. Investment options leading to continuous or permanent residence

After the latest legislative changes in February 2013, foreign investors can choose between a variety of investment options to obtain the preferred residence status. These can be divided into the following groups:

- Passive Investment
- Entrepreneurial options
- Acquisition of real estate
- Investment in certified large-scale projects

The options are examined briefly below.

Arguably, the most interesting and risk-free option remains the investment of minimum 511,292 euro in government bonds that leads to permanent residence. There are options available to leverage the investment by using financing facilities. The statutory holding period of 5 years can now be reduced if the person also invests in a Priority Investment Project as defined in the Investment Promotion Act and the Regulations for its implementation. The threshold amount for each investment is 511,292 euro. By making the additional investment, the foreign individual qualifies to apply for Bulgarian citizenship under a fast track procedure. The cumulative requirements under this rule are:

- for the person to have been permanent resident for at least one year; and
- for the person to have invested in a company carrying out a Priority Investment Project (as defined in the Investment Promotion Act); and
- for the person to hold both investments for a period of two years after being granted Bulgarian citizenship.

Alternatively, the foreign investors may choose to hold the government bonds for the standard period of five years when they will qualify for Bulgarian citizenship under the general rule.
In both cases, the investor and his or her family members – spouse and dependent children – are exempt from physical residence and qualify to apply for Bulgarian citizenship. Additional benefits are introduced with the latest legislative changes – the investors are now exempt from the obligation to prove knowledge in the Bulgarian language and are also exempt from the obligation to renounce their current nationality, which were previously mandatory requirements in the citizenship application procedure.

There are also options available to entrepreneurs who wish to engage themselves in the realization of greenfield and brownfield projects in Bulgaria. We will first examine the most recently introduced entrepreneurial option, which requires a minimum investment of 125,000 euro and leads to continuous residence. The foreign person must invest the minimum amount to obtain at least 50% of the capital of a Bulgarian company operating in one of the underdeveloped regions in the country. There are two types of such regions - municipalities where the level of unemployment is higher than the country’s average and regions in which the GDP per capita is lower than the country’s average. The investment must be used to obtain new tangible or intangible assets. The final requirement is to create a minimum of 5 jobs for Bulgarian citizens under labor contract. The continuous residence is allowed for a term of up to one year. Both the investment and the positions must be maintained if the person wishes to renew the permit for another year.

Another option introduced by the latest changes in the legislation that leads to permanent residence. The threshold amount is not less than 250,000 euro. There is no restriction as to the object of activity or the location of the company. The foreign person must invest the said amount to obtain not less than 50 per cent of the capital of a Bulgarian company as a result of which new tangible or intangible assets must be acquired. Under this option there is also a requirement for the company to open positions for 10 Bulgarian citizens under labor contract.

If the three preconditions are not satisfied (participation in the share capital, investment in assets, and job creation) over the years, the permanent residence permit is suspended. Individuals who receive permits under this option are exempt from the physical residence requirement and after 5 years qualify for Bulgarian citizenship. They are relieved from the obligation to prove knowledge in the Bulgarian language and to renounce their current nationality in the citizenship application procedure.

The third entrepreneurial option leading to receiving permanent residence permission is to invest minimum 3,000,000 euro in the share capital of a private Bulgarian company. The investment must be held for 5 years after which the foreign individual qualifies to apply for Bulgarian citizenship. Like in the case of the preceding entrepreneurial option, the investor is exempt from the obligation to settle in the country or to spend any given number of days per year. At the time of citizenship application, the person is also relieved from the obligation to prove knowledge in the Bulgarian language and to renounce their current nationality.

The recent amendments in the applicable legislation also make it possible for foreign investors to obtain continuous residence with validity of up to one year against investment in real estate. The minimum amount that must be invested is 300,000 euro. The foreign person can invest as an individual or to use this amount to obtain more than 50 per cent of the capital of a Bulgarian company, which in turn, invests the said amount in real estate in Bulgaria. The payment of the real estate must be made through a Bulgarian bank. Financing is allowed, as long as the outstanding amount of the loan is maximum 25 per cent as of the date of the application for the residence. The holder of continuous residence permit must renew it every year and hold the investment, but benefits from the physical exemption rule.

Finally, permanent residence status can also be given to a foreign individual who is implementing and/or maintaining investment that has been certified Class A, Class B, or a
CHAPTER FIVE: RESIDENCE AND CITIZENSHIP THROUGH INVESTMENT IN BULGARIA

Priority Investment Project as per the Investment Promotion Act. Permission may be granted to:

- a partner or shareholder with personal shares holding 50 per cent or more of the company’s registered capital;
- a representative or procurator duly entered in the Commercial Register with the Registry Agency; or
- a person hired under a labor contract on a key and/or controlling position in the R&D, production, marketing or another key activity of the company, or another activity that is essential for the implementation of the investment.

Only the persons as per item (a) above can qualify to apply for citizenship under an accelerated procedure and provided they meet certain qualification criteria. These criteria are related to the maintenance of the company’s investments above the minimum threshold amount for certified investment projects Class A.

V.3. The procedure to obtain the residence

Both procedures - to obtain continuous and to obtain permanent residence - follow the same basic steps. These steps stem from the applicable legislation and can be summarized as follow:

<table>
<thead>
<tr>
<th>CHOOSE THE PREFERRED INVESTMENT OPTION</th>
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<tr>
<td>Make the necessary investment</td>
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<tr>
<th>VISA D APPLICATION</th>
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<tr>
<td>Apply for the special type of visa in the respective Bulgarian consulate</td>
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</table>

<table>
<thead>
<tr>
<th>RESIDENCE APPLICATION AND LOCAL ID</th>
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</thead>
<tbody>
<tr>
<td>Obtain the residence permit</td>
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</table>

Having outlined the process like that, one must bare in mind that in between the major steps indicated in the diagram above, there are several other mandatory procedures that need to be undertaken. The complex process of application for residence permit is set forth in the applicable legislation. Depending on the type of permit, the procedure for the principal investor might take between 6 and 9 months. The process for the qualifying family members might take between 3 and 6 months.

The Permanent Residence Permit is issued by the Migration Directorate within the Ministry of Interior. This document entitles its holder to enter and exit Bulgaria freely and to reside in the country for an indefinite period of time. The continuous residence permit is issued by the Regional Directorate of the Ministry of Interior. This document entitles its holder to enter and exit Bulgaria freely and to reside in the country for up to 12 months where the permit must me renewed every year.

V.4. Citizenship

According to the Bulgarian Citizenship Act (BCA), a foreign investor may apply for Bulgarian citizenship five years after acquiring of Permanent Residence Permit provided that it has not been interrupted. To that effect the foreign person must, as of the date of filing the application for naturalization and as per Art. 12 of BCA: have reached the age of majority (18 years); maintain a current valid status of Permanent Residency, have never been sentenced by a Bulgarian court for criminal offence nor accused of committing such a crime in criminal proceedings, unless he has been rehabilitated.

Those who opt for the fast track citizenship procedure can benefit from qualification for application 1 year after obtaining their PR and from the faster processing of their application. Such applications are processed within 6 months.
Another provision of the law stipulates that a foreign citizen may acquire Bulgarian citizenship regardless of the provisions of Art. 12 of BCA if the Republic of Bulgaria has demonstrated distinct interest in his/her naturalization or if the concerned person has made a special contribution to the Republic of Bulgaria in socio-economic spheres, as well as in the fields of science, technology, culture and sports.

Bulgarian citizenship is granted by the President of the Republic by virtue of a President Decree issued on the grounds of a special well-founded proposal by the Minister of Justice after the completion of a statutory procedure provided for in the Bulgarian Citizenship Act.
VI. BULGARIAN LABOUR AND SOCIAL SECURITY LAW*

VI.1. Bulgarian Labour Law

VI.1.1. Legal Framework

The Bulgarian labour legislation is characterized by codified and detailed provisions established in the Constitution of the Republic of Bulgaria, the Labour Code and numerous sub-legislative legal acts, regulations and rules.

The Labour Code is the basic source of labour legislation. It determines the main institutes of the labour law, such as:
- territorial scope of the Bulgarian labour law;
- scope of the persons who it is applied to;
- tripartite partnership;
- collective labour contract;
- employees’ and employers’ organizations;
- basic labour rights and obligations;
- types and content of labour contracts;
- general contents and amendment of the employment relationship;
- preservation of employment relationships in case of change of employer;
- working hours, rests and leaves, place of work, labour remuneration;
- termination of employment relationships and explicitly listed grounds therefor;
- compensations related to employment relationships;
- general rules for safe and healthy working conditions;
- special protection of certain categories of employees;
- labour disputes, control for protection of the labour law and administrative liability for its breach, etc.

The acts containing provisions for employment relationships may be divided into two basic groups:
- general acts which provide for further development of the institutes of the Labour Code and
- special acts regulating employment relationships of special types of employees.

There are numerous acts in both groups which makes their exhaustive enumeration impossible for the format of the current overview.

The provisions concerning labour law contained in the various laws are specified by the detailed and various sub-legislative normative acts.

Of course, along with the national legislation, the Republic of Bulgaria has ratified a number of Conventions in the field of employment relationships which are integral part of the Bulgarian legislation and supersede any national law in case of controversy.

Integral part of the Bulgarian legislation (subject to certain specific procedures where applicable) are also all labour related legal acts of the European Union. In case of controversy between any internal law and the EU law, Bulgarian courts are obliged to apply directly the provisions of the latter.

VI.1.2. Basic Legal Definitions

The labour legislation provides for legal definitions of the basic labour terms as follows:

**Employer** - is any natural person, legal entity or its division, as well as any other organizational and economically separate formation (enterprise, establishment, organization, cooperation, institution, household, company, etc.) which independently employs people in an employment relationship, including for provision of work at home or at a place outside the enterprise and for the purpose of transfer to a receiving enterprise;

**Enterprise** – is any place - enterprise, establishment, organization, cooperation, institution, establishment, site, etc. – where wage labour is carried out;

**Place of Work** – is any premises, workshop, room, location of machinery, equipment or any other similar territorially defined place within the

*The present material reflects the applicable Bulgarian legislation as of February 28, 2013.*
enterprise where the employee on assignment from the employer works in performance of his duties under an employment relationship, as well the place of work as determined by the receiving enterprise to which the employee directly preforms his/her work. In case the employee performs work at home or at a place outside the enterprise the place of work is the home of the employee or that other place chosen by the employee outside the enterprise;

Working time - is any period during which the worker or employee is obligated to execute the work on which the said worker has agreed to.

VI.1.3. General Review of the Labour Law

The Bulgarian labour law is based on principles generally applicable to the European Union labour law such as: freedom and protection of labour, social dialogue between the state and employees’ and employers’ organizations regarding the regulation of employment relationships, a ban on discrimination, equal pay between men and women, guaranteed labour remuneration, fixed working hours, limitation on overtime work, guaranteed rests and leaves, preservation of the labour relation in case of change of the employer, collective arrangements and freedom of association of employers and employees, etc.

According to the Labour Code, the Bulgarian labour legislation is applicable to all labour relationships between Bulgarian citizens, citizens of the European Union, citizens of the states which are 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 not provided otherwise in a law or a treaty to which the Republic of Bulgaria is a party. The employment relationships of Bulgarian citizens sent to work abroad in foreign enterprises or joint ventures, as well as of foreign nationals working on the territory of the Republic of Bulgaria shall also be regulated by the Labour Code, insofar as not provided otherwise in a law or a treaty to which the Republic of Bulgaria is a party.

### Tripartite partnership and collective labour agreements

Tripartite partnership and collective labour agreements, being achievements of the contemporary labour law, ensure the protection of the employees’ and workers’ rights and the consideration of the interests of all agents, involved in the production process - employees, business, state.

The State can legislate in the filed of labour relations, social insurance and the living standard issues only after consulting the employers’ and employees’ organisations. Despite the obligatory nature of the tripartite partnership, the statements of its bodies have only advisory functions and are not binding on the competent state authority. The bodies of the tripartite partnership are established at national, district, branch, industry sector and municipality level.

Collective labour bargaining also exists at levels: enterprise, branch, industry field and municipality. The collective labour bargaining regulates issues of the labour and social security relations of employees, which are not regulated by mandatory legal provisions. A collective labour agreement shall not contain clauses which are more unfavourable to the employees than the legal provisions or provisions of a higher grade of Collective Labour Agreement (CLA), which is binding upon the employer.

A CLA shall be registered, depending on their level, in a special register of the local or Central Labour Inspectorate. The term of validity of the CLA-s can not exceed 2 years. CLA-s are applicable only to the employees that are members of syndicalist organization - party to the contract. Where the employees are not members of such an organization, they may choose to be bound by the CLA, concluded by their employer, upon written declaration to the employer or to the syndicalist organization – party to the contract.

### Formation of the labour relationship

The labour relationship can be established through:
• individual labour contract,
• election or
• competitive examination.

The procedure of elections is applicable only to offices, specified by law, an act of the Council of Ministers or by-laws. A competitive examination may be held for any position with the exception of a position which shall be filled on the basis of election. However, the labour contract is the most widespread grounds for formation of a labour relationship.

**Individual labour contract**

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

Upon conclusion of the labour contract the employer shall introduce to the employee the labour obligations ensuing from the position or the nature of the work. The employer has to provide the employees with a copy of the description of their activities and responsibilities before the conclusion of the contract. The obligatory contents of the individual labour contract must include:

- the workplace, position and nature of work,
- duration of the labour contract,
- date of conclusion of the contract and commencement of performance,
- amount of basic and extended annual paid leave and additional annual paid leaves,
- term of advance notices for termination of the labour contract, which should be the same for both parties,
- basic and additional labour remunerations of constant nature as well as the periodic terms for their payment and
- the duration of the working day or week.

In case of specific place of work (e.g. place of work at home, other place outside the enterprise or at other enterprise which uses the services/works of the employee) a specific compulsory content of the labour contract in connection with the specific place of work is provided for in the Labour Code.

The employment contract may be concluded:

- for an indefinite period; or
- for a fixed term.

In order to protect the employee/worker, the legislator limits the possibilities for conclusion of fixed term employment contracts by listing them explicitly. For example, fixed term contracts can be concluded:

- for a definite period which shall not be longer than 3 years, insofar as a law or an act of the Council of Ministers does not provide otherwise;
- until completion of some specified work;
- for substitution of an employee who is absent from work;
- for work at a position which is to be occupied through a competitive examination until its occupation;
- for a certain mandate, where such has been specified by the respective body or an employment contract for a trial period.

The Labour Code includes special provisions regarding the fixed term contract concerning the diplomatic service.

A fixed-term employment contract shall be concluded for execution of casual, seasonal or short-term work and activities, as well as for hiring workers or employees in enterprises that have been adjudicated bankrupt or put into liquidation. As an exception, a fixed-term employment contract may be concluded for a period of not less than one year and for work and activities that are not of a casual, seasonal or short-term nature. Such an employment contract may also be concluded for a shorter period upon request in writing by the worker or employee.

Any employment contract, concluded in violation of these principles shall be considered as a contact of an indefinite duration.
Place of work in case of provision of work at home and at other place outside the enterprise

Generally, the place of work of the employee is within the enterprise (see statute definition of place of work above). The Labour Code provides for special stipulations regarding the provision of work at home and at other place outside the enterprise. Such other place of work outside of the enterprise as well all special working conditions in connection with the special place of work are to be determined in the labour contract, whereby the imperative provisions of the Labour Code are to be adhered to.

Working hours

The normal duration of the working day, according to Labour Code, is eight hours. The working week consists of five days, with normal duration of 40 hours. Along with the normal working hours, the Labour Code defines extended and shortened working time, flex time, shift work, night work, etc. Special conditions are provided for regarding the work at home or at a place outside the enterprise.

The length of the working time is codified by law and it can be extended or shortened only upon reasons stipulated by law and under a specific procedure. The working time can be extended by written order of the employer only for industrial reasons upon preliminary consultations with the representatives of the trade union organizations and the representatives of the workers and employees. However, the additional working time shall be compensated for respective reduction in the working time in future. The duration of the working day in this case can not exceed 10 hours and these working conditions can not be imposed for a period longer than 60 working days.

The Labour Code provides for an opportunity for the Employers to reduce the number of working hours for the full-time Employees in case of reduction of the volume of work in the enterprise. This measure could be realized only upon prior coordination with the representatives of the syndicates and with the representatives of the employees and for the maximal period of 3 months in a calendar year.

The work performed between 10.00 p.m. and 6.00 a.m., and for underage workers and employees - from 8 p.m. to 6 a.m., is considered night work. The duration of the night working hours is 7 hours, with 35 hours night working week. The night work can not be performed by underage workers; pregnant female employees; workers/employees at advanced stage of treatment in vitro; mothers of children up to 6 years of age, as well as mothers raising disabled children regardless of their age, except with their own consent.

The work done out of the agreed working time is considered overtime. A general prohibition is put on the over time work and it can be permitted as an exception only in explicitly listed by law cases: for prevention, control and overcoming of the consequences of disasters; for the performance of work of urgent public necessity; for the completion of work that can not be completed in the regular working hours, etc.

Rests

There should be one or several rests during the day. The lunch break should not last less than 30 minutes. Special conditions are provided for regarding the work at home or at a place outside the enterprise.

Leaves

The leaves codified in the Labour Code can be divided on the grounds of their aim into, inter alia: paid annual leave and unpaid leave, leave for studies, leave in case of temporary disability, maternity leave, etc.

Each worker or employee is entitled to a paid annual leave. In case of beginning work for the first time, the worker or employee may use his/her paid annual leave after eight months’ employment. The amount of the basic paid annual leave is not less than 20 working days. Certain categories of workers or
employees, depending on the special nature of work, are entitled to an extended paid annual leave. The categories of such workers or employees and the minimal amount of the leave are determined by the Council of Ministers. However, annual leave can be extended by a collective labour agreement or agreement between the employer and the employee. The Labour Code contains special provisions on the procedure for usage of the annual leave by the employees. In case the annual paid leave has not been used within two years as of the end of the year to which the annual paid leave applies the right to use it becomes time-barred.

Upon request of the employee the employer may permit unpaid leave – in case it is up to 30 days per one calendar year the unpaid leave is recognized as period of service. The use of this type of leave does not depend on a stipulated by law reasons, but rather on the employer’s permission. The Labour Code provides for specific types of unpaid leaves.

Currently the Bulgarian labour law provides for 410-day maternity leave, 45 days of which are used before the childbirth. In addition, the father has the right to use the rest of the maternity leave once the child is 6 months old, subject to the mother’s consent. Moreover the father of a new-born child is entitled to use 15 days leave upon the birth of a child.

The labour law imposes a prohibition on cash compensation for annual paid leave, except for the cases of termination of the labour relationship.

**Labour remuneration**

The Bulgarian labour legislation stipulates that the work performed in labour relationship shall be compensated. The amount of the labour remuneration is generally agreed on by the employer and the employee but it cannot be lower than the minimum wage of the country (at present 310 BGN, approx. 160 Euro). The amount of the latter is defined every year by a decree of the Council of Ministers. The Labour Code contains special provisions concerning the labour remuneration of the employees in the state administration.

Where the employees perform their labour obligations in a rightful manner, the payment of 60 per cent of their remuneration, but not less than the minimum wage of the state, is guaranteed. For the rest of the remuneration the employer owes interest, which is levied until the date of the full payment.

**Preserving employment relationships in case of change of the employer**

Similarly to the legislation of the European Union, the Bulgarian labour legislation envisages retention of the employment relationship in case of change of employer. The labour relationship shall not be terminated in the event of a change of employer as a result of:

- merger of enterprises;
- merger by acquisition of one enterprise by another;
- distribution of the operations of one enterprise among two or more enterprises;
- passing of a self-contained part of one enterprise to another;
- change of the legal form of business organization;
- change of the ownership or of a self-contained part thereof;
- cession or transfer of activity from one enterprise to another, including transfer of tangible assets.

In these cases, the rights and obligations arising from labour relationships, which exist on the date of the change, shall be transferred to the new employer. The employment relationship is not terminated also in the event of change of employer as a result of renting, leasing or granting under concession of the enterprise or of an autonomous part thereof. In these cases the rights and obligations of the previous employer arising from employment relationships existing on the date of the change shall be transferred to the
new employer. Upon expiry of the contract for rental, lease or concession, the employment relationships of the workers or employees shall not be terminated but shall revert to the previous employer thereof. The previous and the new employer shall be jointly liable for all obligations towards the workers or employees.

**Lease of employees**

The Labour Code contains special provisions regarding the so called “temporary lease of employees”. The lease of employees is a legal construction by which the formal employer transfers the employee for a certain period of time to the receiving enterprise whereby the employee provides his/her work directly to the receiving enterprise. The relationship between the transferring employer and the receiving enterprise is to be regulated by a special agreement. The Labour Code contains imperative provisions on the rights and obligations of the involved parties, on the content of the labour contract and the agreement between the transferring employer and the receiving enterprise, etc.

Prior to transferring employees to receiving enterprises the transferring employer is obliged to register with the Employment Agency.

**Termination of the employment relationship**

Similarly to the conclusion of labour contracts, their termination is done only in writing. The termination procedures and grounds for termination of labour contracts are specified in detail in the Labour Code. The types of termination of labour contracts may be divided in several basic groups:

- Procedures where termination requires consent of the other party or procedures where termination involves the will and actions only of the party entitled to initiate termination – termination by mutual consent or unilateral termination of the contract. The unilateral termination of the labour contract supposes either breach of contract from the other party or impossibility to fulfil their contractual obligations;
- Termination procedures via advance notice or termination procedures where no advance notice is required. The terms of the advance notice are specified in the Labour Code: 1 month for non-fixed term contracts unless anything else is specified in the contract, but in any event not more than 3 months, and 3 months for fixed term contracts, but not more than the remainder to the expiry of the contract;
- Termination procedures upon a motion of the employer and termination procedures upon a motion of the employee. However, while the employee may terminate the labour contract without stating any grounds (except by termination without prior notice), the employer cannot use such a procedure - the termination grounds are specified in the Labour Code. Within seven days after the termination of the employment contract, the employer or a person authorized thereby is obligated to send a notification of this to the relevant territorial directorate of the National Revenue Agency.

The Labour Code provides for a special termination of the labour contract whereby the employer can propose, at his initiative, to the worker or employee termination of the employment contract against indemnification. If the worker or employee gives no answer in writing within 7 days the proposal shall be considered rejected. If the worker or employee accepts the proposal for termination against indemnification the employer shall owe him/her an indemnification amounting to not less than the quadruple size of the last received monthly gross remuneration, except if the parties have agreed upon a larger size of the indemnification. If such indemnification is not paid within one month from the date of termination of the labour contract, the grounds for its termination shall be considered dropped.
The Bulgarian law provides for special preliminary protection, which some categories of employees and workers are entitled to. They may be dismissed only upon preliminary permission by the Labour Inspectorate for each separate case of dismissal. The Bulgarian Labour Code enumerates categories of employees and workers entitled to preliminary protection: mothers of children younger than 3 years of age; employees who have been reassigned due to reasons of health; employees who have commenced a period of permitted leave; workers/employees, who are in advanced stage of treatment in vitro.

The labour law provides for special stipulations for the protection of female workers/employees at advanced stage of treatment in vitro. This category of workers/employees was not included in the scope of special protection for women. Until now special protection was provided only for pregnant women and nursing women. Furthermore, there are several more provisions regulating special issues referring the women at an advanced stage of treatment in vitro, such as women’s rooms, job reassignment, business trips, etc. Moreover, the protection policy pursued by the latest amendments reduces the opportunities for their discharge. The reasons on which they may be discharged are limited to the same which are in force for the pregnant women.

**Protection against wrongful dismissal**

As stated above, under the Bulgarian law a labour contract can be terminated by the employer only on listed by law grounds. However, where the termination of the employment relationship does not comply with the legal requirements, the employee/worker can still protect their interests either through challenging the righteousness of the dismissal before the employer, or before court. The employer is not obliged to consider the complaint. However, he can voluntarily withdraw the dismissal until a lawsuit is filed.

The Labour Code provides for four claims, whereas some of them can be filed together:
- Claim for recognition of dismissal as wrongful and its repeal;
- Claim for reinstatement of the employee to her/his previous position;
- Claim for compensation for the period of unemployment due to dismissal;
- Claim for revision of the grounds for dismissal, entered in her/his service record or other documents.

There are no special Bulgarian courts for consideration of labour disputes as in other European countries, but the Civil Procedure Code implements a special claim procedure – the summary procedure, for cases concerning the rights of the workers or employees. Employees are released from paying court costs. The summary procedure provides for much shorter terms for the court actions in comparison with the general claim procedure.

**Compensations related to the labour relationship**

The Labour Code provides for certain compensations, as briefly scheduled below:
- Compensation for failure to observe the termination notice - equal to the amount of the employee’s gross labour remuneration for the remainder of the notice period;
- Compensation for terminating the employment relationship without notice - to the extent of the gross pay for the notice period in case of a labour contract for an indefinite period; and to the amount of the real damages (on the basis of the gross pay for the period during which the employee was unemployed but not more than the remainder of the employment relationship) in case of a labour contract for a fixed term;
- Compensation for dismissal on other grounds:
  - Upon dismissal due to closing down the enterprise or part of it, staff
reduction, reduction in the volume of work and work stoppage of more than 15 working days: 1 month’s pay (unless otherwise stipulated);
- Upon termination of the employment relationship due to an illness: 2 months’ pay (provided service of at least 5 years and during the last 5 years of service not received any compensation on the same grounds);
- Upon termination of the employment relationship after employee has acquired the right to a pension for insured service and age, irrespective of the grounds for the termination: 2 months’ pay; by service with the same employer for ten years: 6 months’ pay;
- Compensation for unused paid annual leave upon termination of the labour relationship.

VI.1.4. Incentives

Incentives in the sphere of labour law are aimed mainly at decreasing unemployment and enhancement of employment. Those are established in the Encouragement of Employment Act and the Rules on its application. The incentives are payment of funds from the Employment Agency to employers who open new job positions, preserve opened job positions in case of decrease of the working volume, hiring unemployed persons over the age of 50 years, engaging unemployed persons of decreased working ability, hiring unemployed women mothers or single parents, employing permanently unemployed persons, etc. An employer wishing to apply for financial aid under an employment program should be registered pursuant to the existing legislation. Depending on the particular program, other requirements may also be specified.

Further, the Bulgarian Corporate Income Tax Act stipulates some incentives and stimuli as follows:

- incentives for hiring unemployed persons which find expression in reduction of the accounting financial result with the installments made by the employer in Personal Income Tax Fund and National Health Insurance Fund for a period of 12 months;
- the corporate tax totalling 100 per cent is assigned when manufacturing activity is performed in municipalities with unemployment 35% or more higher than the average for the country, as this right is preserved for the following 5 years after the municipality is no longer on the list with municipalities with unemployment higher than the average for the country.

In accordance with the principle that the granting of state aid should be in appliance with the common market regulations, the Bulgarian tax legislation, as well as the special State Aid Act stipulate for various restrictions for the granting of tax incentives, which are qualified as state aid, including the infrastructure development aids. The Bulgarian Corporate Income Tax Act provides for certain exceptions from the above restrictions within the framework of the minimal state aid (De minimis aid).

VI.2. Bulgarian Social Security Law

VI.2.1. Legal Framework

The right to social security and social support is determined in the Constitution of the Republic of Bulgaria. Similarly to the labour legislation, the social security law is codified. The main institutes in the field are laid down in the Social Security Code. The procedure provisions are settled in the Bulgarian Tax and Social Security Procedure Code.

Other acts of general importance in the sphere are the Budget of the State Social Security Acts, which are adopted annually and various sub-legislative acts.

The Republic of Bulgaria is a party to a number of international agreements in the sphere of social security such as various contracts for social security between the Republic of Bulgaria and other countries (e.g. Spain, Czech Republic,
Germany, Hungary, Libya, etc.) Integral parts of the Bulgarian legislation are also all social security related legal acts of the European Union. In case of controversy between any internal law and any of EU regulations, Bulgarian courts are obliged to apply directly the provisions of the latter.

VI.2.2. Basic Legal Definitions

The basic legal definitions in the field of social security law are as follows:

- **Obligatory insured persons for all social risks (i.e. general disease and maternity, disability because of general disease, old age and death, accident at work and professional disease, unemployment)** - specified in article 4 of the Social Security Code including but not limited to: the workers or employees hired to work for more than five working days or 40 hours, within a calendar month, regardless of the nature of the work, the mode of pay, and the source of funding (with some exceptions); the civil servants; the judges, prosecutors, investigating magistrates, executive judges, recording magistrates, and judicial officers; certain types of military servants; members of cooperations, who perform work and receive remuneration from the cooperation; the persons who work under a second employment contract or under an additional employment contract; the contractors under contracts for management and control of commercial corporations, as well as managers, procurators and controllers of companies, liquidators, etc.

- **Obligatory insured persons for limited social risks (disability due to a general disease, old age and death)** are: persons registered as sole practitioners/as freelancers and/or exercising craftsmen activity; persons performing work as sole traders, owners or partners in commercial corporations; registered agricultural producers and tobacco producers; persons who perform work without entering into a labour relationship and who receive monthly remuneration equal to or exceeding one minimum wage after deduction of the operating expenses, unless insured on different grounds during the relevant month; persons who perform work without entering into an employment relationship and who are insured on different grounds during the relevant month, regardless of the amount of the remuneration received.

- **Social Insurance Contributors** - according to article 5 of the Social Security Code this is any natural person, legal entity or non-personified entity, as well as any other organizations obligated by the law to make social security contributions for other natural persons.

- **Self-insured person** - a natural person obligated to make his social insurance contributions entirely at his/her own expense.

VI.2.3. General Review

The authorities governing the social insurance system are the Ministry of Labour and Social Policy and the National Social Security Institute. The Ministry develops, coordinates and implements state policy in the field of public social insurance. The National Social Security Institute directly administers social insurance.

The social insurance sector is usually described as a system of three pillars - state mandatory social security, supplementary (mandatory) social security and voluntary (pension) insurance. Each next pillar extends the volume of rights of the secured persons. That is why the following presentation reveals the issues in the same order.

**State social security**

Social security relations in the Republic of Bulgaria may be divided into two general groups:
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.

This means that 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 for which the social risks occur.

The income for which insurance payments are due shall include all the remunerations, including the accounted and non-paid or non-accounted ones and other incomes from labour activity. The installments of non-accounted remuneration shall be calculated on the basis of the insurance income according to the economic activity and the qualification group of profession. In case such are not provided the installments shall be calculated on the basis of the minimum wage of the country (310 BGN, approx. 160 Euro). These measures aim at a more effective collection of the contributions and also represent sanctions against those who act in bad faith.

The Budget of the State Social Security Act for the respective year determines the amount of social security installments collected by the funds for the respective social risks, as well as the minimum and maximum security income for the year. The amount of the minimal monthly insurance income for a self-insured person is 420 BGN (approx. 215 Euro). The maximum amount of the insurance income is 2200 BGN (approx. 1125 Euro).

Pursuant to the Social Security Code the amount of security installments regarding employees working at the third (basic) category of labour for the „Pension“ Fund is 17,8 % or 12,8% of the gross labour remuneration depending on the date of birth - for persons born before 01.01.1960 and after 31.12.1959; for “General Disease and Maternity” Fund - 3,5%; for “Unemployment” Fund - 1% and for “Labour Accident and Professional Decease” - from 0,4% up to 1,1%.

In the common case the installments for “Labour Accident and Professional Decease” Fund shall be at the expense of the insurers. The ratio between the insurer and the insured person for the “Unemployment” and “Maternity and General Disease” Funds is kept 60 to 40, whereby 60 % is paid by the insurer.

Generally, security installments are to be deposited by the 25th day of the month following the month they refer to.

**Supplementary social insurance**

The principles of functioning of the supplementary social insurance differ considerably from those of the mandatory social insurance. The supplementary social security consists of: additional obligatory pension security in case of old age and death; additional voluntary pension security in case of old age, disability and death; additional voluntary security for unemployment and/or vocational training. A person can benefit from supplementary social insurance by participation in universal and/or occupational pension funds, funds for supplementary voluntary pension insurance on occupational schemes and funds for supplementary voluntary insurance for unemployment or vocational training. The latter are managed by licensed pension insurance companies or insurance companies for unemployment and/or vocational training. Individual lots are opened for each insured person and the sums collected therein are paid provided that the respective social risk occurs.
Supplementary mandatory and voluntary pension insurance

Supplementary mandatory pension insurance is made in universal and occupational pension funds in keeping with the principle for mandatory nature of the insurance. Persons born after 31 December 1959 are insured for supplementary pension in case they are insured under the mandatory state social insurance for Fund “Pension”, as well as persons working under the conditions of first and second category of labour, regardless of their age.

The social security contribution for persons insured in a universal pension fund is fixed at 5%. It is distributed between the social insurer (2.8%) and the social insured person (2.2%), while for an occupational pension fund the social security contribution is 12% for persons working under the conditions of first category of labour and 7% for persons working under the conditions of second category of labour, and the contributions are entirely borne by the social insurer.

Supplementary voluntary pension insurance is made in a supplementary voluntary pension insurance fund and supplementary voluntary pension insurance on occupational schemes in keeping with the principle for voluntary nature of the insurance. Insured persons can be 16 years of age and older. Social security contributions for supplementary voluntary pension insurance have no fixed amount. Insured persons acquire entitlement to personal pension for old age, personal pension for disability, and if certain prerequisites are met, their heirs are entitled to inheritance pension if the insured person dies. Supplementary voluntary insurance for unemployment and/or vocational training is made in funds for supplementary voluntary insurance for unemployment or vocational training. Insurance in such funds entitled the insured persons to benefits in the event of unemployment and/or money for attendance of vocational trainings.

V.2.4. Incentives

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

- Income from investments of pension funds of the supplementary mandatory and voluntary social security distributed to the individual lots of secured persons is not subject to taxation pursuant to the Taxation of Income of Natural Persons Act;
- Individual security installments for additional obligatory pension security are deducted from the income prior to taxation;
- Installments made by employers for supplementary mandatory pension security are acknowledged as costs related to their business activity.
CHAPTER SEVEN: TAXATION

VII. TAXATION

VII.1. Direct Taxation of Corporations

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

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

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

VII.1.1. Taxable Persons

Taxable persons are:

- the resident legal persons;
- the non-resident legal persons which carry out economic activity in the Republic of Bulgaria through a permanent establishment or from disposition of property of such permanent establishment, or which receive income from a source inside the Republic of Bulgaria;
- the sole traders: in respect of the taxes withheld at source and in the cases specified in the Income Taxes on Natural Persons Act (when they perform activities liable to taxes alternative to corporation tax);
- the natural persons who have established a business, which in accordance with its purposes and volume requires that its activities be conducted on a commercial basis: in the cases specified in the Income Taxes on Natural Persons Act;
- the employers and the commissioning entities under contracts for management and control: in respect of the tax on the expenses on fringe benefits.

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

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

VII.1.2. Corporate Income Tax

Corporate income tax in Bulgaria applies in a single rate of 10%.

VII.1.3. Profits Subject to Tax

 Bulgarian resident companies are subject to Bulgarian tax on their world-wide profits. Companies that are non-residents in Bulgaria are liable to taxes in respect of the profits gained through a permanent establishment in the Republic of Bulgaria and of the income specified in the CITA accruing from a source inside the Republic of Bulgaria.
A company is resident in Bulgaria if it is incorporated (registered) pursuant to Bulgarian legislation. Resident companies are also any companies incorporated under Council Regulation (EC) No 2157/2001, and any cooperative society incorporated under Council Regulation No 1435/2003, where the registered office thereof is situated in the country and they are entered into a Bulgarian register.

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

VII.1.4. Determination of Profits for Tax Purposes

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

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

Generally, the taxable profit 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.

VII.1.5. Valuation of Depreciable Assets for Tax Purposes.

Depreciation and Amortization

Tax depreciable assets are:
- the tax tangible fixed assets;
- the tax intangible fixed assets;
- the investment properties, with the exception of land;
- the subsequent expenses associated with asset written off from the tax depreciation schedule

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

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

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

The depreciable assets are divided into several categories:
- Category I: solid buildings, including investment properties, plant, transmission facilities, electric power carriers, communication lines;
- Category II: machinery, process equipment, apparatus;
- Category III: means of transport excluding automobiles; surfacing of roads and of runways;
- Category IV: computers, computer peripheral equipment, software, and right to use software, mobile phones;
- Category V: automobiles;
- Category VI: tax tangible and intangible fixed assets whereof the period of use
is restricted according to contractual relationships or a legal obligation;
● Category VII: all other depreciable assets.
The annual rate of tax depreciation is determined on a single occasion for the year and may not exceed the following amounts:

<table>
<thead>
<tr>
<th>Asset category</th>
<th>Annual rate of tax depreciation (%)</th>
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<tbody>
<tr>
<td>I</td>
<td>4</td>
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<tr>
<td>II</td>
<td>30</td>
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<tr>
<td>III</td>
<td>10</td>
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<td>IV</td>
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<td>V</td>
<td>25</td>
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<td>VI</td>
<td>100/years of legal restriction</td>
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<td></td>
<td>The annual rate may not exceed 33 1/3</td>
</tr>
<tr>
<td>VIII</td>
<td>15</td>
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The annual rate may not exceed 33 1/3.

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

VII.1.6. Utilization of Losses

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

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

Another innovation is that the tax loss must be deducted upon determination of the tax financial result within the total amount of the positive tax financial result before deduction of the tax loss. Where the tax loss is less than the positive tax financial result before deduction of the tax loss, the full amount of the said loss shall be deducted upon determination of the tax financial result.

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

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

VII.1.7. Group Taxation. Transactions Between Related Parties

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

Bulgaria has tax rules regulating the tax deductions and the taxable revenue from transactions between related parties (*the
transfer pricing rules”). Transfer pricing rules apply to both domestic and international transactions between related parties. The Bulgarian transfer pricing rules are broadly similar to the generally accepted OECD standards that could be seen in the EU and OECD countries.

VII.1.8. Tax reporting and Tax Payments

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

The corporate income tax is paid through making monthly/quarterly provisional tax payments. Monthly tax prepayments are made by taxable persons who have formed net income from sales exceeding BGN 3,000,000 for the preceding year. Quarterly tax prepayments are made by taxable persons who are under no obligation to make monthly tax prepayments. The monthly and quarterly prepayments are based on the projected tax profit for the current year. Monthly tax prepayments for the months January, February and March are remitted until 15th of April and for the months from April to December – until 15th day of the month to which the said prepayments apply. Quarterly tax prepayments for the first and second quarter are remitted on or before the 15th day of the month next succeeding the quarter to which the said prepayments apply, whereby for the third quarter are remitted until 15th of December. No quarterly tax prepayments are made for the fourth quarter.

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

VII.1.9. Intra-community Dividends

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

VII.2. Corporation Tax Reduction, Retention and Exemption

VII.2.1. Corporation Tax Retention

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

VII.2.2. Corporation Tax Exemption

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

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

VII.2.3. Corporation Tax Incentives

Corporation tax incentives are divided into General tax incentives and Regional incentives.
The General incentives on their part are: 1) tax incentives upon hiring of unemployed persons (such legal entities are entitled to debit the accounting financial result by the amounts paid for labor remuneration and the contributions remitted for the account of the employer to the public social insurance funds and the National Health Insurance Fund during the first twelve months after the hiring); 2) incentives for enterprises hiring people with disabilities (these taxable persons are allowed to retain 100 % of the corporation tax under certain conditions); 3) incentives for social and health security funds (they are allowed to retain 50 % of the corporation tax on their economic activity directly related to their primary activity under specific conditions) etc.

The regional tax incentives:

- **Tax relief, representing state aid for regional development** – it is allowed under the condition that the retained tax shall be invested in assets, necessary for the performance of initial investment. The law also requires the initial investment to be made within four years after the beginning of the year for which the tax was retained; the initial investment to be made in municipalities where the rate of unemployment for the year of retention is by 35 per cent or more higher than the national average for the same period etc. The taxable entity is required to perform all its manufacturing activity only in municipalities where the rate of unemployment for the year preceding the current year is by 35 per cent or more higher than the national average for the same period. In this case the taxable person is entitled to retain 100 % of the corporate tax.

- **State Aid in Agriculture** - Any taxable persons – registered agricultural producers shall be allowed to retain 60 per cent of the corporate tax in respect of the taxable profit accruing thereto from activity carried out in agriculture, the manufacturing industry, production, high technologies and infrastructure, where the certain conditions are fulfilled (such as for example: the assets acquired as part of the investment referred to in above are new as fabricated and have not been exploited prior to the acquisition thereof, etc.)

### VII.3. Alternative Taxes

#### VII.3.1. Gambling businesses

The taxable amount for assessment of the tax on gambling activities of toto and lotto, betting on the outcome of a sports competition and uncertain events is the value of the bets taken for each game and the tax rate is 15 %. The taxable amount for assessment of the tax on gambling activities of lotteries, raffles and bingo and keno numbers lotteries is the nominal value of the bet as specified in coupons, cards, tickets or other tokens certifying participation and the tax rate is 15 %. The taxable amount for assessment of the tax on gambling activity of games where the value of the bet consists in an increased charge for a telephone or another telecommunication link is the increase in the charge for the telephone or other electronic communication service. The tax rate is 15 %

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

Any income accruing to public-financed enterprise from commercial transactions covered
under Article 1 of the Commerce Act, as well as from rent of movable and immovable property, shall attract a tax on income. The taxable amount is the income accruing to the public-financed enterprise during the relevant year.
The tax rate is 3%. The rate of tax on income accruing to the municipalities is 2%.

VII.3.3. Tax on Vessels Operation Activity

Taxable persons are the persons carrying out maritime merchant shipping which simultaneously fulfill certain conditions envisaged in the law. These persons may elect their activity to attract a tax on vessels operations activity. The tax shall be levied on the taxable persons who have elected to be liable for the said tax for a period not less than five years. The tax rate is 10%.

VII.4. Tax on Corporate Expenses

Bulgaria levies taxes on certain expenses. The taxes are charged monthly. The expense and the tax thereon shall be recognized for tax purposes in the year of charging and shall not form a temporary tax difference. In case the taxable person has over remitted any tax on expenses or any corporation tax, the said tax may be deducted from the tax on expenses due.
The tax rate for taxes on all kinds of expenses is 10%. With regard to the fact that the tax on expenses is recognized for tax purposes, the effective tax rate is 9%

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

VII.4.1. Business Entertainment Expenses

Taxable persons are the persons which are subject to levy of corporation tax. Therefore the expenses of legal entities, subject to alternative tax, are not levied with the tax herein.
The tax is levied on the gross amount of business entertainment expenses for the respective year.

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

The taxable expenses are expenses on fringe benefits provided in kind to factory and office workers and to persons hired under a management and control contracts (hired persons). These expenses furthermore include:
● the expenses on contributions (premiums) for voluntary retirement and health insurance and voluntary unemployment and/or vocational-training insurance, and/or life assurance and life assurance linked to an investment fund;
● the expenses on food vouchers

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

Taxable persons are all employers or commissioning entities under management and control contracts.
No tax shall be levied on expenses on fringe benefits not exceeding the amount of BGN 60 per month per hired person, where the taxable persons do not incur any coercively enforceable public obligations at the time of incurrence of the expenses. No tax shall be levied on expenses not exceeding the amount of BGN 60 per month, provided in the form of food vouchers to each hired person if certain conditions are fulfilled.
No tax shall be levied on any expenses on fringe benefits incurred on transportation of factory and office workers and of persons hired under a management and control contract from the place of residence to the place of work and back. The latter does not apply if any such transportation is carried out by passenger car or by extra bus services. However the expenses herein shall not be levied with tax if the transportation of factory and office workers is carried out by passenger car to inaccessible and remote areas and the taxable person cannot ensure the implementation of the activity thereof without incurrence of the expense.
The taxable amount for assessment of the tax on social expenses is the expenses on fringe benefits provided in kind debited with the income related to the said expenses for the relevant year. The taxable amount for assessment of the tax on expenses on contributions (premiums) for voluntary retirement and health insurance and voluntary unemployment and/or vocational-training insurance, and/or life assurance and life assurance linked to an investment fund is the excess of the said expenses over BGN 60 per month per hired person. The taxable amount for assessment of the tax on expenses on food vouchers is the excess of the said expenses over BGN 60 per month per hired person.

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

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

- the expenses on operation shall relate to the management operations on the basis of the total kilometers covered for the said operations during the calendar year;
- the expenses on maintenance and repair shall relate to the management operations on the basis of the kilometers covered for the said operations in relation to the total kilometers covered by the relevant means of transport during the calendar year.

VII.5. Withholding Tax Obligations

Subject to such a tax is only the income of resident and non-resident legal entities whereas the income of natural persons is regulated by Income Taxes on Natural Persons Act.

Corporate taxpayers are subject to the following main withholding obligations:

VII.5.1. Repatriation of Profit/Dividend Withholding Tax

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

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

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

The taxable amount for assessment of the tax withheld at source on dividends is the gross amount of the dividends distributed. Since 1 January 2008 the tax rate of the withholding tax on dividends is decreased from 7% to 5%.

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

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

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

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

The tax shall be withheld by the resident legal persons, the sole traders or the permanent establishments in the country which charge the income to the non-resident legal persons, with the exception of the income from transactions with financial assets and the income from transactions in immovable property, including an undivided interest or a limited right in rem to any immovable property situated in the country.

Where the payer of the income is not a taxable person under the CITA and in respect of the income from transactions with financial assets and the income from transactions in immovable property, including an undivided interest or a limited right in rem to any immovable property situated in the country, the tax shall be withheld from the recipient of the income.

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

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

Bulgaria has concluded more than sixty double tax treaties which provide for a relief of tax or a reduced rate of tax.

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

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

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

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

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

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

VII.7. Local Taxation

Local taxes are charged by the municipalities. According to the latest developments in the applicable law the Municipal Council determines the amount of the taxes within the range established by the law. The main local taxes are:

VII.7.1. Real Estate Tax

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

Taxable persons are the owners or holders of limited real rights over the taxable property.

The Municipal Council determines the amount of the tax within a range of 0.1 to 4.5 per mille of the assessed value of the property. A reduction of 50% of the tax is allowed if the property is a main residence.

VII.7.2. Transfer Taxes

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

The tax rate is determined by the Municipal Council within 0.1 and 3 per cent of the assessed value of the transferred property. Donation and disposal without consideration of any property are subject to tax at the following rates:

- from 0.4 to 0.8 per cent: applicable to donations between siblings and the children of siblings;
- from 3.3 to 6.6 per cent: applicable to donations between any persons.

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

VII.7.3. Vehicle Tax

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

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

VII.7.4. Final Annual (License) Tax

A significant amendment in Bulgarian tax legislation is that this tax is charged by the municipalities as of 1 January 2008 and is not income to the central budget. The license tax is applicable to natural persons and sole traders only (not legal entities) and under the following conditions:

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

VII. 7.5. Tourist Tax

Bulgarian tax legislation envisages also a tourist tax for a night's lodging. This tax is applicable to the persons offering overnight lodging.

The tax rate is determined by the Municipal Council from 0.20 to 3 BGN for each night's lodging in accordance to the city in the Municipality and the category of the premises for night's lodging.

VII.8. Capital Taxation.

Ecological Levies

VII.8.1. Taxes on Capital

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

VII.8.2. Packing Charge

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

VII.9. Income Taxation of Individuals

VII.9.1. Taxable Persons

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

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

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

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

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

VII.9.2. Taxable Income

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

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

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

VII.9.3. Tax Rate

A significant amendment in income taxation of individuals is that the progressive tax rate which depended on the amount of the annual taxable income and was within the range of 20 % to 24 % is replaced with a flat rate of 10 % regardless of the amount of taxable income. Thus, in general the amount of tax on the aggregate annual taxable amount is determined by multiplying the aggregate annual taxable amount by a tax rate of 10 per cent.

Certain items of income of residents or non-residents are not included in the taxable annual income and are subject to special rules of taxation with respect to the rates and the basis for tax. Some tax rates, applicable there to, are decreased since 1 January 2008. Thus, dividends are subject to tax of 5 % instead of 7 %; income from supplementary voluntary social insurance, from voluntary health insurance and life assurances 7 % and income acquired by the person upon the sale or exchange of movable property under certain conditions is levied with tax of 10 % instead of 15 %.

VII.9.4. Exemptions

Taxability does not apply to:

- income acquired during the tax year from the sale or exchange of:
  (a) one residential immovable property if acquired more than 3 years before the sale;
  (b) up to two immovable properties, as well as any number of agricultural and forest properties, provided that more than five years have elapsed between the date of acquisition and the date of sale or exchange;
- income accruing from the sale or exchange of movable property, with the exception of:
  (a) means of transport by road, air and water, provided that the period from the date of acquisition to the date of sale or exchange is less than one year;
  (b) works of art, collectors' items and antiques;
  (c) shares, interests, compensation instruments, investment vouchers and other financial assets, as well as the income accruing from trade in foreign exchange;
  (d) movable property delivered to persons who have the right to carry out collection, transport, recovery or disposal of waste in accordance with the Waste Management Act;
- interest paid on accounts, excluding deposit accounts, with any domestic commercial bank, branch of a foreign bank and with domestic mutual aid funds, established in the EU Member State;
- interest paid and discounts made on Bulgarian government, municipal and corporate bonds etc.

VII.9.5. Wage Withholding Taxes

Salaries and other payments due for employment are included in the annual taxable income and are subject to personal income tax. The employer is required to
withhold provisional tax from the wages of the employees on a monthly basis. The law provides specific rules for determining the taxable amount for tax on income from labor relationships. The wage withholding tax is charged with the flat tax rate of 10%.

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

VII.9.6. Final Taxes

- Taxation of non-resident persons’ income.

Certain items of income are not included in the annual taxable income but are taxed separately with a final tax. This treatment applies to the following items of income:
  (a) compensations for lost profit and damages of such nature;
  (b) scholarships for study in Bulgaria and abroad;
  (c) interest payments, including interest within payments under a lease contract etc.

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

The tax rate is 10%.

- Income from dividends of resident and non-resident natural persons.

Unlike the tax legislation prior to January 1st 2007 the income deriving from dividends and from shares in liquidation surplus of resident and non-resident natural persons is not taxed with withholding tax which had to be withheld by the legal entity, distributing the dividend/share of liquidation surplus.

Pursuant to the present Income taxes on natural persons act the income from dividends and from shares in any liquidation surplus in favor of resident or non-resident natural person, where accruing thereto from a source inside Bulgaria and resident natural person, where accruing thereto from a source outside Bulgaria attract a final tax. The tax rate is 5%.

- Under certain conditions a final tax shall be levied on the gross amount of the taxable income from supplementary voluntary social insurance, from voluntary health insurance and life assurances. The tax rate is 7%.

- A final tax shall be levied on the gross amount of the income acquired by the person upon the sale or exchange of movable property. The tax rate is 10%.

VII.9.7. Businesses of Individuals/Sole Traders

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

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

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

VII.9.8. Tax Returns and Payment of Taxes

Natural person should file an annual tax return. The obligation to submit an annual tax
return does not apply to persons who have received solely:
- income from employment relationships,
- non-taxable income;
- income on which a final tax is levied;
- income accruing to non-resident persons, on which a final tax has been levied.

The return should be filed before the 30th day of April of the year next succeeding the year of acquisition of the income.

The tax should be remitted on or before the 30th day of April of the year succeeding the year of acquisition of the income. Certain items of income are also subject to provisional tax payable through the year on monthly or quarterly basis.

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

VII.9.9. Double Taxation Treaties

As mentioned above Bulgaria has concluded more than 60 double tax conventions. They also provide rules regarding the natural persons.

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

VII.10. Excise Duties

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

The following main categories of products are subject to excise duties:
- liquors and beer, and raw materials with a content of alcohol; wine is zero-rated for excise duty purposes, but the producers of wine may be subject to excise duty registration and control;
- tobacco products such as cigars, cigarettes, tobacco for consumption;
- energy products and electricity; Excise duties are normally charged as a flat amount per measurement unit for the respective product (BGN per piece/ton/liter, etc.).

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

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

VII.11. VAT System

Pursuant to Bulgarian legislation the following transactions should be VAT taxable:
- each taxable supply of goods or services effected for consideration;
- each intra-Community acquisition effected for consideration, whereof the place of transaction is within the territory of the country, by a person registered under this Act or by a person in respect of which an obligation to register has arisen;
- each intra-Community acquisition of new means of transport effected for consideration, whereof the place of transaction is within the territory of the country;
- the importation of goods;
- each intra-Community acquisition whereof the place of transaction is within the territory of the country of excisable goods.
Under Bulgarian legislation taxable person shall mean any person who independently carries out an economic activity, whatever the purpose and results of that activity. As of 19 December 2007 subject to obligations under the Value Added Tax Act are also persons who practice a liberal profession, including as private bailiffs, lawyers and notaries.

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

VII.11.1. Registration of Persons

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

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

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

- The compulsory registration applies to taxable person having a taxable turnover of BGN 50,000 or more for a period not exceeding twelve the last consecutive months preceding the current month. These persons should file an application for registration within 14 days after the lapse of the tax period during which such turnover has accrued. These requirements should not apply to persons to whom the following conditions are simultaneously fulfilled:
  - they supply services electronically to recipients who are non-taxable persons, who are established or have a permanent address or usually reside within the territory of the country;
  - they are not established within the territory of the Community;
  - they are registered for VAT purposes for their activity referred to in Item 1 in another Member State.

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

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

Obligation for registration occurs also for a person who performs distance supplies - supplies whereof the place of transaction is within the territory of the country, the recipient of the supply is not registered for VAT purposes in the country and the supplies effected under the terms of distance selling for the territory of the country exceed the amount of BGN 70,000 for the current calendar year or have exceeded the said amount for the last preceding calendar year.

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

Any taxable and non-taxable legal person, which does not cover the compulsory registration conditions, has the right to register under the VAT Act for intra-Community
acquisition. Also any taxable person may register provided that the said person has notified the tax administration of the Member State where the said person is registered for VAT purposes that the said person wishes the distance selling effected thereby to have a place of transaction within the territory of the country.

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

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

VII.11.2. Tax Rates

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

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

The rate of tax applicable to accommodation provided by hoteliers, is 9%.

VII.11.3. VAT Exemptions

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

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

Main transactions which are exempt from VAT are:

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

VII.11.4. Intra-community Supply of Goods

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

Intra-community supplies with the exception of the exempt intra-community supplies referred are liable to tax at the zero rate.
Regarding intra-community acquisition, the recipient charges 20% VAT and is entitled to deduct credit for input tax.

VII.11.5. VAT Documents, Reporting and Payment

Tax documents are:
- the invoice;
- the advice to an invoice;
- the memorandum.

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

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

VII.11.6. VAT Refunds

Where VAT incurred on purchases exceeds VAT charged on sales, the excess VAT deduction is first carried forward for a period of two months to offset VAT debt due in these two months. If at the end of the two-month period the excess VAT or part thereof has not been recovered, the balance is refunded within 30 days after the date of filing of the VAT return for the second month.

VII.11.7. Special Rules for Material Investment Projects

VAT-registered investors who perform certain eligible investment projects are entitled to import assets needed for the project without effective payment of import VAT. In addition, such investors are entitled to refund VAT incurred on local purchases within 30 days after filing of the tax return. In order to benefit from the special investment rules, the investor needs to obtain an advance approval from the Minister of Finance. In order to receive the approval, the investment project must meet certain conditions, such as:
- the time limit for implementation of the project does not exceed two years;
- the amount of investment exceeds BGN 10 million for a period not longer than two years;
- more than 50 new jobs are created;
- the person is capable of financing the project, as well as of constructing and maintaining facilities ensuring the implementation of the said project.

VII.11.8. Special VAT Regulations for Tourist Sector

There are two regimes in the new VAT Act regarding the tourist sector depending on the services provided. The rate of tax applicable to accommodation provided by hoteliers (which is called “basic tourist service”) shall be 9%. The provision by a tour operator or a travel agent, acting in his own name, of goods or services in connection with the journey of a tourist for the direct benefit of the tourist, is treated as a supply of a single service to tourists. The goods and services directly benefiting the tourist shall be the goods and services which the tour operator or the travel agent has received from other taxable persons and has provided to the tourist without alteration. If the place of transaction of a single service to tourists is in Bulgaria, the tax rate is 20%. However, if the supplies of goods and services for the direct benefit of the tourist have a place of transaction within the territory of third countries and territories (i.e. outside the territory of the Community) they are taxed at zero rate.
EU Structural Funds in Bulgaria

**General Review**

Bulgaria’s accession to the European Union has brought about significant funding opportunities and access of the country to the financial mechanisms of the European Union. The European Union has established financial instruments for the implementation of the EU Regional Policy (also referred as Cohesion policy) which are laid down in the Treaty on the Functioning of the European Union (TFEU). The aim of the Regional Policy is to reduce the social and economic disparities between the regions in the EU. Spending under the Regional Policy is channeled through three funds – often collectively called ‘Structural Funds’. These are:

- **the European Regional Development Fund (ERDF)**, established in 1975, aims to reinforce social and economic cohesion by redressing the main regional imbalances. It supports programmes addressing regional development, economic change, enhanced competitiveness and territorial cooperation throughout the EU. Funding priorities include research, innovation, environmental protection and risk prevention, while infrastructure investment retains an important role, especially in the least developed regions.

- **the European Social Fund (ESF)**, established in 1958, aims to contribute to strengthening the economic and social cohesion by improving employment and job opportunities, with ultimate goal to achieve full employment and quality and productivity at work and promote social integration, including access of disadvantaged people to employment as well as diminishing national, regional or local employment disparities.

- **the Cohesion Fund (CF)** was established in 1993 for the purpose of strengthening the economic and social cohesion in the Community and promoting sustainable development. The fund aims at financial support for underdeveloped Member States and its priority is funding big infrastructure projects (trans-European transport network and environment projects).

Other funds which have been established to finance the different policies (e.g. Common Agricultural Policy (CAP) or Fisheries policy) of the European Union are the following:

- Agricultural expenditures are financed by two funds: the **European Agricultural Guarantee Fund (EAGF)** which finances direct payments to farmers and measures to regulate agricultural markets such as intervention and export refunds, and the **European Agricultural Fund for Rural Development (EAFRD)**, which finances the rural development programmes of the Member States. These two funds were established in 2007 to simplify the financing of CAP and replaced the European Agricultural Guidance and Guarantee Fund (EAGGF), established in 1962.

- **the Financial Instrument for Fisheries Guidance (FIFG)** was established in 1993 and its ultimate goal is restructuring the branch funding the modernization of fishing industry.

National Strategic Reference Frameworks, agreed by the Member States and the European Commission, set out the investment priorities for the regional and sectoral programmes to be supported by the European Union over the seven-year programming period 2007-2013.

The European Commission has approved the **National Strategic Reference Framework** for Bulgaria for the programming period 2007 – 2013 which sets out four main priorities:

- Improving Basic Infrastructure;
- Increasing the Quality of Human Capital with a Focus on Employment;
- Fostering Entrepreneurship, Favorable Business Environment and Good Governance;
The objective sought by the National Strategic Reference Framework is by 2015 Bulgaria to become a competitive EU country with high quality of life, incomes and social awareness. Each priority listed in the Reference Framework is passed through any of the seven Operational Programmes, which are financed through the Structural Funds:

1. **Regional Development** with budget of EUR 1,601,274,759 of which EUR 1,361,083,545 are financed by the ERDF and EUR 240,191,214 as national co-financing. The programme is managed by the Ministry of Regional Development and Public Works;

2. **Development of the Competitiveness of the Bulgarian Economy** with budget of EUR 1,162,215,552 of which EUR 987,883,219 financed by the ERDF and EUR 174,332,333 as national co-financing. The programme is managed by the Ministry of Economy, Energy and Tourism;

3. **Environment** with budget of EUR 1,800,748,085 of which EUR 1,466,425,481 financed by the ERDF and CF and EUR 334,322,604 as national co-financing. The programme is managed by the Ministry of Environment and Waters;

4. **Transport** with budget of EUR 2,003,481,166 of which EUR 1,624,479,623 financed by ERDF and CF and EUR 379,001,543 as national co-financing. The programme is managed by the Ministry of Transport, Information Technology and Communications;

5. **Human Resources Development** with budget of EUR 1,213,869,575 of which EUR 1,031,789,139 financed by the ESF and EUR 182,080,436 as national co-financing. The programme is managed by the Ministry of Labour and Social Policy;

6. **Administrative Capacity** with budget of EUR 180,789,087 of which EUR 153,670,724 financed by the ESF and EUR 27,118,363 as national co-financing.

Each Operational Programme encompasses different priority axes and various operations or measures so that more areas are intervened and better results are achieved. Each axis/operation/measure specifies the main intervention area, sets eligible finance and beneficiaries. The process of operation of each operational programme includes the following interrelations:

(i) the **Central Coordination Unit** at the Ministry of Finance is responsible for the coordination between the European Commission, Monitoring Committees and Managing Authorities. It observes the proper implementation of the European policies and principles in respect of the funding provided by the Structural Funds. It receives reports from the Managing Authorities with regard to the implementation of the Operational Programmes and from the Certifying Authority with regard to the financial implementation of the Operational Programmes;

(ii) the **Monitoring Committee** of each Operational Programme includes representatives from the Central Coordination Unit. It is responsible for the review and approval of operations to be financed, monitoring of the progress and results of the implemented projects,
approval of reports on the implementation, proposals to the Managing Authorities for current changes in the Operational Programmes;

(iii) each Managing Authority is responsible for the management and implementation of the respective Operational Programme under its supervision through announcing calls for proposals for potential beneficiaries under particular operation or measure, evaluation of the eligibility of projects, approval of expenditures under projects and processing payments as per approved financing. The Managing Authority also reports to the Certifying Authority on a monthly basis regarding the executed payments and to the Central Coordination Unit regarding the implementation of the Operational Programme and annually to the European Commission;

(iv) the role of the Certifying Authority is undertaken by the National Fund Directorate at the Ministry of Finance. Its two main functions are (a) receiving funds from the European Structural Funds managed by the European Commission, and (b) executing all payments towards the Managing Authorities. The Certifying Authority also verifies expenditures declared by beneficiaries to actually having been made and certifies all reporting documents of a certain project. The Certifying Authority also sends financial reports to the Central Coordination Unit.

(v) the role of the Audit Authority is undertaken by the Audit of European Funds Directorate at the Ministry of Finance. It carries out system audit and audit of operations. The Audit Authority issues annual control report and audit opinion that all financial operations are legal and regular.

(vi) Intermediate Bodies are institutions to which the Managing Authority may delegate some of its functions on management of the Operational Programme (e.g. project promotion and campaigns among publicity, project selection and approval, financial control and accounting, monitoring). However, the ultimate responsibility for management of the Programme is borne by the Managing Authority.

(vii) Beneficiaries are individuals, legal entities or public authorities, specified in general or in particular in the Operational Programmes. Beneficiaries are the ultimate recipients of the financing from the European Structural Funds. Eligible beneficiaries as per operations or measures submit project proposals or claims for funding to the Managing Authority or the Intermediate Body and once their project or claim has been approved, funding is accordingly granted. Depending on the operation or measure the Managing Authority may execute follow-up control and evaluations of the implementation of the project and the expenditure of funds received under the programme.

Due to the great number of priority axis, operations or measures available for beneficiaries that are public authorities or institutions, the funds granted are subject to public procurement rules. Grant agreements between the Managing Authorities and Beneficiaries are signed with regard to the responsibilities for conducting the public procurement procedure. Beneficiaries are responsible for preparation of tender documents and subcontracting agreements, announcement of public procurement procedure, evaluation of offers and concluding contract with subcontractors. The Managing Authority should review and verify the tender documentation required as well as review and approve the Beneficiary’s evaluation of the received offers. The subcontracting agreement is approved by the Managing Authority before the Beneficiary signs it with the chosen supplier or service provider. The Beneficiary then submits all invoices issued for services rendered to the Managing Authority for reimbursement of the costs from the approved funding. All information regarding
awarded public procurements is entered into the Public Procurement Register kept by the Public Procurement Agency within the Ministry of Economy, Energy and Tourism.

VIII.2. Operational Programmes

VIII.2.1. Operational Programme Regional Development

The programme is managed by the Ministry of Regional Development and Public Works. The programme's main objective is the improvement of the quality of life in all regions of the country through modernization of infrastructure and tourism boost.

The following five priority axis can be identified within this Operational Programme Regional Development:

**Priority Axis 1 - Sustainable and Integrated Urban Development.** This priority is meant to deliver basic environmental, social and economic services to all residents of a community through implementation of the following operations: (i) Improvement of social infrastructure in order to ensure appropriate and cost effective, educational, environmental and cultural infrastructure consistent with future demands of the cities and their surrounding urban areas; (ii) Housing policy – to provide better living conditions for city residents, raising the standard of life and improving the conditions for disadvantaged people; (iii) Organization of economic activities such as upgrading and development of existing business-related infrastructure (communications links, electricity, gas delivery), reconstruction and revitalization of existing industrial zones not affected by contaminations; (iv) Improvement of physical environment and risk prevention – to enhance quality of life and environmental conditions; (v) Sustainable urban transport system.

**Beneficiaries** under this priority axis: municipalities, Ministry of Interior, National Service Fire Safety and Population Protection, non-government organizations in conjunction with municipal authorities.

**Priority Axis 2 - Regional and Local Accessibility -** It includes the following operations: (i) Regional and Local Road Infrastructure – target activities are: rehabilitation and reconstruction of 2nd and 3rd class roads; maintenance of municipal roads within the agglomeration areas; (ii) Information and Communication Technologies Network - development of secure, dependable and trusted public-owned infrastructure, development of public parks; support of municipal ICT projects; (iii) Access to sustainable and efficient energy resources through construction of gas distribution pipeline, construction and installations of systems of renewable energy resources, etc. The operation supports only investment in energy distribution, not energy production.

**Beneficiaries** under this priority axis are municipalities, State Agency for Informational Technology and Communication, Road Infrastructure Company, etc.

**Priority Axis 3 - Sustainable Development of Tourism.** This priority axis aims to enhance the regional tourism potential of the country and to develop and market territorially specific and diversified tourist products through (i) enhancement of tourist attractions and related infrastructure; (ii) regional tourism product development and marketing destinations aiming to increase the awareness of the diverse tourism potential and to maintain the current position of Bulgaria on the tourism market; (iii) National Tourist Marketing.

**Beneficiaries** are: municipalities, associations of municipalities, Ministry of Culture, national and local tourism associations, registered in National Tourist Register, municipalities, State Tourism Agency.

**Priority Axis 4 - Local Development and Co-operation.** The activities planned under this axis are designed to contribute to the local...
and inter-regional development, especially for development and implementation of investment projects, introduced by local communities related to local property, as long as such projects address problems at local level and have the flexibility to solve them. The axis is to be implemented through two projects in two areas of intervention: (i) small-scale local investments targeted at less developed small municipalities due to their geographical or economic isolation and (ii) inter-regional cooperation - regional and local innovations through exchange of practices within the European territory.

**Beneficiaries** are: municipalities, districts, Euro regions and non-government organizations in partnership with municipal and district authorities.

**Priority Axis 5 - Technical Assistance.** The aim of this Priority axis is to guarantee the smooth management, monitoring, evaluation, information and control of the programme, thus ensuring high level of absorption of EU funds.

**Beneficiaries:** Ministry of Regional Development and Public Works (the Managing Authority and its regional departments).

### VIII.2.2. Operational Programme Competitiveness

The main objective of Operational Programme Competitiveness is the development of dynamic economy which is competitive to the European and world market with two specific targets – encouraging innovation thus increasing the effectiveness of enterprises as well as improving business environment in Bulgaria. Managing authority of the programme is the Ministry of Economy, Energy and Tourism.

**Priority Axis 1 - Development of a Knowledge-based Economy and Innovative Activities.**

The axis aims at the improvement of the Bulgarian innovation system and pro-innovative infrastructure through (i) support for starting innovative enterprises, especially in respect of innovative industrial research and experimental development stages and set-up companies that release innovative products on the market (e.g. business plans, services related to the project, marketing etc.); (ii) support for development of innovations and their marketing; (iii) support for increasing the number of research and development professionals in companies. Funds released under this operation will be designated to cover expenses incurred by the companies for remuneration, social security payments, equipment and materials for research; (iv) support for industrial property rights protection - financing will cover expenses related to assessment of innovations, registration fees, etc; (v) financing various companies providing professional and consultancy services for set-up companies; (vi) support for renovation of equipment for practical purposes; (vii) establishment of national innovation network.

**Beneficiaries** under this priority axis are: scientific research organizations, universities, set-up companies, companies that recruit research and development professionals and adopt innovations in their production process; Bulgarian companies engaged in inventions, scientific organizations and universities, municipalities, public or private organizations/companies, including non-government organization.

**Priority Axis 2 - Increasing Efficiency of Enterprises and Promoting Supportive Business Environment.** This part of the programme is intended to fund small and medium-sized enterprises (SMEs) in the light of improving their competitiveness on the market. The following operations will be financed under this priority axis: (i) technological renovation of companies which aims at providing modern and effective equipment and technologies through introducing new machines or innovations; (ii) satisfaction of internationally established standards; (iii) establishment of business support organizations network; (iv) creation of regional business incubators.
**Beneficiaries:** small and medium-sized enterprises; large enterprises (for some operations), public organizations, non-government organizations, companies providing information-consulting services.

**Priority Axis 3 - Financial Resources for Developing Enterprises.** Intervention under this axis aims to overcome the downsides of financing small and medium-sized enterprises due to lack of credit guarantees and venture capital. Financial engineering will be implemented through establishment of a Holding Fund pursuant to Art. 44 of Regulation 1083/2006. The financial instruments to be used by the Holding Fund will be offering guarantees for certain credit portfolios for small and medium enterprises; support for micro-loan funds and support for venture capital funds investing in small and medium enterprises.

**Beneficiaries** small and medium enterprises, organizations (public bodies, commercial entities or NGOs), operating a guarantee fund; organizations (public bodies, commercial entities or NGOs), operating micro-loan funds/schemes, or banks offering micro-loans, seed and venture capital funds, investing in SMEs, organizations, managing business angels networks.

**Priority Axis 4 - Strengthening the International Market Positions of the Bulgarian Economy.** The objectives of this priority axis are to be achieved through promoting the advantages of investing in Bulgaria and supporting Bulgarian companies playing on the international market.

Invest Bulgaria Agency, being the main beneficiary under this axis should elaborate a long-term programme to be followed including campaigns to attract investors, providing information regarding foreign markets, etc.

**Priority Axis 5 - Technical Assistance.** The objective of the priority axis is to improve the quality of the interventions to be carried out and to increase the effectiveness of Structural funds absorption through the realization of the Operational Programme at the level of managing authority and Intermediate bodies.

**Beneficiaries** are the Managing Authority, Intermediate Body.

**VIII.2.3. Operational Programme Environment**

The main objective of the programme is to meet the need of investments in infrastructure, aiming at achieving compliance with EU standards. Its main objective is to increase the share of the population connected to water and sewerage system, as well as to ensure quality and all-year delivery of water to more remote areas. The Managing Authority of the programme is the Ministry of Environment and Waters.

**Priority Axis 1: Improvement and Development of Water and Wastewater Infrastructure and Air Quality Improvement.** The main aim to be achieved under this priority axis is preservation and improvement of the environmental condition of the water in the country through construction and modernization of wastewater treatment plants as per the particular need of settlements.

**Beneficiaries** under this axis are municipal administrations, water supply and sewerage companies and River Basin Management Directorates.

**Priority Axis 2 - Improvement and Development of Waste Treatment Infrastructure.** It results in soil and groundwater condition improvement and the existing landfills for household waste. The priority is designed to achieve compliance with a number of EU directives whose requirements are transposed into the national legislation.

**Beneficiaries** under this axis are municipal administration and regional associations or association of municipalities.

**Priority Axis 3 - Preservation and Restoration of Biodiversity.** This priority axis is aiming to provide support for the entire management of species and natural habitats within the
National Environmental Network comprising protected areas and protected zones under NATURA 2000. The main priority of the axis is to reduce and hinder the loss of biodiversity in the country by improvement and update of the management plans regarding protected areas; information campaigns to increase public awareness on NATURA 2000 Network; establishment of management bodies of NATURA 2000; financing action plans for protection of endangered species of national, European and global significance, etc. 

_Beneficiaries_ are municipalities and departments within the Ministry of Environment and Waters and the Ministry of Agriculture and Food Supply engaged in the management of NATURA 2000, municipal administrations, water supply and sewerage companies and River Basin Management Directorates.

**Priority Axis 4 - Technical Assistance.** The objective of this axis is to provide support for the programme management, implementation, monitoring, control, and evaluation as well as for publicity measures, programme promotion and exchange of experience. This priority supports the realization of the activities, as well as all studies, considered as necessary for the successful Programme and priorities implementation.

_Beneficiaries are Managing Authority, Intermediate Body, Monitoring Committee/ subcommittees, Project Selection and Coordination Committee, Internal Audit Directorate within the Ministry of Environment and Water, working groups established for the purposes of the Operational Programme and Beneficiaries under Priorities Priority Axis 1 to 3._

**VIII.2.4. Operational Programme Transport**

The overall goal of the Operational Programme Transport is development of a sustainable transport system. The objectives of this Operational Programme are (i) the modernization and renovation of road and railway infrastructure, especially Trans-European road and railway network and (ii) improvement of travelling conditions. The Managing authority of the programme is the Ministry of Transport, Information Technology and Communications.

**Priority Axis 1 - Development of Railway Infrastructure along the Trans European and Major National Transport Axes.** The purpose of this axis is the establishment and development of nation-wide cross-border railway infrastructure of European importance, including modernization, rehabilitation and electrification of railway section along the Trans-European transport network. 

_Beneficiary under this axis is the National Railway Infrastructure Company._

**Priority Axis 2 - Development of Road Infrastructure along the Trans European and Major National Transport Axes.** Major focus of this axis is the establishment and development of nation-wide cross-border road infrastructure of European importance.

_Beneficiary under this axis is the National Road Infrastructure Fund._

**Priority Axis 3 - Improvement of Inter-modality for Passengers and Freight.** The objective of the axis is to make travelling conditions and transfer of passengers and freight more environmentally friendly through two main operations: (i) development of combined transport, railway connections, logistic related activities to attract international operators, and (ii) development of multimodal mobility for passengers in Sofia through extension of Sofia underground and creation of inter-modal connections for passengers in Sofia.

_Beneficiaries are Sofia Municipality – Metropolitan EAD Company, and National Railway Infrastructure Company._

**Priority Axis 4 - Improvement of Maritime and Inland Waterway Navigation.** The main aim is the improvement of navigation way – to secure international navigation and all-year passage of vessels in the two most critical sections of the Danube River.
Beneficiaries are the Agency for Exploration and Maintenance of the Danube River and the Maritime Administration Executive Agency.

Priority Axis 5 - Technical Assistance. This priority axis aims at the achievement of effective and efficient management and implementation of the Operational programme Transport.

Beneficiaries are the Management Authority as well as the beneficiaries under the Priority Axes 1 to 4 of this Programme.

VIII.2.5. Operational Programme Human Resources Development

Operational Programme Human Resources Development finances activities aiming to support the overall improvement of the labour structure and labour market conditions in the country. The programme is managed by the Ministry of Labor and Social Policy.

Priority Axis 1 - Promotion of Economic Activity and Development of Inclusive Labour Market. The objective of this priority axis is increasing the economic activity and integration of vulnerable groups and inactive persons on the labour market and employment through establishment of entrepreneurship. Main areas of intervention are integration of vulnerable groups on the labour market and employment through development of entrepreneurship.

Beneficiaries are Employment Agency, educational and training institutions and organizations, employers, branch organizations, social-economic partners, NGOs, centers for information and vocational training, vocational guidance institutions, micro-enterprises, consultancy companies, entrepreneurship development centers.

Priority Axis 2 - Raising the Productivity and Adaptability of the Employed Persons. The purpose of this priority axis is to improve the workforce adaptability and flexibility as well as the mobility through investments in human capital. Further, it aims at improving the working conditions at the workplace.

Beneficiaries are Employment Agency, educational and training institutions and organizations, employers, branch organizations, social-economic partners, NGOs, institutions and organizations exercising control over working conditions, units and services established to support employees.

Priority Axis 3 - Improving Quality of Education and Training in Correspondence with the Labour Market Necessities and Building a Knowledge-based Economy. The focus of this axis is to improve the workforce’s employability through high-quality education and training services, effectively performing educational and training institutions and sustainable links between education vocational training and business.

Beneficiaries are: Ministry of Education and Science, National Evaluation and Accreditation Agency; National Agency on Vocational Education and Training, science institutions and centers, employers, branch organization, municipalities, etc.

Priority Axis 4 – Improving the Access to Education and Training. The ultimate goal of this axis is more productive social and labour advancement of people through (i) access to education and training for disadvantaged groups; (ii) more extensive coverage of children and youth in education and society – expansion of extracurricular engagement of adolescents and setting up mechanism for provision of scholarship for higher education; (iii) development of life-long educational system.

Beneficiaries under this axis are: Ministry of Education and Science, National Evaluation and Accreditation Agency; National Agency on Vocational Education and Training, kindergartens, non-government organizations, Centre for Educational Integration of Children and Pupils from Ethnic Minorities, and others.

Priority Axis 5 - Social Inclusion and Promotion of Social Economy. The purpose of the axis is to support the social inclusion
of vulnerable groups through (i) development of network of social services supporting the future integration on the labour market, (ii) promoting the social entrepreneurship, and (iii) strengthening the workforce’s capability for work and duration of life in employment through better health.

*Beneficiaries* are Social Assistance Agency, Agency for People with Disabilities, State Agency for Child Protection, specialized organizations of people with disabilities, consultancy agencies, employers, municipalities, Ministry of Health, State Agency for Youth and Support.

**Priority Axis 6 - Improving the Effectiveness of Labour Market Institutions and Improving Social and Healthcare Services.** The axis aims to improve institutional system in the field of labour market through (i) development and modernization of the labour market system, and (ii) strengthening the capacity of institutions for social integration and provision of health services.

*Beneficiaries:* Labour market institutions at national and regional level, control authorities, institutions exercising control over the working conditions in the enterprises, Ministry of Labour and Social Policy and its secondary budget spending units, Ministry of Health and its secondary budget spending units engaged in social and health services, etc.

**Priority Axis 7 - Transnational and Interregional Cooperation.** The objectives of this axis are achieved through (i) collaboration between projects in different Member States, (ii) collaboration between national, regional and local institutions and organizations in Member States.

*Beneficiaries* under the axis are: public authorities, non-government organizations, educational, scientific and training institutions, employers, branch organizations, and others.

**Priority Axis 8 - Technical Assistance.** This axis is targeted at supporting the effective management and implementation of Operational Programme Human Resource Development according to the EU requirements. *Beneficiaries* under the axis are Managing Authority and Intermediate Bodies.

**VIII.2.6. Operational Programme Administrative Capacity**

The main objective of Operational Programme Administrative Capacity is the modernization of the Bulgarian State administration leading to the effective functioning of the administrative and judicial system, enhancing the qualification of employees in administration, as well as the provision of modern and adequate service by the state administration. The Managing authority of the programme is the Ministry of Finance.

**Priority Axis 1 - Good Governance.** Good governance is aiming at effective functioning of the administration and judicial system through (i) organizational development of the administrative structures; (ii) transparency and integrity of state administration; (iii) effective coordination and partnership in policy making and implementation of policies; (iv) making administration cooperative towards business; (v) increasing the confidence of citizens in judicial system by making it effective and transparent; (vi) establishing transnational and inter-regional cooperation.

*Beneficiaries* under the axis are: central, regional and municipal administrations, the Ombudsman, civil society structures, Ministry of Justice, Supreme Judicial Council, Prosecutor’s Office, National Investigation Service.

**Priority Axis 2 - Human Resources Management.** The main goal of the axis is to improve the qualification and effectiveness of the state and judicial administration personnel through (i) improving human resources management in the central, municipal and regional administration; (ii) improving professional qualification of state administration employees; (iii) strengthening
the capacity (in terms of knowledge and skills) of civil society structures; (iv) improving the qualifications of magistrates and introducing overall human resources management policy in the judicial system.

**Beneficiaries** are: Institute of Psychology, Bulgarian Academy of Sciences, Registry Agency, Ministry of Justice, central, regional and municipal authorities, and others.

**Priority Axis 3** - Quality Administrative Service Delivery and E-governance Development. Provision of quality administrative services and development of E-Governance aim at modernizing and updating the services provided by the administration through (i) improvement of services to citizens and business sector; e-government development; (ii) providing integrated and interoperable information and communications environment for better administrative service delivery to the citizens and business sector; (iii) development of information technology and integrated information system aiming at transparent and effective services delivered by judicial system.

**Beneficiaries** under the axis are: central and municipal administration, Ministry of Justice, Prosecutor’s Office.

**Priority Axis 4** - Technical Assistance: This axis is focused on improving the capacity for effective and efficient management and implementation of OPAC in accordance with the requirements.

**Beneficiary under this axis is the Managing Authority.**

**VIII.2.7. Operational Programme Technical Assistance**

The purpose of the programme is to strengthen the capacity and functioning of central and local administrative structures involved in absorbing EU Structural Funds and increasing information and public awareness with respect to the efficient use of EU Funds in Bulgaria. The Managing Authority of the programme is the Ministry of Finance.

**Priority Axis 1** – Support the implementation of the activities performed by the structures at central level: Central Coordination Unit, Certifying Authority, Audit Authority, the Managing Authority, National Strategic Reference Framework, Monitoring Committee and the Monitoring Committee; Capacity-building measures for SF implementing structures.

**Beneficiaries** are the Central Coordination Unit, the National Strategic Reference Framework Monitoring Committee, the Certifying Authority, the Audit Authorities and others.

**Priority Axis 2** – Further development and support to the functioning of the Unified Management Information System. The overall aim of Unified Management Information System (UMIS) is to ensure the efficient management and monitoring of the EU structural instruments in Bulgaria.

**Beneficiary** is the Central Coordination Unit.

**Priority Axis 3** – Promotion of European Cohesion Policy in Bulgaria and its purposes in Bulgaria, as well as provision of general and statistical information.

**Beneficiaries** under the programme are: Central Coordination Unit, Certifying Authority, Audit Authority, NSRF Monitoring Committee, OPTA Monitoring Committee, OPTA Managing Authority, Central Information Office.
CHAPTER NINE: CURRENCY REGIME

IX. CURRENCY REGIME

IX.1. Legal Framework

IX.1.1. Laws and Regulations

The main statutory acts pertaining to this matter are (i) the Currency Act, (ii) the Credit Institutions Act, (iii) the Measures against Money Laundering Act, (iv) the Bulgarian National Bank Act, (v) the Limitations of Cash Payments Act. There are also numerous regulations that have been enacted in relation to the implementation of the said acts.

IX.1.2. International Institutions Membership

<table>
<thead>
<tr>
<th>Institution</th>
<th>Accession Date</th>
<th>Participation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The International Monetary Fund</td>
<td>25 September 1990</td>
<td>The Quota Of The State As Of March 31, 2013 Is Sdr 640.2 Million¹</td>
</tr>
<tr>
<td>The International Bank for Reconstruction and Development</td>
<td>25 September 1990</td>
<td>The Total Voting Power Of The Country Equals To 0.32 %</td>
</tr>
<tr>
<td>The European Bank for Reconstruction and Development</td>
<td>29 May 1990</td>
<td>The Shareholding Of The State As Of December 17, 2012 Is Eur 165.98 Million.</td>
</tr>
</tbody>
</table>

¹ The Special Drawing Rights (SDR) are an international reserve asset, created by the IMF in 1969 to supplement its member countries’ official reserves. Its value is based on a basket of four key international currencies, and SDRs can be exchanged for freely usable currencies.

IX.2. National currency

The national currency of the Republic of Bulgaria is the Bulgarian lev (ISO 4217 code: BGN). No individual or legal entity is allowed to refuse payment carried out in the national currency.

IX.3. Currency board

Currency Board introduction took place in Bulgaria on July 1, 1997 after the approval of the new legal act on the Bulgarian National Bank (BNB) by the Parliament. The new act pegged the Bulgarian lev to the German mark (Deutschemark), at an official exchange rate of one Bulgarian lev per one German mark. The act also obliged the BNB to sell and purchase on demand German marks against levls up to any amount within the territory of Bulgaria. With the replacement of the German mark with the euro, the Bulgarian lev’s peg has been switched to the euro and set at rate of BGN 1.95583 per 1 euro, which was the fixed exchange rate of the German mark to the euro.

IX.4. Bulgarian national bank

The Bulgarian National Bank is the authority which:

(i) maintains the price stability by ensuring the stability of the national currency;
(ii) acts in accordance with the principle of the open market economy and free competition favoring an efficient allocation of funds;
(iii) supports the general economic policies of the European Union since the accession of the Republic of Bulgaria to the European Union;
(iv) procures policy of sustainable and non-inflationary growth;
(v) promotes establishment and functioning of effective payment systems, as well as supervision thereof;
(vi) regulates and supervises the activities of all banks in Bulgaria, payment system operators, payment institutions and electronic money institutions;
(vii) may require from and inspect the documentation of the other Bulgarian banks in relation to performing its functions;
(viii) determines through regulations the specific rules pertaining to the currency regime and the various obligations which must be performed by the participants on the foreign exchange market and the payment system;
(ix) conducts the monetary and credit policy and determines the policy regarding sustainable credit system;
(x) emits banknotes and mints coins which is its exclusive right, etc.

IX.5. Payments and transactions between local and foreign persons and cross-border payments and transfers

The Currency Act regulates:
(i) the transactions and payments between local2 and foreign3 persons;
(ii) the cross-border transfers and payments;
(iii) the foreign currency transactions by occupation;
(iv) the transactions with precious metals (gold, silver, and platinum) and gemstones by occupation, their import, export and processing;
(v) the import and export of Bulgarian levs and foreign currency in cash;
(vi) the collection, maintenance and reporting of statistical information on Bulgaria’s balance of payment and international investment position;
(vii) the exercising of foreign exchange control.

IX.5.1. Foreign currency purchase and sale

The Currency Act does not impose restrictions as to the buying and selling of foreign currency on the territory of Bulgaria and these activities may freely be carried out (i) between licensed commercial banks or registered currency exchange bureaus and other persons, (ii) between commercial banks themselves and (iii) between the BNB and the commercial banks.

Local and foreign legal entities and individuals are entitled to possess and operate with various currencies.

IX.5.2. Cross-border transfers and payments

Cross-border transfers and payments may be made through the payment service providers upon stating the grounds for the transaction or payment respectively. A person who makes a cross-border payment or transaction of a sum exceeding BGN 30,000 (including sums in other currency whose equivalent in BGN exceeds BGN 30,000) to a third country shall also present to the payment service providers specific documents and proofs.

For statistic purposes for the balance of payment, the payment service providers keep registers of every transaction or payment between local and foreign persons and of every cross-border transaction or payment

2. A local person as per the Currency Act is given the same meaning as a “resident unit” as per Council Regulation (EC) No 2223/96 of 25 June 1996 on the European system of national and regional accounts in the Community, i.e. a unit is said to be a resident unit of a country when it has a centre of economic interest on the economic territory of that country - that is, when it engages for an extended period (one year or more) in economic activities on this territory.

3. A foreign person is any individual or legal entity not meeting the criteria for a local person.
of sum exceeding BGN 100,000. In this regard, the persons performing the payment or transfer shall provide a standard statistical form. When funds are wired from abroad, local persons who are recipients of such funds fill statistical forms within 30 days following notification of the transfer to the person.

Certain transactions, irrespective of their amount, require notification to the BNB within 15 days as of their execution. The declaration is made with statistical purposes (for payment balance statistics) and it is not a prerequisite for the closing of a deal.

Such transactions should relate to:
(i) initial direct investment\(^4\) abroad by local legal entities and sole proprietors;
(ii) granting of financial credits between local legal entities or sole traders and foreign persons;
(iii) opening bank accounts abroad;
(iv) issuing of securities abroad by local legal entities and/or purchasing of securities without the brokerage of a local investment broker.

IX.5.3. Cash import and export

Bulgarian law does not impose restrictions as to the quantity of cash that may be imported and exported, and individuals may carry unlimited quantity of cash (in any currency) across the border of the country. It is worth stating here that transfer of cash by mail is prohibited unless the parcel is with declared value.

The carrying of cash in the amount of EUR 10,000 or more (or their equivalent in BGN or any other currency) across the border of Bulgaria for or from an EU Member State shall be declared upon a request of the customs authorities.

The carrying of cash in the amount equal to or exceeding EUR 10,000 (or their equivalent in BGN or any other currency) across the border from or for a third country shall be declared to the customs authorities. Further, when carrying cash in the amount equal to or exceeding BGN 30,000 (or their equivalent in any other currency) across the border of Bulgaria for a third country, the person shall also present a certification of no liability issued by the competent territorial directorate of the National Revenue Agency or a proof that the person is not registered in the Register of the National Revenue Agency. When foreign individuals carry cash which exceeds BGN 30,000 (or their equivalent in any other currency) across the border of Bulgaria for a third country, they declare to the customs authorities only the type and the amount of the cash which they carry when its value does not exceed previously declared cash.

IX.6. Opening bank account in a Bulgarian bank

Most Bulgarian banks require the following documents for opening a bank account:
(i) if the applicant is a legal entity – a registration certificate issued by the Registry Agency and copy of the company’s by-laws;
(ii) if the applicant is an individual - an identity card or passport.

A signature sample of the person authorized to operate with the bank account is to be provided to the bank.

\(^4\) Direct investment means (a) the acquisition in a commercial company on an economic territory different from the territory of the investor, acquisition of unlimited liability membership rights or of equity entitling to 10% and more than 10% of the votes in the general meeting or of the capital of the company; (b) the establishment of commercial company on an economic territory different from the territory of the investor; (c) the granting of a loan for the purpose of direct investment purposes under items “a” and “b”, or linked to an agreement for profit sharing; (d) any supplementary investment to the investment under items “a” and “b”; (e) the acquisition of real property on an economic territory different than the territory of the investor.
In case the individual or the person representing the company is unable to open the bank account personally, a notarized power of attorney in favour of the person opening the bank account should be provided.

IX.7. Currency transactions and transactions with precious metals and gemstones

IX.7.1. Currency transactions

Currency transactions may be legally carried out by the BNB, commercial banks, financial institutions and currency exchange bureaus. The Currency Act itself regulates the figure of the currency exchange bureau. Detailed regulations about the activities of the currency exchange bureaus are set forth in Ordinance 4 of the Ministry of Finance dated August 8, 2003. Currency transaction in cash by occupation may be carried out by a person, registered under the Commercial Act, as well as by a person registered as a trader in accordance with the legislation of a Member State of the EU or a member state of the European Economic Area Agreement, and only after it has been entered into the public register of persons conducting business as currency exchange bureau. The public register of persons conducting business as currency exchange bureau in Bulgaria is kept and maintained by the Ministry of Finance. The registration in the register is made within 14 days from filing all the documents required under a regulation issued by the Minister of Finance.

IX.7.2. Precious metals and gemstones transactions

Persons professionally engaged in production, processing and trade with precious metals and gemstones and items made with or from them are obliged to register with the Ministry of Finance within 14 days as of commencement of operation. The Ministry of Finance keeps and maintains a public register of the persons engaged in production, processing and trade with precious metals and gemstones and items of them by occupation.

Individuals may carry unlimited quantity of precious metals or gemstones (or items containing them or made of them) across the border of the country. Carrying of precious metals or gemstones may be subject to declaration to the customs authorities in the cases provided for in Ordinance No. 1 of February 1, 2012 of the Ministry of Finance. Carrying across the border of Bulgaria unprocessed, semi-processed or processed precious metals or gemstones (or items made by them or containing them) is not subject to declaration to the customs authorities in the following cases:

(i) unprocessed or semi-processed gold and platinum and coins to a total of 37 g regardless of the content of gold or platinum;
(ii) jewelry and accessories made from alloys of gold or platinum to a total of 60 g regardless of the content of gold or platinum;
(iii) unprocessed or semi-processed silver, coins and jewelry and accessories made from alloy of silver, up to 300 g regardless of the content of silver;
(iv) gemstones embedded in the articles as referred to in items (ii) and (iii).

In all other cases, gemstones are to be declared to the customs authorities.

IX.8. Money laundering

Notwithstanding the liberalization of the currency regime, the money flow is still controlled by the state through the measures provided for in the Currency Act and specifically by the measures provided in the Measures against Money Laundering Act.

IX.8.1. The concept of money laundering

According to the Measures against Money Laundering Act, money laundering is:

(i) any transformation or transfer of property acquired through illegal activity or
through acts of participation in such activity for the purpose of concealing the illegal origin of the property or for the purpose of aiding a person to avoid the legal results of such activity;

(ii) concealing the nature, source, location, movement and rights of the property, acquired by illegal activity or participation therein;

(iii) acquisition, possession or use of property when the person at the moment of acquisition of the property knows the assets are a result of an illegal activity or participation in such activity; or

(iv) participation in whatever of the activities under items (i) to (iii), association to commit, and attempts to commit such activities, as well as aiding, abetting and facilitating the commission of such activity or its disguise.

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

IX.8.2. Persons responsible for carrying out the measures against money laundering

The persons responsible for carrying out the measures specified in the Measures against Money Laundering Act are, inter alia: the Bulgarian National Bank, credit institutions carrying on activity within the territory of the Republic of Bulgaria, financial institutions, exchange bureaus and the other payment service providers, insurers, postal offices accepting or receiving money or other valuables, leasing entities, political parties, trade unions and professional organizations, non-for-profit legal entities, sports organizations, merchants dealing in arms, petrol and petrochemical products, pension funds, privatization bodies, mutual investment schemes, investment intermediaries and management companies, persons who organize the awarding of public procurement orders, the National Revenue Agency authorities, notaries public, registered auditors, customs authorities, the Central Depository, market operator and/or regulated market, as well as the other persons/entities/institutions listed in Article 3 (2) of the Measures Against Money Laundering Act.

IX.8.3. Measures against money laundering

The measures against money laundering include identifying customers upon establishment of permanent commercial relations with them, including upon opening a bank account or in the course of a transaction which exceeds BGN 30,000 or the equivalent in foreign currency. Further, if a transaction in cash exceeds BGN 10,000 or the equivalent in foreign currency only certain persons under the Measures against Money Laundering Act are obliged to meet the statutory requirements (such as the BNB, leasing entities, etc.). In addition, the origin of the funds should also be declared. Should the person obliged to identify his/her client is unable to identify it, he/she should not proceed with the transaction.

Apart from the identification of clients, other measures to be undertaken may be: data collection on the substantial elements of the transaction, data safe-keeping and reporting suspicious transactions to the Financial Intelligence Directorate with National Security State Agency. The Agency is authorized to collect, process, analyze and store the data received from the respective persons and disclose it to the state authorities when statutory required.

IX.9. Limitations on payments in cash

The Limitations on Cash Payments Act is in force in Bulgaria as of February 2011.

Payments in cash may only be carried out via bank transfer or deposit to payment account where (a) the value of the payment
is equal to or exceeds BGN 15,000 (approx. EUR 7,500); or (b) the value of the payment is below BGN 15,000 but it is a part of financial consideration under a contract the value of which is equal to or exceeds BGN 15,000.

These restrictions are also applicable to payments in foreign currencies where their equivalent in Bulgarian levs is equal to or exceeds BGN 15,000. The equivalent in Bulgarian levs is to be determined on the basis of the exchange rate of the BNB for the day of payment.

It is worth stating that the restrictions set out in the Act are not applicable to:

(i) cash withdrawal and deposit from or to personal payment accounts;

(ii) cash withdrawal and deposit from or to the accounts of legally incompetent persons or persons with limited legal competence, spouses or lineal relatives;

(iii) transactions with foreign currency by occupation;

(iv) transactions with banknotes and coins to which the Bulgarian National Bank is a party;

(v) replacement of damaged banknotes or coins by banks;

(vi) payment of employment remuneration within the meaning of the Labour Code.
CONCESSIONS

X.1. General overview

The Bulgarian regulatory framework governing the concessions regime features two main pieces of legislation - the Concessions Act (‘CA’) and the Regulation on the Implementation of the Concessions Act, as well as a number of sector specific acts laying down certain specific aspects of the concessions regime. The Concessions Act (hereinafter referred to as ‘CA’) establishes the concession as the right to operate a facility and/or a service of public interest, awarded by a grantor to a concessionaire (a commercial company) on the basis of a written agreement, in exchange for the concessionaire’s obligation to build and manage and maintain the facility object to concession or to operate the service of public interest at his/her own risk.

The following chart provides an overview of the main characteristics of concessions under Bulgarian law:

General characteristics of concessions in Bulgaria

| Term | ● Up to 35 years, may be extended |
| Types | ● Works Concession ● Service Concession ● Mining Concession |
| Compensation to concessionaire/Concession payment to | ● Generally allowed as an exception ● When there is a need to ensure a socially acceptable price of the public service. ● Depending on the economic balance of the concession and the allocation of economic benefit between grantor and concessionaire |
| Objects | ● Assets and facilities - state or municipal property ● Assets and facilities ● private property of the concessionaire |

X.1.1. Characteristics

X.1.1.1. Term of the concession agreement

Concessions are granted for up to 35 years, without an option to be extended or reduced by not more than one third of that term.

X.1.1.2 Types of concession

According to its subject, a concession may be one of the following types:

a) Works Concession

A works concession has as its subject the partial or the entire construction of the object of concession and the management and maintenance of the completed facility after its

---

1. Such as the Subsurface Resources Act, Water Act, Forestry Act, Civil Aviation Act, Energy Act, Rail Transport Act, Maritime Space, Inland Waterways and Ports of the Republic of Bulgaria Act, Fisheries and Aquaculture Act, Roads Act, Physical Education and Sports Act, Protected Areas Act, etc.
CHAPTER TEN: CONCESSIONS

ANG - ARSOV, NACHEV, GANEVA

becoming operational; the concessionaire’s consideration therefor shall consist either only of the right to operate the object of the concession, or of that right in addition to a compensation on behalf of the grantor.

b) Service Concession
A service concession has as its subject the operation of a service of public interest at the concessionaire’s own risk, as the consideration therefor shall consist either only of the right to operate the service - object of concession, or of that right in addition to compensation on behalf of the grantor.

A service concession may also include the execution of partial additional construction and assembly works.

c) Mining Concession
Mining concession is the mechanism for awarding to a private partner the right to exploit with own funds and at its own risk natural subsurface resources (such as energy resources, mineral water etc.) by means of their extraction.

X.1.1.3. Compensation for the concessionaire and concession payments to the grantor

a) Compensation
Compensation of the concessionaire may be envisaged for works concession and service concessions, where it is necessary to ensure a socially acceptable price of the services provided through the object of concession (when such price is determined by an act of legislation), or for reconstruction of the object of concession after the impact of force majeure. It shall be effectuated through reimbursement of the concessionaire by the grantor for part of the costs for the construction, management and maintenance of the object of concession or respectively for the operation of the services of public interest.

b) Concession payments
Concession payments to the grantor may be provided for as an obligation of the concessionaire in exchange for the right to operate the object of concession. In each specific case the amount of the concession payment shall be determined depending on (i) the economic advantages, which the concessionaire would obtain from the concession; (ii) the economic balance of the concession and the allocation of economic benefit between the grantor and the concessionaire; and (iii) ensuring a socially acceptable price of the services provided through the object of concession, where such price is determined by an act of legislation.

X.1.1.4. Objects of concession

a) Assets – state or municipal property
Assets and facilities of public interest which can be operated on concession comprise (i) assets representing exclusive state property (subsurface resources, the coastal beaches, the national roads, as well as the waters, forests and parks of national importance, the nature reserves and archaeological reserves); (ii) assets or real estate of public interest representing public state or municipal property; (iii) assets or real estate representing private state or municipal property; (iv) properties or parts of properties owned by a public legal organization.

In all cases, the grantor retains its title of ownership over the object of concession. In the case of work concessions, the facility built shall become property of the grantor as of the date of its commissioning into operation.

b) Assets – private property of the concessionaire
In service concessions, the object may be property of the concessionaire.

X.1.1.5. Parties to the concession agreement

a) Grantor
Depending on the type of assets awarded on concession, the grantor shall be:
(i) the Council of Ministers, for assets constituting state property; or
(ii) the Municipal Council, for assets constituting municipal property, as well as for the mineral water sources which represent exclusive state property and which have been
provided to municipalities for management and operation; or
(iii) a public law organization, represented by a body in accordance with its act of establishment – in regard to facilities in its ownership; or
(iv) water supply and sewage (‘WSS’) associations established under the Water Act – for water supply and sewage assets located within the respective WSS area.

b) Concessionaire
Any natural person or legal entity or an association of such persons may participate in a concession award procedure, provided they do not fall within the regulatory restrictions under the CA. A concessionaire shall be the winning bidder participant with whom the grantor has executed a concession agreement. Concessions shall solely be granted to merchants. Therefore, in cases where the participant selected as a concessionaire is a natural person or a legal entity/association other than a merchant, the concession shall be granted to the newly established trade company in which the natural person, respectively the entity or association, owns the whole capital and accordingly the members of the association own the whole capital in the same proportion as per their articles of association.

The CA also allows for granting of concession to a newly established company in which one of the partners is the private company of the selected bidder and the other partner is a state/municipal body, a public law organization or a company owned by the state/municipality/public organization (mechanism known as Institutionalized Public-Private Partnership – IPPP).

X.1.1.6. Parties to the concession agreement

As per the CA, the granting of a concession comprises the following steps: (i) taking preparatory action; (ii) conduct of a procedure for selection of concessionaire and (iii) execution of a Concession Agreement.

The concessionaire is determined by means of open procedure, conducted in keeping with the principles of publicity, transparency, free and fair competition, equal treatment of, and non-discrimination against, any candidates or participants in the concession procedure. The tender documentation lays down all major parameters of the concession, respectively all basic terms and conditions of the future concession agreement (a draft thereof being enclosed in the tender documentation). The main criterion for assessment of the eligible bids is their economic feasibility. The economically most feasible bid shall be identified on the basis of a comprehensive assessment in accordance with criteria and requirements set out in the concession award documentation.

X.1.1.7. Concession agreement – execution and amendment

The concession agreement shall be executed in accordance with the terms set out in the tender documentation (which are mandatory and non-negotiable) and the proposals of the selected concessionaire made in its bid. The CA allows for limited options for amendment of the executed concession agreements. An important amendment was recently introduced in the CA allowing for additional construction works or additional services to be assigned to the concessionaire which do not exceed a total of 50% of the value of the original concession agreement. Further, the CA provides for amendment of the concession agreement in the event of distortion of the economic balance of the concession.

X.1.1.8. Concessions registry

All awarded concessions shall be recorded at the National Concessions Register, maintained by the Council of Ministers. The file of each concession shall contain the information under art. 97, paragraph 1 CA (type of concession, object, period, data
about the concessionaire etc.) as well as subsequent changes in that information.

**X.2. Public-private partnership**

**X.2.1. General overview**

Although concessions have been regularly implemented, especially since the adoption of the CA in 2006, the general concept of public-private partnership (‘PPP’) was introduced in the Bulgarian legal doctrine only in 2013 with the new Public-Private Partnership Act (‘PPPA’). The relevant sub-legislative acts on the implementation of the PPPA (Regulation on the Implementation of the PPP Act and Ordinance on the terms and procedures for inclusion of PPP projects in the Operational plan and in the program for implementation of municipal development plan) have been adopted as well and therefore the necessary legal framework for implementation of this new instrument under Bulgarian law is now in place.

PPPA defines public-private partnership as long-term contractual cooperation between public partners on the one part and private partners on the other part for the conduct of activities of public interest where better value for money for the invested public funds and better allocation of risks are achieved between the partners.

Projects may be realized through the PPP mechanism only if the following cumulative prerequisites are in place: (i) the project involves only specific types of infrastructure (see section II.5 below); (ii) traditional mechanisms of concessions and public procurement are not applicable (public partner is unable to finance the project and there are no revenues from the public service provided can be collected by the private partner) and (iii) the project is included in the respective national or municipal PPP plan (see section II.2 below).

The following Chart represents the main features of the PPP instrument under Bulgarian law:

*General overview of PPP under Bulgarian law.*

<table>
<thead>
<tr>
<th>Term</th>
<th>National PPP programme</th>
<th>Operational Plans for the forthcoming scheduled PPP projects for the respective programme period at national le.‘el</th>
<th>Municipal Development Plans setting out the scheduled PPP projects at municipal le.‘el</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning</td>
<td>Projects may he implemented upon initiative of private partners</td>
<td>Unsolicited proposals do not grant any benefits or advantages to private partners</td>
<td>Remuneration is envisaged for proposals used by grantors</td>
</tr>
<tr>
<td>Private initiative (unsolicited proposals)</td>
<td>Approved proposals must be included in the operational/ development plan in order to he implemented</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial support to the private partner</td>
<td>Direct payments</td>
<td>Granting of rights over properties</td>
<td>Granting of rights to perform additional economic activities</td>
</tr>
<tr>
<td>Objects</td>
<td>Assets and facilities from the physical infrastructure - state, municipal property or property of a public law organization</td>
<td>Assets and facilities from the social infrastructure - property of the private partner</td>
<td></td>
</tr>
<tr>
<td>Parties</td>
<td>Grantor - government ministers and heads of government agencies/ municipality mayors/state owned and public law organizations</td>
<td>Private partner - existing or newly established commercial company; may be a joint venture (project vehicle) - IPPP</td>
<td></td>
</tr>
<tr>
<td>Procedure for selection of private partner</td>
<td>Carried out by competent authorities designated by law</td>
<td>Three stage procedure: preparatory action, selection procedure and execution of PPP contract</td>
<td>The procedures for selection of contractors in public procurement apply</td>
</tr>
<tr>
<td>PPP contract 1</td>
<td>Its main features are established in PPPA; Risk allocation; Economic balance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PPP Registry</td>
<td>All concluded PPP contracts shall be recorded at the National PPP Registry, maintained by the Ministry of Finance</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
X.2.2. Characteristics.

X.2.2.1. Term

The PPP contract is executed for a minimum term of 5 years and for a maximum of 35 years. In the event of distortion of the economic balance of the PPP, the term may be reduced or extended by a maximum of one third of the original term.

X.2.2.2. Planning

PPPA requires for prior inclusion of the forthcoming scheduled PPP projects into a dedicated Operational plan for the PPP with central government partners, and into the municipal development plans for the PPP with local government partners. The procedure for inclusion of projects in the plans is set forth in the Ordinance on the terms and procedures for inclusion of PPP projects in the Operational plan and in the program for implementation of municipal development plan.

X.2.2.3. Unsolicited proposals

PPPA provides an option for investors to submit project proposals to the competent authorities (public partners). For the purpose, a business-case justification of the project is required (- feasibility studies). Such justification includes an initial financial-economic analysis and a feasibility study for construction. The public partner has a duty to review and respond to the submitted proposal. It is also possible to use the prefeasibility analyses in the project elaboration by the public partner, in which case remuneration to the private partner is due, as the latter shall not be granted any benefits or advantages as regards the subsequent selection procedure.

X.2.2.4. Financial support

Financial support to the private partner is the form of participation of public partner in the PPP. It may be provided in the form of direct payments to the private partner, granting of rights over properties or operations associated with the public interest activity or over ones that have other purpose. The financial support’s aim is to refund the investment costs of the private partner and cover the operational expenses for management and maintenance with a defined rate of return.

X.2.2.5. Objects

Through PPP private partners may be assigned a certain scope of activities of public interest. Such activities cover funding, construction, management, and maintenance of facilities of the technical and social infrastructure. The facilities of the technical and social infrastructure, for which PPP may be established, have been explicitly identified in the Act and include the following types of infrastructure:

(i) Facilities of the technical infrastructure and the landscaping system:
- in urbanized territories: parking lots, garages, sites of the public transportation, surveillance and security systems, street lighting systems, green areas, parks and gardens;
- outside urbanized territories: parking lots, garages, parks and gardens in certain land properties;

(ii) Facilities of the social infrastructure intended for:
- healthcare;
- education;
- culture;
- sports, recreation, and tourism;
- welfare, welfare homes and dormitories;
- serving of prison sentences;
- conduct of the public partners’ administrative operations.

X.2.2.6. Parties

The parties to a PPP contract shall be:
a) Public partner:
- ministers and heads of government agencies – where the assets through which
the public activity is performed are state property:
(ii) municipality mayors – for the municipal PPPs where the assets are municipal property;
(iii) state and municipal public law organizations – for public interest activities, which are their property and/or are vested in them by virtue of a law or act of a competent authority.

b) Private partner
The private partner to a PPP shall be an existing or newly established commercial company selected through the relevant competitive procedure. PPPA allows for joint ventures of the public authority and a private investor to be assigned with the PPP project (IPPP).

X.2.2.7. Procedure for selection of private partner

In terms of selection of the private partner to a PPP, the procedures for selection of contractors in public procurement apply:
● open procedure;
● restricted procedure;
● competitive dialog;
● announced contracting procedure.

The procurement procedures are modified accordingly, in line with the specific character and features of the PPP regulation.

X.2.2.8. PPP contract

The public-private partnership takes place via a PPP contract. PPPA regulates a number of essential elements of the contract. Among these, of central importance are the requirement for economic balance, which is to be maintained throughout the contract, as well as the allocation of risks between the public and the private partners.

A PPP contract may be amended in the event of distortion of the economic balance, as well as for the purpose of assignment of additional construction works or services to the private partner which do not exceed 50% of the total value of the contract.

X.2.2.9. PPP register

The Minister of Finance shall set up and maintain a public register containing information about, inter alia, the National PPP Programme, the National PPP Operational Plan, the municipal development plans, notices of launched procedures and decisions for selection of private partners, concluded PPP contract, etc.
XI. COMPETITION LAW REGIME IN BULGARIA

XI.1. Legislative Framework and General Principles

XI.1.1. Applicable Legislation

The core legislative act governing and protecting the competition environment in Bulgaria is the Protection of Competition Act (PCA), which was introduced at the end of 2008. The new PCA aims at harmonizing the national law with the EU competition rules. In compliance with Council Regulation (EC) 1/2003 and Council Regulation (EC) 139/2004, the national competition authority also ensures the application of Art. 101 and Art. 102 TFEU.

Furthermore, the Commission for Protection of Competition (CPC) has adopted secondary legislation such as Methodology for setting fines under the PCA, Methodology on Investigation and Definition of the Market Position of Undertakings in the Relevant Market, etc. In addition, even though the European Commission documents such as Notices and Guidelines are not binding on the Bulgarian competition authorities when dealing with purely national cases, the CPC tends to apply them in its practice.

XI.1.2. Commission for Protection of Competition (CPC) – the national competition authority of Bulgaria

The CPC is the Bulgarian national competition authority responsible for the enforcement of the Bulgarian Protection of Competition Act (PCA) and Article 101 and Article 102 of the Treaty on the Functioning of the European Union (TFEU). For more details regarding the competences of the CPC, see Table 2.

### Table 2 Other competences of CPC

- rule termination of infringements, including appropriate behavioural and/or structural measures
- impose fines
- impose interim measures
- cooperate with the European Commission and the other national competition authorities of the Member States
- draft sector analyses of the competition environment
- make proposals to the competent state authorities and local governmental bodies to revoke or amend their administrative acts that prevent, restrict or distort the competition

The Supreme Administrative Court (SAC) exercises control over the CPC decisions with regard to their compliance with the law. If the Court establishes lack of such compliance, it is not entitled to decide the case on the merits, but it may issue binding instructions concerning the application of the law and return the case to CPC for resolution.

Damages claims by natural persons or legal entities should be submitted to the Civil District Court. The SAC decision is binding on civil courts as to the fact of the infringement.

### Table 3 Court control over CPC decisions

The PCA regulates 3 main types of behaviour which may infringe competition and sets out the legal framework of concentrations.
XI.2.1. Antitrust – prohibited agreements, decisions and collusive practices

The law prohibits all types of agreements between undertakings, decisions by associations of undertakings as well as concerted practices of two or more undertakings, having as their object or effect the prevention, restriction or distortion of competition on the relevant market.

Agreements, decisions and concerted practices with such effect may be those which:

(i) directly or indirectly fix prices or other trading conditions;
(ii) share markets or sources of supply;
(iii) limit or control production, trade, technical development or investment;
(iv) apply to certain partners different conditions for equivalent transactions, thereby placing them at a competitive disadvantage;
(v) make the conclusion of contracts subject to acceptance by the other party of additional obligations or to the conclusion of additional contracts which, by their nature or in accordance with the reasonable commercial practice, have no connection with the subject matter of the main contract or with its performance.

On the other hand, the agreements, decisions and concerted practices with minor anti-competitive effect shall remain valid and enforceable. This concept is known as the de minimus rule. However, the de minimus rule does not apply to those agreements, decisions or concerned practices having as a result the so called “hard-core restrictions” on competition, i.e. restrictions such as: price fixing; limitation of output or sales; market sharing, etc.

In compliance with the practice of the European Commission, the Bulgarian competition authority applies block exemptions and individual exemptions.

Some agreements, decisions and concerted practices may benefit from an individual exemption on one of the following grounds:

(i) if the agreements, decisions and concerted practices contribute to the improvement of the production or distribution of goods or to the promotion of technical or economic progress, granting the consumers a fair share of the resulting benefit as far as they do not:
   • impose on the concerned undertaking such restrictions which are not indispensable to the attainment of these objectives;
   • enable such undertakings to eliminate the competition on a substantial part of the relevant market.

A new important aspect of the exemption, introduced by the new PCA, is the fact that it is the undertaking itself to decide on and to prove whether the agreement, decision or concerted practice complies with the criteria for exemption. No prior notification to or approval by CPC is required.

(ii) if the agreements, decisions and concerned practices have been explicitly exempted by a decision of CPC (the so called “block exemption”).

XI.2.2. Abuse of monopolistic or dominant position

The law prohibits abuse of monopoly or dominant position by an undertaking or by two or more undertakings enjoying a collective dominant position, which may prevent, restrict or distort competition and impair consumers’ interests. The legislation provides a non-exhaustive list of concrete forms of such abuse.

(i) price fixing;
(ii) limitation of output, trade and technical development impairing the consumers’ interests;
(iii) application of dissimilar conditions to certain partners for equivalent transactions, thereby placing them at a competitive disadvantage;
(iv) making the conclusion of contracts subject to acceptance by the other party of additional
obligations or to the conclusion of additional contracts which, by their nature or in accordance with the reasonable commercial practice, have no connection with the subject of the main contract or to its performance;

(v) unjustified refusal to supply goods or to provide services to actual or potential customers in order to impede their economic activity.

In order to impose fines or other measures on such undertaking, CPC first defines the "relevant market" in each particular case and subsequently analyses whether the undertaking actually enjoys the alleged monopolistic or dominant position. An undertaking is considered to have a dominant position when, in view of its market share, financial resources, possibilities for market access, level of technology and economic relations with other undertakings, may hinder competition on the relevant market, as it is independent of its competitors, suppliers or consumers.

XI.2.3. Unfair competition

The last form of infringement prohibited by law is the unfair competition conducted by an undertaking.

As a general rule the law prohibits any action or omission of an undertaking in the course of its business activity which is contrary to the good commercial practice and damages or may damage the interests of the competitors.

XI.2.4. Mergers

The law prohibits the concentration of undertakings only if it leads to the creation or strengthening of a dominant position, as a result of which the effective competition in the relevant market would be significantly impeded.

Under the Bulgarian law the concentration may take one of the following forms:

(i) merger or acquisition of undertakings;
(ii) acquisition of control over other undertakings or part of undertakings – such control (direct or indirect) may be acquired through acquisition of shares, securities, assets or other rights by means of a contract or other relevant way. The essential characteristic of the term "control" is the decisive influence that the acquiring undertaking shall have over the acquired undertaking by means of:

- acquisition of right of ownership or right of use over the whole or part of the assets of the undertaking;
- acquisition of rights, including contractual rights, by virtue of which the acquiring undertaking may exercise decisive influence over the composition, voting or decisions of the undertaking’s bodies

(iii) establishment of a joint venture acting as an autonomous economic entity.

The parties are bound to notify CPC of the contemplated concentration after they conclude the agreement, publicly announce the offer for concentration or acquire the control, but in any case before taking any actions for the actual implementation of the transaction. In exceptional cases, the parties may request from CPC to assess the concentration prior to conclusion of the agreement or the public announcement of the offer.

As a general rule, CPC shall not authorize a concentration which leads to creation or strengthening of a dominant position, as a result of which the effective competition in the relevant market would be significantly impeded. However, even if the concentration has such anti-competitive effect, the same shall be authorized if it aims at modernisation of the respective economic activity, improvement of market structures, better meeting the interests of consumers and overall the positive effects outweigh the negative impact on competition.
XI.3. Investor’s liabilities and fines imposed by CPC

The new PCA complies with the European Commission model for setting fines and sets the latter as a percentage of the undertaking’s turnover. While assessing the amount of the fine in each particular case CPC takes into consideration a number of relevant factors such as gravity and duration of the infringement along with circumstances mitigating or aggravating the liability. The CPC has adopted a Methodology for assessing the exact amount depending on the particular type of infringement. The main principle followed by CPC in determining the fine is that the latter should be of such amount as to restore the competitive environment and to allow the infringing undertaking after paying it to continue its business activity. However, the infringing undertakings may elude paying fines for participation in a secret cartel if they provide CPC with specific information set out in the law. Further, CPC may decrease an imposed fine of such undertaking which provides CPC with a substantial evidence for the infringement by the end of the proceedings. Along with the fines CPC may impose

<table>
<thead>
<tr>
<th>Scope of the PCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antitrust</td>
</tr>
<tr>
<td>PCA prohibits: agreements, decisions nd concerted practices which have as their object or affect the prevention, restriction or distortion of competition on the relevant market</td>
</tr>
<tr>
<td>Legal consequence: such agreements are null and void</td>
</tr>
<tr>
<td>Unless: a block exemption or an individual exemption lies</td>
</tr>
</tbody>
</table>

Table 4 Scope of the PCA
other measures (structural or behavioural) aiming to restore the competition such as division or merger of capitals, shares or assets, termination of joint control, etc.

<table>
<thead>
<tr>
<th>Fines imposed by CPC</th>
<th>Fines imposed by CPC</th>
<th>Periodic penalty payments - up to 5% of the average daily turnover for the preceding business year (per day):</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to 10 % of the total turnover of an undertaking for the preceding business year:</td>
<td>Up to 1% of the total turnover of an undertaking for the preceding business year:</td>
<td>- non-compliance with the imposed termination of the infrindgement or the imposed structural/behavioural measures</td>
</tr>
<tr>
<td>- execution of prohibited agreements, decisions and concerned practices, abuse of monopoly or dominant position</td>
<td>- non-compliance of an undertaking with its obligation to cooperate with CPC</td>
<td>- non-compliance with injunctions</td>
</tr>
<tr>
<td>- conduct of unfair competition</td>
<td>- non-compliance with the obligation to present to CPC full, accurate and not misleading information, etc.</td>
<td>- non-compliance with commitments imposed by CPC</td>
</tr>
<tr>
<td>- completion of concentration, prohibited by law</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- lack of notification to CPC upon concentration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- non-compliance with decisions or rulings of CPC</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Table 5 Sanctions under the PCA.*
CHAPTER TWELVE: INDUSTRIAL & INTELLECTUAL PROPERTY

Legal Framework – Legislation, Basic Concepts, Licensing

XII.1.1. Legislation

XII.1.1.1. European Legislation

- Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights;
- Directive 2001/84/EC on the resale right for the benefit of the author of an original work – successfully transposed;

XII.1.1.1. International Treaties

General

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIP’s Agreement) of April 15, 1994;
- Paris Convention for the Protection of Industrial Property of March 20, 1883 as in force from September 27, 1965;

Copyright and Neighboring rights

- Berne Convention for the Protection of Literary and Artistic Works of 1886;
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- Convention for the Protection of the Producers of Phonograms against Unauthorized Reproduction of their Phonograms;

Patents

- European Patent Convention of October 05, 1973 as in force from July 01, 2002;

Trademarks

- Madrid Agreement Concerning the International Registration of Marks of April 14, 1891 in force as of August 01, 1985;
- Protocol Related to the Madrid Agreement Concerning the International Registration of Marks of June 27, 1989 in force as of October 02, 2001;

Industrial Design

- Hague Agreement Concerning the International Deposit of Industrial Designs of June 02, 1934 as in force from December 11, 1996;

Other

- Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods of April 14, 1891 as in force from August 1, 1975;
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958 as in force from August 12, 1975;
- International Convention for the Protection of New Plant Varieties (UPOV) of December 02, 1961 as in force from April 24, 1998;
Bulgarian Legislation

- Patents and Registration of Utility Models Act, published in State Gazette No. 27 of April 02, 1993 as in force from June 01, 1993, last amendments published in State Gazette No. 19 of March 9, 2010 as in force from June 10, 2010;
- Different Ordinances on drafting up, filing and examination of corresponding objects of Industrial Property.

The law protects the products of intellectual labor, but distinguishes between their specific characteristics, providing them with separate protection regiments. Thus, for all objects of industrial property, protection arises after registration with the Patent Office which keeps separate registries for each type of industrial property (e.g. Geographical Indications Registry).

However, in regard to copyright, as the second main branch of intellectual property, protection arises from the moment a work is incorporated in an objective carrier.

XII.1.2. Definitions and Basic Concepts

1. Copyright – Copyright is the right of an author over literary, artistic and scientific works. Protection over it arises with the creation of the literary, artistic or scientific work incorporated in an objective carrier (tangible or electronic). The protection term is 70 years after the author’s death. The applicable Bulgarian Law is the Copyright and Neighboring Rights Act.

2. Rights Neighboring the Copyright – Neighboring to copyrights are considered the rights of (1) performers over their performance, (2) producers of phonograms, (3) producers of initial recording of a film or another audiovisual work, and (4) broadcasting organizations over their programs whose initial transmission or broadcast they have personally carried out. Again, legal protection arises with the creation of the work, with no registration needed. The protection term is 50 years with variations in the starting point of the protection. The applicable Bulgarian Law is the Copyright and Neighboring Rights Act.

3. Patent – A patent incorporates an inventor’s rights over inventions from all areas of the technics. To be patentable, an invention has to be new, industrially applicable and has to display an inventive step on a worldwide level (meaning the invention is not directly derivable from the level of technical knowledge of mankind at the moment when protection is sought). The protection term is 20 years with no prolongation possibilities. The applicable law is the Patents and Registration of Utility Models Act.

4. Utility model – A utility model incorporates an inventor’s rights over inventions from all areas of the technics, which is industrially applicable and displays novelty
but is not suitable for patent registration because it demonstrates an inventive step only on a local level (meaning the utility model is not easily derivable from the level of technical knowledge in the country of protection by an average specialist in the respective field). The protection term is 4 years with an extension opportunity for up to 10 years. The applicable Bulgarian law is the Patents and Registration of Utility Models Act.

5. Mark – The mark is a sign which is capable of distinguishing the goods or services of one person from those of other persons, and which can be presented graphically. Such signs can be words, including names of persons, letters, numerals, drawings, figures, the shape of the products or their packing, combination of colors, sound signs or any combinations of such signs. The protection term is 10 years with the possibility of unlimited prolongation. The applicable Bulgarian law is the Marks and Geographical Indications Act.

6. Geographical Indication – This is an indication of the geographic, local or national origin of given goods significant for the goods' qualities or characteristics. A person can request registration of a geographic indication only for a specific type of goods. The term of protection is unlimited and is restricted only by the existence of the connection between the goods' properties and the region of production. The applicable Bulgarian law is the Marks and Geographical Indications Act.

7. Industrial Design – An industrial design is the appearance of the whole or a part of a product resulting from the specific features of the shape, lines, contours, ornamentation, colors or combinations thereof. Within this definition, product means any industrial or handicraft item, including parts intended to be assembled into a complex item, sets or composition of items, packaging, graphic symbols and typographic typefaces. The protection term is 10 years with a possibility for extension for up to 25 years. The applicable Bulgarian law is the Industrial Design Act.

There are several more peculiarities in regards to patents. Thus, the following are not patentable:

- Inventions, the exploitation of which would be contrary to the public order or morality;
- Methods for treatment of human or animal body by therapy or surgery, as well as diagnostic methods practiced on the human or animal body. This provision is not related to products, in particular substances or compositions used in these methods;
- Plant varieties or animal breeds or essentially biological processes for obtaining them. This provision does not apply to microbiological methods and the products thereof.

Moreover, discoveries, scientific theories and mathematical methods, results from artistic work, schemes, rules and methods of intellectual activity, for playing games or doing business, computer programs as such, or presentation of information are not regarded as inventions.

XII.1.3. Licenses – Assigning Intellectual Property Rights

The owner of a patent, registered trademark or industrial design could assign the right of usage through a license agreement which should be recorded with the Patent Office. The License Agreement, or at least an extract thereof, is submitted to the Patent Office, containing the following information:

- Identification data of the licensor and the licensee;
- Bibliographic data about the patent, trademark or industrial design;
- Kind of the license (exclusive or non-exclusive);
- Term of the agreement.

In regard to third parties, the license
agreement is in effect as of the date of its entry in the State Registry.

XII.2. Protected rights

XII.2.1. Copyright and Neighboring Rights

Copyright

The Copyright and Neighboring Rights Act provides for protection of copyright during the whole life of the author and for 70 years after his death. Moreover the law stipulates the right of authorship could not be assigned, meaning the author is always entitled to have his name associated with his work. Furthermore a 2011 alteration of the law enables authors to cooperate through organizations for joined right management for better protection of their interests.

In regards to assignable rights, the author is entitled to the exclusive right to use the work created by him and to permit its use by other persons. Thus, the following are all considered types of use of an author’s work: reproduction of the work, regardless whether it is related to the distribution; presentation; broadcasting; transmission; public exhibition; translation in other languages; revision and synchronization; import from and export of the work to non EU member states in commercial quantities. Moreover, the author has the right of remuneration for each and every separate type of use of the work.

In cases where the subjected to copyright protection work is created by the author under a service or assignment agreement, the employer or assigner has the right to use the work without the author’s permission, but only for the purpose the work was created for. Thus, for usage outside the scope of the initially intended, the permission of the author is needed. However, for works created under employment agreements, the employer is entitled to all types of use of the work without the author’s permission.

Moreover, under the Bulgarian law, computer programs are copyright objects and thus are protected for the period of 70 years. The copyright over such a program belongs to the person or the team whose work has resulted in the creation of computer program. In case the computer program was created under an employment contract and unless otherwise agreed, the copyright over it belongs to the employer. In this case the period of protection is 70 years, but after the program has become known to the open public.

Neighboring Rights

Neighboring to copyright are considered the rights of (1) performers over their performance, (2) producers of phonograms, (3) producers of initial recording of a film or another audio-visual work, and (4) broadcasting organizations over their programs whose initial transmission or broadcast they have personally carried out.

There are variations in the starting point of the 50-year protection period for these rights. Thus, the protection period for unannounced and unpublished works starts on January 1 of the year following their creation. However, for lawfully published or announced works, the period starts on January 1 of the year following the publication or announcement. The rights of broadcasting organizations over their programs are a natural exception to this rule, with the protection period always starting on January 1 of the year following the year of initial transmission.

Moreover, the Copyright and Neighboring Rights Act provides each group of holders of neighboring rights with the exclusive powers to permit against compensation the usages of the following rights:

- The recording, reproduction and distribution of the recordings of the work;
- The reproduction of the work on sound and video carriers and their distribution;
- The broadcasting of a recorded performance by wireless means or by cable;
• The public performance or screening of the work;
• The offering of access to work to an unlimited number of people, by wireless means or cable in a manner permitting the access to occur from any place and at any time individually chosen by each one of these persons;
• The import from and export to non EU Member States of the work in commercial quantities.

Additionally, there are some specific exclusive rights for the separate types of neighboring copyright right bearers set in the table below:

<table>
<thead>
<tr>
<th>Right Bearer</th>
<th>Specific Exclusive Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performers</td>
<td>● The sound and video recording of the performance.</td>
</tr>
<tr>
<td>Phonogram producers</td>
<td>● The revision and synchronization of the recording.</td>
</tr>
<tr>
<td>Movie and audio-visual work producers</td>
<td>● The duplication of the protected work;</td>
</tr>
<tr>
<td></td>
<td>● The translation, dubbing into another language or sub-titling of the work;</td>
</tr>
<tr>
<td></td>
<td>● The processing and synchronization of the work.</td>
</tr>
<tr>
<td>Broadcasting organizations</td>
<td>● Rebroadcasting of the program by wireless or re-transmitting it via electronic transmission networks.</td>
</tr>
</tbody>
</table>

XII.2.2. Copyright and Neighboring Rights

The exclusive right on invention is obtained by issuance of a patent by the Bulgarian Patent Office. The procedure includes (A) a formal examination and (B) an examination whether the criteria for patentability are fulfilled. Moreover, any patent application may enjoy a priority from earlier application filed in a Member-State of the Paris Convention within 12-months of the filing with the Bulgarian Patent Office.

The scope of protection provided by a patent is determined by the patent claims. However, the Patents and Registration of Utility Models Act provides for the basic rights the patent holder has over the patented invention: (1) the right to use the invention, (2) the right to prevent third parties from using it, and (3) the right to dispose of the patent.

Where the subject matter of the patent is a product (device, machine, equipment) or a method, the patent owner has the right to prohibit others from:
• Producing the product or applying the method;
• Offering, putting on the market, using, importing, stocking for market or other offering, or using a product obtained directly by the patented method.

The term of validity of a patent for invention is 20 years from the date of filing of the application – the term cannot be extended. Moreover, in order to maintain the validity of a patent annuity fees are due.

Utility Models

The exclusive right on a utility model is obtained by its registration with the Patent Office. They differentiate from patents in the scope of the scope of their inventive step. Thus, for the registration of an utility model the criterion is only the local technological level and the knowledge of the average local socialists. The procedure again includes (A) a formal examination and (B) an examination whether the criteria for registration are fulfilled. The term of validity of a utility model registration is 4 years from filing the application. That term may be extended for two consecutive periods of three years each. The total term of protection may not exceed 10 years from the date of the filing of the application.
XII.2.3. Marks

**Application for Mark Registration**

The Bulgarian Marks and Geographical Indications Act ("MGIA") stipulates that the exclusive right on a mark is obtained by its registration in the Bulgarian Patent Office. The law provides protection for trademarks, service marks, certificate marks and collective marks. The procedure before the Patent Office again consists of the two stages of (A) formal examination, and (B) examination whether the registration criteria are fulfilled, along with a check for the statutory refusal grounds (both absolute (Art. 11 MGIA) and relative (Art. 12 MGIA)). The list of refusal grounds is lengthy but, in general, revolves around the inability of the given mark to distinguish the applicant’s production or services, its similarity with a previously registered mark, or that it uses symbols prohibited for registration as marks (e.g. national flags or vulgar images).

Furthermore, any mark application may enjoy a priority from an identical application filed in member-state of the Paris Convention within a 6 month period prior to the filing with the Bulgarian Patent Office.

**Publication of the Registered Mark and Possible Objections**

Each application, which is filed in the proper form and is not in conflict with the absolute grounds for refusal of registration, shall be published in the Official Bulletin of the Patent Office.

Within three months after the date of publication of the application, any person may give notice of objection to the registration of the mark based on both the absolute and the relative grounds for refusal of registration.

Within the same period holders of earlier rights may file an opposition against the trademark application based on the relative grounds for refusal of registration. One of the substantial amendments to the Marks and Geographical Indications Act, in force as of March 10, 2011, provides that refusal for trademark registration based on the relative grounds may be granted by the Patent Office only in case the holder of the earlier rights has filed a notice of opposition to the registration of the mark.

**Rights Under a Mark**

The term of protection of a registered mark is 10 years from the date of filing the application. The registration may be renewed for an unlimited number of 10-year periods. The exclusive right on a mark includes the right of the owner (1) to use it, (2) to dispose of it and (3) to prevent other parties from using (without the holders authorization) in their business activity signs which:

- Are identical to the mark and relate to identical goods and services as the mark;
- Are identical or similar to the protected mark but characterize goods or services different from those distinguished by the mark – this would be an infringement, if the protected mark is known within the territory of the Republic of Bulgaria and the similarity of the used sign with it bears unfair advantages to the person using the sign;
- May confuse consumers or mislead them to make an association to the protected mark due to the identity or similarity of the used signs with it.

Furthermore, the registration of a mark may be revoked if (A) the owner has not put the mark to genuine use on the territory of Bulgaria within a period of 5 years after the date of registration or (B) if the use of the mark has been suspended for an interrupted period of 5 years.

Also, the registration of a mark may be cancelled when:

- The usage of the mark could be prohibited because it breaches previous rights such as rights over a name or a portrait, copyrights, rights over the name of a new plant variety or animal breed, industrial property rights, etc.;
The mark has been registered in breach of the absolute or relative grounds for refusal;
The mark has been registered despite of the notice of opposition to the registration of the mark filed by a holder of earlier rights;
The mark is registered in the name of an agent or a representative of the owner without the consent of the owner;
A court decision establishes that the applicant has acted in bad faith when filling the mark registration application;
The mark consists of or contains the trading name of another party registered prior to the filing of the application, if the trading name has been registered and used in the Republic of Bulgaria in relation to identical or similar goods and services.

Well-Known Marks

In compliance with the respective criteria applied by the Office for Harmonization in the Internal Market (OHIM), the Marks and Geographical Indications Act provides for detailed criteria for the recognition of a mark as well-known or as a mark of renown. Moreover, the latest legislative amendments revoked the disputed State Registry of Well-Known and Famous Marks with the Patent Office.

The Sofia City Court (in regular civil proceedings) or the Patent Office (in case of a filed opposition or a registration cancellation claim) are competent to pronounce a mark well-known.

Community Trade Marks

A Community trade mark are registered with the OHIM under Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (that repealed Council Regulation (EC) No. 40/94 on the Community trade mark which had been in force in the Republic of Bulgaria as of 1 January 2007). For the registration of a Community trade mark, the applicant has to be fit for registration in each one of the member countries, meaning any previous registrations of similar or identical marks would be an obstacle for the registration of the Community trade mark.

Since January 1, 2007 these marks have effect on the territory of the Republic of Bulgaria. However, the use of a Community trade mark on the territory of the Republic of Bulgaria may be prohibited, if it breaches another right lawfully and in good faith acquired or applied for prior to January 1, 2007.

XII.2.4. Geographical Indications

Geographical Indications indicate the connection of the qualities and features of a type of goods to the region where they are produced. Thus, anyone producing such goods may file an application for registration of a geographical indication with the Patent Office.

The geographic indication can be used by any recorded user for the goods registered as related to the given region. Moreover, a user may request the termination of the registration of another user who uses the geographical indication for goods other than the registered or that the goods that don’t possess the relevant qualities.

Finally, legal protection upon the geographical indication is terminated when the connection between the goods’ qualities and the production region ceases to exist.

XII.2.5. Industrial Designs

The criteria for registration of industrial designs with the Patent Office are world novelty and originality. Moreover, the designer has copyright under both the Industrial Design Act and the Copyright and Neighboring Rights Act.

The procedure of registration of industrial designs again consists of the two stages: (A) formal examination, and (B) examination on the presence of the criteria for registration.
The scope of protection of registered industrial design is determined by its visual representation and spreads upon any design that does leave the informed user with a different overall impression. The exclusive right on registered industrial design includes the right of its owner (1) to use it, (2) to dispose of it, and (3) to prevent third parties from copying or using in the course of business activity designs falling within the scope of protection of the registered design.

The term of protection of registered industrial design is 10 years from the date of filing the application. It could be extended 3 times for periods of 5 years, i.e. the maximum term of protection is the total of 25 years.

Moreover, under Council Regulation (EC) No 6/2002, a Community design application could be filed with the OHIM. The application for such a registration with a determined filing or priority date is deemed a valid filing on the territory of the Republic of Bulgaria. However, in case of infringement of the rights over a Community design, civil legal protection measures are carried out in accordance with the procedure provided by Council Regulation (EC) No 6/2002.

Thus, both the owner of the infringed right and the holder of an exclusive license are entitled to lodge a writ against the infringer claiming:
- Establishment of the infringement;
- Termination of the infringing actions;
- Compensation for the damages suffered because of the infringement;
- Seizure and destruction of the products resulting from the infringement.

In case the court rules in favor of the claimant the latter may require the decision to be published in two dailies and, for most rights, to be announced through a broadcast by a television organization with national coverage in viewing time.

XII.3. Protection Against Infringement of IP Rights

XII.3.1. Basic Claims and Information

Sofia City Court is the competent first-instance court to rule on all disputes arising from unlawful use of industrial property. However, disputes on infringements of copyright and neighboring rights are within the competence of the district court at the registered address of the defendant.

Moreover, the possessors of infringed rights are free to engage in both civil proceedings before the respective courts and administrative proceedings before the Patent Office itself. However, only the court is entitled to award compensation for the damages caused by the infringement.

Thus, both the owner of the infringed right and the holder of an exclusive license are entitled to lodge a writ against the infringer claiming:
- Establishment of the infringement;
- Termination of the infringing actions;
- Compensation for the damages suffered because of the infringement;
- Seizure and destruction of the products resulting from the infringement.

In case the court rules in favor of the claimant the latter may require the decision to be published in two dailies and, for most rights, to be announced through a broadcast by a television organization with national coverage in viewing time.

In regard to the protection provided for intellectual property by the Bulgarian Criminal Code, no private claim is needed for the proceedings to begin, except for the patent infringement claims which start with a private claim from the right possessor or the licensee, but once commenced the proceeding could not be ended by their decisions.

Along with these basic claims, there are specifics in the protection for each type of intellectual property, as set below.

XII.3.2. Civil Protection

Besides the basic claims set forth above, in any case of infringement of a copyright or a neighboring right, the right owner is entitled to require not only the destruction of the infringing copies, but also the seizure and destruction of the equipment exclusively used for their production.

Moreover, when a compensation for the infringement is required, in determining the amount of the sum to be paid, the court takes into account the proceeds obtained as a result of the violation. In case the amount of the damages cannot be thus calculated, the owner of the infringed right may request (A) the value of the subject of infringement, calculated on the basis of the retail prices of lawfully reproduced copies, or (B) an amount between BGN 500 and BGN 100,000.
Furthermore, in case of infringement of patent or utility model rights, the court may compel the defendant or any third party to reveal information of the channels through which the infringement was committed. Moreover, if the infringement concerns a patented method, the burden of proof lies upon the defendant who is to demonstrate the lack of infringement (i.e. another method was applied in his production).

In the case of civil protection of marks, geographical indications, and industrial design, along with the basic claims for IP property infringements, the right possessor or the licensee may request the sealing of the premise, where an infringement is allegedly committed or will be committed. This is needed in order to prevent the destruction of evidence or its concealing.

Moreover, when a compensation for damages is requested, the Marks and Geographical Indications Act and the Industrial Designs Act provide explicitly the terms and conditions for determination of the amount of the compensation.

XII.3.3. Administrative Penalties

Administrative penalties refer to the fines imposed for an infringement by the respective state authorities. Such penalties are imposed only if the infringement does not constitute a criminal offence.

The administrative penalties on infringers of rights of the owners of copyrights or neighboring rights are imposed by the Minister of Culture or a person authorized by him. The fine is within the range of BGN 2,000 to BGN 20,000. If a second infringement is committed within 1 year of the first one, the fine ranges between BGN 3,000 and BGN 30,000.

In regard to infringements of rights under the Patents and Utility Models Act, the President of the Patent Office is empowered to impose administrative penalties. Thus, for revealing information on a secret patent, the fine is from BGN 1000 to BGN 20,000. The fine for using information on the packaging of products, misleading the consumer that the product results from a patent is between BGN 300 and BGN 500 or with a monetary sanction from BGN 600 to BGN 1,000.

Again the President of the Patent Office is empowered to impose fines and monetary sanctions between BGN 500 and BGN 5,000, depending on the circumstances of the offence, for infringements of marks, geographical indications, and industrial design.

Finally, border control measures are established for goods carried through the borders of the state bearing a registered mark or geographical indication without the consent of the holder or an imitation of goods subjected to intellectual property rights. The customs authorities detain such goods, and once the infringement is legitimately determined, destroy them.

XII.3.4. Criminal Punishment

The criminal court has all the powers of the civil court with the addition of the opportunity to punish the infringer of intellectual property rights and to pronounce him a criminal offender. In this case, even though the punishment may still be a monetary sanction instead of imprisonment, its effect and purposes are different from the compensation under civil law – within the statutory criminal protection any fines are collected for the state budget and not for redemption of the damages the right possessor has suffered. Therefore, the criminal court is also capable of awarding compensations, along with imposing fines and other sanctions.

Thus, within the Bulgarian Criminal Code, the protection for copyright and neighboring rights is most extensive. The most common offence is plagiarism consisting of several forms under the Bulgarian law.

First, the unlawful reproduction, distribution and broadcast of a copyright or neighboring right object is subjected to a punishment in a form of a fine of up to BGN 5,000.
Second, the possession of carriers amounting to a large value and carrying an infringed object of intellectual property rights is punished with imprisonment for 2 to 5 years and a fine of BGN 2,000 to BGN 5,000.

If the acts described above have been repeated or considerable damage has occurred, the punishment is imprisonment from 1 to 6 years and a fine of BGN 3,000 to BGN 10,000. If the offences are of extremely material scale the punishment is imprisonment for 2 to 8 years and a fine of BGN 10,000 to BGN 50,000.

Moreover, any person who, without having participated in the creative work and by abusing his authority joins as a co-author of a work of science, literature or art is punished with imprisonment of up to 2 years with an alternative of a fine of BGN 100 to BGN 300 or public probation. This provision also spreads upon the creation of inventions and utility models with the same punishment opportunities.

Furthermore, the Criminal Code criminalizes the unlawful usage within the commercial activity of the offender of marks, geographical indications, and industrial design which is punished with imprisonment for up to 5 years and a fine of up to BGN 5,000. If the act is repeated or significant damages have been caused, the punishment is imprisonment from five to eight years and a fine from BGN 5,000 to BGN 8,000. The object of the crime is confiscated and destroyed irrespective of whose property it is.

Also, all types of intellectual property are subjected to a type of plagiarism, known to Bulgarian law as “kontrafaktzia”. This marks presenting the product of intellectual achievement of another person as your own, i.e. under your own name or pseudonym. The punishment is imprisonment for up to 2 years with an alternative of a fine of BGN 100 to BGN 300 or public reprobation.

Finally, the Criminal Code provides that contraband is punished with 3 – 10 years imprisonment and a fine of BGN 20,000 to BGN 100,000 for unlawful import of stock for commercial or production purposes.

XII.4. Foreign Investors Related Measures

Foreign authors will enjoy the same rights as Bulgarian authors unless otherwise provided by international treaties and agreements. In case the Bulgarian law is applicable to foreign authors or the object of copyright was first created or published in a foreign country, the holder of the right will be determined by the respective foreign law and the term of protection will be the one provided by the foreign law if Bulgarian law provides for a longer period.

Foreign individuals and legal entities and all persons with a domicile or seat outside Bulgaria may apply for the registration of a patent, trademark, geographical indication, industrial design only through their local industrial property representatives listed with the Patent Office.

The provisions of Bulgarian law will apply to foreign individuals and legal entities whose respective country of origin is a member to international agreements, to which Bulgaria is a party. To other foreigners Bulgarian laws will apply only in case of reciprocity, which will be established by the Patent Office in case-by-case basis. Where bilateral international agreements exist their provisions will apply.

The international registrations of patents under the Patent Cooperation Treaty; of trademarks in conformity with the Madrid Agreement; of geographical indications under the Lisbon Agreement; and of industrial designs under the Hague Convention, have the same effect as if the applications were directly lodged and the registrations were made in Bulgaria according to the relevant Bulgarian law.
INVESTMENT DISPUTES AND DISPUTES RESOLUTION IN BULGARIA

Legal Framework

XIII.1.1. European Legislation

- Council Regulation (EC) No 1393/2007 of November 13, 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters;
- Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters;


XIII.1.2. International Treaties

- 1958 New York Convention for recognition and Enforcement of the International Arbitral Awards (ratified by Bulgaria in 1961);
- 1961 European Convention on the International Commercial Arbitration (ratified by Bulgaria in 1964);
- 1959 European Convention on Mutual Assistance in Criminal Matters (ratified by Bulgaria in 1994);
- 1965 Washington Convention for Settlement of Investment Disputes Between States and Other States’ Citizens (ratified by Bulgaria in 2000);
- Number of bilateral treaties on protection of investments (over 50) and in the field of legal assistance (over 25) entered into by Bulgaria.

Bulgarian Legislation

- Private International Law Code (promulgated in State Gazette, issue 42 of May 17, 2005, last amendments published in State Gazette No 100 of December 21, 2010, in force as of December 21, 2010);

XIII.2. General Review of Investment Dispute Matters

XIII.2.1. Investments Protection Treaties

Bulgaria is a party to more than 50 bilateral Investments Protection Treaties (“Treaties”), and all of them explicitly provide for certain dispute resolution mechanism. The overwhelming majority of the Treaties stipulate for two separate mechanisms applicable depending on the type and level of the dispute: (1) disputes between a signatory state and an investor from the other state; and (2) disputes between the signatory states themselves.

According to most of the Treaties, disputes between the signatory states would be referred to an ad-hoc arbitration, in case the parties fail to reach settlement through friendly negotiations. Each Treaty provides for the specifics of the arbitration in each separate case.
However, this particular mechanism concerns only disputes between the states and it could be initiated only by a contracting state in the event of breach by the other, i.e. at a governmental level. Nevertheless, it may still be used as a (last) indirect possibility for protection of the interest of a particular investor but only if undertaken by its own state.

The direct means of action available to an investor in case of a dispute with the host-state (i.e. Bulgaria) will be reviewed separately below.

XIII.2.2. Average Dispute Resolution Mechanism

Most of the Treaties provide for three potential institutions to which to refer a dispute between a foreign investor and the host-state (Bulgaria):

- Ad-hoc arbitration;
- International Centre for Settlement of Investment Disputes ("ICSID");
- The competent national (Bulgarian) courts or arbitration.

The different Treaties provide for a number of potential combinations of these institutions. Nonetheless, a few of the Treaties admit only the jurisdiction of the national courts or refer all disputes directly to arbitration ad-hoc. Some of the Treaties grant to the investor the possibility to choose upon its own discretion the institution to which to refer the dispute. The majority of the Treaties, however, provide for a differentiation of the procedure and institution disputes should be referred to depending on the nature of the dispute itself.

The most common mechanism involves:

- Ad-hoc or ICSID arbitration for disputes concerning nationalization or expropriation of investments or property and especially due compensations, as well as in regard to repatriation (transfer) of investments income, profit and other related funds;
- Jurisdiction of national (Bulgarian) courts in all remaining cases.

However, any investor considering the possibilities to protect its interests in an investment dispute should, in any case, thoroughly examine the provisions of the particular Treaty between its country and Bulgaria.

XIII.2.3. Arbitration Ad-hoc

As a principle, the Treaties provide for ad-hoc arbitration held by three arbitrators. Each party appoints one arbitrator, and the appointed arbitrators choose the third participant in the arbitration panel. In most cases, the third arbitrator should be a national of a third country which keeps diplomatic relations with both contracting states. However, some of the Treaties stipulate the third arbitrator to be appointed by a respected international institution. Many of the Treaties explicitly refer to the UNCITRAL arbitration rules (http://www.uncitral.org/english/texts/arbitration/arb-rules.htm).

XIII.2.4. International Center for Settlement of Investment Disputes ("ICSID")

ICSID is an autonomous institution closely linked to the World Bank. ICSID was established by the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States whose purpose is to stimulate larger flow of private international investment between participating countries. ICSID procedures are specifically designed for the settlement of disputes between foreign investors and host nations. ICSID is a de-localized system operating independently and exclusively of domestic legal systems. The role of domestic courts is limited to judicial assistance in recognition of ICSID awards.

Further information on ICSID is available at: http://www.worldbank.org/icsid/.

XIII.3. Court Dispute Resolution in Bulgaria

XIII.3.1. Competence

The Bulgarian Judicial System and the hierarchy of Bulgarian courts include four types of judicial bodies: (1) regional courts, (2) district courts, (3) courts of appeal, and topping the hierarchy are (4) the two highest courts – the
Supreme Court of Cassation and the Supreme Administrative Court.

The Civil Procedure Code ("CPC") is the regulatory act generally guiding the dispute resolution within the competence of these courts. Moreover, according to the CPC, Bulgarian courts are exclusively competent to consider all civil cases including investment disputes.

Bulgarian courts are competent to administer justice against all persons (individuals and legal entities) in Bulgaria except in cases of extraterritoriality when competence matters are determined by the Private International Law Code and the respective EU legislation and international treaties.

Furthermore, since January 1, 2007 when Bulgaria became a Member to the European Union, the relevant EU laws are applicable in Bulgaria, including Council Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters. Thus, in case the Bulgarian courts are competent to resolve an investment dispute under the rules of the Regulation, the provisions of CPC will be applied for the court proceedings.

XIII.3.2. Proceedings

The CPC introduces special claim proceeding applicable for resolving of commercial disputes. The legal definition of "commercial dispute" in the CPC is very broad and it includes the following:

- Commercial deal disputes, as well as for filling gaps in a commercial deal or adjustment of any such deal to intervening circumstances;
- Privatization contracts, public procurement contracts, concession contracts or contracts for cooperation between the public and the private sectors;
- Disputes arising from the participation in a commercial company, as well as disputes on entries with the Commercial Registry for the establishment of admissibility, nullity or non-existence of a recorded fact or of a recording itself;
- Replenishment of the bankruptcy estate, including the declaratory claims of the creditors;
- (A) Cartel agreements, decisions and concerted practices, (B) concentration of economic activities, (C) unfair competition and abuse of a monopoly or dominant position matters.

Court proceedings in front of Bulgarian courts may develop in three instances – first instance court, court of appeal (which may be the District Court or the Court of Appeal) and court of cassation (the Supreme Court of Cassation). The resolution of the second instance may be reviewed by the Supreme Court of Cassation in case the appealable interest exceeds BGN 5,000 (about EUR 2,500) in civil disputes or BGN 10,000 (about EUR 5,000) in commercial disputes and provided that the second instance court has pronounced on an issue which satisfies at least one of the following criteria:

- It has been decided in conflict with the case law of the Supreme Court of Cassation;
- The court practice on it is inconsistent;
- It is relevant to the correct application of the law or to the progress of the judicial theory or practice.

Prior to the lodging of the claim or after the claim has been lodged the claimant may request the court to impose against the assets of the (future) defendant specific injunction measures for a total amount of up to the size of the claim. Such injunction may be enforced (A) by placing interdict on a real estate; (B) by placing a distrait on movables and receivables of the debtor; (C) by other appropriate measures, determined by the court which could include the suspension of some actions of the debtor.

The court fees involved in a dispute resolution procedure depend on the scenario of the particular case. Generally, they may be summarized as follows:

- Court fee for the first instance court – 4% of the claim's value but not less than BGN 50;
- Court fee for the second instance court – 2% of the amount of the appealed part of the ruling;
The court fee for a ruling on the admissibility of the third instance appeal is BGN 30, and for a ruling upon the merits of the dispute – 2% of the amount of the appealed part of the ruling. In addition, the parties may have to pay court expenses for the appointment of court experts, summons of witnesses, etc.

XIII.3.3. Recognition and Enforcement of Foreign Judgments

The Bulgarian Private International Law Code ("PILC") provides for specific rules applicable to the recognition and enforcement of foreign judgments, but in case the foreign judgment is issued by a court of a EU Member State the provisions of Council Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters will be applicable. Both legal instruments have similar provisions.

In proceedings for recognition and for enforcement of foreign judgments, the Bulgarian court does not decide upon the merits of the dispute brought before the foreign court. It only verifies that the ruling meets the following conditions determined by the PILC:

- The foreign court had jurisdiction according to the provisions of Bulgarian law, but not if the nationality of the plaintiff or the registration thereof in the State of the court seized was the only ground for the foreign jurisdiction over disputes in rem;
- The defendant was served a copy of the statement of action, the parties were duly summoned, and fundamental principles of Bulgarian law, related to the defense of the said parties, have not been prejudiced (however the defendant in the proceedings for recognition and enforcement of the foreign judgments may not invoke such violations, in case the said defendant could have raised them before the foreign court);
- No effective judgment has already been enacted by a Bulgarian court based on the same facts, involving the same cause of action and between the same parties;
- No proceedings based on the same facts, involving the same cause of action and between the same parties, have been brought before a Bulgarian court earlier than the case instituted before and decided upon by the foreign court;
- The recognition or enforcement of the foreign ruling is not contrary to Bulgarian public order.

The above said also applies to court settlements, if they enjoy equal status as judgments of court in the State in which they are reached.

Moreover, the state fee for filing an application for recognition and enforcement of a foreign judgment is BGN 50.

The conditions for the recognition of the foreign judgment become a matter of dispute, the issue can be brought before the Sofia City Court. Moreover, the Sofia City Court is the one capable of enacting a ruling for the enforcement of the foreign judgment.

In addition, the CPC implements in its Part VII the provisions of the EU legislation concerning civil proceedings matters (see XII.1. Legal Framework above).

XIII.3.4. Order for Performance Procedure

The newly adopted CPC introduces new procedure before the Regional Courts for issue of order for performance. In principle, that procedure may be applied only for receivables up to BGN 25,000 (about EUR 12,500) and for obligations for delivery or return of movables with value not exceeding BGN 25,000 (about EUR 12,500).

In addition the CPC allows order for performance to be issued on the grounds of the following exclusively listed documents:

1. Administrative acts, under which the admission to enforcement is delegated to the civil courts;
2. Documents or accounting book excerpts establishing receivables of
governmental institutions, municipalities and banks;
3. Notary deeds or other settlements or contracts with notarized signatures for the receivables or other obligations, a settlement or another kind of contract with notarized signatures in respect to receivables or other obligations they settle;
4. Excerpts from the Central Register of Special Pledges (A) on a registered security interest and (B) for commencement of foreclosure – in respect to the delivery of the pledged things;
5. Excerpts from the Central Register of Special Pledges on (A) a registration of a contract for sale with retention of title until payment of the purchase price or (B) a lease contract – in respect to sold or leased objects;
6. Pledge contracts or mortgage deeds, provided that the special requirements under the Obligations and Contracts Act are met;
7. Effective administrative act establishing a state or municipal particular receivable, where the enforcement of the act is carried under the CPC;
8. Tax Assessment Acts;
9. (A) Promissory notes, (B) bills of exchange or (C) other equivalent securities payable to order, along with (D) the bonds or coupons attached to the said three.

Once the order for performance is granted the debtor has 2 weeks term for submission of a formal written objection against the order for performance (and no evidence or substantive arguments have to be presented).

Moreover, there is an option for preliminary execution performance orders issued on grounds of the documents of p. 1 – 8 above. In this case, the mere objection to the performance order does not stop the execution of the performance order. Thus, in order to suspend the preliminary execution, the debtor has to provide the creditor with a sufficient guarantee for its obligation (the guarantee has to be in the form of (A) a pledge over a monetary amount or state securities or (B) a mortgage).

In case the debtor objects to the performance order, the order applicant (i.e. the creditor) has a term of 1 month to lodge a claim. If he chooses not to or fails to lodge a claim, the order of performance is cancelled. However, in case the debtor does not object to the order for performance, it enters into force and a writ of execution can be issued on request of the creditor.

XIII.4. Arbitration Dispute Resolution in Bulgaria

XIII.4.1. Legal Grounds and Competence

Being faster and less expensive compared to the court proceedings, arbitration is the most popular alternative dispute resolution in Bulgaria. Arbitration proceedings in Bulgaria are governed by the International Commercial Arbitration Act (“ICAA”), along with the relevant international treaties to which Bulgaria is a party, and the rules of the respective arbitration institution (if relevant).

ICCA applies to international arbitration based on an arbitration agreement, when the place of arbitration is within the territory of the Republic of Bulgaria and one of the parties has its habitual residence, registered office according to its Deed of Incorporation or place of the actual management outside Republic of Bulgaria. Nonetheless, ICCA also applies to domestic arbitration when neither party is a foreign person or entity.

The arbitration is competent to settle civil or commercial disputes, as well as disputes related to the filling gaps in contracts or their adaptation to newly arisen circumstances. The CPC explicitly excludes from the competence of the arbitration the disputes on possession or real rights over real estates, alimonies and labor contract rights.

XIII.4.2. Arbitration Institutions and Fees

There are more than a dozen arbitration institutions in Bulgaria at the moment such as the Marine Court of Arbitration at the Bulgarian
Marine Chamber, the Sofia Court of Arbitration at the Association for Internal and International Arbitration, the Court for Minor Civil Disputes at the Bulgarian Association for Civil Society and Legal Initiatives, etc. The most famous and reputable among them are the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry (http://www.bcci.bg/arbitration/index.html) and the Arbitration Court at the Bulgarian Industrial Association (http://www.bia-bg.com/arbitration/).

The fees attributable to the arbitration institutions in Bulgaria differ from one another and are specified in their respective Tariffs and Rules on Arbitration. In principle, the fees are formed on the basis of the value of the claim as they increase in proportion to it.

The state fee for the enforcement of an arbitration award issued by an arbitration court in Bulgaria is 0.2% on the interest for which the enforcement is requested, but not less than BGN 50 (about EUR 25).

XIII.4.3. Recognition and Enforcement of Foreign Arbitration Awards

With regard to the recognition and enforcement of foreign arbitration awards, the ICCA refers to the international agreements to which Bulgaria is a party. Thus, such awards are recognized and enforced in compliance with the provisions of the New York Convention for Recognition and Enforcement of Foreign Arbitration Awards (“Convention”), but to the extent the Convention is not in conflict with the bilateral agreements concluded by Bulgaria providing for specific rules for recognition and enforcement of foreign arbitration awards. The competent court is Sofia City Court, unless otherwise provided by an international convention to which Bulgaria is a party.

Sofia City Court may in some specific cases refuse the recognition and enforcement of the award. Common examples of grounds for refusal are the lack of a valid arbitration agreement or a breach of the procedural rules or provisions of the arbitration agreement. Moreover, an award is not recognized and enforced if its application is contrary to the public order in Bulgaria.

The fee collected by the Sofia City Court for the recognition and enforcement of foreign arbitration awards is fixed to BGN 50 (about EUR 25).
CHAPTER FOURTEEN: PUBLIC PROCUREMENT

PUBLIC PROCUREMENT

Legal Framework

The public procurement is one of the major financial instruments for allocation of state funds and resources towards private sector. The basic act in Bulgaria that regulates the assignment of public procurement is the Law on Public Procurement. This act regulates provision of public funds in connection with outsourcing of activities to economic operators. The Bulgarian Law on Public Procurement in force is fully in accordance with the European legislation and defines three main principles that constitute the basis of the legal framework of public procurement:

- publicity and transparency;
- free and loyal competition;
- equality and non-discrimination.

The observation of those principles in particular ensures the efficiency of public procurement legislative regime. At present the national legal framework of public procurement is fully in accordance with the European legislation and defines three main principles that constitute the basis of the legal framework of public procurement:

- delivery of goods;
- provision of services;
- construction, including building or engineering, designing and fulfillment of one or several building and mounting works.

It shall be noted that the delivery of goods includes also all necessary preliminary activities related to the use of the goods, such as set up, testing of machines, staff training how to work with the equipment and others;

The last amendments to the Law on Public Procurement, in force as of 18.05.2012, introduce the requirements of Council Directive 2009/81/EC on the coordination of procedures for the awarding of certain construction work contracts; supply contracts and service contracts in the field of national security and defense and also introduce new objects of public procurement. One of the aims of the adoption of these amendments is to eliminate the obstacles to the functioning of the common market for defense and “sensitive” equipment in the European Union.

The objects of public procurement already include the supply of military and “sensitive” equipment or the equipment that includes requires and/or contains classified information. The introduction of this term in the Bulgarian law is made by the using of the term “specialized equipment”. The new provisions also apply to awarding of supply and construction contracts directly relevant to the above described equipment, as well as to awarding of construction and service contracts for specific military purposes and to public procurement contracts for special construction works and for provision of special services i.e. relevant to classified information.

XIV.2. Subjects

Subjects of the procedures for assigning of public procurement contracts are the contracting authorities, the participants and the contractors.

A candidate or a participant in a public procurement procedure may be any Bulgarian or foreign natural or legal person, as well as their associations. A candidate or a participant may not be suspended from the procedure for assignment of a public procurement on the grounds of its status or legal and organizational form, where it has been authorized to provide the respective service, carry out supplies or construction works in the Member State, in which it is settled.
Contracting authorities of public procurement are defined under the law in several categories:

- the bodies of state power;
- the diplomatic and consular representation offices of the Republic of Bulgaria abroad, as well as the permanent representation offices of the Republic of Bulgaria to the international organizations;
- the public organizations (legal entities created for the satisfaction of a given public interest having no commercial or industrial character, and satisfying set it the law);
- the associations of subjects under item 1 or 3;
- the public enterprises and their associations, where they carry out one or several of
  - the activities specified in The Law on Public Procurement;
  - the traders or other persons, who are not public enterprises, when on the grounds of special or exclusive rights they carry out one or several of activities specified in the law.

The Law on Public Procurement introduces different legal definitions depending on the type of procedure and the step of the procedure:

- **“Interested person”** is any person who is or has been interested in assigning a certain public procurement contract or who has suffered damages or may suffer damages from the alleged infringement. An economic operator becomes an interested person when a tender is announced in this part and field of the market where the economic operator carries out its activities;
- **“Candidate”** is a natural or legal person or their association, who has submitted an application for participation in a limited procedure, procedure of negotiation with notice, competitive dialogue or limited project competition.
- **“Participant”** is a natural or legal person or their association, who has presented an offer or a project in an open procedure or project competition.
- **“Contractor of a public procurement”** is a participant in a public procurement procedure, with whom the contracting authority has concluded a public procurement contract.

Criteria for evaluation of offers

The contracting authority shall determine the contractor in a public procurement procedure on the basis of evaluation of the offers under one of the following criteria as indicated in the notice:

- the lowest price offered;
- the most economically advantageous offer.

Where the criterion chosen is the most economically advantageous offer, the contracting authority shall be obligated to indicate the awarding criteria, the relative weighting given thereto and the methods for assessment of each criterion, which include the admissible value in figures and the assessment in previously set limits. In duly justified cases, where the relative weighting given to each criterion cannot be established, the contracting authority shall indicate the descending order of importance of the criteria.

### XIV.3. The value thresholds under the law on public procurement

The last amendments to the Law on Public Procurement, in force as of 18.05.2012, increase the value threshold of all public procurement procedures. The increase is by 10 percent for all thresholds. Nonetheless the EU thresholds are much higher, because the Bulgarian market is smaller than the other markets in the EU.

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1. The stated values are without VAT
The Value Thresholds according to the particular object – supply, service or construction.

**Table 1**

<table>
<thead>
<tr>
<th>The place of performance</th>
<th>Obligatory application of procedures under The Law on Public Procurement</th>
<th>Procedures under The Law on Public Procurement by simplified rules</th>
<th>Chapter eight “a” of the Law on Public Procurement – Public invitation</th>
<th>Direct award without the application of procedures under The Law on Public Procurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>construction</td>
<td>A place of performance in the country</td>
<td>Equal to or exceeding 264 000 BGN</td>
<td>From 264 000 to 2 640 000 BGN</td>
<td>From 60 000 to 264 000 BGN</td>
</tr>
<tr>
<td>supplies/services</td>
<td>A place of performance outside the country</td>
<td>Equal to or exceeding 1 650 000 BGN</td>
<td>From 670 000 to 1 650 000 BGN</td>
<td>Less than 670 000 BGN</td>
</tr>
<tr>
<td>construction</td>
<td>A place of performance in the country</td>
<td>Equal to or exceeding 66 000 BGN</td>
<td>Above 66 000 BGN to European thresholds</td>
<td>From 20 000 to 66 000 BGN</td>
</tr>
<tr>
<td>supplies/services</td>
<td>A place of performance outside the country</td>
<td>Equal to or exceeding 132 000 BGN</td>
<td>Above 132 000 BGN to European thresholds</td>
<td>Less than 66 000 BGN</td>
</tr>
</tbody>
</table>

The Value Thresholds according to the particular object – service, supply or construction, cases in which the contracting authorities shall announce information in the Official Journal of the EU. **Table 2**

<table>
<thead>
<tr>
<th>construction</th>
<th>supplies *</th>
<th>services *</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equal to or exceeding 9 779 000 BGN</td>
<td>Equal to or exceeding 254 254/391 160 BGN</td>
<td>Equal to or exceeding 254 254/391 160 BGN</td>
</tr>
</tbody>
</table>

**XIV.4. Authorities. Public procurement register.**

The Minister of Economy, Energy and Tourism shall carry out the state policy in the sphere of public procurement. The Public Procurement Agency was established on 12.03.2004 with a decree of the Council of Ministers. The Agency subordinates to the Minister of Economy, Energy and Tourism and provides assistance in implementing the national policy in the field of public procurement. The main priority of the Public Procurement Agency is to ensure the efficiency of the public procurement system while respecting the main principles applicable to allocation/spending of public funds established under the Law on Public Procurement.

The Agency establishes and maintains a Public Procurement Register. The register is open for the public. The contracting authorities are obliged to send the information (in Bulgarian) intended for entry in the Public Procurement Register, as follows:

- the decisions for opening, amendment and termination of procedures for assigning of public procurement;
- the notices for public procurements;

* Depending on the type of the supply/service
The Public Procurement Register contains the following information:

- public procurement that are open;
- the economic and financial requirements of the candidates;
- the technical capacity and/or the qualification requirements.

Depending on the value of the public procurement procedure the contracting authorities shall be obliged to send the above information for promulgation, not only to the Register of Public Procurement Order, but also to the Official Journal of the European Union.

Types of procedures
The public procurement procedures under art. 14, paragraph 1 of the Law on Public Procurement (with values specified in the column 2 of Table 1) are assigned by means of:

- **Open procedure** - the procedure whereupon all interested persons may submit offers;
- **Limited procedure** - the procedure whereupon offers may be submitted only by candidates which are invited by the contracting authority upon a preliminary selection;
- **Competitive dialogue** - a procedure, where every interested person may submit an application for participation and the contracting authority conducts a dialogue with the candidates, admitted upon a preliminary selection, the purpose of the dialogue is to define one or more proposals, which meet the requirements of the contracting authority and the candidates with suitable proposals, selected by means of the dialogue are then invited by the contracting authority to submit offers;
- **Procedures of negotiations:**
  - Procedure of negotiation with notice - whereupon the contracting authority holds negotiations for determining the clauses of the contract with one or more participants chosen by a preliminary selection;
  - Procedure of negotiation without notice - whereupon the contracting authority holds negotiations for determining the clauses of the contract with one or more concretely chosen persons.

The contracting authority is assigning public procurement by competitive dialogue or procedures of negotiation only under strict conditions specified under the Law on Public Procurement, in all other cases the contracting authority shall take a decision for assigning of public procurement contract by means of an open procedure or a limited procedure. Most public procurement contracts are awarded by means of an open procedure, because this procedure allows a wide range of economic operators to participate and thus contracting authorities may award contracts under most favorable conditions.

**XIV.5. Preparation of an offer to participate in an “open procedure”**

**XIV.5.1. General rules for the preparation and submission of an offer**

In preparation and drafting of the offer every participant shall comply strictly with the requirements announced by the contracting authority. Every offer must contain all the documents required under the notice for public procurement procedure.

Every participant in the public procurement procedure shall have the right to present only one offer. Until the deadline for receipt of offers every participant in the procedure may amend, supplement or withdraw his offer.

A person who participates in an association or who has given consent and is pointed as subcontractor in the offer of another participant may not present an independent offer. In a particular public procurement procedure one natural or legal person may participate in only one association.
The offer shall be filed in a sealed opaque envelope by the participant in person or by an authorized representative or by registered mail. The envelope shall contain three individual sealed non-transparent envelopes, as follows:

- **Envelope No 1** - which shall contain the following documents:
  - a copy of the registration document/a or a copy of the identification document where the participant is a natural person;
  - a document for a tender bond;
  - documents that prove the economic and financial status and the technical capacity of the participant according to the requirements specified under the public procurement notice;
  - the subcontractors, if any and the share of participation of each subcontractor;
  - declarations under the Law on Public Procurement;
  - list of the documents contained in the offer;
  - other information indicated in the public procurement notice.

- **Envelope No 2** - which shall contain the following documents:
  - technical proposal for the fulfillment of the public procurement contract;
  - term for fulfillment of the public procurement contract;

- **Envelope No 3** - which shall contain the price proposal of the participant.

When a candidate in a public procurement procedure is a foreign natural person or legal entity or their association the offer shall be submitted in Bulgarian language, the document under item 1 shall be presented in an official translation and all other documents in foreign language shall also be presented in translation. In those cases where the place of performance of the public procurement is outside the territory of the Republic of Bulgaria, the contracting authority may allow the offer to be presented in the official language of the respective state.

XIV.5.2. Rules for opening, reviewing, assessment and rating of the received offers

The preparation and realization of the procedures shall be carried out by the contracting authority. The exchange of information may be realized by post, by fax, by email signed with an electronic signature or by combination of these means upon the choice of the contracting authority. The chosen means of communication must be accessible to all candidates. All actions of the contracting authority towards the candidates or the participants shall be in writing.

The contracting authority must indicate in the public procurement notice the specific date and time of opening of the received offers. In case of change in the stated date and time for opening of the offers, the contracting authority shall notify the participants in writing.

The opening of the offers is opened to the public and may be attended by all participants in the procedure or their authorized representatives, and also by representatives of NGOs and media representatives.

A special commission appointed by the contracting authority shall open, consider, assess and rate the submitted offers.

**Actions of the Commission:**
- Public opening of offers

The commission shall open the envelopes following the order of their filing and shall ascertain the presence of three separate sealed envelopes.

The commission opens Envelope No 1 and checks whether the contents of the envelope corresponds to the list of the documents contained in the offer.

2. “Official translation” is a translation performed by a translator, who by virtue of a contract concluded with the Ministry of Exterior has the right to perform official translations.
Public session

Opening of offers

Opening of Envelope No 1

- Check for compliance with “requirements set in advance”
  “Requirements set in advance” are the terms and conditions included in the notice and/or documentation for participation.
  The Commission shall verify whether the documents in Envelope No 1 satisfy the requirements set in advance.
  Where the Commission establishes a missing document and/or document non-conforming with the selection criteria or non-conforming with any other requirements of the contracting authority, the Commission notifies the participant and prescribes a term for correction of the established non-conformity.
  After the expiry of the prescribed term, the Commission examines the additionally submitted documents with view to their conformity to the selection criteria, set by the contracting authority.
  The next step of the Commission is to check the documents in Envelope No 2 – Technical offer for their conformity to the selection criteria, set by the contracting authority.

Public session

Opening of Envelope No 3

Announcement of offered price

- Public opening of the price proposal
  The commission shall announce in an appropriate way the date, time and place where the price proposals will be opened. In case the offer of a participant does not meet the requirements of the contracting authority, the commission does not open Envelope No 3 with the price proposal.
  The commission shall announce the offered prices at the time of opening.

XIV.5.3. Selection of the contractor of a public procurement

Within 5 working days after the conclusion of the work of the commission, the contracting authority shall issue a motivated decision, announcing the rating of the participants and the participant, chosen as a contractor under the public procurement procedure. The contracting authority shall specify in its decision the names of participants and offers removed from participation in the procedure and the motives for their removal. The contracting authority shall send the decision to the participants within three days from the date of issue.

XIV.6. Appealing

The acts of contracting authorities, issued and adopted in connection with the public procurement procedures, are considered as individual administrative acts within the meaning of the law and they shall be appealed under the rules and procedures of the Bulgarian Administrative Code.
The appealing procedure takes place in two phases that may be called out of court and court phase:

- The out of court phase develops before the Commission for Protection of Competition (CPC). The CPC is not part of the Bulgarian judicial system. It is an independent controlling body, but it is not a court. The appeal against the particular act of a contracting authority shall be filed first before the CPC and the Commission shall come out with a decision;

- The court phase develops before the Supreme Administrative Court. The decision of the CPC may be appealed before a three-judge panel of the Supreme Administrative Court under the rules and procedures set under the Bulgarian Administrative Code. The decision of the Supreme Administrative Court is final and obligatory to the parties.

Subject to appeal are the following acts of a contracting authority:

- The decisions for opening of a procedure for assigning of public procurement contracts – these decisions shall be appealed before the Commission for Protection of Competition with regard to their lawfulness, including with regard to the presence of discriminatory economic, financial, technical or qualification requirements in the notice, the documentation or in any other document, relevant to the procedure;

- The decisions for assigning of public procurement contracts – participants in public procurement procedures can appeal before the Commission for Protection of Competition the legality of their disqualification or the disqualification of their offers from the procedure, the assessment of the admitted offers, the ranking of the participants and the selection of the contractor of the public procurement;

- Acts or omissions of the contracting authority, which represent an impediment to the free and equal access or participation of persons in the public procurement procedure.

In the conclusion, Bulgarian public procurement legislation guarantees reasonable and effective management of public funds and at the same time gives an opportunity to interested economic operators to be awarded activities in the context of fair competition and equitable treatment.

The transposition of the latest changes in EU directives regarding the awarding of public contracts has lead to the simplification and increased flexibility of the procurement procedures as well as to the enhancement of legal certainty, which in turn ensures a well-functioning market for public procurement in Bulgaria in line with the expectations of EU citizens.
E-MONEY

Main types and characteristics:

Definition: electronic money, also known as e-money or digital cash represent a digital, represent an electronic record of monetary values record of monetary value through use of high tech facilities. This monetary (material) value exists only in the form of electronic information.

XV.1.1. Forms of electronic money:

- Electronic and digital wallet – this is a record of monetary value in definite currency on electronic (card) device or smart device (prepaid cards, gift cards, smart phones which use applications to make electronic payments by special telecommunication services). In this case the electronic device is actually in physical possession of the owner;
- Digital cash, recorded in special software, which by means of the Internet or telecommunication networks under definite rules for security may be transferred to any point on Earth and used to service any type of deals and transactions. In this case the money is just in virtual shape, i.e. it does not have any material bearer.
- Network or software cash – one of the frequent options is to save the e-money on a server which may be at a distance, taking into consideration that in the essence e-money is in the form of bits of information which are transferred as computer files. In this case the transactions are very cheap, fast and easy because they represent communication between two servers without the participation of bank institution. Each file of virtual money is secured by a special code, which should be validated by the server of the recipient for avoiding double payment with one and the same digital cash.

XV.1.2. Manner of making transactions with digital cash:

In case of operating with digital cash, users buy only value – electronic value, which is available for the buyer to make transactions with it. When he disposes of the e-money, the electronic value reduces. The e-money is multipurpose means of payment.

XV.1.3. Advantages of using e-money:

- it does not need any material bearer and are stored in electronic memory only;
- it is a multipayment means – it can be used for any type of deals and transactions;
- it is independent of time and space – the users can make deals at any time from any place all over the world;
- it represents credit money which execute all the basic monetary functions of regular money;
- it allows transfers to be made at a very low value from other financial institutions apart from banks.

XV.1.4. Complications with using e-money payments:

The basic trouble with using electronic money concerns the means of protection – avoiding the possibility to pay with the same digital cash more than once and for different stocks/services.

XV.1.5. The security issue:

It is quite serious and basically different cryptographic and validation methods are used to protect that kind of money. Actually these transactions represent transfer of electronic data by telecommunication networks or by Internet. Other complications are:

- Different taxation problems and applicable law when making transactions with e-money
- The notion of digital money as a
property and their transferring into different currencies and into actual money;
● The problem with the parties authorized to be emitters of electronic money and avoiding the danger for electronic money to become “private money”, not sanctioned by state bank institution;

**XV.2. Basic requirements for legitimacy of electronic money:**

1. In order to be recognized as a legitimate payment facility, electronic money should be acknowledged as such by both parties in the transaction – the payer and the receiver.
2. The e-money, based on the transfer of electronic “coins” (bits of information in the form of files), should differ essentially from the regular payment systems which depend on the debiting bank accounts of contractual origin / bank cards/ or by order to the bank for payments made electronically.

The last type of payments require the activity to be held by banks and include necessary bank clearing and settlement, do not allow payments at a value lower than 1 (for example transfer of 25 cents, which is possible when dealing with electronic money)

**XV.3. Scheme of payment and making transactions with electronic money. The basic steps of making e-money transactions are as follows:**

**XV.3.1. Payment with the intermediation of bank institution:**

● The client draws out the e-money by a special software platform from his e-cash account, which generates files and records them on the hard disk of his computer. Each file represents one electronic coin and is protected by unique identification code.

● The Client encrypts the file in such a way that the serial number to stay hidden and sends it to a financial institution – a bank or credit institution, licensed to operate with e-money, in which the client has an open account. The institution confirms the amount, debits the account of the client (in case of software transactions there is no institution, the transaction represents an exchange of data between two servers as the receiver’s server validates the data and confirms the received payment).

● If there is a bank/credit institution that confirms the amount, after debiting the client’s account with the respective sum, sends the file back, after which the client decodes the serial number with his specific software. The serial number of the electronic money of the respective client should be unknown at this stage even to the financial institution.

**In case of payment via Internet, the Client pays with electronic money, already confirmed by a financial institution or validated by a server, i.e. this is money, already decoded. At the time of actual payment, the financial institution registers the serial numbers of the e-money.**
XV.3.2. Server – request validation of e-money transactions

- The Recipient’s server gets request to confirm that the client has not already paid with e-money, encrypted with the same serial numbers in order to avoid double payment with the same money. In the communication between servers there is an exchange of electronic data (bits of information) and there is not intermediation of bank institution.
- The e-money may be used only once. The single use validation is performed by the Recipients’ Server.
- Generally the server that generates and stores and the one that validates electronic money, are administered and supported by a specially licensed institution in a system of e-money payment. The validating server debits the virtual account of the client or refuses to do so. In this network system there is not any financial institution which confirms payment.

XV.3.3. Network payments

The above mentioned modes of payment with e-money are basically replaced by the network payments in online-shops and others types of commercial contracts via Internet. These are the well known payment systems: eBay, PayPal, Amazon and etc. Mode of payment is the following:

- Encoding e-money by keys (key encoding). In this mode of payment, the Client has two keys:
  - Public key: The public key is generated and known by a global server which makes general validation of the money – who has issued them and who knows them. The payment systems regularly pay some annual or monthly fee to maintain the respective database on the global server which validates the money.
  - Private key: this is a password owned exclusively by the money owner. The client has an opened virtual account in the respective payment system. He may withdraw money from the prepaid value of this account and when he makes payments from it, the virtual account regularly reduces with the respective amount.
- Scheme of transaction:
  The client authorizes his approach to the Global server by his public key. The Global server issues and validates electronic money. The Client that has an e-account on the Server uses his private key (password) to access his personal account to order transaction. The Server validates the Order (Request for validation) and confirms or refuses the transaction. In this scheme there is no participation of any type of bank or other financial institution. The validation is at a global level and no intermediacy is required. After positive validation, the receipt’s e-account is debited with the respective amount. So this is transaction of e-money per se, that can be transferred into regular money at any time.

XV.4. Applicable legislation:

XV.4.1. EU legislation:

of the business of electronic money institutions;

- Commission Recommendation 97/489/EC of 30 July 1997 concerning transactions by electronic payment instruments and in particular the relationship between issuer and holder

XV.4.2. Applicable Bulgarian legislation:

- Law on Funds Transfers, Electronic Payment Instruments and Payment Systems;
- Electronic Commerce Act;
- Personal Data Protection Act;
- Telecommunications Act;
- Public Register of the Licensed Companies for Electronic Money, held by “Bank Supervision Sector” of Bulgarian National Bank;

XV.5. Electronic money companies

XV.5.1. Licensing regime

In Bulgaria the e-money companies are subject to a license regime by Bulgarian National Bank which represents the official state institution responsible for establishing and governing any payment institutions.

Actually any company which has a license shall be authorized to issue and deal with e-money. For obtaining a license from BNB, the company shall deliver the following documents:

- A certified copy of the Company’s Act (Articles of Association or Statute);
- Documents, certifying that the required capital has been submitted according to the requirements of the Payment Services and Payment Institutions Act; all the requirements of the Commercial Act should be observed as well.
- Documents from shareholders/partners for the origin of the funds, by which the required installments have been made or for obtaining the same;
- UIC or Certificate of good standing, issued not earlier than 1 (one) month before submitting the license request;
- A detailed description of the aplier’s activity and the audited financial reports for the last 3 years or over the period of existence of the company if that period proves to be shorter;

XV.5.2. Business plan and a prognosis budget over the first 3 years.

The business plan should involve at least:

- Plan for development and economic justification of the activity;
- A detailed description of all activities that the company intends to perform;
- Rules and procedures for performance of the activity, involving the applicant, his branches and representatives;
- Risk assessment for the risks to which the company for e-money is or might be exposed;
- A prognosis budget for the first three years;
- A resource availability for performing the activity;

XV.5.3. Rules for management of the company as E-money company, including:

Management structure and levels of responsibility;

- Systems and procedures for establishment, management, control and reporting the risks;
- Internal control mechanisms, including reliable and effective administrative and accounting procedures;
● A program for measures against money laundering, established in the Act for measures against money laundering and the Act for measures against financing the terrorism, as well as the measures provided in Regulation № 1781/2006 of the European Parliament and the Council from 15th of November 2006 concerning the information for the payer, accompanying financial transactions;
● Other required documents according to Ordinance 16/2009;

All documents should be provided in Bulgarian language in official legalized translation or with notarized copy of the originals as the applicant shall be able to provide the originals if required to do so. After the closing of license procedure, Bulgarian National Bank issues an official License Certificate to the Bearer.

XV.5.4. Requirements for qualification, professional experience and good commercial reputation

XV.5.4.1. The representatives and managers of the applicant and the members of its official authorities – management and control organs of the companies as Board of directors and Supervisory body (if such available) may be physical parties which have:

● higher education;
● at least 5 years of professional experience, of which at least 3 years of experience in banking or financial sector enterprises or in institutions equal to banks in the sense of Regulation № 20/2009;
● have not been convicted of intentional crime of general character;
● have not been deprived of right to take such positions;
● have not been members of management or control organ in the last 2 years in a company, which has been terminated for insolvency if there have remained unsatisfied debtors;
● have not been included in the list under the Act for measures against financing terrorism;

XV.5.5. Emitting e-money by representatives and branches

● The E-money company cannot emit e-money through representatives;
● The E-money company can distribute and buy back e-money through representatives – traders, acting on behalf of it.
● When the applicant shall perform activity through a branch, or shall distribute and buy back e-money through a representative, it shall submit to the BNB the following obligatory information:
  - Name and registered address of the applicant, UIC or Certificate of good standing of the applicant;
  - Name, registered address, UIC and Certificate of good standing of the Branch or representative;
  - List of persons, managing or representing the Branch or Representative according to the above described requirements;
  - Declaration for observing the rules and procedures also by the branch or applicant.

Bulgarian National Bank enrolls or refuses to enroll the Branch/Representative of the license bearer in the Register kept by it according to the requirements of the Payment services and Payment Institutions Act. In the register shall also be entered the e-money companies, bearing license from BNB, which shall operate in other EU member states directly of by a branch or shall distribute and buy back e-money on the territory of the Republic of Bulgaria.

● The e-money companies make reports for the emitted, distributed and bought back e-money to BNB.
● Charges of BNB: for review of applications by companies the charge is
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10 000 BGN or 5 000 EUR – for issuing a license as an e-money company.

- Requirements for payment system operator license is 50 000 BGN or 25 000 EUR.

XV.6. Electronic money association (EMA)

The Electronic Money Association (EMA) is the European trade body for electronic money issuers and payment institutions. Members include payments companies, the telecommunications and transport sectors and specialist e-money issuers. The EMA is the industry’s voice in dealing with regulators, government bodies and international organizations. It is a forum for education, responding to regulatory proposals, and establishing industry guidelines.

XV.7. Some significant legal issues regarding the e-money payments which face the e-money companies

Besides the undisputable advantages of e-money payments and the technical issues regarding the use and protection of electronic money, there prove to be also some significant legal issues according to the general requirements of Bulgarian legislation.

XV.7.1. Applicable legislation to e-money transactions

- Taking into consideration that the e-money transactions are by definition related to high technologies and Internet, they are in most cases supranational, i.e. the issuer and/or payer and/or recipients are of different nationalities. A significant number of payments with e-money are related to contracts concluded online.
- The applicable law according to International private law shall resolve the most significant legal issues for the place and time of execution of the legal obligation under the concluded contract.
- If the BG law shall be applicable to the deal, art. 75 (3) of the Contracts and Obligations Act shall be applied according to which the debt shall be considered settled by debiting the creditor’s account with the respective amount. In other legal systems it is possible the same legal issue to have been resolved differently.

Legal principle: The applicable law shall be determined by mutual agreement between the parties or by the norms of the international private law. If not explicitly agreed otherwise between the parties, the contracts shall be bound to the EU Convention for the applicable law to contractual obligations (the Rome Convention 1980). The Convention is universal and according to it the applicable law may be the law of a nation which is not a party on the Convention.

XV.7.2. Applicable law in deals with international element involving payment with e-money:

- According to the Roman Convention, in cases where there has not been stated an explicit wish for applicable law, the applicable law shall be the one of the party, which at the moment of concluding the contract has had a common residence on the territory of the country, which needs to provide the typical performance. In this case the applicable law is the law determined by the place of execution of the obligation. That means that if the applicable law is for example the French law, but the place of execution is Bulgaria, the payment could be made in BGN.

- The correct payment and release from duty shall be determined according to the applicable law in the state where the payment with e-money has been done.
**XV.8. Distribution of the risk from double payment with e-money**

- In case of deals with international element, the risk of double payment e-money should be distributed according to the applicable legislation according to the old Roman law principle “Who pays bad (wrong), pays twice”. As specifically explained here above, the electronic money contains a few bits of electronic memory. Respectively there exists an option this money to be copied and put into circulation for they are not protected by the official protective traits of regular money. This situation is known as “double payment”. As a result of it the payment system needs a mechanism for identifying and preventing second payments with the same electronic money.

- If the purpose is pico-payments and just a small amount of the whole transaction is turned into electronic money, the risks shall not enhance a too high level of security. Irrespective of the level of encryption, supported by each payment system for e-money, it is not yet undoubtedly clear who shall bear the legal responsibility of falsifying e-money. If the principle of regular money is applied, the risk shall be born by the one who accepts the e-money.

- In cases of gross negligence by the party, who has allowed his/her own encryption code to be used by unauthorized parties, this negligent person should bear the legal responsibility for the double payment.

- Another requirement is to elect an appropriate nominal value for the electronic coins or the emitting institution to provide an adequate form of transferring them in various currencies on demand by the client. The nominal value troubles arising from international trade impose the money in circulation to be checked and authenticated before being transferred into different currencies.

- Besides the electronic money should be able for converting into regular money anywhere where the trader or the client requires so. This explicit condition is stated in art. 3 of Directive 2000/46/EC which allows the users to transfer electronic money into regular money at any time and without additional payment, except for payment of the regular charges.

  The trust in electronic currency means adequate and stable speed of exchange between electronic and real money. If the exchange process does not have regular speed, that would impose possibilities for stock speculations, gains from currency differences, which makes the system unstable and untrustworthy because of the possible currency fluctuations.

**XV.9. Special requirements for the e-money**

The main purpose of the acting legislation in EU and in Bulgaria is to secure a general regulatory framework in case of fast development of technologies. Actually back in 1999, the Economic and Social Committee to the European Council criticizes the general framework, declaring that the basic legal regime for e-money should be essentially different from the one provided for regular money, especially with view of greater risks for money laundering and other criminal transactions. That is why the definition for e-money is constantly précised. That enhances the approach for strengthening the requirements to companies which issue and proceed with e-money.

**Bulgarian legislation coordinates the two different approaches:**

- the principle in EU legislation to allow non-bank institutions to emit and trade with such type of money;
the balancing approach to elicit a regime of licensing and control of such non-bank institutions by the National Bank of Bulgaria.

The EU Directive 2009/110/EO of the European parliament and the Council from 16th of September 2009 regarding the initiation, execution and prudential supervision on the activity of e-money institutions explicitly prohibits e-money to be issued by institutions, which are not defined as “credit institutions”. So the limitation approach towards such institutions (e-money companies) is fully justified in BG legislation.

XV.10. Conclusion

The regulation enhances that in exchange of higher requirements towards security and liquidity, such companies may operate with lower initial capital (they do not have to be JSCos. which is an obligatory requirement for the banks) so as LTDs they can operate with minimum initial capital required under general commercial legislation (Commercial Act). On the other hand, there is a comparatively high charge for review an application by BNB – 10 000 BGN. These companies have lower requirements for capital adequacy compared to the other payment institutions. That allows easier entrance of new commercial objects (e-money enterprises) on the market of electronic payment services without necessity to block significant resources and funds in order to meet the requirements for capital adequacy.

Apart from the above, in order to secure the turnover of e-money and their easy transformation into regular money at any time, these institutions are limited in their investment options; they are highly monitored and controlled by BNB. That guarantees that the other economic participants on the market shall be sufficiently protected in case of insolvency of the e-money company or applying some illegal practices.
The new Electronic Communications Act (ECA) was adopted in the middle of year 2007. The new Act introduces the 2002 EU Regulatory Framework which provides the Sector Regulator (Communications Regulation Commission – CRC) with broader powers and mechanisms for influencing the activities of the players in the communications markets. The CRC being the sector specific regulator in Bulgaria is generally supposed to act under its powers outlined by the ECA in its full strength of 5 members taking its decisions by majority of the votes.

In 2011 a law amending the law on Electronic Communications was adopted to fulfil the Republic of Bulgaria’s obligation, as an EU Member State, to implement in its national legislation the revised 2009 regulatory framework in the sector of electronic communications.

According to an amendment of the ECA dated 29.12.2011 and entering into force in 2013 to the Act from 1 September 2013 the terrestrial analogue television broadcasting on the territory of the Republic of Bulgaria shall cease and shall become only digital.

1. The Interconnection market is fully liberalized:
   All undertakings carrying out electronic communications have the rights to negotiate and conclude written contracts for interconnecting each other.
   The interconnection is meant to cover all types of services and networks.
   The content of the reference offer is stipulated by the ECA.
   The full set of specific obligation is envisaged to be imposed on the significant market power undertakings.
   The CRC has very comprehensive powers with regard to intervention in the interoperator relations, imposition and amendment of specific obligations.

2. The ECA provides that operators shall be designated as having significant market power (SMP), solely or jointly with others, after identification, analysis and assessment of the relevant markets as not effectively competitive according to the principles of competition law and after public consultations and in consultation with the European Commission. The order to be followed in identifying the markets, in carrying out analyses and assessment of the relevant markets, and the criteria to be applied to designate undertakings as having significant market power is laid down in a special Methodology.
   On designating operators as having SMP on the relevant market of access and interconnection, CRC can impose one or more of the following specific obligations: (a) transparency, (b) non-discrimination, (c) accounting separation, (d) price restrictions and cost orientation and implementation of a cost accounting system and (e) access to and use of necessary network facilities and equipment.

3. The ECA introduces significant changes to the regulations in the field of telecommunications and the relationship between the two regulatory bodies – the General Regulator – Competition Protection Commission (CPC) and the CRC.
   The one of the significant articles of the ECA present the CPC with the opportunity to consult the CRC, share information and opinions and form joint work groups on specific issues/cases.
   The CRC shall analyse the effectiveness of competition on a relevant market according to the methods and principles of the competition law. This is the main interaction point between the CRC and CPC in the process of defining the markets. The CPC analyses the market only after it receives written application concerning a specific case and it creates another significant difference between the CPC and CRC as the latter analyses the markets ex ante.
   The amendments introduced in ECA in 2011 reflect the interaction of the CRC with
the Bureau of European Regulators for Electronic Communications (BEREC).

XVI.2. Fixed Lines Market

- Nowadays Bulgaria has an open legislation for telecom investments (Electronic Communications Act, 2007). Fixed telephony could be said as one liberalized service. From a legal point of view there are no essential barriers of entrance. The market is facing serious competition and develops shortly. The new market players (so-called alternative operators) make good progress and increased the market share.

- Based on the market analyses of the CRC BTC was designated as SMP on the retail market for access to the public telephone network at a fixed location for residential and non-residential customers. On wholesale level BTC was designated as SMP on the market for call origination on the public telephone network provided at a fixed location, on the market for call termination on individual public telephone networks provided at a fixed location, on the wholesale (physical) network infrastructure access (including shared or fully unbundled access) at a fixed location and on the market for wholesale broadband access. Because of its SMP status BTC has several ongoing obligations to provide wholesale services as follows: for interconnection, including carrier selection and carrier pre-selection, leased lines, collocation, bitstream access, local loop unbundling access, access to its duct network. BTC only on the telecommunications market is obliged also to apply cost oriented pricing for all wholesale services above.

- In spite of the regulatory framework in force which seems to be aimed to foster so called “facility – based” competition the regulator tries to promote the “service-led” completion on the market. The competition in a network industry is not symmetric, because the alternative providers don’t invest in network infrastructure significantly. One of the very important new facts is a decision of the CRC for reduction of the prices for the use of BTC local ducts. The imposed prices (as values and structure) are result of the carried out negotiations with the CRC and the operators. CRC finalized the analysis of the wholesale fixed voice markets (origination and termination markets) and imposed on BTC the full set of respective obligation for access and interconnection mentioned above. The main restrictions are connected with reduction of the termination prices to the average EU levels by glide-path till the middle of 2010. Call origination and termination services must be provided at non-discriminatory conditions, irrespective of the traffic origin, except for termination of international calls and calls to VAS numbers. The CRC adopted final decision also on the retail fixed voice markets where BTC is nominated as SMP. The resulting new main obligations are for publishing WLR offer and for cost oriented prices of the retail services. Currently CRC is performing a second round of market analyses of call origination and call termination in individual fixed telephone networks. The draft decision of the Commission has been sent to the European Commission. The draft provisions a glide path till July 2013, followed by obligation for cost oriented prices.

- For the time being BTC is the only Bulgarian fixed operator that is investing significantly in infrastructure – Digitalization of the network is in process, as well as installation of new lines in remote areas.
The fixed number portability was successfully launched in June 2009.

**XVI.3. Mobile Market**

- At present there are three mobile operators that are active on the Bulgarian market - three of them operating under the GSM/UMTS standard. The NMT/CDMA network operated by BTC under 450 MHz has ceased providing retail services in H2 of 2008.
- The GSM operators were licensed in 1994 (Mobiltel), 2000 (Globul) and 2004 (Vivacom). These operators are competing strongly against each other and as a result the prices of mobile services have dropped considerably especially after the launch of the third GSM operator (Vivacom) which commenced commercial operation in 2005.
- The GSM operators were awarded UMTS licences in April 2005 after conducting an open tender. Presently all GSM operators provides UMTS services.

CRC has finalized its first round of market analysis on the mobile termination market nominating all mobile operators as SMP. Based on this nomination CRC has introduced the full set of specific obligations regarding the first two mobile operators, including cost orientation – initially under the form of symmetric glide-path reduction of the MTRs to about 0.06 Euro per minute in the middle of 2010. In parallel all three operators shall work out and apply Cost Allocation Systems (LRIC) and ultimately form cost-oriented MTRs based on it. The discrimination of traffic based on origin is forbidden except for incoming international calls.

All three mobile operators apply strictly the prices restrictions (maximum price levels) imposed by the EC on the wholesale and retail roaming prices through the Roaming Regulation.

As of year 2008 Mobiltel and Globul started offering converged fixed/mobile services and launched virtual operators (MVNO) on their networks.

The fourth and fifth GSM authorization in 1800 MHz range initiated by CRC failed twice in 2008. Obviously the high market penetration (about 140% by population for 2008), the lack of adequate national roaming obligation and the economic crisis have created barrier for the potential investors.

The Mobile Number Portability was launched in April 2008.

Under pressure from the European Commission, Communications Regulation Commission imposed provisional measures to implement price caps for terminating incoming international voice calls over the mobile networks of Mobiltel EAD, Cosmo Bulgaria Mobile EAD and the Bulgarian Telecommunications Company AD. From 01.04.2011 the required price cap is 0.13 BGN / min.

The measure was imposed pursuant to Art. 42, para. 9 of the Electronic Communications Act. It should be noted that this is the first case in which the CRC imposes provisional measures without actually analyzing the market. Extremely questionable is whether the measure is imposed legitimately and what will be its legal effect. There is no attributed pre-execution of the decision nor reasons for that. On the other hand the measure is under art. 35, para. 6 of the ECA and by law those decisions are with attributed immediate execution.

Since the effect of the measure is tens of millions euros in losses for the operators there is no doubt that series of lawsuits against the decision of the regulator will follow.

Currently CRC is performing a second round of market analyses of the market of call termination in individual mobile networks. The process has not yet
been finalized. The draft decision of the Commission has been sent to the European Commission. The draft provisions a glide path till July 2013, followed by obligation for cost oriented prices.

XVI.4. Alternative Service Providers

The CRC has issued about 30 permissions for provision fixed voice services, including CS and CPS. The market growth of the alternative operators was significant in 2008, but their market share is still not very high (the incumbent still holds over 90% of the fixed voice market).

XVI.5. Broadband market

Characterized by growing but still low penetration – under 10% by population mainly because of the low PC penetration. The dominating technology is LAN (over 50% of the market) followed by CATV and DSL holding the rest of the market by almost equal shares. The wireless and mobile internet access penetration is still negligible. Services are offered predominantly in the big cities and towns. However the growth potential is good because of the rapidly falling prices and increasing access speeds, and more affordable PC offers.


The main amendments introduced in the ECA in 2011 could be summarized are as follows:

(i) new procedure and scope for interaction between CRC and the newly created BEREC is stipulated;
(ii) procedures and requirements related to the provision of electronic communications are further developed:
  ● general authorisation rules are supplemented with requirements differentiated by type of electronic communications network and/or service;
  ● terms and procedures are determined for imposing express temporary measures by the CRC to remedy breaches that would cause immediate and serious danger to public safety, public security or public health or serious economic operational problems for other providers or users of electronic communications network or services or other user radio frequency spectrum;
  ● requirements on conditions that may be included in permits for the use of individually assigned scare resource – radio frequency spectrum the geostationary orbital positions and numbers – were updated;
(v) provisions related to access to, and portability of, numbers were clarified;
(vi) procedures relevant to identifying, analyzing and evaluating the relevant market and to the determination and imposition of obligations on undertakings with significant market power are refined:
  ● provisions dealing with the transfer of market power by an undertaking with significant market power on a closely related market, and powers of the CRC to impose specific obligations on these undertakings, in the related markets were introduced;
  ● in exceptional cases the CRC shall have the power to impose obligations on vertically integrated undertakings with significant market power functional separation;
  ● CRC shall be able to require holders of rights to install facilities on, over or under public or private property or use such facilities or property jointly with other companies (including physical co–location);
  ● preliminary decisions is withdrawn and the CRC is obliged to in detail all of its preliminary execution rulings;
access and consumer facilitation obligations under the “no market analysis rule” shall be imposed by the CRC after technical feasibility and economic viability and after consultation with the interested parties;
(viii) protection of consumers’ rights and interests is strengthened and the main supplements included:
• consumers shall be clearly informed of the duration of contracts, date of contract expiry, their conditions of renewal, appropriate penalties, the nature of the service for which they are subscribing, techniques of traffic management and impact on quality of service, possible suspension of services or access to emergency services, minimum quality of service and any other restrictions;
• maximum duration of the initial fixed term of subscription shall not exceed 24 months with the possibility of choosing a contract for a period of one year;
• individual contracts with subscribers take effect within seven days after conclusion, unless the subscriber expressly requests immediate effect. This rule shall not apply if the subscriber is receiving terminal equipment along with the contract;
• a fixed term contract may be renewed only with the express consent of the subscriber on the conditions. Where no such agreement is reached after the expiry of the minimum contract term the subscriber is entitled to terminate it with one month’s notice, without penalty;
• undertakings may be obliged by CRC to provide particular services so that consumers can control and monitor their consumption;
• undertakings are obliged to notify subscribers of atypical traffic or excessive consumption if such is indicated;
• CRC is authorised to intervene and give binding instructions to undertakings in order to implement the requirements of transparency and clarity of information for end users of, and to determine requirements for ensuring equal access to, electronic communications services for people with disabilities.
(ix) the requirements for enterprise security and network integrity are regulated;
(x) the rules for data protection and right to privacy are further developed;
(xi) conditions for development and construction of modern electronic communications infrastructure are improved, while minimising administrative obstacles.

XVI.7. Personal data protection – new developments

XIII.7.1. International Aspect

The Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data of The Council of Europe1 (Convention 108), adopted on January 28th, 1981 was ratified by Bulgaria in May 2002. The Convention is in force in Bulgaria since January 2003 and its text was promulgated in the State Gazette in March 2003.

The purpose of the Convention is to secure respect for rights and fundamental freedoms of individuals, and in particular their right to privacy, with regard to automatic processing of personal data related to them.

XVI.7.2. Applicable Bulgarian Legislation

The Bulgarian legislation provides a general data protection regime, contained in the Personal Data Protection Act (PDPA), in force from January 1st, 2002. The Act was adopted in the end of 2001 and promulgated in State Gazette issue #4, 2002. In general the Act
follows the main standards set in Convention 108.

The PDPA text guarantees free collection and processing of personal data whenever that is necessary, provided expressly stated principles were followed:

- The data should be processed lawfully and in good will;
- Collected for concrete, precisely defined and lawful purposes;
- The data should be proportional with the purposes for which they are processed;
- The data should be precise and are to be up-dated if necessary;
- The data should be extinguished or corrected when they were found incorrect or disproportionate to the purposes of their processing;
- The data should be kept in such a manner that allows identification of the respective individual for a period not longer than the one necessary for the purposes of the data processing.

The version of PDPA adopted in the year 2002 contained texts that generated a lot of practical problems. The latter were related mainly to the application field of the law and the registration of data controllers’ regime.

End of the year 2005 the general regulation of personal data protection laid down in PDPA was substantially changed especially with respect to the personal data definition, the administrators of personal data registration regime, etc.

XVI.7.3. Definition Changes

One of the significant changes in PDPA was the new personal data definition in Article 2, para.1. “Personal data shall be any information referring to an individual that is or could be identified directly or indirectly with an identification number or by one or more specific indicators related to his/her physical, physiological, genetic, psychic, psychological, economic, cultural or social identity. From the definition dropped out data related to the participation of physical persons in civic associations and/or the management, control and supervision of bodies corporate, as well as in governmental bodies. That amendment guaranteed to the citizens a wider access to information especially regarding information about public persons in line with the Constitutional Court’s perception in the interpretation of Articles 39 to 41 of the Bulgarian Constitution.

The second significant amendment to the definition, already mentioned above, was the express listing in paragraph 1 of Article 2 of the principles to be followed regarding the collected data.

XVI.7.4. Application Scope Changes

With the new amendment PDPA is to be applied only with respect to the processing of personal data comprising of or designated to be part of a public registry. The processing is to be performed by a personal data administrator. Article 4, paragraph 2 expressly allows free collection and processing of personal data in cases when it serves journalism, literature or art expression.

XVI.7.5. Administrators of Personal Data Registration Regime Changes (article 17, paragraph 2)

Subject to Article 3, para 1 of the PDPA administrator of personal data is any physical or body corporate, as well as governmental body, which according to the activity performed defines the type and volume of data processed, their aim, means for processing and protection.

The position of data administrator originates from the type of activities performed by the respective person. Pursuant to the text of the PDPA prior to the amendment each person processing personal data was subject to registration at the Personal Data Protection Commission (the Commission). That general obligation resulted to be unnecessary and created practical problems to the business and to the Commission itself. The amended
text of the law provides for obligatory registration only for administrators who:

- Process the so called sensitive personal data (disclosing racial or ethnical origin, political, religious or philosophical beliefs, etc.);
- Process personal data performing obligations under law;
- Support registry with data for more than 100 individuals;
- Were expressly obliged by the Commission.

The Bulgarian Personal Data Protection Act provides for the establishment of an independent body - the Personal Data Protection Commission, which oversees the implementation of the Act. The Commission was elected by the Bulgarian Parliament on May 23, 2003. Subject to Article 10 of the PDPA the Commission was granted a number of rights, so that it may effectively ensure the data protection of individuals in cases of violation of their rights. The Commission is entitled to review appeals against personal data controllers, perform inspections, issue binding decisions, order temporary suspension of personal data processing and impose sanctions on persons, who process personal data against the provisions of domestic law. The Commission creates and keeps a register of data controllers. Under the PDPA the Commission is to adopt internal rules, regulating its activities, describing the structure of its administration, the procedures for keeping the data controllers register and the procedures for considering appeals, issuing orders and imposing sanctions.

The initially adopted Rules for the work and organization of the Commission provided for an administration of 76 officials, including its members. Until now most of the positions have not been filled.


2 In comparison to the Bulgarian Commission, the Personal Data Commissioner of Ireland has an administration of 16 officials, while 40 people work for the Commissioner of Sweden.
The matters related to media services, provided by media service providers are regulated by the Radio and Television Act (RTA). Media services include audio-visual media services and radio-services. Audio-visual program is a system of moving images with or without sound constituting a separate item within a schedule or a catalogue established by an audio-visual media service provider and whose form is comparable to the form and contents of TV broadcasting. Radio program is an individual item within a radio-program schedule or catalogue, established by radio-service provider. Media services are two types - linear and non-linear. Linear are media services provided by a media service provider for simultaneous viewing/listening to programs on the basis of a programme schedule. Non-linear (on demand media services) are media services provided by a media service provider for the viewing of/listening to programs at the moment chosen by the user at his individual request on the basis of a catalogue of programs chosen by the media service provider. The law guarantees independence of media service providers and of their activity from political and economic pressure. Censoring of media services in any form is prohibited.

The public media service providers:
● present for broadcasting political, economic, cultural, scientific, educational and other socially important information;
● guarantee access to the national and global cultural values and popularize the scientific and technical achievements by means of broadcasting of Bulgarian and foreign educational and cultural programmes and issues for all age groups;
● provide, via their programme policy, protection of the national interests, the all-human cultural values, the national science, the education and culture of all Bulgarian citizens regardless of their ethnic origin;
● support the creation of works of Bulgarian authors;
● promote the Bulgarian performing art. Bulgarian National Radio (BNR) and Bulgarian National Television (BNT) are national public providers of radio-services, respectively of audio-visual media services. Media service providers which are not licensed/registered as public are commercial. In the course of their activities the media service providers have to be obey the following principles:
  ● supporting the right to free expression of opinion;
  ● supporting the right to information;
  ● keeping the secret of the source of information;
  ● protection of the personal inviolability of the citizens;
  ● inadmissibility of programmes showing intolerance among the citizens;
  ● inadmissibility of programmes contradicting the good manners, especially if they contain pornography, praising or freeing from blame cruelty or violence or instigate hatred based on racial, sexual, religious or national nature;
  ● supporting the right of reply in the programs;
  ● supporting the copyright and related rights of the broadcasts and programmes;
  ● preservation of the purity of the Bulgarian language.

The journalists and the creative workers who have signed contracts with media service providers may not receive instructions and directives for exercising of their activity by persons and/or groups other than the bodies of management of the media service providers. Public criticism regarding media service providers on the part of their employees is not be considered disloyal regarding the employer.

The media service providers are not be responsible for disseminated information and its contents when they are:
● obtained officially;
● quotations of official documents;
● precise reproduction of public announcements;

Changes are not allowed in quoting documents. The news, as informational facts, must be differentiated from the comments on them.

Persons and state and municipal bodies affected by linear media services, where they have not taken part in person or through their representative, have a right to reply. The operator is obliged to include the response in the next issue of the same broadcasting or in equal time within 24 hours from the receipt of the response without allowing changes or shortening of the text. The response submitted for broadcasting must be free of charge.

Radio and television operators have the right to choose freely short extracts of the signal of the operator who is the rights holder, where for audio-visual media services the name must be shown and/or the logo of the operator holding the exclusive rights must be pointed, and for radio-services the source must be indicated in a proper way.

The Council for electronic media (CEM) is an independent specialized body which regulates the media services in certain cases. It has the powers to:
● supervise the activity of media service providers;
● elect and dismiss the general directors of BNR and BNT;
● approve, at the proposal of the general directors, members of the management boards of BNR and BNT;
● express opinion in drafting normative acts and in concluding international instruments in the sphere of media services;
● organize the study of the public assessment of the activity of the media service providers and their media services;
● take decisions on the issuance, changing, supplement, revoking, transferring and termination of licences for radio and television activity for creation of programmes intended for broadcasting through available and/or new electronic communications networks for terrestrial analogue radio broadcasting;
● contact the competent bodies for violations of the normative acts in provision of media services;
● issue mandatory instructions to media service providers for compliance with the provisions of RTA;
● take decisions regarding programmes created and provided for transmission in violation of the rules;
● require from the Communications Regulation Commission information regarding the technical parameters necessary for terrestrial analogue radio broadcasting and radio and television programmes regarding indicated by the Council for electronic media populated area, region or for the whole territory of the Republic of Bulgaria, including free radio frequencies, admissible capacity for broadcasting, possible points of broadcasting, as well as other technical data;
● conduct competition for radio and television operator to be authorized for using individual scarce resource – radio frequency spectrum for broadcasting electronic communications via available and/or new terrestrial analogue radio broadcasting communication networks;
● issue individual licence for radio and television activity to the winner of the competition and inform the Communications Regulation Commission in view of the issuance of authorization for individual scarce resource – radio frequency spectrum for broadcasting electronic communications via available and/or new terrestrial analogue radio broadcasting communication networks to the same person;
● keep many public registers.

Commercial communications are audio-visual commercial communications.
and commercial communications in radio-services. Audio-visual commercial communications are images with or without sound having the purpose to promote, directly or indirectly, the goods, services or image of a person pursuing a business activity or to facilitate the popularization of a cause or idea or to stimulate another effect, wanted by the advertiser, accompanying or included in a particular program in return for payment or for similar consideration or for self-promotional purposes.

Commercial communications in radio services are sound communications having the purpose to promote, directly or indirectly, the goods, services or image of a person pursuing a business activity or to facilitate the popularization of a cause or idea or to stimulate another effect, wanted by the advertiser, accompanying or included in a particular program in return for payment or for similar consideration or for self-promotional purposes.

Advertising includes any form of a commercial communication, accompanying or included into an audio-visual or radio-broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in relation with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, or rights and obligations, or for facilitation of popularization of a cause or idea or to stimulate another effect, wanted by the advertiser in return for payment.

Sponsorship is a form of a commercial communication representing a contribution of a natural person or a legal entity, not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products.

Product placement is a form of a commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration. Product placement in news, religious programs and in audio-visual media services of public providers is prohibited. Product placement in children’s programs is prohibited. Product placement is allowed in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes. Product placement in programs of public providers is allowed in cinematographic works, in films and series, produced for audiovisual media services.

Programmes, including product placement, must meet the following requirements:

- their contents and, in the case of television broadcasting, their scheduling must not be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
- they must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
- they must not give undue prominence to the product in question;
- viewers must be clearly informed of the existence of product placement.

Programmes containing product placement must be properly identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

The commercial communications must not:

- violate respect for human dignity;
- include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- encourage behaviour prejudicial to health or safety;
- encourage behaviour grossly prejudicial to the protection of the environment.

All forms of commercial communications for cigarettes and other tobacco products...
are prohibited. Commercial communications for alcoholic beverages must not be aimed specifically at children and must not encourage immoderate consumption of such beverages. Commercial communication for medicinal products available only on prescription or for medical treatment available only on prescription.

Television advertising and teleshopping must be readily recognizable and distinguishable from editorial content. They must be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means without prejudice to the use of new advertising techniques.

Radio and television activity related to creation of programmes intended for distribution through electronic communications networks where individual scarce resource – radio frequency spectrum is used must be on the grounds of individual licences issued by the Council for electronic media. The candidates for licence must present to the Council for electronic media the following documents:

- a certificate of current status;
- documents proving the origin of the capital for the last three years, including endorsed accountancy report, considered from the date of filing the documents;
- a list of the media enterprises in which they are stock holders or partners.

The licence is personal. The transfer of a licence is permitted by the Council for electronic media in accordance with the requirements for the persons for initial licensing.

Upon presentation of the documents for obtaining licences the candidates have to declare that they do not possess shares, stock or other rights of participation in radio and television operators above the admissible amount according to the anti-monopoly legislation of the Republic of Bulgaria. The candidates for licence for radio and television activity must file written application to the Council for electronic media and to attach certain documents to this application.

For performing radio and television activity by using available and/or new electronic communications networks for terrestrial analogue broadcasting a licence is issued after the procedure of competition. After receiving the reply of Communications Regulation Commission the Council for electronic media has to take a decision for opening competition or competitions in accordance with the available free radio frequency spectrum. The Council for electronic media has to appoint a chairman and members of an expert commission for conducting the competition.

Radio and television activity for creation of programmes intended for distribution via electronic communications networks for terrestrial analogue radio broadcasting must be done on the grounds of licence, issued by the Council for electronic media. When taking a decision for issuing of license or upon refusal of issuing such, the Council for electronic media takes into consideration the following principles:

- securing the right of information of the citizens of the Republic of Bulgaria;
- creating the necessary conditions for media variety and pluralism;
- protection of national identity.

Persons who wish to create radio or television programmes are subject to registration and must fulfill certain requirements. On the basis of the decision of Council for electronic media a certificate of registration must be issued to the applicant, containing specific components.

The persons intending to provide on-demand media services must notify the Council for electronic media thereof.

Persons creating programmes for dissemination through electronic communication networks for terrestrial or satellite broadcasting, where the broadcast signal is intended for reception outside the territory of the Republic of Bulgaria, must apply for registration by the Council of Electronic Media.

Under the Copyright and related rights act (CRRA) films and other audio-visual works
(also arrangements of musical works) are one of the many subject matters of copyright. Author is the natural person whose creative endeavours have resulted in the creation of a literary, artistic or scientific work. Other natural or legal persons may be owners of copyright only in the cases provided by CRRA.

The author has the moral rights to:
- decide whether the work created by him may be made known to the public and to define the time, place and way in which this may be carried out;
- claim authorship of the work;
- decide whether his work may be made known to the public under pseudonym or anonymously;
- insist that his name, pseudonym or other identifying mark be displayed in a proper way whenever his work is used;
- insist that the entirety of his work is kept and oppose to any changes thereof as well as to any other actions that may violate his legal interests or personal dignity;
- change his work, provided that this does not violate the rights of other persons;
- access the original of the work when it is in the possession of another person;
- stop the use of the work due to changes in his beliefs, with exception of already implemented architectural works, providing compensation for the damages incurred by persons who have lawfully obtained the right to use the work.

The moral rights are non-transferable. Transfer of other moral rights may be done only explicitly and in writing.

The author has the exclusive economic rights to use the work created by him and to allow its use by other persons. These economic rights are the rights to:
- reproduction of the work;
- distribution of the original or copies of the work among unlimited number of persons;
- public presentation or performance of the work;
- broadcasting of the work;
- transmission and retransmission of the work by cable;
- public display of a work created by photographic or analogous method;
- translation of the work into another language;
- adaptation and synchronisation of the work;
- communication by wireless means or cable, by making the work known to the public in such a way that members of the public may access it from a place and at a time individually chosen by them.
- the import and the export to third countries of copies of the work in commercial quantities.

The author has the right of compensation for all types of use of his work and for each successive use of the same type.

The authorization for wireless broadcasting of a work includes authorization to transmit it via any other electronic communication network or provision of electronic access to it by the same organisation without paying additional compensation, on condition that the transmission is carried out simultaneously with the broadcast, unmodified and unaltered and does not extend beyond the territory of which the right to broadcast has been granted.

On condition that author has granted the right of retransmission by cable his work to a producer of a phonogram or film or other audio-visual work, undertaking providing public electronic communication networks and/or services, which retransmits this work, will owe to the author compensation separately from any other. Any waiver of such compensation by the author is invalid. The right to collect this compensation may be granted by the author only to organizations for collective administration of the respective category of copyrights.

The authorization for wireless broadcasting of the work also includes the right to introduce the work into an interrupted chain of communication leading to satellite and back to the earth through programme-carrying signals.
under the control and the responsibility of the broadcasting organization in a way allowing its reception by the public.

Where author of musical or audio–visual work has granted his rental right of audio or video carriers containing his work to the respective phonogram or film producer, the person renting such carriers owes to the author fair compensation separate from any other. Any waiver of such compensation by the author is invalid. The right to this compensation may be granted in advance by the author through organizations for collective administration of rights or directly.

Copyright in a film or other audio-visual work expires 70 years after the death of the last surviving among the director, the scriptwriter, the operator, the author of the dialogue and the author of the music if it has been created especially for the film. Upon the death of the author the copyright passes to his heirs.

The work may be used only in accordance with the preliminary consent of the author unless otherwise provided for by the Law. By concluding a contract on the use of his work the author grants to the user the exclusive or non-exclusive right to use the work created by him under concrete terms and against compensation. Whenever an author grants to a user exclusive right to use a work, the author himself may not use it in the manner for the term and on the territory agreed upon in the contract, nor may he grant such right to third parties. Whenever an author grants to a user non-exclusive right to use a work, the author may continue using it himself, as well as grant non-exclusive right to use the same work to third parties.

The compensation of the author for each type of use of his work may be defined as a portion of the revenues received from the use of his work, as single amount or in other form.

Authors may at their own discretion set up organisations for collective administration of copyrights and grant to them the right to negotiate the use of their works in one or more ways and to collect compensations related to such contracts or arising from the respective legal rules. These organisations have the right to represent their members, the allied organisations abroad with whom they have signed contracts for mutual representation and their members before all courts, arbitrations and administrative agencies in defending the rights entrusted for administration to them. For the protection of these rights the organisations may on their own behalf, undertake any court proceedings, including filing claims.

Copyright in a work created under employment or civil service relationship belong to the author unless otherwise provided by the Law. The employer or the appointing body has the exclusive right without permission by the author and without paying compensation, unless otherwise provided by the employment contract or the act of appointment, to use such a work for his own purposes.

Copyright in a work created under mandate belongs to the author of the work unless otherwise provided by the assignment contract. Unless agreed otherwise, the assignor has the right to use the work without permission by the author for the purpose it was commissioned.

Copyright in films and other audio-visual work belongs to the director, the scriptwriter and the operator. Regarding cartoons the production designer also has copyright. The authors of the music, the dialogue, the already existing literary work upon which the audio-visual work was created, the scenery, the costumes, as well as of all other works included in it preserve copyrights in their own works.

Producer is the person who organises the creation of the work and gives funds for its financing. The authors sign written contracts with the producer that, unless agreed otherwise or otherwise provided by the Law, it will be deemed to grant to the producer within the country and abroad the exclusive right of reproduction of the work, making it known to the public, wireless broadcasting or transmission and retransmission by cable, reproduction on
video carriers and their distribution, making it or part of it available to unlimited number of persons by wireless means or by cable in a way permitting access from a place and at a time individually chosen by each of them, as well as the right to authorise the translation, dubbing and subtitling of the text. An audio-visual work is considered completed when the final version is determined by agreement between the director and producer.

The director, the scriptwriter, the operator and the composer, and regarding cartoons – also the production designer, have the rights to fair compensation, separate from the abovementioned one, also for each type of use of the film or audio-visual work, while the rest of the authors – only in case such compensation has been agreed upon.

Compensations for the different forms of use of the work are due by the respective users. The compensations, upon request by the authors, may be received through the producer or through organisation for collective administration of copyrights. Regardless of the latter compensation, the authors are entitled to a percentage of every revenue of the producer, related to the use of the work. Irrespective of the contract between the authors and the producer, where the work is presented on public places, in which the access is provided against payment of an entrance fee or a total amount, the authors are entitled to a percentage of the income from every occasion of such presentation. Any waiver of such right to remuneration by the authors has no effect. At the request of the authors, the producer has to provide to them at least once a year a statement on the revenues from each type of use of the work.

Rights, related to the copyright, have:

- the performers in their performances;
- the producers of phonograms in their phonograms;
- the producers of the initial record of a film or other audio-visual work in the original and the copies obtained as a result of this record;
- the radio and television organisations in their programmes.

The economic rights of the performers, producers of phonograms, producers of films or other audio-visual works and radio and television organisations may be exercised by organisations for collective administration of rights. Performer is a person who presents, sings, plays, dances, declaims, acts, directs, conducts, comments, dubs roles or performs in other way a work, circus or variety performance, puppet show or a folklore work.

The performer has the following moral rights:

- the right to insist that his name, pseudonym or artistic name is displayed or communicated in the usual way at each live performance and at each use of the recorded performance in any manner;
- the right to insist that the recorded performance is preserved entire and unchanged at its reproduction or use in any other manner.

The performer has the exclusive right to allow for compensation:

- wireless broadcasting of his performance, transmission and retransmission by cable, as well as sound or video recording of the performance, reproduction of the recordings on audio or video carriers and their distribution;
- public performance, wireless broadcasting, transmission and retransmission by cable of these recordings;
- providing access to his recorded performance or part of it by wireless means or by cable to unlimited number of people in such a way that it may be accessed from a place and at a time individually chosen by each of them;
- import and export to third countries of copies of the recording of the performance in commercial quantity.

Performing artists may grant the abovementioned rights by a written contract.
The compensation may be negotiated as portion of the revenues, single payment or in other form. Unless agreed otherwise in the contract between the performer and the producer of phonograms, the performer has the right to permit other persons to record and distribute his performances as well. Any agreement limiting the right of the performer to grant such authorization is not valid for more than five years.

The amount of the compensations of the performers and producers of phonograms for wireless broadcasting, transmission and retransmission by cable or for public performance via audio technology or in other manner of their performances or phonograms which have been already made available to the public, has to be stipulated in a contract (between the holders of the rights and the users), where half of the amount has to be paid to the performers, and the other half to the producers of phonograms.

Unless agreed otherwise in the performance contract, it is considered that the performer who has taken part in the making of a film or other audio-visual work has thereby granted to the producer of the work also the right of public communication of the recorded performance, its wireless broadcasting, transmission and retransmission by cable, as well as its reproduction on video carriers and their distribution. A role performed by a performer in a film or another audio-visual work may be dubbed in the same language by another person only with the consent of the performer who has performed the role. The contracts with performers playing leading roles also determine additional compensation in percentage of each gross revenue of the producer from using the work. Their compensation has to be paid, according to the contract, by the producer or by the respective users. In cases where their compensation is paid by the respective user, the producer is obliged to provide for this in the contracts for using the work concluded by him. If the compensation is not negotiated it will be determined according to agreement between the associations of the actors on the one side and the producers or their associations on the other.

Producer of a phonogram is the person who organises the first recording and gives funds for its financing. The producer has the exclusive right to authorize for compensation:

- reproduction and distribution of the phonogram;
- import and export to third countries of copies of the phonogram in commercial quantity;
- public performance and wireless broadcasting and transmission and retransmission of the phonogram by cable;
- providing access to the phonogram or part of it by wireless means or by cable to unlimited number of people in such a way that it may be accessed from a place and at a time individually chosen by each of them;
- the adaptation and synchronisation of the recording.

The producer may grant under contract some of his rights to other persons, including authors and performers of the recorded works. The producer has the right to require his name to be displayed in the usual manner on the sound carriers, including their cover and boxes, at the reproduction and distribution of the phonograms made by him.

The compensations of the producers of phonograms due for wireless broadcasting, transmission and retransmission by cable, or for public performance by sound equipment or other means of their phonograms that have been already made available to the public, are determined and paid in the way provided by the Law.

The producer of the initial recording of the film or another audio-visual work has in respect of the original of the film and the copies of it, obtained as a result of this recording, an exclusive right to authorize for payment:
● their multiplication;
● their public showing;
● their public performance and wireless broadcasting;
  their transmission and retransmission by cable;
● their reproduction;
● their distribution;
● their translation, dubbing and subtitling;
● providing access to the film or part of it by wireless means or by cable to unlimited number of people in such a way that it may be accessed from a place and at a time individually chosen by each of them;
● the import and the export to third countries of copies of the film in commercial quantity;
● the adaptation and synchronisation of the recording.

The producer has the right to require his name or firm to be displayed in the usual manner at using the film.

The radio and television organisation which has carried out the initial broadcasting or transmission of its own programme has exclusive right to permit for payment:

● wireless rebroadcasting or retransmission via electronic communication networks of the programme;
● the recording, the reproduction and the distribution of the recordings of the programme;
● giving access to the programme or part of it by wireless means or via another electronic communication network to unlimited number of people in such a way that it may be accessed from a place and at a time individually selected by each of them;
● public performance of the programme.

The abovementioned rules also apply where a programme sent by a radio or television organisation through signal to a communication satellite, is rebroadcasted, retransmitted, recorded, reproduced or distributed by other persons. For each use of the programme the using organisation is obliged to show in a proper manner the name of the organisation which has performed the first broadcasting or transmission of the programme.
The Energy Sector Act (hereinafter referred to as “ESA”) regulates the public relations in the sphere of the production, import and export, transmission, distribution of electric and heat energy and natural gas, transmission of oil and oil products through pipelines, trade with electric and heat energy and natural gas, as well as the authority of the state bodies in determining the state policy, regulation and control.

The regulation of the activities in the energy sector and in the water supply and sewerage is performed by the State Commission for Energy and Water Regulation, called hereinafter “the Commission”. The Commission has very important powers with significant legal effect in the energy and water sector. While exercising its competence, the Commission may interact with the Commission for protection of competition and the Commission for consumer protection, and if necessary it may notify them with the purpose of initiating a procedure under the Competition Protection Act or under the Consumer Protection Act.

The Minister of Economy, Energy and Tourism exercises control on the technical state and the operation of the energy sites; the applying of the technical requirements for heat supply, termination of the heat supply and applying the share distribution of the heat power; the fulfilment of the obligation for raising and storing the reserves of fuel necessary for a reliable and uninterrupted supply of power; implementation of the National plan for investments.

The Commission controls the compliance of the performed licensed activities with the terms of the issued licences. The Commission controls currently the compliance of the fulfilment of the licensed activity with the terms of the licence.

In certain cases the Commission acts as a special administrative jurisdiction when it considers various complaints and appeals of consumers, operators, licensed persons. The Commission also keeps different public registers.

The Commission has significant powers related to price regulation in many cases specified by the ESA. The prices of the electric power, natural gas and services, provided by the energy enterprises are not subject to regulation by the Commission where it finds the presence of competition forming conditions for free negotiations on the prices in market conditions regarding the specific segment of the energy sector. The Commission may approve preferential prices for sale of electric power produced in a highly effective combined method by co-generation power stations. The Commission may also specify the maximal total amount and period for compensation of the acknowledged non-refundable costs for each individual energy enterprise.

The energy enterprises have to keep separate accounting for each activity subject to licensing under ESA and activities in regulated and freely negotiated prices. The energy enterprises are obliged to provide yearly to the Commission their annual financial statements.

The contracts between energy consumers and the energy enterprises, delivering services of public interest, must contain mandatorily specific components envisaged by the ESA.

The activities subject to licensing under ESA are the following:
- production of electric and/or heat power;
- transmission of electric power, heat power or natural gas;
- distribution of electric power or natural gas;
- storing of natural gas in storage equipment and/or liquidation of natural gas or import, unloading and degasification of liquid natural gas in equipment for liquidized natural gas;
- trade with electric power;
- organising of stock market of electric power;

The Commission controls the compliance of the performed licensed activities with the terms of the issued licences. The Commission controls currently the compliance of the fulfilment of the licensed activity with the terms of the licence.
● public supply of electric power or natural gas;
● supply of electric power or natural gas by end suppliers;
● distribution of traction electric power to distribution networks of the railway transport.
● supply of electric energy by an end instance supplier;

Issuance of licence is not be required for:

● production of electric power by a person possessing electric power station with total installed capacity up to 5 MW;
● production of heat power by a person possessing a heat power station with a total installed capacity up to 10 MW;
● transmission of heat power by a person possessing heat transmission network, to which are connected power stations with a total installed capacity up to 10 MW;
● production of heat power for own consumption only.

Licence is issued to a person registered in the Commercial register who:

● has technical, financial and organisational possibilities, material and human resources for performance of the legal rules regarding the certain licensed activity;
● has real rights over the energy sites by means of which the activity will be implemented (if they are constructed);
● presents proof that the energy sites by means of which the activity under the licence will be performed correspond to the legal requirements for operational security and for environmental protection.

Licence must not be issued if there is threat of damaging the life and the health of the people, the property of third persons and the interests of the consumers, interruption of the reliable supply of electric or heat power or natural gas. In the cases in which the same person performs more than one of the activities for which licensing is required, individual licences have to be issued for every activity. The licence is issued for a period of up to 35 years. The term of the licence may be increased for a period not longer than 35 years if the licensee meets the requirements of the Law and performs all duties and requirements of the licence, and the licensee has submitted a written application for extension at least one year prior to the expiration of the term of the initial licence.

Only one licence is issued on the territory of the country for:

● transmission of electric power;
● organising market of the electric power;
● public supply of electric power or natural gas;
● supply of electric power by last instance provider for clients, connected to the electric transmission network.

Only one licence is issued for one separate territory for:

● distribution of electric power or natural gas;
● supply of electric power or natural gas by end suppliers;
● transmission of heat power.
● supply of electric power by a last instance supplier for clients, connected to the electric transmission network of the territory.

One separate territory of distribution of electric power comprises no less than 150 thousand clients connected to the respective electric distribution network. For such a separate territory only one license for supply of electric power is issued by end suppliers. One separate territory of distribution of natural gas comprises no less than 50 thousand clients who might be connected to the respective gas-distribution network. For such a separate territory only one license for supply of natural gas is issued by end suppliers.

The licence defines: the title of the licence; the activity for which the licence is issued; the sites by means of which the licensed activity is carried out; the territorial scope of the licence; the period of the licence;
the kinds of insurance; requirements for decommissioning of energy sites by means of which the activity is performed; other special legal requirements connected to the licensed activity.

The licence may be changed by a decision of the Commission:
- upon the request of the licensee;
- at the Commission’s initiative.

The Commission allows transformation of a licensee through merger, consolidation, division, separation, if the person who will perform the licensed activity after the transformation fulfills the requirements for issuance of! a licence for the respective activity.

The licence has to be cancelled by a decision of the Commission:
- at a licensee’s request;
- in case of a loss of the energy site by means of which the licensed activity is performed;
- in case of a transformation of a corporate licensee when the transformation results in termination of the corporate holder of the licence;
- in case of a court decision for declaring the licensee bankrupt or a court decision for termination of the activity due to declaring liquidation of the licensee.

The Commission has to withdraw the licence in the following cases:
- when the licensee does not fulfil or violates his duties under the law or under the issued licence;
- when the licensee does not fulfil within the set period, or violates instructions of the controlling public agencies or of the Commission, or imposed compulsory administrative measures by the Commission;
- when the licensee has provided false information which has been ground for issuance of the licence.

Where it is necessary to build or expand service-bay and/or lineal energy sites, as well as above-the-ground and underground hydro-technical infrastructure for production of electric power or parts of them on a real estate – private property, the person has to acquire onerously in advance a right of ownership or a right of construction on the land needed for the building of the site.

In expanding the existing, and in building new air and underground electric power lines, above-the-ground and underground hydro-technical infrastructure for production of electric power, heat pipelines, gas pipelines, oil and oil products pipelines easements are constituted in favour of the person, who will build and exploit the energy site. The easements have to be registered in the cadaster. Easements are:
- right of passing by people and equipment;
- right of setting electric power lines, hydro-technical installations for production of electric power, heat pipelines, gas pipelines, oil and oil products pipelines;
- restriction of the using of land estates adherent to the energy sites.

The change of the ownership of the property does not terminate the effect of the easements regarding the dominant and regarding the servient property. The easements are inseparable rights; they may be exercised entirely in favour of each part of the dominant property. The easement may be used only for the needs of the dominant property. The owner of the servient property has no right to move the easement. Regardless of the compensation under the easement holder owes indemnification of all damages caused to the property or a respective monetary compensation.

Subsidiary companies of the vertically integrated undertaking, performing the functions of production or provision must not have direct or indirect participation in the capital of the independent transmission operator. The operator must not have direct or indirect participation in the capital of some of the subsidiary undertaking of the vertically integrated undertaking, performing the functions of production or provision,
and it must not receive dividends or other financial benefits from this subsidiary undertaking. The whole management structure and statute of the independent transmission operator has to guaranty its effective independence.

All or certain tasks of the independent transmission operator may be assigned to an independent system operator upon request of the Commission in case of permanent violation of the obligations of the independent transmission operator, connected to the principles of independence. As independent system operator may be appointed a person, proposed by the owner of the transmission network and approved by the Commission in relation to whom certain requirements have to be met.

With the selection of an independent system operator of electric transmission network, the network owner, who is part of a vertically integrated undertaking has to be independent in relation to the legal organizational form, the organization and the decisions taking from the other activities of the vertically integrated undertaking, which have not been connected to the transmission of electric power.

While selecting an independent system operator of a gas transmission network, the network owner and the operator of an equipment for storage of natural gas, who are part of the vertically integrated undertaking, must be independent in relation to the legal organizational form, the organization and the decision taking from the other activities of the vertically integrated undertaking, which are not connected to transmission, distribution and storage of natural gas. In order to guarantee independence of the owner of the gas transmission network and of the operator of a facility for storage of natural gas, the persons, responsible for the management have to follow certain restrictions.

Every undertaking, which has acquired transmission network after certification, functions as operator of a transmission network. Such an undertaking must not carry out activities of production of electric power, production of gas from renewable sources, production of natural gas or provision of electric power or natural gas and is not a part of a vertically integrated undertaking, in which such activities are carried out. Operator of a transmission network, which has been a part of a vertically integrated undertaking, is obliged to keep confidentiality of information, which is a trade secret and has been received in the course of its activity.

All electric power sites on the territory of the country must be connected and functioning in a single electric power system with a common regime of operation and an interrupted process of production, transformation, transfer, distribution and consumption of electric power. The electric power system comprises the electric power stations, the transfer network, the individual distribution networks and the electric utilities of the consumers. The parallel operation of the electric power system with other electric power systems and units of systems must be carried out in accordance with the concluded international acts in the sphere of the electric power sector and in compliance with the technical norms and requirements for reliable and secure operation.

Production of electric power may be carried out by energy enterprises having obtained licence for production.

The transmission of electric power may be carried out by the operator of the electric transmission network, having obtained licence for transmission of electric power and having been certified. The transmission of electric power is a service of public interest. The activity on transmission of electric power also includes:

- representation of the operator of electric transmission network and contacts with third parties, with the regulatory public agencies of other EU Member States, as well as representation within the European network of the operators of
transmission systems (ENOTS);
● collection of all receivables regarding transmission, including access, payments for additional services as buying services (costs for balancing, energy for loss coverage), as well as for overloading the mechanism for compensation between the operators of transmission networks in compliance with Art. 13 of Regulation (EC) N 714/2009;
● exploitation, maintenance and development of a safe, efficient and economic electric transmission network in view to provision of an open market, in compliance with the requirements for protection of the environment, energy efficiency and effective use of the energy;
● investment planning, which should provide long term capacity of the network to cover in reasonable limits the demand and to guaranty security of deliveries;
● establishment of appropriate joint undertakings, including with one or more operators of electric transmission networks, energy stock markets and other relevant players in view to development of creation of regional markets or to facilitate the process of liberalization, and
● all corporate services, including legal services, accountancy and service, related to IT.

The electric transmission network operator is responsible for the expansion, reconstruction and the modernization of the transmission network in accordance with the long-term plans for development of the electric power sector. The operator of the electric transmission network provides:
● the united management of the electric energy system and the reliable functioning of the electric transmission network, including availability of all necessary additional services;
● the transmission of electric power

along the electric transmission network, provision and management of the access of third parties on non-discrimination basis between consumers of the network or groups of consumers of the network;
● the maintenance of the sites and installations of the electric transmission network in compliance with the technical requirements and with the requirements for safety at work;
● coordinative development and the operative compatibility of the electric transmission network with interrelated electric transmission networks;
● the maintenance and development of the auxiliary networks;
● measurement of the electric power in the electric transmission network;
● short-term and long-term prognoses for change of the consumption of electric power in the country.

The distribution of electric power and the operation of the electric distribution networks is carried out by electric distribution network operators - owners of such networks on a separate territory, licensed to carry out distribution of electric power to the respective territory. The distribution of electric power is a service of public interest. For the licensed territory comprised by the electric distribution network the electric distribution network operator provides:
● distribution of the electric power received in the electric distribution network;
● continuity of the electric power supply and quality of the supplied electric power;
● management of the electric distribution network;
● maintenance of the electric distribution network, sites and installations of the auxiliary networks in compliance with the technical requirements;
● expansion, reconstruction and modernisation of the electric distribution network and of auxiliary
networks, in compliance with the requirements environment protection, energy efficiency and effective use of power;
● measurement of the electric power in the electric distribution network;
● other services, related to the license activity.

Transactions with electric power may be concluded at prices regulated by the Commission, at freely negotiated prices and at the stock market, as well as at balanced market of electric power. The transactions with electric power must be concluded in accordance with the provisions of ESA and the rules or trade with electric power adopted by the Commission at a proposal of the energy enterprises. The rules regulate provision by the end providers and suppliers of last instance, exchange of data, the way of administering the transactions, of information about hour schedules, organizing of the stock market, the market of balancing energy, and the market for provision of transmission ability, the mechanisms for defining the prices for non-balancing, as well as registration of the types of balance groups and the activity of the coordinators of balance groups.

Parties to the transactions with electric power are the following:
● public supplier of electric power;
● end supplier of electric power;
● producer;
● end client;
● operator of the electric transmission network;
● operator of electric distribution network;
● energy trader (dealer of electric power);
● last instance supplier;
● coordinator of balancing group.

The public supplier purchases the electric power from producers, connected to the electric transmission network under contracts for long-term purchasing of availability and electric power, as well as the one, produced from renewable sources, by highly effective combined production of heating and electric power. The public supplier purchases electric power with the purpose of provision of that electric power to the end suppliers. The public supplier defines the hour quantities for every day for each of the station.

The end supplier provides electric power to household and non-household end clients, connected to electric distribution network at level of low tension in the relevant licensed territory, where these clients are not provided by another supplier. The supply of electric power is a service of public interest. The end supplier purchases electric power, produced from renewable sources, by highly effective combined production of heating and electric power from producers, connected to the electric distribution network.

Each client has the right to choose a supplier of electric power notwithstanding the fact in which EU Member State the supplier is registered as far as the supplier obeys the respective rules. The network operator must change the supplier up to 3 weeks after receiving the written request of the client. The change of the supplier while following the agreed conditions is not accompanied by additional duties for the client.

The supplier from the last instance provides electric power to end clients, which cannot be clients to the end supplier until the occurrence of certain events. Such a provision with electric power is a service of public interest.

The energy traders (dealers of electric power) are person licensed for their activity, meeting the requirements of financial guaranteeing of the transactions concluded by them for electric power, defined by the respective rules.

Coordinator of a balance group is a person, to whom a licence is issued for some of the activities and who meets the requirements for financial guarantee of the transactions, the requirements, specified in rules for trade with electric power and who is registered by the operator of the electric transmission network. The licensees for the activities of transmission of electric power and distribution of electric power
may be combined in a special balancing group under the conditions and procedure, provided by the rules for trade with electric power.

At prices regulated by the commission, deals with electric power are signed between:

- the producers and transmission undertaking, respectively between the public supplier and the operator of the electric transmission network or between the public supplier and the operators of electric distribution networks – for the electric energy, needed for compensation of the technological costs on transmission or distribution;
- the producers and the end suppliers or the public provider of the quantities electric power, determined by the Commission;
- the public supplier and the end suppliers of the quantities electric power, determined by the Commission;
- the end suppliers and household and non-household end clients – for sites, joined to the electric distribution network at level low voltage, where these clients have not chosen other supplier.

The operator of the electric transmission network concludes transactions with the operators of the neighbouring systems for mutual compensation of the influence of the cross-border flows of electric power.

The end supplier sells electric power under general conditions disclosed to the public. The general conditions must mandatorily contain certain components. The relations between the end supplier or last instance supplier, or trader and the operator of the electric distribution networks are arranged by the rules of electric power trade.

For the purposes of balancing the production and consumption of electric power the operator of electric power network has to organise a market of balancing energy. The operator of the electric transmission network is a party to all transactions with balancing energy.

The electric transmission network operator concludes transactions with the providers of balancing energy from the state and/or outside the state in order to balance the electric power system. The electric transmission operator concludes transactions for settling non-balances with the coordinators of balance groups and with the persons, who because of lack of participation in balancing groups are responsible independently for their non-balances. The electric transmission network operator settles the transactions and the mutual obligations between the participants in the market of balance energy.

Transactions with electric power at freely negotiated prices may be concluded between the producers, dealers of electric power, last instance suppliers and end clients.

The transactions on the organised stock market of electric power have to be carried out in accordance with the rules for trade with electric power. The organising of a stock market of electric power must be carried out by a person having obtained such a licence.

The end clients use the electric transmission or the electric distribution network to which they are connected in public known general conditions.

The unified operative planning, coordination and management of the electric energy system is carried out by the electric transmission network operator and by the operators of each electric distribution networks.

The operator of the electric transmission network is obliged to provide:

- reliable, safe and effective functioning of the electric energy system;
- maintenance of the balance between the production and consumption of electric power;
- joint work of the electric energy system with the electric energy systems of other countries in compliance with the
international agreements;
● equal access to transmission of electric power.

The electric transmission network operator administers the transactions for electric power, concluded at regulated and freely negotiated prices and organizes the market of balancing energy by:
● keeping registers for the persons concluding contracts and of the market of electric energy;
● keeping registers of schedules;
● accepting, arranging in priority lists at price and technological criteria and activate offers and requests for purchase/sale of balancing energy;
● applying a methodology of calculation and determine prices of the balancing energy for each period of settlement;
● working out daily and monthly notifications for the due sums for balancing energy by the participants for each period of settlement;
● controlling the financial security of the transactions for balancing energy and give obligatory instructions to the participants on the market in that respect;
● on occurrence of circumstances threatening the reliability of the operation of the electric energy system or parts of it has the right to stop temporarily the fulfilment of the transaction or to change the contracted quantities of electric power by them.

The electric transmission network operator regulates the distribution of the electric load of the electric energy system among the electric power stations at technical and economic criteria.

The operators of the electric distribution networks are obliged to provide:
● reliable, safe and effective functioning of the respective electric distribution network;
● reliable and effective functioning of the auxiliary networks;
● equal access to transmission of electric power in observance of the requirements for quality;
● equality of the producers and equality of the clients, connected to the network.

In case the electric distribution network operator is a part of vertical integrated enterprise, its activity must be independent in legal organizational form and in decision making from the other activities, which are not connected to distribution of electric power. The company, which owns an electric distribution network operator must not give orders regarding its current activity and must not take decision on the activities of construction, expansion, reconstruction or modernization of the network, where these activities are within the approved plan.

The operators of electric transmission and of the electric distribution networks are obliged to keep confidentiality of the information, which is a commercial secret and is obtained in the course of the performance of their duties. The operators are obliged to give information about their activity on the basis of equality.

The electric transmission network operator, respectively the electric distribution network operator, is obliged to connect every site of a producer of electric power located on the respective territory, where the producer:
● has concluded a written contract for connection at a price for connection defined according to the respective ordinance;
● has fulfilled its obligations under the contract and the legal requirements for connection to the electric transmission or electric distribution network;
● has built electric facilities within the boundaries of its own property or on the property on which it has a right of construction, meeting the technical rules and the requirements for safe operation.

The electric transmission network operator or the electric distribution network operator is obliged to define the technically possible place of connection while following the
criteria for secure functioning of the electric power system and in accordance with the approved development plans of the electric networks. The electric transmission network operator or the electric distribution network operator is obliged to perform expansion and reconstruction of the electric transmission or the electric distribution networks, related to connection of sites of producers to the place of connection. The electric equipment of high and medium voltage, which serves for connection of a producer of electric power to the electric transmission or electric distribution networks and is not component of these networks, has to be constructed at the producer’s account and is producer’s ownership. The electric lines of high and medium voltage, which connect the abovementioned equipment to the relevant electric network at the place of connection have to be built by the electric transmission network operator, or the electric distribution network operator and are operator’s ownership. The produced electric power must be measured by devices for commercial measuring – ownership of the operator of the electric transmission network, respectively of the electric distribution network. The conditions and the order of connecting to the respective network, for disconnection or supply with electric power and the border of ownership between the electric facilities are determined by an ordinance, adopted by the Commission.

The electric transmission network operator or the electric distribution network operator is obliged to connect any site of a client of electric power located on the respective territory which:

- has built electric facilities within the boundaries of his property, meeting the technical norms and the requirements for safe operation;
- has fulfilled the requirements for connection to the transmission, respectively the distribution network, and
- has concluded a written contract for connection with the electric transmission network operator, respectively the electric distribution network operator at a price for connection determined according to the respective ordinance.

Producers may supply with electric power their branches, enterprises and sites located on the territory of the country:

- by means of the electric transmission and/or electric distribution networks (high, medium and low voltage) to the concrete site by concluding a contract for transmission with the electric transmission network operator and/or electric distribution network operator, or
- along direct electric power lines constructed for their account.

Site of a client may be supplied by a direct electric line by a producer or electric power trader.

The consumers of electric power does not pay a fee for the devices for commercial measuring.

The electric transmission network operator of the electric distribution network operators have the right to stop temporarily the transmission of electric power through the respective network upon an advance written warning in the cases of planned repairs, reconstruction or inspection of facilities of the electric energy enterprise, requiring safety by their disconnection. The electric transmission network operator or the electric distribution network operators have the right to terminate the connection in certain cases specified by ESA.
The last instance public supplier and the public providers, the end suppliers and electric power traders have the right to stop temporarily the supply of electric power of end clients in case of failure to perform duties under the contract for sale of electric power, including in failure to perform the duty for timely payment of all due sums, related to supply of electric power.

The heat supply is a process of production, transmission, supply, distribution and consumption of heat power by heat carrier of water steam and hot water for household and non-household purposes. The heat supply is carried out by means of sites and facilities for production, transmission, supply and distribution connected to a heat supply system.

The production of heating power is carried out by an energy enterprise having obtained licence for production. The production of heating power is carried out in:

● power stations for combined production of heating and electric power;
● heating power stations;
● installations for utilisation of waste heating power and of renewable sources.

For declared need of heating power new installations with capacity over 5 MW and using natural gas must be constructed for production of combined production of heating and electric power.

The operation of the heat transmission network is carried out by a heat transmission enterprise. The heat transmission enterprise may also carry out an activity of production of heating and electric power. The heat transmission enterprise is obliged:

● to develop the heat transmission network in accordance with the plans for development on the territory for which it holds a licence;
● to buy out the agreed quantities of heating power from producers from the territory for which it holds a licence.

The operative management of the heat supply system is carried out by an operator of the heat transmission network. Operator of the heat transmission network is a specialised unit of the heat transmission enterprise. The orders of the operator are mandatory for the producers and clients of heating power.

The heat transmission enterprise is obliged to connect to the heat transmission network producers and clients located on the respective territory defined by the licence for transmission of heating power. The connection of the clients' installations in a building – condominium is based on the written consent of the owners holding at least two thirds of ownership of the condominium building.

The producers are connected to the heat transmission network by means of connecting heat pipelines which are constructed by and at the producer’s account and are its property. In connecting a client of heat power for non-household purposes the connecting pipelines and their facilities, as well as the junction, are built by and at the client’s account and are its property. In connecting clients of heating power for household needs the connecting heat pipeline, its facilities and the junction are built by the heat transmission enterprise and are its property.

The distribution of heating power in a condominium is carried out by a system of share distribution. The share distribution of the heating power between the clients in buildings - condominium is carried out by the heat transmission enterprise or by a provider of heat power individually or through assignment to a person, entered in a special public register.

The heating power for heating the
private properties is distributed among the individual private properties on the basis of the share units defined by the individual distributors fitted on the heating appliances in a private property. The share unit is defined by the readings of the individual distributor considering factors of assessment in accordance with its standard.

The sale of heating power is carried out on the grounds of written contracts under general conditions, concluded between:

- a producer and the heat transmission enterprise;
- a producer and directly connected clients of heating power for non-household purposes;
- a heat transmission enterprise and clients of heating power for non-household purposes;
- a heat transmission enterprise and associations of the clients of heating power in a condominium;
- a heat transmission enterprise and a provider of heat power;
- a provider of heat power and the clients in a building – condominium.

Providers of heating power are legal persons, registered as commercial companies under the Commercial Act, meeting the requirements of financial guarantee of the transactions, concluded by them with the heat transmission enterprise.

Providers of heating power are legal persons, registered as commercial companies under the Commercial Act, meeting the requirements of financial guarantee of the transactions, concluded by them with the heat transmission enterprise.

The gas supply is a combination of the activities of transmission, transit transmission, storing, distribution and supply of natural gas for meeting the needs of the clients. The transmission of natural gas and the operation of the gas transmission network is carried out by the gas transmission network under a licence.

The storing of natural gas and the operation of the installations for storing natural gas and/or for liquid natural gas is carried out by a person having obtained the necessary licence. The operator of a facility for storage of natural gas and/or the operator of a facility of a liquid natural gas has to:

- exploit, maintain and develop in market conditions safe, reliable and effective facilities for storage of natural gas and/or for liquid natural gas;
- provide equal access of the users to facilities for storage of natural gas and/or for liquid natural gas;
- provide to the gas transmission network operators and to the operators of other facilities for storage and/or operators of other facilities for liquid natural gas and/or the operators of gas distribution networks sufficient information, in order to guaranty, that storage of natural gas is made in a way, compatible with the secure and effective exploitation of interconnected networks and facilities, and
- provide for the users of networks and facilities the information, which they need for their efficient access.

The distribution of natural gas and the operation of the gas distribution networks is carried out by the operators of gas distribution networks having obtained the necessary licence.

The gas transmission network provides:

- the united management of the gas transmission network in view to its reliable, safe and effective functioning;
- the transmission of natural gas along the gas transmission network and its accounting;
- the maintenance of the sites and installations of the gas transmission network in accordance with the technical rules and with the requirements for safety of operation;
- development of the gas transmission network in accordance with the long-term prognoses and plans for development of the gas supply and out of them, where it is economically feasible;
- inclusion of gas from renewable sources in the gas transmission network, where this is technically possible and safe.

The gas distribution network operator provides:
the management of the gas distribution network in view to its reliable, safe and effective functioning;

- the distribution of natural gas along the gas distribution network and its accounting;

- the maintenance of the sites and installations of the gas distribution network and of the supporting facilities in accordance with the technical requirements;

- the expansion, reconstruction and modernization of the gas distribution network in compliance with the requirements for environment protection and power effectiveness and in compliance with the prognoses for consumption of natural gas adopted by the Commission, and out of them, where it is economically feasible;

- inclusion of gas from renewable sources in the gas distribution network where this is technically possible and safe.

The gas transmission and the gas distribution network operators are obliged to provide access under the conditions of equality to their gas transmission and/or gas distribution networks to the persons meeting the requirements established by rules adopted by the Commission.

The transactions with natural gas are carried out on the grounds of written contracts following the provisions of the law and of the rules for trade of natural gas adopted by the Commission. The transaction with natural gas are supply, transmission along the gas transmission and gas distribution networks and storing of natural gas. Parties to the transactions with natural gas are:

- public supplier of natural gas;

- producing enterprises;

- operators of facilities for storage of natural gas;

- operators of facilities for storage of liquid natural gas;

- operator of gas transmission network;

- combined operator;

- operators of gas distribution networks;

- dealers of natural gas;

- clients;

- end supplier of natural gas.

The producing enterprises or traders of natural gas on the one hand, and the public supplier of natural gas, the end suppliers of natural gas, operators of facilities for storage of natural gas, operators of facilities for liquid natural gas, traders of natural gas or clients – on the other hand, sign contracts (deals) with natural gas between themselves at free negotiated prices.

The public supplier of natural gas is a legal person registered under the Commercial Act or according to the legislation of a Member State of the European Union or of another country – party to the European Economic Area Agreement, who may conclude transactions for supply of natural gas with producing enterprises, with dealers of natural gas, with end suppliers and with clients. The public supplier of natural gas may conclude transactions for transmission of natural gas with the gas transmission and gas distribution enterprises and transactions for storing natural gas with the operators of facilities for natural gas storages and/or operators of facilities for liquid natural gas.

The end supplier is a person licensed for its activity, who provides the supply of natural gas to end clients, connected to the gas distribution network.

Supply of natural gas by a public supplier and by the end suppliers is considered a generally offered service of public interest.

The dealers of natural gas may conclude transactions with producing enterprises inside or outside of the country, with clients, with other dealers of natural gas, with the public supplier of natural gas and with end suppliers of natural gas and with operators of facilities for natural gas storages and or operators of facilities for liquid natural gas.

Any client connected to gas transmission and/or gas distribution network has the right to choose natural gas supplier, notwithstanding the fact, in which EU
Member State the supplier has been registered, as far as the supplier observes the relevant rules and the requirements for the supply security.

The contracts for natural gas are concluded:
- at prices regulated by the Commission for universally offered services of public interest related to the transmission, distribution and supply of natural gas;
- at freely negotiated prices between the parties, apart from the abovementioned cases.

The centralised operative management, coordination and control of the regime of operation of the gas transmission network is carried out by the operator of the gas transmission network through a unit for operative management. The operative management of each gas distribution network is carried out by the operator of the gas distribution network, through a unit for operative management.

The operator of the gas transmission network provides:
- reliable, safe and effective functioning of the gas transmission network;
- transmission of natural gas on the gas transmission network while observing the quality requirements;
- equality of the clients in the transmission of natural gas;
- reliable and effective functioning of the auxiliary networks;
- operative management of the regimes of operation of the facilities for storage of natural gas and of the facilities for liquid natural gas, joined to the gas transmission network in blasting and production of natural gas;
- administration of the transactions at freely negotiated prices for natural gas;
- organizing of the balancing of the market of natural gas.

The operators of the gas distribution networks provide:
- safe, reliable and effective functioning of the distribution network;
- distribution of natural gas to the clients by observing the requirements for reliability and quality;
- reliable and effective functioning of the auxiliary networks;
- equality of the clients in distributing natural gas.

In case a gas distribution network operator is a part of vertical integrated enterprise, its activity must independent with regards to legal organizational form and at taking decisions for the other activities, which are not related to distribution.

The connection to the gas transmission and gas distribution networks is carried out under conditions and by an order defined by an ordinance, adopted by the Commission. The gas transmission network operator is obliged to connect to its network, at a point set by it, sites of the gas distribution networks, the producing enterprises and the facilities for storing natural gas, facilities for liquid natural gas and sites for production of gas from renewable sources.

The owner of the gas pipeline is obliged to provide its servicing, maintenance and repair. The gas transmission network operator may, at a request of the owner, against payment, service, maintain and repair a gas pipeline, connecting non-household client to the relevant network.

The gas distribution network operator is obliged to connect to the network the sites of clients and gas production sites from renewable sources on the territory for which the enterprise is licensed for distribute natural gas under the conditions of equality and by observing the technical requirements for reliability and safety.

Energy from renewable sources

The Energy from Renewable Sources Act (ERSA) regulates the public relations in the sphere of production and consumption of electric energy, thermal energy and energy for cooling from renewable sources; gas from renewable sources; biofuels and energy from renewable sources in transport. In order to achieve the national target of the Republic of Bulgaria for 16% general share of the energy from renewable sources in the
gross end consumption of energy, including 10% mandatory share of the energy from renewable sources in transport, the Minister of Economy, Energy and Tourism develops the National Action Plan for Energy from Renewable Sources (NAPERS).

Promotion of production of energy from renewable sources is done through:

- development of supporting schemes;
- financing activities;
- contracts with guaranteed result according to the Energy Effectiveness Act, related to use of energy from renewable sources.

The production of electric energy from renewable sources is promoted through:

- guaranteed access of electric energy, produced from renewable sources to the transfer and distribution electric networks while observing the criteria of security;
- guarantee of the transfer and distribution of electric energy, produced from renewable sources;
- providing construction of the needed infrastructure and electric energy powers for regulation of the electric energy system;
- providing priority at controlling the electric energy, produced from renewable sources;
- buying electric energy, produced from renewable sources for a term, determined by ERSA;
- determining preferential price for buying electric energy, produced from renewable sources, including electric energy, produced from biomass, through technologies for direct burning, with the exception of the energy, produced from water power stations with total installed power above 10 MW;
- determining preferential prices for buying electric energy, produced from biomass, in the cases, where technologies for thermal gasification are used; the price cannot be lower than 30% above the preferential price, determined for the electric energy, produced from biomass from waste wood and other, through technologies for direct burning with a combined cycle.

The operators of distribution networks yearly up to 28 February present to the operator of the transfer electric network the envisaged for one year period electric powers, which may be produced for connection to the distribution networks on regions of joining and levels of tension. The operator of the transfer electric network on the basis of the 10-year plan for development of the transfer network and the abovementioned proposals yearly up to 30 April submits to Commission and to the Minister of Economy, Energy and Tourism the envisaged for 1 year period electric powers, which may be produced for joining to the transfer and distribution networks of sites for production of electric energy from renewable sources on regions of joining and levels of tension.

The targets in NAPERS must be taken into consideration and data about:

- the signed preliminary contracts;
- the accounted and forecast consumption of electric energy;
- the transferable possibilities of networks;
- the possibilities for balancing of powers in the electric-energy system.

The Commission approves yearly up to 30 June and publishes on its internet site the envisaged for 1 year period, from 1 July, electric powers, which may be provided for joining to the transfer and distribution electric networks of sites for production of electric energy from renewable sources on regions of joining and levels of tension.

Persons, who wish to construct an energy site for production of electric energy from renewable sources or to expand an existing electric power station or to increase the installed electric power of the station for production of electric energy from renewable sources, have to submit to the operator of the relevant electric network application for joining
in pointed by them regions, approved in the abovementioned way. All applications have to be submitted after approval of the electric powers, which may be provided for joining, by the expiry of the 1-year period. The operator of the relevant electric network considers the applications in the order of their receiving and issues a motivated opinion on the admissibility of each application. While submitting the applications for the benefit of the operator of the relevant electric network a guarantee must be deposited for participation in the procedure in the amount of BGN 5000 per MW declared power for joining. In case that the request for preparing a preliminary contract for joining is not submitted before the relevant operator of electric network within the term of 6 months after receiving the abovementioned opinion it will be considered as invalid.

The costs for building up equipment for joining of an energy site of a producer to the relevant network to the border of ownership of the electric equipment is at the account of the producer. The costs for building up equipment for joining of the energy site of a producer to the relevant network from the border of ownership of the electric equipment to the place of joining, as well as for development, including reconstruction and modernization of the electric networks in relation to the joining are at the account of the owner of the relevant network.

While signing preliminary contract for joining the producer of electric energy from renewable sources owes to the transfer or the relevant distribution enterprise an advance payment in the amount of:
- BGN 50 000 for every MW installed power of the future energy site, where the installed power is larger than 5 MW;
- BGN 25 000 for every MW installed power of the future energy site, where the installed power is up to 5 MW.

The abovementioned advance payment is part of the price for joining and remains in favour of the energy enterprise – owner of the transfer or distribution electric network, in the cases, where the energy site of the producer of electric energy from renewable sources is not constructed within the time limits, determined in the contract for joining, where the non-fulfillment is because of a reason, for which the producer is responsible. The contract for joining regulates the payment of the remaining part of the determined in it price for joining, in the cases, where this price is higher than the value of the advance payment.

The preliminary contract for joining has a time limit, not longer than one year, where before running of this time limit, the producer has to submit a written request for signing a contract for joining. The contract for joining has a time limit not longer than the time limit for entering into exploitation of the producer’s site and the equipment for its joining, but not more than three years, where the introduction into exploitation has been envisaged to be done in one stage. In case of introduction in exploitation in several stages, the time limit for introduction in exploitation of the first stage is not longer than three years after signing the contract.

The producers of electric energy from renewable sources, whose energy sites are with total installed power above 30 kW, have to sign a contract for access to the operator of the transfer or distribution network under general conditions, approved by the Commission before signing the contract for buying the electric energy. The electric energy from renewable sources is bought on the basis of signed long-term contracts for buying for the term of:
- 20 years – for electric energy, produced from geo-thermal and solar energy, as well as for electric energy, produced from biomass;
- 12 years – for electric energy, produced from wind energy;
- 15 years – for electric energy, produced from waterpower stations with installed power up to 10 MW, as well as for electric energy, produced from other
kinds renewable sources. The Commission determines preferential prices for buying electric energy, produced from renewable sources, with the exception of the energy, produced from waterpower stations with installed power above 10 MW:

- annually by June 30;
- where, it has been found a significant change in the price forming elements as a result from an analysis carried out.

The preferential prices are determined as provided by the relevant ordinance, where the type of the renewable source, the types of the technologies, the installed power of the site, the place and way of mounting of the equipment has to be considered, as well as:

- the investment costs;
- the norm of regained;
- the structure of the capital of the investment;
- the productivity of the installation according to the type technology and the used resources;
- the costs, related to a higher level of environment protection;
- the costs for raw materials for production of energy;
- the costs for fuels for transport;
- the costs for labour and work salaries;
- other exploitation costs.

The preferential price of the electric energy from renewable sources is determined for the whole term of the contract for buying, where after expiry of this term, preferences for buying will not be provided.

Production and consumption of biofuels and energy from renewable sources in transport is promoted by:

- accessibility of the transport fuels;
- offering mixtures of biofuels as compound part of the liquid fuels of petrol origin for internal-combustion engines;
- sustainable development of the agriculture and forestry;
- development and introducing new technologies for using wastes, residues, non-food cellulose and lingo-cellulose materials for production of biofuels;
- development and introduction of electric cars in the public and personal transport;
- building up stations for charging the electric cars while building new or reconstruction of existing car parks in urban territories;
- building up infrastructure for charging electric cars outside the urban territories;
- financial support for consumption of biofuels.

Persons, who place on the market liquid fuels from petrol origin in transport are obliged at liberation for consumption in the meaning of the Excises and Tax Warehouses Act to offer the fuels for diesel and petrol engines mixed with biofuels in a certain percentage relation. Mixing biofuels with liquid fuels of petrol origin has to be done only in tax warehouses, licensed as provided by the Excises and Tax Warehouses Act.
CHAPTER NINETEEN: MERGERS AND DE-MERGERS

WOLFTHEISS

MERGERS AND DE-MERGERS

Introduction

This paper advises on cross border mergers involving Bulgarian companies and companies with a registered address in another Member State of the EU or Contracting Party to the Agreement on the European Economic Area (‘Member State’).

In Bulgaria, the European Cross Border Mergers Directive¹ (the ‘Directive’) is implemented into law by the Commercial Act.² This applies to mergers by acquisition and mergers through the formation of a new company, where at least one of the companies involved has its registered office in a Member State, and is of a company type specified in the First Council Directive³, namely: In Germany: die Aktiengesellschaft, die Kommanditgesellschaft auf Aktien, die Gesellschaft mit beschränkter Haftung; in Belgium: de naamloze vennootschap, la société anonyme; in France: la société anonyme, la société en commandite par actions, la société à responsabilité limitée; in Italy: società per azioni, società in accomandita per azioni, società a responsabilità limitata; in Luxembourg: la société anonyme, la société en commandite par actions, la société à responsabilité limitée; in the Netherlands: de naamloze vennootschap, de commanditaire vennootschap op aandelen.

Following the adoption of EC law permitting the establishment of a European Company⁴ (‘Societas Europaea’ or ‘SE’) and Bulgaria’s entry into the European Union in 2007, the legal possibilities for a cross border merger were extended.

XIX.2. Relevant Bulgarian Laws

In addition to the Directive, the principal laws and regulations governing mergers and de-mergers are listed in the table below.

<table>
<thead>
<tr>
<th>Law</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial Act⁵</td>
<td>Regulates corporate issues, including company establishment, transformations/mergers, shareholder rights and protections, insolvency and liquidation, and others</td>
</tr>
<tr>
<td>Public Offering of Securities Act⁶</td>
<td>Regulates public companies (those listed on the stock exchange or having more than 10,000 shareholders for the past two years) and mergers in which a public company is involved</td>
</tr>
<tr>
<td>Commercial Register⁷ Act⁸</td>
<td>Regulates the registration of mergers with the Commercial Register</td>
</tr>
<tr>
<td>Corporate Income Tax Act⁹</td>
<td>Regulates tax issues involved in mergers and acquisitions including cross border mergers</td>
</tr>
<tr>
<td>Competition Protection Act¹⁰</td>
<td>Regulates merger clearance filings before the Commission for Protection of Competition</td>
</tr>
</tbody>
</table>

¹. Directive 2005/56/EC on cross border mergers of limited liability companies
². Chapter XVI, new Section V
⁴. Regulation (EC) 2157/2001 on the Statute for a European Company
⁵. Commercial Act - promulgated State Gazette No 34/2006, as amended
⁷. The Commercial Register kept by the Registry Agency is the competent authority for registration procedures relating to corporate entities and their status in Bulgaria.
⁸. Commercial Register Act, promulgated, SG. No. 34/25.04.2006, as amended
¹⁰. Competition Protection Act , promulgated, State Gazette No. 102/28.11.2008, as amended
Labour Code\textsuperscript{11} Regulates employment issues involved in mergers

<table>
<thead>
<tr>
<th>Act on Information and Consultation of Workers in Multinational Undertakings, Groups of Undertakings and European Companies\textsuperscript{12}</th>
<th>Regulates employment issues involved in cross border mergers</th>
</tr>
</thead>
</table>

Regulation on the Statute for a European Company (SE)\textsuperscript{13} Regulates the setting up of a European Company (an SE)

or more companies pass to one existing company that becomes their successor (see Figure 1). The transforming companies are dissolved without being liquidated; or

- Consolidation – all assets and liabilities of one or more companies pass to one newly formed company - their successor (see Figure 2). The transforming companies are dissolved without being liquidated.

Figure 1: Merger through Bundling

Figure 2: Merger through Consolidation

XIX.4.2. De-mergers through:

- Split-up – all assets and liabilities of one company pass to two or more companies - its successors (see Figure 3). The transforming company is dissolved without being liquidated; or

- Spin-off – assets and liabilities of one company pass to one or more companies - its successors (see Figure 4). The transforming company is not dissolved.

\textsuperscript{11} Labour Code, promulgated, State Gazette, No. 26/1.04.1986 and No. 27/4.04.1986 as amended

\textsuperscript{12} Act on Information and Consultation of Workers in Multinational Undertakings, Groups of Undertakings and European Companies, promulgated, State Gazette No 57/14.07.2006, as amended

\textsuperscript{13} Regulation (EC) 2157/2001
XIX.5. Cross Border Mergers between Bulgarian and other Member State Companies

As a general principle, all assets and liabilities, as well as legal relationships, are transferred from the transforming company to the acquiring or newly formed company by way of ‘universal succession’, i.e. as they were within the transforming company without changes. For comparison, in case of transactions where separate assets or shares are acquired, the purchasing or acquiring company is not a universal legal successor of the selling company.

Any permits, licences or concessions held by the merging company will pass to the acquiring or newly formed one, unless otherwise explicitly regulated.

The merger is effective from the moment of registration in the Bulgarian Commercial Register, while mergers where the registered office of the acquiring or newly formed company is in another Member State take effect according to the law of that state.

Upon registration, the newly formed company comes into existence and the transforming companies are dissolved. The assets and liabilities of the transforming companies pass automatically to the acquiring or newly formed company. The shareholders in the transforming companies become shareholders in the acquiring or the newly formed company.

It should be noted that a Bulgarian company that owns agricultural or forest land cannot be merged with a company registered in another Member State. An SE, which has its registered office in Bulgaria and which owns agricultural or forest land, may not transfer its registered office to another Member State. This prohibition applies subject to the conditions of the Bulgarian accession to the European Union.

XIX.6. Implementation of Cross-border Mergers

XIX.6.1. Corporate Procedure

The table below summarizes the main corporate aspects related to cross border mergers between Bulgarian and other Member State Companies.
<table>
<thead>
<tr>
<th>Document</th>
<th>Description</th>
<th>Announcement / Registration</th>
<th>Timing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Merger terms (General merger plan)</td>
<td>The main terms and conditions of the merger including, among others: • the companies involved; • the ratio applicable to the exchange of shares; • the amount of any (ancillary) cash payments to shareholders; • a description of the shares which each shareholder is to acquire in the newly formed or acquiring company, including the envisaged increase of capital of the acquiring company (if any), etc.; • the date of the merger for accounting purposes; • information on the evaluation of the assets and liabilities which are transferred to the newly formed or acquiring company. An integral part of the general merger plan is: (i) a draft of the Articles of Association of the newly formed company or, respectively, the amendment of the Articles of Association of the acquiring company; and (ii) the annual financial statements and the activity report and/or the balance sheet of the merging companies on the basis of which the general merger plan has been drawn.</td>
<td>To be filed with the Commercial Register with respect to the Bulgarian companies involved</td>
<td>At least 1 month before the date of the General Meeting of the Bulgarian company adopting the resolution on the proposed merger</td>
</tr>
<tr>
<td>Management report</td>
<td>Prepared by the management of each of the merging companies. It explains in detail and justifies the legal and economic aspects of the general merger plan, and particularly concerning the exchange ratio, as well as the impact of the merger on the position of the shareholders, creditors, and employees</td>
<td>To be filed with the Commercial Register with respect to the Bulgarian companies involved To be made available (free of charge) at the registered address of each company to both the company’s shareholders and employees or the employees’ representatives</td>
<td>At least 1 month before the date of the General Meeting of the Bulgarian company adopting the resolution on the proposed merger At least 1 month prior to the date of the General Meeting of the Bulgarian company adopting the resolution on the proposed merger</td>
</tr>
</tbody>
</table>
| Independent expert report | An expert examination of the general merger plan and indicates, among others:  
- the method(s) used to arrive at the share exchange ratio and to what extent the method is appropriate in that particular case;  
- whether the share exchange ratio proposed for the cash compensation is fair and reasonable;  
- the values arrived at using such method, and the relative significance of the method in determining the value of the shares or participating interests;  
- verification of the proposed capital increase of the acquiring company or the amount of the newly formed company's capital (if applicable).  
No expert report is required if all shareholders of each company involved in the cross border merger have given their consent in writing. However, such consent may not waive the verification of the proposed capital increase of the acquiring company or the amount of the newly formed company's capital. | To be made available (free of charge) to the shareholders at the registered address of each company | At least 1 month prior to the date of the General Meeting of the Bulgarian company adopting the resolution on the proposed merger |
| Approval by the General Meeting | A resolution for the merger to be adopted by the General Meeting of each of the merging companies based on the general merger plan, the management report, and the expert report (unless waived). Where the acquiring company is a sole owner of the capital of the merging companies, the merger will take place on the basis of a resolution of the sole owner. In such cases, a simplified general merger plan would be prepared and no expert report on the merger is required. | To be registered with the Commercial Register in order to effect an inbound merger (see 6.2.1 below) | The registration of the merger with respect to companies involved that have their registered office in Bulgaria is made no earlier than 14 days following submission of the application. |
XIX.6.2. Registration of Cross Border Mergers

XIX.6.2.1. Inbound merger

Under the Commercial Act only newly formed and acquiring companies with a registered address in Bulgaria may initiate the registration procedure before the Commercial Register. The registration is initiated by the management of the newly formed or acquiring company. The following main documents, among others, have to be enclosed to the application for the Commercial Register:

- general merger plan and the General Meeting resolutions of all companies involved in the merger;
- certificate confirming the lawfulness of the merger with respect to a transforming company from another Member State referred to in Art. 10 of the Directive (pre-merger certificate);
- copy of the Articles of Association of the acquiring company, which contains all amended and supplemented clauses, certified by the representatives; or the adopted Articles of Association of the newly formed company and the documents necessary for the registration of the corporate bodies elected;
- experts’ reports;
- list of persons acquiring shares, participating interests or membership in a newly formed or acquiring company, the type of membership, as well as data concerning any existing pledges;

The merger takes effect from its registration in the Commercial Register.

XIX.6.2.2. Outbound merger

Where the newly formed or acquiring company has its registered office in another Member State, the transforming companies which have their registered office in Bulgaria should require the issuance of a pre-merger certificate.

Once the merger is completed the Bulgarian company files a request for striking-off from the Commercial Register on the basis of a notification from the register of the relevant Member State in which the acquiring or newly formed company is registered.

Both requests should be filed with the Commercial Register by the representative(s) of the transforming Bulgarian company.

XIX.6.2.3. Registrations relating to the assets of merging companies

Where the property of a merging company with a registered office in Bulgaria includes property rights over immovable, movables or other rights, the transfer of which are subject to registration in a special registry, the certificate issued by the Commercial Register and, respectively, the notification for registration issued by the register of the other respective Member State, shall be submitted for filing in the relevant registry.

XIX.7. Protections

XIX.7.1. Minority Shareholders’ Protection

The Commercial Act does not explicitly define the protection rights of minority shareholders in the event of a cross border merger. The Commercial Register Act indicates certain options for shareholders’ protection by reference to the general rules of the Commercial Act applicable to mergers of Bulgarian companies.

The following actions for protection of the minority shareholders could be available under Bulgarian law:
### Action and Deadline

<table>
<thead>
<tr>
<th>Action</th>
</tr>
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</table>
| Filing a claim that some of the following infringements of the merger procedure under Bulgarian law are present:  
  • Lack of general merger plan or invalidity of the available merger plan;  
  • Non-compliance with some of the requirements of the Commercial Act, explicitly listed in the law;  
  • The resolution(s) approving the merger contradicts mandatory provisions of the Commercial Act or the Articles of Association of the companies involved |
| Not later than the date on which the cross border merger is registered with the Commercial Register |

<table>
<thead>
<tr>
<th>Action</th>
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<tbody>
<tr>
<td>A shareholder (in a limited liability company or a joint stock company) whose legal status is changed as a result of the merger and who has voted against the resolution on transformation may withdraw from the company where he has received shares by sending a notarized termination notice to the company</td>
</tr>
<tr>
<td>Within 3 months as of the date of legal effectiveness of the merger</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Filing a claim for cash compensation in the event that the share exchange ratio determined under the general merger plan is not equivalent</td>
</tr>
<tr>
<td>Within 3 months as of the date of legal effectiveness of the merger</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Action</th>
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<tbody>
<tr>
<td>Claim for rendering invalidity of the newly formed company if the latter has its registered office in Bulgaria</td>
</tr>
<tr>
<td>Within 1 year as of the date of legal effectiveness of the merger</td>
</tr>
</tbody>
</table>

Under the Commercial Register Act, a claim lodged by a shareholder compensation or participation termination notice (exit notice) shall not be considered an obstacle preventing the issuance of a certificate under Art. 10 of the Directive; however, the registry official shall note the respective circumstances in the certificate.

### XIX.7.2. Creditors’ Protection

In order to secure the protection of merging companies’ creditors, a list, for each of the companies, setting out the rules applicable to protection of its creditors and minority shareholders, as well as the address at which complete information on those arrangements might be obtained, is to be enclosed together with the general merger plan and filed with the Commercial Register.

Under the Commercial Act, there are no explicit provisions for imposing securities or lodging claims by the creditors against the merging companies.

By way of interpretation it might be concluded that the general creditor protection rules (regulating the protection in case of mergers between Bulgarian companies) would apply. This includes the obligation of the acquiring or the newly formed company with seats in Bulgaria for separate management of each of the acquired companies’ property which has passed thereto for a period of 6 months after the merger. Within a 6 month period each creditor of a company involved in the merger whose claim is not secured and has arisen prior to the date of the merger may demand either an imposition of a security in compliance with his rights or an execution of the debtor’s obligation.

### XIX.7.3. Employment Issues

The general principle under the Directive with regard to the employees’ rights to participate in the merger process is that national laws governing the company emerging from the cross border merger, i.e. the acquiring company, apply. However, the Directive introduces some exceptions when the provisions relating to employees’ participation laid down in the relevant laws of
the Member State of the acquiring company will not apply. Namely, these exceptions refer to the following cases where:

- at least one of the merging companies, within six months prior to publication of the draft terms of the cross border merger, has an average number of employees that exceeds 500 and operates under an employment participation system;
- the national legislation applicable to the acquiring company provides for a lower level of employee participation than the one kept in the relevant merging companies;
- the national legislation applicable to the acquiring company provides for a lower level of participation for employees of that company that are situated in other Member States than the participation rights enjoyed by those employees employed in the Member State where the acquiring company has its seat and registered office.

In the above mentioned exceptions either (i) the companies involved in the merger and the board of employees’ representatives agree on arrangements for the employees’ involvement in the cross border merger procedure, or (ii) if such agreement cannot be reached (in due time), the so-called standard rules for participation applies. In general, those standard rules provide for the application of the highest participation level of the involved companies. In contrast to the SE Regime, the management of the involved companies can decide without any prior negotiations to directly employ the standard rules for participation. The employees’ representatives must be (only) informed of this decision.

Apart from the above exceptions, in all other cases where the acquiring company has its seat and registered address in Bulgaria, Bulgarian legislation regulating the participation of the employees’ organization will apply. This legislation refers mainly to the provisions of the Commercial Act as the general law regulating the cross-border merger procedures part of which are the employees’ rights of participation, and the special law – the Act on Information and Consultation of Factory and Office Workers in Community-Scale Undertakings, Groups of Undertakings and European Companies, which provides for the election of a special body for consultations, sets forth the general content of the negotiation agreement to be agreed between the employee and the emerging companies, and provides for the application of standard rules if no agreement can be reached.

In addition, all relevant acts – the Directive, the Bulgarian Commercial Act, Bulgarian Labour Code and the Act on Information and Consultation of Factory and Office Workers in Community-Scale Undertakings, Groups of Undertakings and European Companies impose a number of information duties towards the employees’ representatives (if any) or to the employees directly during the process of the cross border merger. The main duties refer to the following mandatory acts/actions:

- The report of the management body providing assessment of the cross-border merger must include all implications of the merger that would affect the status of the employees. This report shall be made available to the employees’ representatives (or the employees) at least 1 month prior to the general meeting on which the merger will be voted. The employees’ representatives have the right to provide opinions which are to be attached to the management report.
- The employees’ representatives must be informed about the merger in writing regarding the (proposed/scheduled) date of

14. Art. 265 (h) of the Bulgarian Commerce Act
transfer, the reason for it, the legal, economic and social implications on the employees and any measures envisaged in relation to their status.\textsuperscript{15} Upon the merger becoming legally effective, all employment contracts at the time of the merger together with all rights and obligations pertained to them, including those rights and obligations imposed by a collective bargaining agreement to which the former company became party, are automatically transferred to the acquiring company.\textsuperscript{16}

Please note that the Commercial Register can only issue a pre-merger certificate if evidence is presented showing either (i) the correct negotiation with the employees’ representatives concerning the participation of the employees; or (ii) the management has informed the employees’ representatives / the employees about its decision to choose to be directly subject to the standard rules for participation.

\section*{XIX.8. Merger Clearance}

The Competition Protection Act requires a pre-merger notification to be filed with the Competition Protection Commission if the companies involved in the merger have had an aggregated turnover within the territory of Bulgaria of more than BGN 25 million (approximately EUR 12.5 million) in the business year prior to the merger, and the turnover of each of at least 2 of the companies participating in the concentration on the territory of Bulgaria for the previous financial year exceeds BGN 3 million (EUR 1.5 million), or the turnover for the previous financial year, of the acquired Bulgarian company, exceeds BGN 3 million (EUR 1.5 million).

\textsuperscript{15} \textit{Art. 12 of the Act on Information and Consultation of Factory and Office Workers in Community-Scale Undertakings, Groups of Undertakings and European Companies will apply}

\textsuperscript{16} The transfer of any company pension claims or (company) collective agreement should be assessed separately.
IBA services:

- Macroeconomic data on Bulgaria
- Legal advice
- Data on operational costs
- Regional information related to economy, unemployment data, availability of skilled labor force, education level, infrastructure, industrial zones
- Offering of Investment Sites
- Individual administrative services to the investors
- Identification of potential suppliers, contract manufacturing or joint venture partners
- Creating linkages with central and local governments
- Creating linkages with branch chambers and other NGO

Why Bulgaria

- Financial and political stability
- The lowest operation cost in Europe
- Low level of tax rates - corporate income tax 10%
- Well educated and highly skilled labour force

Governmental support to priority investment projects
- Bulgaria – a linkage between Europe and Asia