

EDITORS

Frank Wright LLB, LLM, PhD Professor University of Warwick

ADVISORY BOARD

Catherine Barnard MA, PhD Professor Trinity College, University of Cambridge

Tim Beale, Solicitor

S J Berwin LLP Partner, (Solicitors)

Cherie Booth Q.C.

Matrix Chambers, London

Chris Brown Director, PFP Benefit Solutions, London

Simon Deakin MA, PhD, FBA Professor

Robert Monks Professor of Corporate Governance, Judge Institute, University of Cambridge

Gillian Eastwood LLB, MA, Solicitor Partner, Freshfields

Gerard McDermott Q.C. Attorney at Law

Outer Temple Chambers,

London and 8 King Street,

Manchester

Frances Spencer HR Consultant, formerly Head of HR Overseas British Airways World

Charlotte Villiers LLB, PhD, Solicitor Professor University of Bristol

Jo Whiterod BSc, FPMI, ACIS Pensions Manager/Communications Consultant

CONTRIBUTORS

BULGARIA

Assoc. Prof. Dr. George Dimitrov/Hristo Nihrizov,
Dimitrov, Petrov & Co.
28 Todor Alexandrov Blvd, Fl. 7
Sofia 1303
Bulgaria
www.dpc.bg

CYPRUS

Andreas Neocleous & Co,
Neocleous House,
199 Arch. Makarios III Ave.,
P.O. Box 50613,
CY-3608 Limassol, Cyprus

CZECH AND SLOVAK REPUBLICS

Chev. DrJur Edward Lestrade, K.OSt.J, Director and Lead Lawyer:
Lestrade Law Associates Llc,
Law Offices of Treilons & Petrovics,
Brivibas 40-29,
Riga,
Latvia

ESTONIA

Chev. DrJur Edward Lestrade, K.OSt.J, Director and Lead Lawyer:
Lestrade Law Associates Llc,
Law Offices of Treilons & Petrovics,
Brivibas 40-29,
Riga,
Latvia

EUROPEAN OVERVIEW

Matthew Humphries,
Department of Law,
University of Surrey,
Guildford,
GU2 7XH

FRANCE

John C. Newman,

Kenlan Schwiebert Facey & Goss, P.C.
71 Allen Street
Rutland, Vermont
United States
www.kenlanlaw.com

GERMANY

Dr Thomas Meyding/Tobias Grau,
CMS Hasche Sigle,
Schöttlestraße 8,
D-70597 Stuttgart
www.cms-hs.com

GREECE

Stefanakis law firm,
18 Akadimias Street,
10671 Athens,
Greece

ITALY

GF Macconi, Baker & McKenzie Roma STP,
Viale di Villa Massimo,
57, 00161 Roma, Italy

LATVIA AND LITHUANIA

Chev. DrJur Edward Lestrade, K.OSt.J, Director and Lead Lawyer:
Lestrade Law Associates Llc,
Law Offices of Treilons & Petrovics,
Brivibas 40-29,
Riga,
Latvia

LUXEMBOURG

Alex Schmitt, Bonn Schmitt Steichen,
44 Rue de lat Vallee,
L-2661 Luxembourg,
BP522,
L-2015 Luxembourg

MALTA

Eugene Buttgieg,
252 Liedna Street,

Fgura PLA 15,
Malta

NETHERLANDS

Jan van Tilburg,
Fisconti Tax Consulting,
President Kennedylaan 19,
2517 JK Den Haag

POLAND

Rafal Zakrzewski, Clifford Chance LLP,
200 Aldersgate Street,
London,
EC1A 4JJ

PORTUGAL

Marta Leitao, Abreu & Marques,
Vinhas e Assoicados Rua Filipe Folque no 2,
4o 1069-121,
Lisboa,
Portugal

ROMANIA

Gelu Maravela, Musat & Asociatii, Attorneys at Law,
43 Aviatorilor Boulevard,
1st District,
Code 011853,
Bucharest,
ROMANIA

RUSSIA

Sergey Matyunin,
537/1 Lanark Road,
Edinburgh,
EH14 5DE

SPAIN

Carlos Llorente, Baker & McKenzie,
Paseo de la Castellana 33,
Edificio Fenix—6th floor,
28046 Madrid,
Spain

BULGARIA

Topical Index

[For Bulgaria Index, see page BUL-1]

BULGARIA

Contributor

**Assoc. Prof. Dr. George Dimitrov/Hristo Nihrizov
Dimitrov, Petrov & Co.**

28 Todor Alexandrov Blvd., Fl. 7
Sofia 1303
Bulgaria

Website: *<http://www.dpc.bg>*

BULGARIA

TABLE OF CONTENTS

Paragraph

INTRODUCTION

Geography.....	¶BUL-000
Population.....	¶BUL-025
Ethnic structure.....	¶BUL-050
Political System	
Constitution.....	¶BUL-075
Parliament.....	¶BUL-100
President.....	¶BUL-125
Government.....	¶BUL-150
Judiciary.....	¶BUL-175
Local executive authorities.....	¶BUL-200

FORMS OF DOING BUSINESS

Introduction.....	¶BUL-225
Forms of Doing Business under The Commercial Act	
General.....	¶BUL-250
Limited liability company.....	¶BUL-275
Sole-proprietorship limited liability companies.....	¶BUL-300
Limited partnership.....	¶BUL-325
General partnership.....	¶BUL-350
Joint-stock company.....	¶BUL-375
Company limited by shares.....	¶BUL-400

continued over

	Paragraph
Sole trader	¶BUL-425
Branches	¶BUL-450
European Company.....	¶BUL-475
Forms of Doing Business under the Non-Profit Organisations Act (“NPOA”)	
Introduction	¶BUL-500
Types of organisations under the Non-Profit Organisation Act	¶BUL-525
Civil association	¶BUL-550

TAX SYSTEM

Introduction	¶BUL-575
Taxation under the Taxes on the Incomes of Individuals Act.....	¶BUL-600
Taxable and non-taxable incomes	¶BUL-625
Taxation under the Corporate Incomes Taxation Act	¶BUL-650
Taxation Under the Value Added Tax Act	
General	¶BUL-675
Scope of the VATA	¶BUL-700
Registration under the VATA	¶BUL-725
Specific cases of mandatory registration	¶BUL-750
Registration of foreign persons under the VATA.....	¶BUL-775
Taxation under the VATA	¶BUL-800
VAT exempted transactions	¶BUL-825
Taxation under the Excise and Tax Warehouses Act....	¶BUL-850

EMPLOYMENT LAW

Introduction	¶BUL-875
Labour Contract	
General	¶BUL-900
Labour contract with a trial period	¶BUL-925
Additional labour contract (additional work under labour contract).....	¶BUL-950
Labour relations on grounds of a selection process.....	¶BUL-975
Labour relation on grounds of an election	¶BUL-1000

continued over

	Paragraph
Content of the labour relation.....	¶BUL-1025
Working Time	
General ¶BUL-1050	
Part-time working	¶BUL-1075
Night labour.....	¶BUL-1100
Work in shifts	¶BUL-1125
Overtime work.....	¶BUL-1150
Leave	
Paid annual leave.....	¶BUL-1175
Unpaid leave	¶BUL-1200
Labour discipline.....	¶BUL-1225
Termination of Employment	
General.....	¶BUL-1240

INDUSTRIAL AND INTELLECTUAL PROPERTY

Introduction	¶BUL-1250
Subjects to copyright.....	¶BUL-1275
Authors — persons to whom the copyright belongs.....	¶BUL-1300
Contents of the copyright	¶BUL-1325
Free use of the work (production).....	¶BUL-1350
Copyright licensing	¶BUL-1360
Marks	
General.....	¶BUL-1375
Marks	¶BUL-1400
Grounds for refusal for the registration of the mark.....	¶BUL-1425
Contents of the right over a mark.....	¶BUL-1450
Right to prohibit third persons to use a sign in the course of trade	¶BUL-1475
Revocation of the mark's registration	¶BUL-1500

COMPETITION LAW

Introduction	¶BUL-1525
Unfair Competition	
General.....	¶BUL-1550

continued over

Paragraph

Common prohibition ¶BUL-1575
Compromising the good name of competitors ¶BUL-1600
Misleading ¶BUL-1625
**Prohibition of misleading advertising and
comparative advertising** ¶BUL-1650
Imitation ¶BUL-1675
Unfairly attracting clients ¶BUL-1700

SALES CONDITIONS AND CONSUMER PROTECTION

Introduction ¶BUL-1725
Rights of the Consumer
General ¶BUL-1750
**Right of information (general obligation for
providing information)** ¶BUL-1775
Labeling ¶BUL-1800
Announcement of prices..... ¶BUL-1825
Right of claim..... ¶BUL-1850
Protection of personal data..... ¶BUL-1875

ENVIRONMENTAL RULES

Introduction ¶BUL-1900
Competent bodies ¶BUL-1925
**Ecological assessment and environmental
impact assessment**..... ¶BUL-1950
**Other legislative acts with respect to
environmental issues** ¶BUL-1960

ARBITRATION

Introduction ¶BUL-1975
**Arbitration Court at the Bulgarian Chamber of
Commerce and Industry** ¶BUL-2000
**Court of Arbitration at the Bulgarian
Industrial Association** ¶BUL-2025
Arbitration Court at KRIB..... ¶BUL-2040

continued over

Paragraph

COURT SYSTEM

Introduction¶BUL-2050
Regional court.....¶BUL-2075
District court.....¶BUL-2100
Administrative Court.....¶BUL-2125
Specialised Penal Court¶BUL-2150
Court of Appeal¶BUL-2175
Supreme Cassation Court.....¶BUL-2200
Supreme Administrative Court.....¶BUL-2225

BULGARIA

INTRODUCTION

¶BUL-000] Geography

Bulgaria is situated in south-eastern Europe, in the north-eastern part of the Balkan Peninsula. It borders Romania to the north, the Republic of Serbia and the Republic of Macedonia to the west, Greece and Turkey, to the south, and the Black Sea to the east, which also links it to Russia, Ukraine, and Georgia. The Black Sea borderline is 378 km long. Bulgaria covers an area of 110,993 sq km.

¶BUL-025] Population

The Bulgarian people have a 1000-year-old history. According to the National Statistical Institute, on December 31, 2013 Bulgaria's population numbered 7,245,677. Subsequent estimates show that the number of citizens is constantly decreasing — chiefly, as a result of economic emigration to the EU countries, North America and Turkey. The total number of Bulgarians abroad — natives in adjoining countries or emigrants for different periods — is approximately 3 million people.

¶BUL-050] Ethnic structure

Although Bulgaria is characterised by a large ethnic and religious population, the major portion of which (84.8 per cent, according to the Official Census Results from 2011) is Slavonic-speaking Bulgarians. A large proportion is Christian, but there are also Muslims. Those who identify themselves as Muslim Turks represent 8.8 per cent of the population. In the minority groups, ethnic identity and religion do not always coincide, and variations or uncertainty in the declared ethnic self-identification are often witnessed. Thus, for example, gypsies, the third largest ethnic group (roughly 4.9 per cent), speak several very different dialects and some of them are Christian, others Muslim. Equally, they may have any one of the following self-identifications: gypsy, Slavonic-speaking Bulgarian or Turk. Furthermore, there are small numbers of Armenians, Jews, Russians, Slovaks, Greeks, Wallachians, Kutzowallachs, Karakachans, Tartars, Gagaouzes, Circassians and Kazalbashes, etc., varying from about 10,000 to only several hundred living in Bulgaria. These larger or smaller groups together form the Bulgarian nation. Under Bulgarian law, they have equal rights and opportunities.

Within the ethnic groups there is also an astonishing variety from region to region, including differences in customs and dialect. Slavonic-speaking Bulgarians, for example, can be distinguished as Shopps, Macedonians, Dobrudzhans, Thracians, Rhodopians, Pomaks, Kapans, Graovians, Torlaks, and many others. Bulgarians are mostly a Slav people, and consequently are closest relatives of the Serbs, Croats and Slovenians, as well as of the Russians, Ukrainians and Byelorussians, of the Czechs, Slovaks and Poles. Bulgarians are nonetheless a Balkan people, so that there are numerous examples in their language, traditions, folklore, cuisine, customs, mentality, culture, value system, and relationships and interactions with all their neighbours—Greeks, Romanians, Albanians, Turks, etc.

POLITICAL SYSTEM

[¶BUL-075] Constitution

The Constitution of the Republic of Bulgaria was adopted in July 1991. It was built on the basic principles of contemporary constitutionalism. The Constitution provides for a multi-party parliamentary system and free elections, in which all the citizens of the Republic of Bulgaria take part with the right to vote. After the elections, the largest parliamentary group forms the Government. A parliamentary majority is required in order that the Government may be approved (the Council of Ministers), as well as for the adoption of regular legal acts. Amendments in the Constitution may be adopted, provided that they have the support of three-quarters of the parliamentary majority, except those connected with the territory and the political territory, for which a Great National Assembly is convoked.

[¶BUL-100] Parliament

Bulgaria is a Parliamentary Republic and the basic power in the country is the legislative one. The Parliament (the National Assembly) exercises the legislative power, as well as the right to exercise parliamentary control. The mandate of the National Assembly is for four years. The National Assembly consists of 240 deputies elected directly by the voters for a four-year term, on the basis of a proportional system, including registered lists of candidates in multi-member electoral districts. The new Election Code from March 5, 2014 introduces a preference vote, where voters can give preference to a particular candidate from the lists of candidates of the political parties or coalitions. In order for the parties and the pre-election coalitions to enter the National Assembly, they must achieve over 4 per cent of the total number of votes at the elections. The deputies of the National Assembly represent not only their electoral districts, but also the whole nation. The deputies work in compliance with the Constitution and the legislation, following their conscience and convictions. The National Assembly elects temporary and permanent commissions, where deputies participate. It adopts laws, decisions, declarations and statements. Every member of the National Assembly, or the Council of Ministers, has the right to introduce a draft law. The draft law on the state budget is developed and introduced by the Council of Ministers.

In addition to the general data provided above, it should be noted that the National Assembly has been dissolved, and as of July 2014 Bulgaria is governed by an Interim Government, due to the resignation of the Prime Minister Mr. Plamen Oresharski on June 23, 2014. The elections for a National Assembly took place on October 5, 2014. The process of forming a new government may take a long time. The difficult political situation in the country and the impossibility for the political parties to reach agreement and form a coalition government may lead to new elections.

[¶BUL-125] President

The President is the Head of State and is elected by direct election once every five years, for no more than two mandates. The Vice President is elected at the same time, with the same voting paper, and under the same conditions and procedure as of the

President. The President is the supreme commander of the military forces of the Republic of Bulgaria. He assigns and discharges the supreme command staff of the military forces and promotes the supreme officers to the higher ranks upon a proposal of the Council of Ministers. The President is the Chairperson of the Consultative Council for national security and has the power to:

- declare war in the case of armed attack against Bulgaria or, if necessary, the country's implementation of international agreements;
- declare general or partial mobilisation at the request of the Council of Ministers;
- declare martial law, or any other state of emergency, in cases when the National Assembly is not in session and is impossible to be convoked;
- give an order to the Prime Minister to form the Government;
- select the date of the elections for the National Assembly, as well as for the local self-government authorities;
- announce the date for a national referendum, following the corresponding decision of the National Assembly; and
- approve the laws adopted by Parliament with a Decree signed also by the Prime Minister or by the relevant Minister.

The present President of the Republic of Bulgaria, Rosen Plevneliev, was elected in November 2011 and took office on January 22, 2012.

¶BUL-150] Government

The Government (The Council of Ministers) is the main executive body of the executive power, headed by the Prime Minister. The Council of Ministers rules and conducts the internal and foreign policy of the State, secures public order and national security, and exercises control over the public administration and the military forces. The largest parliamentary group nominates the Prime Minister, after which the President authorises the formation of the Government. The proposed Council of Ministers is voted in by the National Assembly, which directly controls the activity of the Government.

As described above, after the elections on October 5, 2014, the lack of agreement among the political parties for the formation of a new coalition government may lead to new parliamentary elections.

¶BUL-175] Judiciary

The judicial power in Bulgaria is independent. It is built on the basis of a procedure of three instances. The Supreme Administrative Court and the Supreme Cassation Court exercise control over the implementation of the law by the courts of lower instances and take decisions on the legality of the acts of the executive power. With the new Judiciary System Act, promulgated in August 2007, administrative courts have been created to deal with administrative trials separately. The Act was amended in January 2011, creating a Specialised Penal Court having jurisdiction over specific offences. The Constitutional Court determines whether the laws and the international agreements are in compliance with the Constitution. A Supreme Court Council has been established, to organise the activity of the judiciary.

[¶BUL-200] Local executive authorities

The status and powers of the local executive authorities depend on the territorial structure of the country. The municipality is the main administrative territorial unit for the local government. The policy of every municipality is determined by the Municipality Council and includes the economic development, the environmental policy, educational, cultural, etc. activities. The Municipality Council approves the annual budgets and development plans of the corresponding municipality. Every municipality is ruled by a mayor. The mayor is in charge of the whole executive activity of the municipality, of keeping the public order and organising the distribution of the municipality budget. The region is the larger administrative territorial unit, through which governmental local policy is conducted in a decentralised and more effective way. Each region is governed by a regional governor assigned by the Council of Ministers.

According to a recently adopted Restriction of Cash Payments Act in February 2011 all payments equal to or greater than 15000 BGN shall be made by bank transfers. Every payment under that amount which is a part of a contract payment of 15000 or greater shall also be transferred only through the banks. Individuals who fail to obey the payment regime shall be fined with 25 per cent of the total amount of the payment and for the legal entities the sanction grows at 50 per cent. Failing to comply with the provisions of the Act once more doubles the sanctions respectively.

FORMS OF DOING BUSINESS**[¶BUL-225] Introduction**

The general legal framework of the forms of doing business under the Bulgarian jurisdiction is contained in the Commercial Act (“the CA”), the Obligations and Contracts Act (“the OCA”), and the Non-Profit Organisations Act (“the NPOA”). Specific rules applicable to certain forms of doing business have also been introduced in other acts, some of which are mentioned below.

The Obligations and Contracts Act was adopted in 1950 and came into force as of January 1, 1951. Designed to apply to a different society and economics, it has survived the democratic changes in 1989 and with relatively small changes continues to regulate the civil relations.

The Commercial Act was adopted shortly after the democratic changes – in 1991, as a continuation of the Bulgarian legal tradition in regulating commercial relations prior to 1944, and gave an answer to the increasing needs of regulation of the commercial turnover. Since then it has undergone numerous amendments, two of the most significant being in 1994 and 1996, when the rules regarding insolvency, respectively commercial transactions, were introduced.

The Non-Profit Organisations Act was adopted in 2000 and entered into force on January 1, 2001, introducing the NPOs as a legally recognised form of doing business. This act also has numerous amendments.

FORMS OF DOING BUSINESS UNDER THE COMMERCIAL ACT**[¶BUL-250] General**

The forms of doing business under the Commercial Act (CA) are generally the different types of traders. The trader can be a sole trader, a public undertaking, or a commercial company. The CA introduces also special rules regarding associations of traders — the consortia and the holding.

The type of trader that is most common and most significant in practice is the commercial company. Commercial companies, in accordance with the definition of art.63 of the CA, are associations of two or more persons for the purpose of performing commercial transactions with joint property. In some cases, envisaged under the law, only one person may incorporate a commercial company. The commercial companies are legal entities.

The types of commercial companies are explicitly enumerated in the Commercial Act. This section will provide a brief overview regarding the nature of each type of commercial company and its main characteristics.

All traders (sole traders, public undertakings and commercial companies) must be registered in the national Commercial Register. When the Commercial Register was initially created after the democratic changes, it was administered by the district courts and more specifically by a specialised department thereof – the company department. Back then each district court maintained a separate register. With the adoption of the Commercial Register Act in 2006 the Commercial Register was placed in the competence of a government agency - the Registry Agency of the Ministry of Justice. However, the new Commercial Register at the Registry Agency became operative in the beginning of 2008, when it began to gradually replace the old court registers. In order to provide for the transition, every trader had to re-register with the Registry Agency by the end of 2011. Currently, the Commercial Register is the only one nationwide and functions also online, providing free access to a vast amount of company information. One of the recent amendments to the functioning of the Commercial Register is that the online access to a significant part of the company information is available only to users with electronic signatures, in order to obviate the negative effects of anonymous research of companies.

[¶BUL-275] Limited liability company

The limited liability company is one of the most popular commercial company types in Bulgaria. It is regulated by art.113 et seq. of the Commercial Act. As a rule two or more persons may incorporate this type of company. These persons (shareholders that may be natural persons or legal entities) are responsible for the obligations of the company up to the value of their shareholding. This feature is the main advantage of the limited liability company: it allows the shareholders to limit the risk ensuing from doing business. The limited liability company is a legal entity, i.e. the limited liability company and the shareholder are different persons. The shareholder's personal property is separate from the property of the limited liability company, and for example, generally does not fall within the legal reach of the company's creditors. Bulgarian law does not recognise the need for the shareholder to bear the liability for the company's obligations with his/her own property.

The limited liability company is a "capital" company. By relatively recent amendment to art.117 of the CA, the minimum amount of the capital was reduced from 500 BGN to 2 BGN (approximately €1). The announced legal reason behind the amendment was to facilitate the establishment of new companies during the "financial crisis". The capital is divided into shares, each of which must be at least 1 BGN.

The managing bodies of the limited liability company are the General Meeting of the shareholders and the Manager/Managers of the company. The General Meeting consists of all shareholders. The shareholder has as many votes as the number of the shares held in the limited liability company's capital (unless otherwise envisaged in the Articles of Association). The General Meeting is competent to:

- amend and supplement the Articles of Association;
- associate and expel shareholders;
- give consent for the transfer of share/s in the company to a new member;
- approve the annual report and balance sheet;
- distribute the profits and decide on their payment;
- make decisions regarding the increase or decrease of the capital;
- elect the Manager, determine his/her remuneration and release him/her from responsibility;
- decide on opening and closing branches and participations in other companies;
- decide on the acquisition and transfer of real estate and rights over them;
- decide on additional instalments to be made by the shareholders, etc.

A most essential and important characteristic of the limited liability company is the regime regarding the transfer of ownership over the shares. It defines this type of company as relatively closed for the entry of new shareholders. This regime envisages that the shareholders are entitled to transfer freely their own share/s to other shareholders. However, in the case where a shareholder intends to transfer a share/s to a third party who is not a shareholder, the consent of the General Meeting is required.

A majority of 50 per cent of the capital plus one share is the general requirement for the valid adoption of most of the above decisions. However, decisions regarding capital increase and decrease need to be adopted unanimously, and other decisions (additional

instalments, amendment and supplementation of the Articles of Association, etc.) need a 75 per cent majority.

The Manager of the company is the person who manages the day-to-day business activities and represents the company before third parties (legal entities, natural persons, tax authorities, governmental bodies, etc.). The General Meeting may appoint one or several managers of the company, explicitly stating whether they are entitled to represent the company severally or jointly. Without the consent of the General Meeting, the Manager/s may not:

- perform commercial transactions in their own or in a third party's name;
- participate in partnerships or partnerships limited by shares or limited liability companies; or
- participate in the managing bodies of other companies.

These prohibitions apply only in cases where the activities and transactions carried out are similar to those of the company.

¶BUL-300] Sole-proprietorship limited liability companies

The regime of the limited liability company applies to this type of company. The only difference is that the General Meeting consists of only one person, who actually is the sole owner of the capital. There is no restriction on the number of companies which may be incorporated by one person. For example, one person, including a natural person, may incorporate several sole-proprietorship limited liability companies, and these will be separate legal entities with separate capital.

¶BUL-325] Limited partnership

This commercial company has two types of partners depending on their responsibility for the obligations of the company. These are the “general partners” and the “limited liability partners”. The main and essential difference between them is that the general partners are jointly liable for the obligations and debts of the company. That means that a creditor of the company can address its claims against the general partner as well, for which the general partner is liable with his/her personal property, i.e. their responsibility is unlimited. The “Limited liability partners” bear responsibility up to the amount of their holding in the company's property.

The incorporation of the limited partnership requires a written contract to be signed between the partners, with notarised signatures (by a notary public). There are certain requirements regarding the name of the company — it must contain the abbreviation and the name of at least one partner who has the capacity of a general partner. If the name of a “limited liability partner” is included in the name of the company, this partner will be considered fully liable (like the general partners) before the creditors of the company, regardless of what is written in the contract. The reason for this is that third parties make certain decisions whether to enter into business transactions or not with this company, depending on the standing and reputation of the partners.

The different responsibilities of the two types of partners lead also to the allocation of different powers regarding the management and representation of the company. The

management and the representation of the company are wholly held by the “general partners”. The “limited liability partners” are not entitled to manage the company and cannot veto decisions made by the “general partners”. Therefore, in situations where a “limited liability partner” enters into a transaction or concludes a deal in the name and on behalf of the company without authorisation, this partner will bear full responsibility unless the company confirms the so-concluded deal or transaction.

There is one other limitation in respect to the “general partners” in connection with the competition activities. The “general partners” do not have the right to participate in other companies which appear to be competitors of the company, and do not have the right to enter into transactions on their own or a third party’s behalf related to the business activity of the company, without the explicit consent of the other partners. If a “general partner” breaches the above rule, the company will be entitled to claim damages or to declare that it will assume the rights and obligation under the concluded transactions by the “general partner”. This declaration will be made in a written form and not later than one month following the date on which the company was made aware of the relevant transaction. In all cases, this declaration cannot be made after the expiration of one year following the date on which the transaction was actually concluded. The declaration must be sent to the partner and the third party.

[¶BUL-350] General partnership

This is a company incorporated by two or more persons for the performance of commercial transactions. All of the partners are “general partners”. These partners bear full responsibility, i.e. they are jointly (with the company) and fully liable for the obligations and debts of the company. That means that the claims of the company’s creditors can be addressed to the “general partners”. Their responsibility is not limited only to their contribution to the property of the company. The partners may be individuals or commercial companies. The name of the company must include the words “събирателно дружество”, or “съдружие” or the abbreviation “с-ие”.

The incorporation of the general partnership requires a written contract to be concluded between the partners. This contract has to be notarised by a notary public). The contract contains the name and address of the partners, the company names and address of management (when a partner is a legal entity), the name, address of management and the business activity of the general partnership, the type and amount of the partner’s contributions and their evaluation (in cases where they are non-monetary (in-kind) contributions), the practice and procedure of profit and loss distribution between the partners, and how the company is managed and represented.

In accordance with the Commercial Act, all partners have the right to participate in the management of the company, unless the management is assigned to one or several partners on the grounds of the provisions included in the above-mentioned written contract for incorporation of the company. The Commercial Act also provides for the management of the company to be assigned to a third person who is not a partner. In accordance with the provision of art.84, para.2 of the Commercial Act, the consent of all partners is required in the following cases:

- for the acquisition and disposal of ownership rights over real estate (e.g. right of use, right to build, ownership title, etc.);

- for entering into loan agreements for amounts exceeding the one envisaged under the written contract for incorporation.

The representation of the company must be arranged in accordance with the regulations in the incorporation contract. If the contract does not contain such a provision, by virtue of the Commercial Act it is assumed that each partner has the right to represent the company. If a partner does not have the right to represent the company, this limitation of the partner's rights needs to be entered into the Commercial Register. Otherwise, this limitation shall not apply with respect to third parties.

¶BUL-375] Joint-stock company

The joint-stock company is the most typical representative of the capital companies. The capital of the joint-stock companies is divided into stocks. The name of the joint-stock company must include the word “акционерно дружество” or the abbreviation “АД”. One or more natural persons or legal entities may incorporate the joint-stock company. In accordance with art.161 of the Commercial Act, the minimum capital is determined at 50,000 BGN (approximately €25,650). Regardless of the provisions above, the requirements regarding the minimum amount of the capital of certain joint-stock companies which operate in specific sectors are envisaged in the respective act. For example, for banks (in accordance with art.7, para.2 of the Credit Institutions Act) the minimum capital required for the incorporation is 10 million BGN), for insurance companies (in accordance with art.82 of the new Insurance Code), the minimum capital required for the incorporation of an insurance company, depending on the scope of insurance activities, shall generally be between 2,2 and 7 million BGN, for companies offering voluntary health insurance (in accordance with art.121B of the Social Security Code), the minimum capital required is 5 million BGN).

The minimum nominal amount of one stock (share) is 1 BGN.

The bodies of the joint-stock company are the General Meeting of the shareholders and the Board of Directors (if the company has one-tier management system) or the Managing Board and the Supervisory Board (with two-tier systems). The General Meeting consists of all the shareholders who have the right to vote. The General Meeting is entitled to:

- amend and supplement the Statute of the company;
- increase and decrease the capital;
- reorganise and terminate the company;
- elect and dismiss members of the Board of Directors, respectively of the Supervisory Board;
- approve the annual financial report;
- make decisions on the distribution of profit;
- make decision on the issuance of debentures, etc.

The General Meeting of the shareholders must have at least one session per year. The Board of Directors, respectively the Managing Board, convokes the General Meeting. However, the General Meeting may also be convoked by the Supervisory Board, as well as on the grounds of shareholders' initiative. In order to be entitled to request the convoca-

tion of the General Meeting, the shareholders need to possess shares representing at least 5 per cent of the capital for a period of at least 3 months. If the request of the shareholders for the convocation of the General Meeting is not fulfilled within one month or if the session of the General Meeting is not conducted within a three-month term, the district court must either convoke the General Meeting or empower the shareholders to convoke it. The General Meeting must be convoked by a written invitation announced in the Commercial Register or (under certain conditions) by a written invitation delivered directly to the shareholders. The invitation must include the name and address of management of the company, the place, the date and the hour of the session convoked, the agenda, etc. Note that the announcements in the Commercial Register (if that is the applicable procedure) must be at least 30 days prior to the date on which the session of the General Meeting is appointed.

The members of the Board of Directors, the Managing Board and the Supervisory Board are elected for a five-year term, unless the Statute provides for a shorter term. However, the members of the first Board of Directors and the first Supervisory Board may be elected for a period not exceeding three years. There are no limitations regarding the re-elections of the board members. Normally, members of the boards are elected natural persons. However, in accordance with art.234 of the Commercial Act, as a member of the relevant board may be elected a legal entity if this is explicitly allowed by the Statute of the company. In this case, the legal entity appoints a representative to perform the obligations of the legal entity as a board member. At the same time, the legal entity shall be jointly and unlimitedly liable for the actions and omissions of its representative. Members of boards are entitled to represent the company jointly, unless otherwise stipulated in the Statute. If allowed in the Statute, the board members may authorise one or several members to represent the company. This authorisation may be withdrawn at any time. The names of the board members authorised to represent the company must be entered in the Commercial Register. The authorised members also submit sample signatures of the board members, notarised by a notary public. Any limitations regarding the representative functions of members (e.g. that they cannot undertake obligations on behalf of the company which exceed certain amount) do not apply in respect of third parties.

There are additional special rules, provided for under art.236 of the Commercial Act, regarding the conclusion of deals. The Statute of the company may require certain deals to be entered into only in those cases where the preliminary approval of the Supervisory Board is received or if there is a unanimous decision of the Board of Directors. If there is not such a provision in the Statute, these deals may be concluded only after a decision made by the General Meeting of the shareholders. The said deals are:

- the transfer of ownership or right of use over the whole company's commercial enterprise (the ongoing concern of the company);
- the disposal of more than half of the assets of the company in accordance with the last approved annual financial report;
- the assumption of obligations to one person or legal entity, whose obligations exceed half of the assets of the company, etc.

[¶BUL-400] Company limited by shares

This type of company is regulated in art.253 et seq. of the Commercial Act. The rules regulating the regime of the joint-stock companies are applicable to the company limited by shares, unless a special regime is provided for. The company limited by shares is incorporated by virtue of a contract. The name of this company must include the words “командитно дружество с акции” or the abbreviation “КДА”. There are two types of partners at a company limited by shares — “unlimited liability partners” and “limited liability partners”. The partners may be individuals, as well as legal entities. The number of the “limited liability partners” must be at least three. The “limited liability partners” are obliged to pay instalments against the subscription of shares (stocks). Their liability is limited to the amount of the subscribed shares (stocks). The “limited liability partners” are not required to participate in the company’s activities. The “unlimited liability partners” incorporate the company limited by shares. The same partners are also entitled to adopt the Statute of the company and to choose the “limited liability partners” of the company.

The managing bodies of the company limited by shares are the General Meeting of the shareholders and the Board of Directors. Only the “limited liability partners” have the right to vote in the General Meeting. The “unlimited liability partners” do not have the right to vote at the sessions of the General Meeting, even when these partners possess shares (stocks) of the company. The Board of Directors is comprised only of the “unlimited liability partners”.

The incorporation of this type of commercial company is rare because of the possibility for incorporation of a limited liability company or a joint-stock company. The company limited by shares is appropriate in the cases where the company intends to perform business by using a large number of representatives.

[¶BUL-425] Sole trader

In accordance with the provision of art.56 of the Commercial Act, every individual who is over 18 years of age, has full legal capacity and is resident in Bulgaria may register as a sole trader. It is important to note that the sole trader is a merchant, but not a commercial company, and not a person (legal entity) separate from the individual. One natural person is entitled to register only one sole trader. The individual is liable for the obligations and debts (in connection with the commercial activities of the sole trader) with all of his/her property. Generally, there is no difference between the property of the sole trader and the property of the individual. The sole trader bears unlimited liability with all his/her personal property for debts and obligations arising from the performance of the commercial activities of the sole trader.

An advantage of the sole trader is the fact that registration is very easy and relatively inexpensive. The name of the sole trader must include the name of the individual and the abbreviation “ЕТ”.

[¶BUL-450] Branches

The Commercial Act explicitly envisaged in art.17 that every trader is entitled to open a branch outside the city where its address of management is. Therefore, all com-

mercial companies, as well as sole traders, may register branch/branches. The branch is not a legal entity and not a separate trader. The branch is part of the company's (or sole trader's) enterprise. The branch is comparatively independent as it may have its own scope of business activity, address of management, and manager. Regardless of the provision above, the property of the branch is the property of the commercial company (or of the sole trader), and it is actually the commercial company (the sole trader) that is party to all the deals and transactions that are concluded by the branch.

[¶BUL-475] European Company

On January 1, 2007 Bulgaria became a member of the European Union and thus accepted *acquis communautaire* — i.e. the law of the European Union. In the light of the aforesaid, any normative acts adopted by the European Union now applies to Bulgaria as well.

As envisaged in art.1 of Regulation 2157/2001, a company may be set up within the territory of the Community in the form of a European public limited liability company (*Societas Europaea* or SE) subject to the conditions and in the manner laid down in this Regulation.

Pursuant to Regulation 2157/2001, SE seated in Bulgaria can be established through consolidation or transformation of a joint stock company seated in Bulgaria. The Commercial Act (art.281 et seq.) specifies certain limitation to the incorporation of SE seated in another country — particularly, through consolidation when the transforming company owns land in Bulgaria. Also, an SE seated and owning land in Bulgaria cannot move its seat in other countries. These limitations apply in accordance with the Treaty of Accession of Bulgaria and Romania to the European Union.

FORMS OF DOING BUSINESS UNDER THE NON-PROFIT ORGANISATIONS ACT (“NPOA”)

[¶BUL-500] Introduction

Article 3 of this Act envisages that non-profit organisations may perform business activities, provided that these business activities are connected with the main scope of activity for which these non-profit organisations are incorporated. Moreover, the requirement of the law is that the income from the business activity must be used for the achievement of the aims under the organisation's Incorporation Act or Statute. The scope of the business activity, as such, must be included in the Statute or the Incorporation Act of the organisation. The business activity of organisations is subject to the rules and procedures provided for the commercial activities of traders. However, non-profit organisations cannot distribute dividends.

[¶BUL-525] Types of organisations under the Non-Profit Organisation Act

There are two types of organisations under the Non-Profit Organisation Act — associations and foundations. Both organisations are aimed at achieving non-profit purposes. They may determine their aims in the field of education, the protection of the environment, the development of e-technologies, the support of disabled or poor people, etc.

These aims must be written in the organisation's Statute or Act of Incorporation and they may be further amended. Both the foundations and the associations are divided on the ground of the following criteria: if the activity is performed for the benefit of the public or for private benefit. The founders of the foundations and the associations determine whether the activities will be performed to the benefit of the public or for their own benefit. The performance of activities carried out for the benefit of the public requires the special entry of the organisation into a register maintained by the Ministry of Justice. Entry into this register is irrevocable once completed — organisations are not allowed afterwards to change their activity to private benefit. In accordance with art.4 of the Non-Profit Organisation Act, the State may support organisations performing an activity to the public benefit by rendering some tax, credit, customs, as well as some other financial and economic advantages. These advantages are regulated by laws.

The foundation is incorporated by virtue of an incorporation written act, and its property is used for certain non-commercial purposes. This written act may have the form of a testament or a donation. The donation needs to be made in written form and the signatures — notarised by a notary public. The property granted is considered to be the property of the foundation.

The associations may be incorporated by three or more persons who consolidate their efforts in order to achieve non-commercial purposes. If the association is to perform activities to the benefit of the public, a minimum of three legal entities or seven individuals are required as founders.

¶BUL-550] Civil association

The civil association is regulated by arts.357–364 of the Obligations and Contracts Act. The civil association arises on the grounds of an agreement. Pursuant to this agreement, two or more persons agree to combine their efforts for the purpose of achieving one common economic result. The civil association is not a trader and does not have the capacity of a legal entity. Nevertheless, the civil associations are subject to registration with the tax authorities just like the commercial companies. Therefore, when performing commercial transactions, they should be checked to ensure that the concluded agreement does not lead to the establishment of a civil association.

For the purpose of the achievement of the common economic result, the “partners” are entitled to negotiate a cash instalment or other properties as instalments. The money, the substitutable assets and the consumer's goods are considered to be owned by all of the partners. All other assets should be considered to be deposited for common usage only, unless otherwise agreed. All of the property acquired in favour of the civil association is to be considered owned by all partners. All partners have an equal share in respect to the acquired property, unless otherwise agreed. Furthermore, the profit and the losses of the civil association must be distributed between the partners in accordance with their shares, unless otherwise agreed. Each partner is entitled to demand the payment of his/her share in the common property of the association when leaving the association or in the event of termination of the civil association. Pursuant to the regulation of art.363 of the Obligations and Contracts Act, the civil association is terminated in the following cases:

- when the common economic result is achieved or it appears that the achievement of the result is impossible;

- with the expiration of the term in cases where the civil association is established for a certain period of time;
- with the death of a partner, unless otherwise agreed;
- with the termination notice made by any of the partners, which notification is made in good faith and in a reasonable time in advance. The termination of the civil association applies in cases where the partners have not agreed that the civil association will continue its existence with the remaining partners;
- by virtue of a court decision if there are reasonable grounds and the civil association is established for a definite period of time.

None of the partners is entitled to transfer his/her right of participation in the civil association without the explicit consent of all of the other partners. At the same time each partner is entitled to demand reimbursement for the expenses, as well as for the interests accrued over them, and the damages suffered in connection with the performance of the association's business.

The association's activities shall be performed on the grounds of unanimous decisions adopted by the partners. The rule under the preceding sentence applies unless the partners have negotiated something different in the agreement for the establishment of the civil association. Therefore, a certain majority for adopting decisions could be envisaged where each partner has one vote.

TAX SYSTEM

[¶BUL-575] Introduction

The Bulgarian tax system is regulated by a number of tax laws which cover the taxation of individuals, legal entities and all other persons. These legislative acts include the following laws: the Taxes on the Incomes of Individuals Act ("the TIIA"), the Corporate Incomes Taxation Act ("the CITA"), the Value Added Tax Act ("the VATA"), the Excise and Tax Warehouses Act ("the ETWA"), the Local Taxes and Fees Act ("the LTFA"), the Tax and Social Insurance Procedure Code ("the TSIPC"), etc. The above Acts, including the secondary legislation on their implementation, have numerous amendments. This section examines the taxation under the above-mentioned Acts in turn.

[¶BUL-600] Taxation under the Taxes on the Incomes of Individuals Act

The Act regulates the taxation of individuals' incomes, as well as the incomes from sole traders' activities. As a general rule, the law envisages that the total income for the taxation year is subject to taxation. A taxation year is a calendar year, i.e. the period from January 1 until December 31. Therefore, only the incomes received in the respective calendar year are subject to taxation.

The taxable persons, i.e. the persons who are obliged to pay the taxes, are the local and foreign individuals.

The definition of a local individual under art.4 of the law includes the following persons: persons with permanent residence in the country; persons who reside in the country for more than 183 days per calendar year; persons who reside abroad on the grounds of assignment by the State, state bodies or state enterprises, as well as the

members of their families, persons who have their centre of vital interests in Bulgaria. The above persons are qualified as local persons, regardless of their citizenship.

Foreign natural persons are subject to taxation for their incomes earned in Bulgaria. Therefore, we may conclude that there are two groups of subjects whose incomes are subject to taxation under the TIIA:

<i>Subject</i>	<i>Income subject to taxation</i>
Local natural persons	All incomes earned throughout the year in Bulgaria and abroad
Foreign natural persons	Incomes earned in Bulgaria

All incomes are subject to taxation of local natural persons' incomes — those earned on the territory of Bulgaria and those earned outside the country. At the same time, subject to taxation of the foreign natural persons are only those incomes earned in Bulgaria. Article 8 of the law contains the definition of incomes earned in the country. In accordance with art.8, para.1 of the law, the income from economic activity through a fixed base which is performed by a natural person on the territory of the country shall be considered as an income earned in the country. The fixed base is defined in the TSIPC, as referred to in para.1, item 4 of the Additional Provisions of TIIA. Therefore, para.1, item 7 of TSIPC specifies the “fixed base” as:

- a fixed place through which a non-resident natural person provides, wholly or partly, independent personal services or practises a liberal profession in this country, such as: an architectural studio, a dental consulting room, a law office or another consultant's office, an office of an independent auditor or accountant; and
- the sustained provision of independent personal services or practice of a liberal profession, even where the non-resident natural person does not have a fixed place.

In accordance with art.8 of TIIA, the following incomes shall also be considered to be earned on the territory of the country:

- derived from work performed within the territory of the Republic of Bulgaria, or from services performed within the territory of the Republic of Bulgaria;
- dividends and liquidation surplus, arising from participating interests in resident legal persons and unincorporated associations, including agreements on joint activity;
- income derived from transfer of the enterprise of a sole trader registered in the Republic of Bulgaria, regardless of whether the transferor is a resident person;
- any prizes and remunerations for activity performed within the territory of the country by non-resident natural persons who are public figures, or such active in science, the arts, culture and sports, including where the income has been paid/charged through a third party, such as a performer-management agency, a production company and other intermediaries;
- any income derived from shares, interests, compensation instruments, investment vouchers and other financial assets issued by the Bulgarian State, the municipalities, resident legal persons, unincorporated associations and other forms of joint activity, as well as from any transactions therein;

- any income derived from agriculture, forestry, hunting ground management and fisheries within the territory of the country;
- any income derived from use, sale, exchange or other transfer of immovable property, including any such transfer of an undivided interest in or a limited right in rem to any such property situated within the territory of the country; and
- income charged/paid by resident persons, by representative offices, as well as by a permanent establishment or a fixed base in the Republic of Bulgaria (multitude hypotheses are listed in the law).
- etc.

[¶BUL-625] Taxable and non-taxable incomes

Chapter 2 of the law clearly distinguishes the incomes into two main categories: those which are subject to taxation and those which are not subject to taxation. The types of incomes are enumerated in art.10:

- employment relationships;
- activity as a sole trader;
- other economic activity;
- rent or from other onerous provision for use of rights or property;
- transfer of rights or property;
- compensations for lost profit and damages of such nature;
- cash prizes and merchandise awards awarded at competitions and contests which are not provided by an employer or a commissioning entity;
- interest, including such in payments under a lease contract;
- any producer dividends distributed by cooperatives;
- exercise of intellectual property rights by succession; and
- all other sources which are not expressly specified in this law or CITA.

The general rule is that every income is taxable unless it is not specified as non-taxable in the law.

The income is considered to be received by the individual on the date of payment when the payment is made in cash. If the money is transferred by wire, it shall be considered received on the date when the money reaches the bank account of the person. If the income is non-monetary, it shall be considered received on the date of the receipt of the consideration.

Article 13 of the law envisages the scope of non-taxable incomes, as follows (the enumeration is not exhaustive):

- incomes from sale or barter of:
 - one residential immovable property, in case that at least 3 years have expired between the acquisition date and the date of sale or the barter;
 - 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;
 - vehicles acquired at least one year before the sale; and
 - movable properties with some exceptions.

- amounts received from the mandatory pension, social and health insurance;
- interest on deposits in local commercial banks, branches of foreign banks, etc.;
- compensation and other similar payments in case of death, physical injury, professional disease, compensations under certain insurance policies, etc.;
- interest on receivables adjudged under court decisions, as well as the adjudged court expenses;
- monetary and non-monetary incomes from social aid, as well as compensation and payments to unemployed people;
- scholarships in favour of local natural persons for education in Bulgaria and abroad;
- subsidies received from social funds and organisations;
- family allowances, compensation and subsidies for children, received on the grounds of a legislative act, alimonies received in accordance with the Family Code;
- prizes and winnings received from the state lottery, gambling, games of fortune, etc.

The law explicitly envisages that the amount received from the sale or barter of property acquired via inheritance or donation shall not be considered an income. Furthermore, the incomes received by natural persons on the grounds of concluded lease or rent agreements with agricultural land are exempt from tax.

The TIIA introduces a “flat tax” system which applies a constant tax rate, regardless of the amount of the income, contrary to the previously used “progressive taxes”. The general rule says that the tax rate is 10 per cent (15 per cent for the sole traders) of the annual aggregate taxable amount. The annual aggregate taxable amount is the annual income from which are deducted tax reliefs or operating expenses (if applicable by the law). Social security contributions are also deducted from the aggregate amount.

In this connection, the gross incomes are levied with the relevant per cent of the social security contributions. The income which is subject to assessment with the percentage of the social security contributions consists of all of the remunerations and payments derived from labour activity. As a conclusion, we may say that the gross income is subject to taxation with the above tax rates and is also subject to taxation with social security contributions. Pursuant to the regulation of art.6 of the Social Security Code, the social security contributions are shared between the employer and the employee in a certain proportion which changes for a period of 10 years as follows:

<i>Calendar Year</i>	<i>Per cent of the social security contributions</i>	
	<i>Employer</i>	<i>Employee</i>
2000; 2001	80%	20%
2002; 2003; 2004	75%	25%
2005	70%	30%
2006; 2007	65%	35%
2008	60%	40%
2009 and next	a complex system is introduced where the ratio is	

<i>Calendar Year</i>	<i>Per cent of the social security contributions</i>	
	<i>Employer</i>	<i>Employee</i>
	different for the various social security funds.	

Both the employer and the employee are obliged to pay the relevant share of the social security contribution at their own expense. We shall say here that where there is a labour contract signed, actually the portion of the employee's social security contributions are deducted by the employer from the employee's salary. Thus, the employee does not need to pay them himself/herself. The portion of the employee is paid physically by the employer, but at the expense of the employee.

We shall note that the Social Security Code stipulates that there is a maximum amount of the monthly income that is subject to social security contributions' assessment. This maximum amount is determined each calendar year with Budget of the State Social Security Act. For the year 2014 the maximum amount is determined at 2,400 BGN. Monthly incomes over this maximum amount will not be subject to assessment with social security contributions. Thus, as we mentioned above, the final financial result will be different for the different individuals. This will be most probably subject to calculations for each individual that is subject to taxation under the TIIA.

[¶BUL-650] Taxation under the Corporate Incomes Taxation Act

This law regulates the taxation of:

- the profit accruing to resident legal persons;
- the profit accruing to resident legal persons which are not merchants, including the organisations of the religious denominations, from any transactions covered under art.1 of the Commercial Act, as well as from letting movable and immovable property;
- the profit accruing to non-resident legal persons from a permanent establishment in the Republic of Bulgaria and the profit from transactions with their property from such an establishment;
- the income, as specified in this Act, accruing to resident and non-resident legal persons from a source in the Republic of Bulgaria;
- the expenses as specified in Part Four of the Act;
- the activities of organisers of games of chance;
- the income accruing to public-financed enterprises from any transactions covered under art.1 of the Commercial Act, as well as from letting movable and immovable property; and
- the vessels operation activity of persons that carry out maritime merchant shipping.

It is worth noting that the former CITA excluded from its scope profit and income of local legal entities with annual turnover of under 50,000 BGN and performing certain activities. The present CITA (entered into force as of January 1, 2007), in compliance with the new TIIA, applies to all legal entities, regardless of the amount of their turnover.

The profit is levied with a corporate tax. From 2007 (according to the new CITA) the tax rates are as follows:

- corporate tax — 10 per cent;
- tax on expenses (which are specifically envisaged in the law) — 10 per cent;
- withholding tax — 5–10 per cent; and
- alternative taxes — 2–15 per cent, depending on the activity and the subject of taxation.

Corporate tax

This is a general tax and it applies to the profits and incomes falling in the scope of the law, except those explicitly levied with other types of taxes.

As Chapter 5 of the law states: “Tax financial result” shall be the accounting financial result adjusted according to the procedure established by this Act. There are two types of this result:

- the positive tax financial result, which shall be considered a tax profit;
- the negative tax financial result, which shall be considered a tax loss.

Pursuant to art.19, the taxable amount for assessment of the corporate tax shall be the tax profit.

Tax on expenses

A tax on expenses shall be levied on the following documented expenses:

- any business entertainment expenses;
- any expenses on fringe benefits provided in kind to factory and office workers and to persons hired under a management and control contracts (hired persons); the expenses on fringe benefits provided in kind shall furthermore include:
 - (1) the expenses on contributions (premiums) for additional voluntary retirement and health insurance, and life assurance;
 - (2) the expenses on food vouchers over 60 BGN;
- the expenses related to operation of means of transport, where used to service management operations.

Withholding tax

A withholding tax shall be levied on any dividends and shares in a liquidation surplus, as distributed (apportioned) by any local legal entities in favour of:

- any foreign legal entities, with the exception of the cases where the dividends accrue to a foreign legal entity through a permanent establishment in the country; and
- any local legal entities which are not merchants, including municipalities.

The tax shall be final and shall be withheld by the local legal entities distributing dividends or shares in a liquidation surplus. The tax rate shall be 5 per cent.

A withholding tax shall be levied also on the income of foreign entities which has its source inside the country, however has not been realised through a permanent establishment in Bulgaria. The tax rate shall be 10 per cent.

Alternative taxes

Subjects to alternative taxes are:

- the activity of organising games of chance;
- the income accruing to public-financed enterprises from any transactions covered under art.1 of the Commercial Act, as well as from letting movable and immovable property; and
- the vessels operation activity.

The alternative tax for gambling is 15 per cent of the amount of the received stakes. A licensed telecommunication operator, where the value of the bet consists in the increased charge for a telephone or another telecommunication link, is obliged to deduct the amount of the tax from the due remuneration and to pay it to the budget on behalf of the provider of the services. The tax is final.

Pursuant to art.245, the tax rate is defined by a fixed amount as follows:

- in respect of a gambling slot-machine, respectively, each players' place at such a machine: BGN 500 per quarter;
- in respect of a roulette in a casino per gambling table: BGN 22,000 per quarter for each device; and;
- in respect of any other gambling device in a casino: BGN 5,000 per quarter for each device.

State (budget) enterprises are levied with an alternative final tax to the amount of 3 per cent (and 2 per cent for the budget municipal enterprises) on the basis of their incomes, derived from the performed commercial activities.

The persons carrying out maritime merchant shipping which simultaneously fulfill certain conditions specified in the law are levied with alternative tax the rate of which is 10 per cent.

It is worth noting that the new taxation regime is optional, i.e. the commercial companies performing the above activity have the right to choose between this regime and the common one — taxation of the profit with the corporate tax to the amount of 10 per cent. This regime envisages that instead of assessment of corporate tax, these commercial companies will be levied with a tax on the basis of the net burden of the ships for the days during which they are in exploitation. The amount of the basis subject to taxation will be determined for the days in exploitation for each calendar month as follows:

<i>Net burden of the ship</i>	<i>Calculation of the tax basis subject to taxation</i>	<i>Tax rate</i>
Up to 1,000 tons	3.50 BGN for each 100 tons	10%
From 1,001 to 10,000 tons	35 BGN + 3 BGN for each 100 tons over the initial 1,000 tons	10%
From 10,001 to 25,000 tons	305 BGN + 2.5 BGN for each 100 tons over the initial 10,000 tons	10%
Over 25,000 tons	680 BGN + 1 BGN for each 100 tons over the initial 25,000 tons	10%

The tax rate assessed over the so calculated tax basis amounts to 10 per cent. The amount of the tax rate is determined by the provision of art.258 of the CITA. Pursuant to

the provision of art.260 of the same law, the amount of the due tax needs to be paid until March 31 of the next calendar year. However, we shall note that there are certain requirements which the commercial companies need to meet in order to be entitled to choose the new regime. First of all, as it is obvious, they need to be registered as a commercial company. The commercial companies are exhaustively enumerated under the Commercial Act. They can also be permanent establishments of a corporation which is resident for tax purposes in another Member State of the European Union, or a Member State of the European Economic Area, according to the relevant tax legislation. Such corporation shall not be considered to be resident for tax purposes in another State outside the European Union or the European Economic Area by virtue of a convention for the avoidance of double taxation with a third State. Further, they also need to meet the following requirements:

- operate with their own or leased ships or offer ships for lease;
- do not refuse the training of apprentices;
- the crews of the ships contain Bulgarian citizens or citizens of the European Union or the European Economic Area; and
- at least 60 per cent of the net tons of the exploited ships are sailing under the Bulgarian flag or a flag of another Member State of the European Union or of the European Economic Area;
- operates according to the relevant international conventions and the European Union Law regarding shipping safety, environmental protection, and the work and life conditions of the crew.

This regime applies to the relevant commercial company if declared before the tax authorities with a tax return.

TAXATION UNDER THE VALUE ADDED TAX ACT

[¶BUL-675] General

The main indirect tax is value added tax (VAT). It is regulated by the VATA, as mentioned above, and the secondary legislation issued on its implementation. The other indirect tax which is regulated by Bulgarian legislation is the excise duty. The legislative framework for excise duty includes the Excise and Tax Warehouses Act.

[¶BUL-700] Scope of the VATA

The scope of the VATA is regulated by art.2 of the Act. In accordance with the provision of this article, the following transactions are subject to mandatory VAT taxation:

- each taxable delivery 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;

- each intra-Community acquisition effected for consideration, whereof the place of transaction is within the territory of the country, of excisable goods, where the recipient is a taxable person or a non-taxable legal person which is not registered under this Act; and
- the importation of goods.

Taxable delivery of goods and services

Each taxable delivery of goods or services, in the case when a taxable person performs the delivery, is subject to mandatory VAT. Pursuant to art.3 of the VATA, a taxable person shall be considered every person, who performs independent economic activity, regardless of the results or the aim of the activity. Furthermore, the VATA contains a definition of an independent economic activity: independent economic activities shall comprise the activities of producers, traders and persons supplying services, including mining and agriculture, as well as the practice of a liberal profession, including as private enforcement agents and notaries. Any remunerative activity carried out on a continuing basis or as a regular occupation or business on a professional basis for the purpose of obtaining income therefrom, including the exploitation of tangible and intangible property, shall also be considered an independent economic activity.

This definition is partially declared unconstitutional by the Constitutional Court of the Republic of Bulgaria regarding the expression “as well as the practice of a liberal profession, including as private enforcement agents and notaries” — SG 37/2007, supplemented in SG 108/2007. Therefore, the aforesaid cases shall be excluded when determining the scope of the above definition. Also art.3, para.3 excludes the following activities:

- the activity carried out by natural persons under an employment relationship or under a legal relationship equivalent to an employment relationship;
- the activity of natural persons who are not sole traders, in respect of the activity carried out by such natural persons and regulated by law, concerning management and control of legal persons.

“Delivery” of goods means the transfer of the right of ownership or another right in rem to goods. Pursuant to art.6, the following shall also be considered as a delivery:

- the transfer resulting from a request or an act of a central or local government authority or the administrations thereof or in pursuance of the law, of a right of ownership or another right in rem against payment of compensation;
- the actual handing over of goods, pursuant to a lease contract which provides for the passing of the right of ownership of the said goods under a suspensive condition or in the normal course of events;
- the actual handing over of goods pursuant to a lease contract which expressly provides for passing of the right of ownership of the goods; this provision shall not apply where passing of ownership of the goods is stipulated in the contract solely as an option;
- the actual handing over of goods to a person acting in his own name and for the account of another.

Pursuant to para.3 of art.6, the following shall also be considered delivery of goods effected for consideration:

- the setting aside or handing over of goods for the private use or consumption of the taxable natural person, of the owner, of the factory or office workers thereof or of third parties and subject to the condition that credit for input tax has been deducted wholly or partly upon the production, importation or acquisition of the said goods;
- the transfer of ownership or another right in rem to goods to third parties effected free of charge, where credit for input tax has been deducted wholly or partly upon the production, importation or acquisition of the said goods;
- the dispatch or transport of any goods produced, extracted, processed, purchased or imported in the territory of the country by a taxable person under the VATA within the framework of the economic activity, where the said goods are dispatched or transported for the purposes of the economic activity thereof by or for the account of the said person from the territory of the country to the territory of another Member State.

The definition of “goods”, in accordance with the VATA, remains virtually the same as the definition in the former law. Pursuant to art.5 of the VATA, “goods” means each movable and immovable thing, including electric current, gas, water, heat or refrigeration, etc., as well as standard software. Exceptions are money in circulation and foreign currency used as tender.

As a result of the EU membership, a new article has been added defining the “intra-Community delivery of goods” as:

- any delivery of goods transported by or for the account of the supplier that is a person registered under this Act, or of the recipient from the territory of the country to the territory of another Member State, where the recipient is a taxable person or a non-taxable legal entity registered for VAT purposes in another Member State;
- any delivery of a new means of transport dispatched or transported by or for the account of the supplier or of the recipient from the territory of the country to the territory of another Member State, regardless of whether the recipient is a taxable person or a non-taxable person;
- any delivery of excisable goods dispatched or transported by or for the account of the supplier that is a person registered under the VATA, or of the recipient from the territory of the country to the territory of another Member State, where the recipient is a taxable person or a non-taxable legal entity which is not registered for VAT purposes in another Member State; and
- the dispatch or transport of any goods produced, extracted, processed, purchased or imported in the territory of the country by a person within the framework of the economic activity, where the said goods are dispatched or transported for the purposes of the economic activity thereof by or for the account of the said person from the territory of the country to the territory of another Member State in which the said person is registered for VAT purposes.

The definition of a “service”, pursuant to the VATA, also remains almost unchanged. A service, pursuant to the definition of art.9 of the VATA, means the following: a service is everything which has a value and is different from the goods, the money in circulation and foreign currency used as tender. As a delivery of service shall be considered the following cases:

- the sale or transfer of rights to intangible property;
- the assumption of an obligation not to perform any acts or not to exercise any rights;
- any manual and intellectual work, including treatment in the sense of production, construction or assembly of a tangible asset, using raw and prime materials placed by the client at the disposal of the service provider; and
- the performance of services by a tenant/user for repair and/or improvement of an asset hired out or allocated for use.

Equalised to delivery of services effected for consideration are:

- the provision of services for the private use of the taxable natural person, of the owner, of the factory and office workers or of third parties, the performance of which involves use of goods upon the production, importation or acquisition whereof credit for input tax has been wholly or partly deducted; and
- the provision, free of charge, of services for the private use of the taxable person, of the owner, of the factory or office workers or of third parties.

In connection with the aforesaid definitions, “taxable delivery” shall be each delivery of goods or services, within the scope of these definitions, which is effected by a taxable person under the VATA and whereof the place of transaction is within the territory of the country, as well as the zero-rated delivery effected by a taxable person, unless otherwise envisaged in the VATA.

Other areas covered by VATA

These include any intra-Community acquisition and the import of non-Community goods into the territory of the country.

It is worth noting here that the VATA explicitly excludes from the scope of the taxpayers certain categories, as follows.

The State, the state bodies and the municipal bodies

The State, the state bodies and the municipal bodies for all of the activities and deliveries in which they engage in their capacity as a central or local government authority, even where they collect fees, contributions or payments in connection with these activities or deliveries. However, regardless of this, the State, the state bodies and the municipal bodies shall have the capacity of taxpayers under the VATA in the following hypotheses of activities and deliveries:

- electronic communication services;
- supply of water, gas, electricity or steam;
- transport of goods;

- port and airport services;
- passenger transport;
- sale of new goods manufactured for sale;
- deliveries effected for the purpose of intervention on the market of agricultural products;
- organising or running of trade fairs, exhibitions;
- warehousing;
- the activities of commercial publicity bodies, advertising services, including rental of advertising space;
- tourist services;
- running of shops, industrial canteens and other commercial outlets, the letting of buildings, parts of buildings and sales areas, and their concession;
- activities of radio and television bodies of a commercial nature;
- any other deliveries which will lead to significant distortion of competition.

[¶BUL-725] Registration under the VATA

Under the VATA, only VAT taxable persons, as well as all importers and persons who perform intra-Community acquisition, are liable for assessment for VAT. There are two types of registration under the VATA: mandatory registration and registration by choice. The register in which the registration is done is a part from the register envisaged in the Tax and Social Insurance Procedure Code.

In accordance with art.96 of the VATA, every person with a total taxable turnover of more than 50,000 BGN for a period including the last 12 consecutive months shall file an application for registration within a 14-day term as of the expiry of the assessment period during which this turnover has been reached. The taxable turnover within the meaning of the VATA, in the case of a mandatory registration, is the sum of the tax bases of taxable deliveries performed by the person, including the taxable deliveries that are zero-rated, deliveries of financial services and deliveries of insurance services. Every person is under the obligation to calculate and check their turnover for the last consecutive 12 months after the expiry of each calendar month. The obligation for registration arises once the above noted turnover is reached, regardless of the term. This term may be shorter than 12 months, but not longer. The advance payments received by the person on the grounds of taxable deliveries are included when determining the taxable turnover, except for the intra-Community acquisitions. Regardless of its turnover, a person will not be taxed if the following requirements are simultaneously met:

- they deliver services electronically to recipients who are non-taxable persons, that 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 European Union; and
- they are registered for VAT purposes for their activity referred to in item 1 in another Member State.

If a tax authority finds that a person meets all the criteria for mandatory registration, but is not registered, the tax authority registers the person at its own initiative.

[¶BUL-750] Specific cases of mandatory registration

Mandatory registration is also envisaged in the following cases, regardless of the common prerequisites:

- deliveries of goods to be assembled and installed;
- distance selling of goods;
- intra-Community acquisition with a turnover over 20,000 BGN;
- deliveries of goods and services when the tax is due from the recipient.

Registration by choice means the following: pursuant to art.100 of the VATA, every person who does not meet the criteria for mandatory registration, has the right to file an application for registration under the VATA.

[¶BUL-775] Registration of foreign persons under the VATA

Foreign persons who have a business unit on the territory of the Republic of Bulgaria, from where they perform an independent economic activity, must register under the VATA through an accredited representative, provided that this foreign person meets the requirements for mandatory registration or registration by choice. When the foreign person has a branch in Bulgaria, the common procedure under the VATA shall be followed and no accredited representative is needed. Furthermore, a foreign person who is neither established in the country nor has a business unit in Bulgaria, but performs taxable deliveries with goods or services with a place of performance in Bulgaria and who meets the requirements for mandatory registration or registration by choice, shall register through an accredited representative.

The accredited representative of a foreign person must be a natural person with full legal capacity and permanent address or permanent residence in the country or local legal entity, who is not involved in any liquidation procedures and is not declared bankrupt. The accredited representative represents the foreign person regarding all tax issues that may arise on the grounds of the provisions of the VATA. The accredited representative is jointly and unlimitedly liable for tax obligations which arise on the grounds of the VATA.

[¶BUL-800] Taxation under the VATA

The tax rate amounts to 20 per cent for all taxable deliveries of goods or services, except for those expressly specified as subject to the zero rate, including for the import of goods and intra-Community acquisition. A specific tax rate to the amount of 0 per cent is envisaged for the following cases:

- delivery of a single service to tourists, if the deliveries of goods and services are for the direct benefit of the tourist and have a place of transaction within the territory of third countries and territories;
- delivery of goods dispatched or transported to a destination outside territory of European Union;
- international transport of passengers;
- international transport of goods;
- delivery linked to international transport;
- delivery linked to international goods traffic;

- delivery for the processing of goods;
- delivery of gold for the Bulgarian National Bank and the Central Bank of another Member State;
- delivery linked to duty-free trade when it is considered export;
- delivery of goods provided by agents, brokers and other intermediaries; and
- documenting delivery;

Specific conditions for all hypotheses are envisaged in detail by the law.

A special tax rate of 9 per cent is set for the basic tourist services provided in hotels. According to the Tourism Act, these tourist services include bed and breakfast, and transportation services.

¶BUL-825] VAT exempted transactions

There are certain transactions which are, on the grounds of art.38–50 of the VATA, tax exempted. These tax exempted transactions include the following: financial services; insurance and reinsurance services, social services, educational and cultural services, transactions connected with land, transfer of ownership over enterprises, etc. VAT exempted transactions are also intra-Community deliveries and intra-Community acquisition of goods if they would have been exempt if effected within the territory of the country according to the above cases.

¶BUL-850] Taxation under the Excise and Tax Warehouses Act

Pursuant to art.1 of the Act, the latter regulates the assessment of excise duty, as well as the control over the manufacture, usage, warehousing, movement and securing of the goods, subject to taxation with excise duty.

Pursuant to the provision of art.2 of the law, excise duty is assessed for the following goods: cigarette products, alcohol and alcoholic beverages, energy products and electrical energy (automobiles were excluded in 2010). The exact amount of the excise duty and the method of calculation for the different goods are regulated in detail in the law.

Pursuant to the provision of art.19 of the Excise and Tax Warehouses Act, goods are subject to excise duty when they are manufactured in the territory of the country, introduced into the territory of the country from the territory of another Member State, or upon their import in Bulgaria, unless the goods are under the regime for postponed payment of the excise duty (for example, such cases are envisaged for energy products and electrical energy).

The said regime means that the assessment of the excise duty may be temporarily postponed for goods manufactured, introduced or imported in Bulgaria. This regime is applied by a licensed warehouse keeper in the following cases:

- manufacture of the goods in a tax warehouse;
- warehousing of the goods in a tax warehouse;
- movement of goods, subject to assessment with excise duty.

A “tax warehouse” shall be considered the place where goods falling within the scope of the law are produced, stored, received and dispatched by a licensed warehouse keeper in accordance with the provisions of the law. A “licensed warehouse keeper” is a

trader who is licensed to produce, store, receive and dispatch goods under the regime for postponed payment of the excise duty.

The obligation for payment of the excise duty arises as of the date of the release of the goods for usage. The tax subjects are obliged to file tax returns for the due excise duty for every tax period, (i.e. every calendar month).

Pursuant to the provision of art.3 of the new law, a “tax subject” is defined as follows:

- licensed warehouse keepers and persons registered under the law;
- persons obliged under the customs legislation in respect of goods falling within the scope of the new law;
- persons who, in breach of this Act, have produced or hold (or participate in such activities) such goods outside a tax warehouse or have disposed (or participated in the disposal) of goods for which the excise duty has not been paid;
- end customers released from excise duty and temporarily registered recipients;
- tax representatives of the persons registered for VAT purposes in another Member States, which perform deliveries of excise goods under the conditions of distance selling (the definition and condition of it are envisaged in the VATA); and
- persons that receive excise goods on the territory of the country which are dispatched for consumption in another Member State (except when the taxable person is the tax representative who has fulfilled his duties under this Act).

EMPLOYMENT LAW

[¶BUL-875] Introduction

The main act in the field of employment law is the Labour Code. There are many ordinances and acts regulating the implementation of the Code. The Labour Code regulates the relations between the employee and the employer as well as all other connected relations between them. The Constitution of the Republic of Bulgaria in art.48 declares that all citizens have the right to work. The State is obliged to take care and create the necessary conditions in order to allow citizens to exercise their right to work. Every person is free to choose their profession and place of work. Article 16 of the Constitution states that the labour is guaranteed and protected by law. Compulsory labour is prohibited. Furthermore, the Constitution declares the main rights of employees, which are: the right to healthy and safe working conditions, the right to a minimum salary, right to remuneration corresponding to the performed work, the right to holidays, etc.

LABOUR CONTRACT

[¶BUL-900] General

The conclusion of the labour contract between the employer and the employee is the normal means of founding the labour relationship. The labour contract shall be concluded in a written form, in accordance with the regulation of art.62 of the Labour Code. The employer must then inform the National Revenue Agency within a three-day term following the conclusion of the labour contract. The employer has the same obligation when an already signed labour contract is amended. The employer shall deliver to the employee a

copy of the signed labour contract together with the above-mentioned written notification, countersigned by the National Revenue Agency. These documents shall be delivered to the employee before the date on which the latter starts to perform his/her obligations under the labour contract. Once the employee receives these documents, he/she is under obligation to commence work within a one-week term, unless the parties have agreed other terms. If an employee does not appear at his/her place of work to start performing their obligations within the one-week term, the Labour Code assumes that the labour contract is invalid and the labour relation does not exist. Therefore, the labour contract, although signed, shall not constitute the labour relation between the employer and the employee. In connection with the above, the Code envisages that the employer shall certify the commencement of the employee's work in a written form. The content of the labour contract is the following:

- (a) working place;
- (b) position and nature of the work;
- (c) date of the contract's conclusion and date of work commencement;
- (d) duration of the labour contract;
- (e) duration of basic annual paid leave and duration of additional annual paid leaves;
- (f) terms of notification for termination of the labour contract in favour of both the employer and the employee;
- (g) basic salary and additional labour remunerations with constant character as well as the periods of payment (daily, weekly, monthly); and
- (h) the duration of the working day and the duration of the working week.

Still only a), b) and g) are mandatory for the validity of the contract. If any other element of the contract content is missing it is substituted by regulations in the Labour Code.

The labour contract may be signed for a definite (with exact duration included in the contract) or for an indefinite period of time. The labour contract is always considered to be a contract for an indefinite period, unless an explicit duration is included. A labour contract for an indefinite term cannot be converted into a labour contract for a definite term unless the employee has given their explicit written consent.

Labour contracts for a definite period of time can be concluded in certain cases envisaged under the Labour Code. These cases are exhaustively enumerated below. Labour contracts can be signed for a definite period:

- which cannot exceed three years, unless otherwise regulated in a legislative act. This type of labour contract for a definite period of time can be signed only for work or activities which have temporary, seasonal or short-duration character. As an exception to this rule, labour contracts can be signed for a definite period of time for works and activities which do not have the above temporary, seasonal or short-duration character. However, the duration of this labour contract shall be at least one year and may be signed only twice. The second labour contract, if such, shall also be for the duration of at least one year. The mandatory minimum one-year duration may be diminished on the grounds of a written request of the employee (regarding the first contract only);

- until the completion of a certain work;
- for the purpose of replacement of an employee who is temporarily missing from work;
- for a position which shall be occupied on the grounds of a selection process. In this case a labour contract shall be signed for the period necessary for the organisation and successful completion of the selection process;
- for a certain mandate, when this is envisaged for the relevant body;
- for the term of a long-term business trip for a position designated for long-term assignment to a foreign mission of the Republic of Bulgaria under the Diplomatic Service Act.

It is worth noting here that the above-described hypotheses are the only cases where the labour contract may be signed for a definite term. These regulations of the Labour Code are aimed at the protection of the employee. In accordance with the regulation of art.68, para.5, if a labour contract envisages a definite period of duration in breach of the above rules, this labour contract shall be considered concluded for an indefinite period of time. An additional important rule, envisaged under art.69 of the Labour Code, regulates a mechanism for converting a labour contract for a definite term into a labour contract for an indefinite term. Pursuant to art.69, the labour contract for a definite term automatically converts into a labour contract for an indefinite term if, after the expiration of the agreed term of the contract, the employee continues to work, i.e. continues to perform their obligations (under the labour contract) for five or more working days, the employer does not object and the working position is vacant. This rule also applies in the case of a replacement for an employee who is temporarily missing from work, if the labour contract with the missing employee is terminated while the substitution is in force.

¶BUL-925] Labour contract with a trial period

This labour contract is qualified as a contract with a definite term. The term of this contract must not exceed six months in accordance with the mandatory regulations of the Labour Code. This contract may be signed when the employer is not sure if the employee will be in a position to satisfactorily perform the obligations and duties necessary for the relevant working position. Equally, the employee may want to check that the work will be appropriate for him/her. Thus, this type of labour contract allows both the employer and the employee to check if the work is appropriate for the employee. The review must be made within the term of the contract, which can be no more than six months. If nothing is written in the contract, it is assumed by the Labour Code that each of the parties (the employer and the employee) may terminate the contract with a written notification at any time before the expiration of the agreed term. However, the parties may include a clause in the labour contract, according to which only one of the parties (the employer or the employee) shall have the right to terminate the contract. In this case, the term of the contract shall be considered stipulated in favour of only one party. Therefore, only one of the parties will be entitled to appraise and to make a decision whether to continue with the labour relation or not. This contract may be concluded only once for the same role with the same employee.

[¶BUL-950] Additional labour contract (additional work under labour contract)

The Labour Code permits the employee to work not only on the grounds of a basic labour contract, but also on the grounds of an additional labour contract. The employee is therefore entitled to sign an additional labour contract, which may be signed with the current employer or with another employer. The employee is free to sign a second labour contract with another employer only if this is not prohibited in the main (first) labour contract. Article 112 of the Labour Code prohibits work under additional labour contracts for individuals who work under dangerous or harmful conditions where the risks for the individual's health cannot be removed or decreased. Work under an additional labour contract could also be prohibited on the grounds of a law or act issued by the Council of Ministers. The Labour Code implements the requirement that the working time under the main labour contract together with the working time under the additional labour contract shall not infringe the minimum daily and weekly rest of the employee. In accordance with art.152 of the Labour Code, the minimum daily rest i.e. the rest between two working days shall be no less than 12 hours. The minimum weekly rest i.e. the rest between two working weeks is different depending on the working hours of the employee, but in all cases must be no less than 24 hours.

When the employee is working on the basis of a second labour contract, signed with another employer, the employee has the right to receive full remuneration on the basis of the basic labour contract as well as the right to receive full remuneration on the basis of the second labour contract for the amount as agreed with the second employer. Therefore, the employee will receive full remuneration on the basis of both signed labour contracts.

When the employee is working on the basis of a second labour contract with the same employer, there are two possible approaches:

- the employee performs only the obligations of a missing employee. Therefore, if the missing employee's remuneration is higher than the remuneration received by the employee on the basis of their first labour contract, he/she has the right to receive the higher remuneration of the missing individual;
- the employee performs not only the obligations of a missing person, but also his/her own obligation under the first labour contract. In this case the employee has the right to receive his/her own remuneration, together with additional remuneration, which shall be agreed between the employer and the employee.

[¶BUL-975] Labour relations on grounds of a selection process

Labour relations may arise not only on the grounds of a signed labour contract, but also on the grounds of a selection process. Working positions which are to be occupied on the grounds of a selection process are explicitly appointed as such. These working positions may be envisaged in laws, acts issued by the Council of Ministers, chiefs of other organisations, or act, issued by the employers. The new position will be announced when the law envisages a new position, which shall be occupied on the grounds of a selection process, as well in cases where the existing position is vacant or will be vacant soon, or in cases where the individual who has been occupying the position has been absent for a long period of time. In the latter case, the recruitment shall be for a person who will

substitute the missing person until the missing individual returns to work. If the law envisages that a certain position needs to be occupied on the grounds of a selection process, it must be recruited for in this way. The Labour Code permits a labour contract with a definite term to be signed for the same position for the period, necessary for the announcement, organisation and successful completion of the recruitment process.

The recruitment is normally announced by the employer by means of a publication in a central or local newspaper. If necessary, the recruitment may be announced by other appropriate means. The announcement must include the following information: name of the enterprise (i.e. name of the employer), working place and character of the work, requirements for the vacant position, the means of recruitment, any necessary documentation, the place where these documents must be submitted and the deadline. The term for the submission of the documents must be at least one month. If some of the candidates for the position are working under labour relations with other employers, the candidate shall request no consent by these employers for the purposes of participation in the recruitment. Such candidates have the right to leave for the days of participation in the selection process and, if the recruitment is being carried out in a different city, the candidates have the right to an additional two days' leave for travelling.

A commission, appointed by the employer, permits the admittance of the candidates to the selection process. The members of the commission must be experts in fields relevant to the vacant position. The commission must inform unsuccessful candidates in writing about the grounds for refusal. Within a seven-day term, the unsuccessful candidate may appeal the refusal before the employer, who must resolve the issue and make a final decision within a three-day term. Candidates who are taken forward to the selection process must be informed in writing about the date and hour of this process. The commission carries out the selection process in accordance with the announced manner. The commission is obliged to evaluate the professional background and the abilities of each candidate, necessary for the occupation of the vacant position. The commission issues a protocol for the selection procedure, which contains the final position of each successful candidate. The candidates are informed of the result and the position of each candidate within a three-day term following the carrying out of the selection process.

In accordance with art.96 of the Labour Code, labour relations come into being between the employer and the individual as of the date on which the latter receives a notification by the Commission. This person must commence their working obligations within a two-week term as of the date of receiving the notification. If the individual does not observe this two-week term, the labour relation with him/her shall be considered non-existent, and the labour relation shall be considered formed with the individual who was the second choice from the recruitment process.

[¶BUL-1000] Labour relation on grounds of an election

Positions which shall be occupied on the grounds of an election are determined in laws, acts issued by the Council of Ministers or in statutes. The election shall be carried out for a position which is either vacant or will soon be vacant, as well as when an individual has been absent for a long period of time. The term for which a person is elected shall be no longer than five years. The candidatures for the vacant position may be

appointed by bodies and persons, envisaged under the law, an act issued by the Council of Ministers or a statute. The Labour Code requires the written consent of the nominated individual for participation in the election. The election shall be carried out even if only one individual is nominated for the vacant position.

The election shall be carried out when at least half of the individuals who have the right to vote are participating in the election. The nominated individual, who receives most of the votes, but no less than half of the participating votes, shall be considered the winner. The labour relation shall be considered existing as of the date of the announcement that the person is elected. The elected person is under obligation to commence work within a two-week term from notification. The labour relation shall be considered non-existent if the individual does not observe the above two-week term. However, once constituted the labour relation shall remain in force even after the expiration of the term until the election of the new candidate as a result from a following election. It is possible for the same person to be elected for another mandate and in this case the labour relation with him/her shall continue.

The regional court shall resolve all disputes regarding the carrying-out of the elections in compliance with the provision of the law. Each candidate, as well as the employer, is entitled to file a claim before the court within a two-week term following the completion of the election and the notification of this completion. The court may decide that the election is carried out in accordance with the requirements of the law—in this case the court confirms the labour relation between the employer and the elected candidate. The court may decide that there is a breach of the law—in this case the court revokes the election and a new election must be carried out.

¶BUL-1025] Content of the labour relation

Once established, regardless of whether it is on the grounds of a labour contract, selection process or election, the labour relation has certain content. This content represents the rights and obligations of the parties under the labour relation, i.e. the rights and obligations of the employee and the employer. The main obligations of the employee are to perform the assigned work and to observe the established labour discipline. The main responsibilities of the employer are to guarantee normal (safe and healthy) working conditions and environment for the employee and to pay the agreed salary (remuneration).

The obligations of the employee under the labour relationship include the following:

- the employee is obliged to perform his/her obligations and the assigned work strictly and in good faith;
- the employee has an established working time and is obliged to arrive at work on time and to stay there until the end of the working day;
- the employee must arrive at work in a condition which allows him/her to perform the obligations and fulfil the assigned work. The employee does not have the right to drink alcohol or to use other opiates or narcotics;
- the employee is obliged to use all the working time for the performance of his/her obligations arising from the labour relation;
- the employee shall perform the assigned work in accordance with the required quantity and quality by the employer;

- the employee shall observe the technical rules and requirements related to the relevant work;
- the employee shall observe the rules regarding healthy and safe working conditions;
- the employee shall observe and fulfil the orders of the employer when they are in compliance with the law;
- the employee shall keep the property which is given to him/her in connection with the work and shall further economise the use of raw materials, means, energy, etc., which has been also given to him/her for the purposes of performance of his/her obligations;
- the employee shall be loyal to the employer and shall not disclose the confidential information of the employer and shall maintain the good name of the enterprise;
- the employee shall observe the internal rules of the enterprise and shall not disturb other employees in order to allow them to perform their obligations;
- the employee shall co-ordinate his/her work with the work of other employees and shall render them help and assistance in accordance with the orders and instructions of the employer;
- the employee shall perform all other obligations arising on grounds of the labour relation.

The obligations of the employer under the labour relation include the following:

- the employer is obliged to provide normal working conditions for performance of the employee's obligations under the labour relation;
- the employer is obliged to provide for the work as agreed with the employee;
- the employer is obliged to provide for working place and working conditions in accordance with the character of the work, which will be performed by the employee;
- the employer shall provide for healthy and safe working conditions;
- the employer shall deliver to the employee a document, describing in detail his/her obligations. Such documents shall be delivered to the employee simultaneously with the signing of the labour contract;
- the employer shall ensure the employee is acquainted with the procedures and manner for performing his/her working obligations. The employer shall further make clear any internal rules in addition to the rules of healthy and safe working conditions;
- the employer shall insure the employee against all social risks in accordance with the procedure and terms, established in the Social Security Code.

As mentioned above, one of the main obligations of the employer is to pay to the employee the agreed salary (remuneration).

WORKING TIME

[¶BUL-1050] General

The working week consists of five days with a normal duration of the weekly working time up to 40 hours. The normal duration of the working time in daytime is up to eight

hours. The employer is entitled, when necessary, to prolong the working time on some of the working days. However, he/she may do so only with an explicit written order and is further obliged to compensate the employees by means of working time reduction on other days. A consultation with representatives of the workers syndicates is needed and the employer is obliged to notify in advance the Labour Inspectorate of the extension of the working time. In accordance with the mandatory regulations of the Labour Code, the duration of the extended working time cannot exceed 10 hours, i.e. cannot exceed the normal duration of the working time by more than two hours. In the case of diminished working time, the prolonged working time cannot exceed the established diminished working time by more than one hour. For example, if the diminished working time is fixed at seven hours, then the prolonged working time cannot exceed eight hours. Diminished working time, in accordance with the regulation of art.137 of the Labour Code, is established for the following employees:

- employees working under harmful working conditions or performing work under specific conditions on the grounds of a decision adopted by the Council of Ministers; and
- employees under the legal age of 18.

Furthermore, in accordance with the provision of art.136a, para.2 of the Labour Code, the prolonged working time per week cannot exceed 48 hours in total and in the case of a diminished working time, the prolonged working time per week cannot exceed 40 hours. The employer is obliged to maintain a log and to enter into it the extension and compensation of working time. Extension of working time is allowed for no more than 60 working days per calendar year, and for no more than 20 consecutive working days. The employer is obliged to compensate each extended working day within a four-month term. If the employer does not observe this term, the employee is entitled to determine by himself/herself the time of compensation, provided they inform the employer at least two weeks in advance. If the labour relationship is terminated before this compensation, the prolonged working hours shall be paid as an overtime work.

[¶BUL-1075] Part-time working

The employer and the employee may agree that the employee shall work only for a part of the full-time working time established under the Labour Code. They will therefore agree a part-time working time and shall determine the duration and the distribution of the working time. The employer is entitled, in the case of a decrease of work in the enterprise, to establish a part-time working hours for a period of three months in one calendar year. The duration of the part-time working hours in this case cannot be less than half of the normal duration established under the Labour Code.

[¶BUL-1100] Night labour

The normal duration of the weekly working time at night is up to 35 hours in the case of a five-day working week. The normal duration of night working time is up to seven hours per night. Night labour shall be considered to be work performed between 10 pm and 6 am. For employees under the age of 18, night labour shall be considered to be work performed between 8 pm and 6 am.

The employer is under obligation to provide hot food and drinks for employees to assist the employees in the easier performance of their working obligations during the night. Regardless of the envisaged obligations, “night labour” is prohibited for certain categories of employees. These categories include the following:

- employees under the age of 18. Such employees cannot work between 8 pm and 6 am in accordance with the above written definition for “night labour”;
- pregnant employees (including employees into an advanced in-vitro procedure);
- mothers with children under the age of six, and mothers who take care of disabled children. However, this prohibition shall not apply if the mother has given written consent to override this prohibition;
- employees who are transferred to a more appropriate job because of health reasons. However, this prohibition can be also evaded with the consent of the employee and provided the night labour does not have negative impact on his/her health, which shall be concluded by the health authorities;
- employees who continue education, unless they have expressed their consent.

The employer is obliged to pay additional remuneration to the employee for night labour. This additional remuneration shall be agreed between the employer and the employee. The additional remuneration cannot be lower than that established by the Council of Ministers.

[¶BUL-1125] Work in shifts

When the nature of the work requires this, work may be organised in shifts. A shift is considered mixed when it combines both daytime and night labour. A mixed shift with more than four hours night labour shall be considered a night shift. A mixed shift with less than four hours night labour shall be considered a daytime shift. The distribution of the shifts shall be determined by the internal rules of the enterprise. Work during two consecutive shifts is prohibited. Shifts of employees in education shall be appointed in accordance with the educational organisation.

[¶BUL-1150] Overtime work

Overtime work is regulated in arts 143 et seq. of the Labour Code. In accordance with the definition under the Code, overtime work shall be considered to be work which is performed by the employee in addition (before and/or after) to the established working time on the grounds of instruction/order by the employer or on the grounds of the knowledge of an employer who does not object to this work. Therefore, overtime labour can be described as follows:

- (1) the employee works before or after their working time or at any other time which differs from the established working time;
- (2) the work is performed by the employee on the grounds of a direct instruction/order by the employer or if there was no such instruction/order, the employer knows that the employee is working and has no objection to this.

Pursuant to art.143, para.2 of the Labour Code, overtime work is prohibited. There are of course certain exceptions to the prohibition, which are enumerated in art.144 of the Labour Code. Overtime work is permissible only as an exception in the following cases:

- for the performance of work which is in connection with the defence of the country;
- for the avoidance of and to fight against natural and public disasters and dangers;
- for the performance of urgent steps and works aimed at reconstruction of the normal water supply, energy supply, heating, drainage, transport and telecommunication coverage and network, as well as for rendering medical aid;
- for the performance of urgent reconstruction works in working places, as well as for the performance of reconstruction works regarding machinery and other equipment;
- for the performance of seasonal work;
- for the completion of work which has already commenced, which cannot be performed in normal working time.

The duration of overtime work for one employee cannot exceed 150 hours in total during one calendar year. The duration of overtime work cannot exceed:

- 30 hours daytime or 20 hours night labour per 1 calendar month;
- 6 hours daytime or 4 hours night labour per 1 calendar week;
- 3 hours daytime or 2 hours night labour per 2 consecutive working days.

The above limitations do not apply for the performance of work which is in connection with the defence of the country or urgent works aimed at reconstructing the normal water supply, energy supply, heating, drainage, transport and telecommunication coverage and network, as well as for rendering medical aid.

Pursuant to the regulation of art.147 of the Labour Code, overtime work is prohibited for the following individuals:

- employees under the age of 18;
- pregnant employees (including employees into an advanced in-vitro procedure);
- mothers with children under the age of six, as well as mothers who take care of disabled children. However, this prohibition shall not apply if the mother has given written consent to override this prohibition;
- employees who are transferred to a more appropriate job because of health reasons. However, this prohibition can be also evaded with the consent of the employee and provided the night labour does not have negative impact on his/her health, which shall be concluded by the health authorities;
- employees who are in continuing education, unless they have expressed their consent.

The employee has the right to refuse overtime work if the requirements of the Labour Code or other legislative act have not been observed. The employer is obliged to keep a log of the overtime work of employees. Overtime work shall be reported before the Labour Inspectorate every six months.

Overtime work shall be paid by the employer at an increased amount of remuneration. The amount of the increased remuneration shall be agreed between the employer and the employee and shall be increased by no less than 50 per cent for overtime work during working days, 75 per cent for work on holidays and 100 per cent for work on public holidays.

LEAVE

[¶BUL-1175] Paid annual leave

Every employee has the right to a paid annual leave. Employees have the right to use his/her paid leave once he/she has acquired eight months of service. These eight months of service should be acquired only when the employee is commencing their first job; it is not necessary for the employee to acquire eight months of service again when changing their job. The length of the annual paid leave should be no less than 20 working days. The employees have the right to additional paid annual leave when working in harmful or under specific conditions, where additional paid leave shall be no less than five working days. The employer and the employee are entitled to agree by mutual consent a longer annual paid leave. The employer must allow annual paid leave to be used by the employee at once or in parts and a schedule shall be created in the beginning of the year for the leave of all employees. If the employer does not abide by the schedule, the employee may take his/her leave at any time giving a further two-week notice. The Labour Code stipulates a 2-year prescription term for the use of this right. For example an employee can use his/her paid leave for 2014 by the end of 2016.

[¶BUL-1200] Unpaid leave

The employer is entitled to give permission to the employee to take unpaid leave, regardless of whether the employee has used his/her paid annual leave and regardless of their length of service. The employer will decide whether to permit unpaid annual leave on the grounds of a request filed by the employee. Unpaid leave, which cannot exceed 30 working days for a calendar year, is considered as a length of service. The days of the unpaid leave exceeding 30 working days shall be considered as a length of service only if this is envisaged under the Labour Code or under another law or act issued by the Council of Ministers. The employer is however obliged to grant a one-year unpaid leave to any employee working for an institution of the EU, UN or OSCE.

[¶BUL-1225] Labour discipline

Every employer is entitled to issue internal rules which specify the exact rights and obligations of the employees in accordance with the content of the labour relationship. These internal rules also regulate the organisation of the labour process in the enterprise taking into account the specifics of the relevant work. Pursuant to art.186 of the Labour Code, the non-performance of the labour obligations by the employee constitutes a breach of the labour discipline. The employer is entitled to impose discipline penalties regardless of the civil, administrative or penal responsibility if such responsibilities are applicable in the relevant case. These breaches of the labour relations are enumerated in art.187 of the Labour Code as follows:

- the employee does not observe the established working time;
- the employee comes to work in a condition which does not allow him/her to perform the labour obligations and tasks assigned by the employer;
- the employee does not perform his/her labour obligations and the tasks assigned by the employer;

- the employee does not observe the technical requirements regarding the work;
- the employee is producing work of a poor quality;
- the employee does not observe the healthy and safe working conditions;
- the employee does not fulfill the lawful instructions and orders of the employer;
- the employee abuses the trust and confidence of the employer or distributes confidential information;
- the employee spoils and/or does not economise the raw materials, means, energy, etc. of the employer;
- the employee does not observe other labour obligations envisaged under other legislative acts or agreed at the time of constituting the labour relation.

The discipline penalties are envisaged in art.188 of the Labour Code and include the following:

- remark (conduct-remark);
- warning for dismissal;
- dismissal.

When determining the type of discipline penalty, the employer shall take into account the nature of the breach of the labour discipline performed by the employee, the circumstances under which the breach is performed, as well as the behaviour of the employee. It is worth noting here that only one discipline penalty can be imposed for one and the same breach of discipline. The most serious discipline penalty (dismissal) can be imposed only for breaches of labour discipline, which are explicitly enumerated.

Discipline penalties are imposed by the employer or by another person, appointed and authorised by the employer. The employer is obliged to listen to the explanation of the employee regarding the breach of the labour discipline and the reasons for this breach. This is a mandatory requirement, envisaged under the Labour Code. If the employer does not allow the employee to explain the situation or does not allow him to submit this explanation in written form, the imposed discipline penalty shall be considered null and void. The court shall therefore be obliged to revoke the imposed discipline penalty regardless of whether the employee has performed a guilty breach of the labour discipline. The discipline penalties must be imposed within two months of the date on which the employer becomes aware of the performed breach but no later than one year following the date on which the breach was performed by the employee.

TERMINATION OF EMPLOYMENT

[¶BUL-1240] General

The labour contract could be terminated only on the grounds explicitly specified in the Labour Code, namely:

- without either party being obligated to give notice to the other party;
- by the employee with a written notice to the employer;
- by the employee without notice;
- by the employer with a written notice to the employee;
- by the employer without notice;

- upon employer's initiative without cause.

The labour contract may be terminated without either party being obligated to give notice to the other party:

- by mutual consent of the parties, expressed in writing.
- where the dismissal of the employee is pronounced unlawful, or where the employee is reinstated to his previous work thereof by the court, but fails to report to work within the statutory term;
- upon expiry of the agreed term;
- by completion of the work as specified;
- upon return to work of the replaced employee;
- where the position has been designated for occupation by a pregnant woman or an occupational rehabilitee, and an applicant who is entitled to occupy the position appears;
- upon the beginning of work of an employee who has been elected or who has won a competitive examination;
- if the employee is unable to execute the work assigned thereto by health reason which has led to permanently reduced working capacity, or because of health contraindications on the basis of a conclusion of the medical expert board for working capacity certification;
- upon the death of the person wherewith the employee has concluded the labour contract *intuitu personae*;
- upon the death of the employee;
- owing to the designation of the position for occupation by a civil servant.

The employee may terminate the labour contract by giving the employer a written notice. The term of the termination notice could be agreed in the range between 30 days and 3 months.

The employee may terminate the labour contract in writing without notice, where:

- the employee is unable to execute the work assigned thereto by health reason and the employer fails to provide the employee with another suitable position conforming to the prescription of the health authorities;
- the employer delays the payment of the labour remuneration or of a compensation under the employment or social security legislation;
- the employer changes the place or nature of work or the agreed labour remuneration, except in the cases where the employer has the right to make such changes, as well as where the employer fails to fulfil other obligations agreed by the labour contract;
- as a result of a change in the employer, the working conditions under the new employer deteriorate substantially;
- the employee transfers to a salaried elective office or begins research work on the basis of a competitive examination;
- the employee pursues the studies thereof as a full-time student at an educational establishment, or enrolls in a full-time doctoral degree course;
- the employee works on a fixed-term labour contract and transfers to another work for an indefinite term;

- the employee has a contract with a temporary-work agency and signs a contract with an employer that is not temporary;
- the employee is reinstated to work according to the established procedure by reason of pronouncement of the dismissal as unlawful, in order to take the work whereto the said employee has been reinstated;
- the employee enters civil service;
- the employer ceases their trade activity;
- the employer has made the employee use unpaid leave without the consent of the latter.

The employer may terminate the labour contract by giving the employee a written notice observing the agreed notice term in the following cases:

- upon closing of the undertaking of the employer;
- upon closing of part of the undertaking or in case of staff reduction;
- upon reduction in the volume of work;
- upon cease of work for more than 15 working days;
- where the employee lacks the capacity for efficient execution of the work;
- where the employee does not possess the educational level or professional qualification required for the work executed;
- upon refusal of the employee to relocate together with the undertaking or the division where the employee works;
- where the position occupied by the employee must be vacated for reinstatement of an unlawfully dismissed employee, who previously occupied the same position;
- where professors, associate professors or doctors in science have reached the age of 65;
- in case the employment relationship has arisen after the appointed employee has acquired and exercised his right to pension;
- upon change of the requirements for execution of the position, if the employee does not satisfy the said requirements;
- when performance of the labour contract is objectively impossible;
- when the employee concludes a management contract with the undertaking.

The employer may terminate the labour contract without notice where:

- the employee has been detained for execution of a sentence;
- the employee has been disqualified by a sentence or according to an administrative procedure, from practising a profession or from occupying the position to which the employee has been appointed;
- the employee is divested of the academic rank or academic degree, if the labour contract has been concluded considering the rank or degree awarded;
- the employee has been stricken off the registers of the professional organisations of the medical doctors, the dentists, the masters of pharmacy or the health care specialists;
- the employee refuses to accept a suitable work offered thereto upon occupational rehabilitation;

- the employee is dismissed by reason of breach of discipline;
- the employee fails to fulfil the obligation to notify the employer in case of incompatibility with the assigned work;
- incompatibility exists due to a relation between an employee in the state administration and his/her superior;
- by the means of a statement that has come into effect a conflict of interests under the Law on Prevention and Disclosure of Conflict of interests has been ascertained.

The employer may offer the employee a termination of the labour contract in consideration of compensation. If the employee fails to react in writing to any such offer within seven days, rejection of the offer shall be presumed. If the employee accepts the offer, the employer shall owe the said employee compensation to the amount of no less than 4 times the gross monthly labour remuneration as last received, unless the parties have agreed on a larger amount of the compensation.

In most of the options for termination of the labour contract by the employer listed above, certain categories of employees enjoy special protection as the employer is obliged to obtain a prior permission from the Labour Inspectorate for each particular case in order to dismiss:

- a female employee who is the mother of a child under the age of three years;
- an employee transferred to a more appropriate job for reasons of health;
- an employee suffering from a disease, determined in an ordinance of the Minister of Health (such as ischemic heart disease; active form of tuberculosis; cancer; mental diseases; diabetes; professional disease);
- an employee who has commenced the use of a leave permitted thereto;
- an employee elected as a representative of the employees within the company for the time he/she is occupying such position;
- an employee elected as a representative of the employees on workplace health and safety;
- an employee, member of a special body for negotiations of a European work council or of a representative body in a European commercial company or cooperation for the time he/she is performing such functions.

Special protection against some grounds for dismissal upon employer's initiative is also guaranteed for pregnant women, women in maternity leave, women in advance stage of in-vitro treatment, members of syndicate bodies.

INDUSTRIAL AND INTELLECTUAL PROPERTY

¶[BUL-1250] Introduction

There are a number of laws that regulate industrial and intellectual property rights and the relations connected with them. The Copyright and Neighbouring Rights Act ("the Copyright Act") is one of these acts. Pursuant to art.1, the Copyright Act regulates the relations connected with the creation and distribution of works (productions) of literature, art and science. In accordance with art.2 of the said law, as a general rule the copyright over the above works (productions) automatically arises in favour of the author with the creation of the relevant work.

[¶BUL-1275] Subjects to copyright

Subject to copyright is every work (production) of literature, art and science, which is created as a result of constructive activity and is expressed in any manner and in any objective form, such as:

- literary works, including works of scientific and technical literature, as well as publicity works and computer programs;
- musical works;
- performing art works: dramatic works, musical-dramatic works, pantomime, choreographic works, as well as other works;
- movies, as well as other audio-video works;
- works of picture art, application art, design works and works of fine art;
- completed works of architecture and implemented development plans;
- photographic works and arts;
- approved architectural plans, approved projects on development planning, maps, schemes, plans and others, which refer to architecture, territorial planning, geography, topography, museum works or other fields of science and technology;
- graphical formatting of a printed publication; and
- cadastral maps and state topographic maps.

As objects of copyright shall be also considered the following: translations and adaptations of existing productions and folk works, adaptations of musical productions and folk works, periodical editions (publications), encyclopedias, collections, databases, bibliographies, and other similar items which include two or more productions or materials.

The Copyright Act explicitly excludes certain categories of production, which cannot be subject to copyright. In accordance with art.4 of the Act, the following cannot be subject to copyright: legislative acts, individual administrative acts, acts issued by the governmental and other state bodies, ideas and conceptions, news, facts, information, data, etc.

[¶BUL-1300] Authors — persons to whom the copyright belongs

The author is the individual who has created the relevant work (production) on the basis of his/her creative activity. The Copyright Act introduces the assumption that the author of the relevant work (production) is the individual whose name or identifiable sign is placed on the original of the production, its replicas or copies thereof and/or the packaging in an appropriate manner. The manner in which the name or the sign is placed depends on the nature of the production—a book, a computer program, a movie, etc. The production may be further distributed or made known to the public under pseudonym or anonymously. In this case, until the author decides to reveal his/her name, the person who has distributed the production, shall exercise the copyright, i.e. shall exercise the rights and powers included in the copyright.

In the case of a work having more than one author, the copyright will belong to all the authors regardless of whether the relevant production is divisible and the separate parts may be used independently, or if the production cannot be divided. The peculiarity

in this case is that for the use or adaptation of the production, the consent of all the authors is needed. If the authors cannot reach an agreement, the court shall resolve the dispute. Remuneration received in consideration of the use of the production shall be distributed among the authors. Distribution shall be made in shares, which shall be determined on the grounds of the authors' consent. If there is a lack of consent, i.e. if the authors do not determine this issue, the Act assumes that the shares of the authors shall be equal. The court shall decide on the distribution of the shares if there is a dispute between the authors. The court shall issue a decision on the grounds of the contribution of each author to the creation of the production.

The owners of the copyright depend on the type of the production (work):

<i>Type of work</i>	<i>Owner of copyright</i>
Translation or adaptation of a work	The individual who has made the translation or adaptation
Periodical editions (publications), encyclopedias	The individual or legal entity, who/which provides for the creation and the publishing of the work (production)
Collections, databases, bibliographies and other similar works	The person who has performed the collection or the arrangement of the included productions or materials, unless a contract stipulates something different
Works of fine art and works of architecture	The person who has created the work/the person who has created the architectural project where the work is created as a result of the project implementation
Portraits (drawings and photos)	The author of the work
Computer programs and databases	The employer

Article 42, para.1 of the Copyright Act stipulates the so called commission agreement, on the basis of which a person or entity commissions the author to create a copyright work. In this case the parties could agree that the copyright shall belong to the commissioner.

[¶BUL-1325] Contents of the copyright

Copyright comprises certain rights and powers of the author regarding the work (production). These rights and powers may be divided into two main categories: economic rights and moral rights. The most essential difference between these two categories of rights refers to the ability to transfer the rights to third persons and the requirements regarding these transfers.

Moral rights, included in the copyright, are the following:

- the author has the right to decide whether to make the work (production) known to the public and to choose the manner for this;
- the author has the right to seek recognition of his/her copyright over the work (production);

- the author has the right to decide whether the work (production) be made known to the public under pseudonym or anonymously;
- the author has the right to demand his/her name, pseudonym or any other sign that identifies him/her as an author to be designated in appropriate manner upon each use of the work (production);
- the author has the right to demand preservation of the integrity of the work (production) and to oppose any alterations and changes regarding the work, as well as the right to oppose to any action which may infringe his/her legal interest;
- the author has the right to alter (change) the work (production) provided that this does not infringe the rights of third persons;
- the author has the right of access to the original of the work (production), provided that the production is in the possession of a third party and this access is needed for the exercise of an author's right, included in the copyright;
- the author has the right to stop the use of the work (production) because of changes in his/her persuasions.

The Copyright Act explicitly envisages that the above-described moral rights can be alienated only with the explicit agreement of the parties, expressed in a written form. However, it should be noted that, as stated above, the right of the author to seek recognition of his/her authorship over the production and the right to decide whether to made the production known to the public under pseudonym or anonymously cannot be alienated. If the author and a third party agree on the alienation of these rights, this agreement will be null and void on the grounds of art.26 of the Obligations and Contracts Act. This article states that contracts which contradict the imperative provisions of the law shall be considered null and void. In this specific case, the agreement will contradict the prohibition of the alienation of these rights, envisaged under the Copyright Act.

The general rule, envisaged under the Copyright Act in respect to the economic rights, is that the author has the exclusive right to use the work (production), created by him/her, and to permit the use of the work (production) by third parties. The economic rights, included in the right of use, in accordance with what is envisaged under the preceding sentence, are the following:

- the author has the right to reproduce the work (production);
- the author has the right to distribute the original or copies of the work (production) among an unlimited number of people;
- the author has the right to represent or perform the production before the public;
- the author has the right to a wireless broadcasting of the work (production);
- the author has the right to broadcast the work (production) via cable;
- the author has the right to translate the work (production) into other languages;
- the author has the right to exhibit the work (production) before the public, where the production represents a work of pictorial art, photographic art or any other similar art;
- the author has the right to adapt (remake) and synchronize the work (production);
- the author has the right to implement the project, if it is an architectural project;
- the author has the right to offer access to unlimited number of people to the work (production) or to part of the work (production);

- the author has the right to import and export copies of the work (production) in quantities aimed for the performance of commercial activities, i.e. for commercial purposes.

[¶BUL-1350] Free use of the work (production)

The free use of the work (production) is envisaged as an opportunity under the Copyright Act. In accordance with art.23 of the Act, the free use of the works is possible only in those cases envisaged under the Act and provided that this free use does not infringe the copyright of the author and his/her legal interests. There are two types of free use: with and without obligation for the payment of remuneration by the person who is using the work.

Without consent from the author and without obligation for payment of remuneration, the free use of the relevant work (production) is permitted as follows (note that this rule does not apply in respect to computer programs and works of architecture):

- temporary reproduction of works if it is transitional and incidental by nature, is of no independent economic significance, constitutes an integral and important part of the technical process, and is conducted only for the purpose of allowing transfer via network through an intermediary or other allowed use of work;
- the use of quotations from already announced works for critical evaluations or reviews by providing due indication of the source and name of the author, if not impossible; quotations are made in the usual way and their volume is justified by their purpose;
- the use of parts of published works or of a moderate number of works in other works in an amount that is required for the purposes of preparing an analysis, commentary, or other scientific research; such use is allowed only for scientific or educational purposes with reference to the source and name of the author if this is not impossible;
- the use as current information in the press and other media of speeches, reports, sermons, and others, or parts of them delivered at public gatherings, as well as pleadings before the court, if reference is made to the source and name of the author if not impossible;
- use by the mass media of already announced articles on current economic, political, and religious issues in case such reproduction is not expressly forbidden if reference is made to the source and name of the author if not impossible;
- reproduction by photographic, cinematographic or similar manner, as well as audio or video recordings of works related to a current event, for the use of such works by the media in a limited amount for purposes of providing news coverage if reference is made to the source and name of the author if not impossible;
- use of works that are on permanent display in streets, squares, and other public places without mechanical contact copying, as well as their broadcast by wireless technology, cable or other technical means if such broadcast is carried out for informational or other non-commercial purpose;
- the public presentation or performance of published works in educational institutions if this does not involve the collection of proceeds and if the participants in the preparatory work and the actual public performance do not receive payment;

- reproduction of already published works by generally accessible libraries, educational institutions, museums, and public archives for educational purposes or to ensure the preservation of the work where such action is not for profit;
- reproduction of works already made available to the public through Braille script or similar method if this is not for profit;
- providing access to natural persons to works that belong to collections of generally accessible libraries, educational institutions, museums, and public archives if this is done for scientific purposes and not for profit;
- temporary copying of works by radio and television organisations, to which the author has granted the right to use her/his work and broadcast it by their own technical means and for the purposes of their own broadcasts within the scope of the permission granted; copies that are of important documentary value may be kept in official archives;
- use of works for the purposes of national security, in judicial or administrative proceedings, and in parliamentary practice;
- use of works in religious ceremonies or official ceremonies organized by public authorities;
- use of a building which is an architectural work or a plan of such building for the purpose of its reconstruction, performed after it has been concerted with a collective management organization.

Without consent of the author but with obligation for payment of fair remuneration, the free use of the relevant work (production) is permitted as follows (note that this rule does not apply in respect to computer programs and works of architecture):

- reproduction with a non-commercial aim of already published productions on paper or similar means;
- reproduction of works (productions) by a natural person, regardless of the means, if the reproductions are for personal use only.

¶BUL-1360] Copyright licensing

A specific characteristic of the Copyright Act is that it provides for a maximum term of the copyright licenses of 10 years (except for the works of architecture where no maximum term is provided). If the parties have agreed on a longer license term, it is regarded to be 10 years. If no term has been agreed in the agreement, the license term is regarded to be 3 years.

MARKS

¶BUL-1375] General

The Marks and Geographical Indications Act (“Marks Act”) regulates the terms and procedure for the registration of marks and geographical indications, the rights which arise out of the registration as well as the protection of the marks and the geographical indications. The competent state body regarding marks and geographical indications is the Patent Office of the Republic of Bulgaria (<http://www.bpo.bg>). The Patent Office is

entitled to collect fees for filing applications for registration, for priority, for issuance of certificates, for renewal of registration, for correction of mistakes, etc.

[¶BUL-1400] Marks

Article 9 of the Marks Act contains the definition of a mark. Pursuant to this article, the mark is a sign which distinguishes the goods and services of one person from the goods and services of another person and this sign could be represented graphically. These signs can be words, including the names of persons, letters, digits, drawings, figures, the form of the goods or its package, combination of colours, sounds, or any other combination of these signs. The marks are divided into several types: trade mark, service marks, collective marks and certificate marks. The acquisition of the right over a mark may be performed by filing an application for the registration of the mark before the Patent Office. The right over the mark shall be considered to be acquired as of the date that the application is filed. The right over a mark is an exclusive right and belongs to the person who has first filed the application for registration.

[¶BUL-1425] Grounds for refusal for the registration of the mark

In accordance with art.11 of the Marks Act, the following marks and signs cannot be registered and if filed for registration, the Patent Office will be obliged to reject the application and refuse the registration (considered as “absolute grounds for refusal of registration”):

- a sign which is not a mark because it does not conform to the requirements of art.9 (the definition of a mark);
- a mark which is devoid of any distinctive character;
- a mark which consists exclusively of signs or indications which have become customary in the current language or in the established commercial practice of the Republic of Bulgaria in relation to the goods or services applied for;
- a mark which consists exclusively of signs or indications designating the kind, quality, quantity, intended purpose, value, geographical origin, time or manner of production of the goods, the manner of rendering the services or other characteristics of the goods or services;
- a sign, which consists exclusively of:
 - the shape which results from the nature of the goods themselves;
 - the shape of the goods which is necessary to obtain technical results;
 - the shape which gives substantial value to the goods;
- a mark which is contrary to public order or to principles of morality;
- a mark which may deceive customers regarding the nature, quality or geographical origin of the goods or services;
- a mark which include badges, emblems or escutcheons, other than those covered by art.6 of the Paris Convention and which are of particular public interest, unless the consent of the competent authority to their registration has been given;
- a mark which consists of or includes national emblems, flags, or other symbols, as well as their imitations of countries (States) which are parties to the Paris

Convention or emblems, flags, or other symbols, abbreviations or full names of official governmental organisations announced under art.6 of the convention;

- a mark which consists of or includes names or images of cultural value or a part of cultural value, as determined under the Cultural Heritage Act;
- a mark which consists exclusively of a geographical indication applied for or registered for the territory of Republic of Bulgaria, or its derivatives;
- a mark, which contains a claimed or a registered geographical indication operating within the territory of the Republic of Bulgaria or its derivatives, where the applicant is not a registered user of the geographical indication;
- a mark, which consists of or includes official signs or stamps for control and quality, when they are aimed at indicating similar goods.

Furthermore, the following additional grounds for the refusal of the mark's registration upon opposition by the proprietor of an earlier trade mark shall be considered (defined as "relative grounds for refusal"):

- the mark applied for is identical with an "earlier mark", when the goods or the services of the requested mark and the goods or services of the "earlier mark" are identical. (An "earlier mark" can be 1) a mark with an earlier date of filing of the application or with an earlier priority registered under the Marks Act; 2) a claimed mark an earlier date of filing or with an earlier priority if it is registered under the Marks Act; 3) a mark registered under the Madrid Agreement and Protocol, having an earlier date of registration or an earlier priority and with a recognized effect on the territory of the Republic of Bulgaria; 4) a mark registered under the Madrid Agreement and Protocol, having an earlier date of registration or with an earlier priority, if its effect is recognized on the territory of the Republic of Bulgaria; 5) a Community trade mark with an earlier date of filing of the application or with an earlier priority or with an earlier seniority on the territory of the Republic of Bulgaria recognized under Regulation (EC) 207/2009; 6) a Community trade mark applied for with an earlier date of filing or with an earlier priority, or with an earlier seniority on the territory of the Republic of Bulgaria recognized under Regulation (EC) 207/2009 if registered under this Regulation; 7) a trade mark which is well known on the territory of the Republic of Bulgaria to the date of filing of the application for a trade mark, respectively to the date of priority);
- because of its identity with or similarity to the earlier trade mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public, where the likelihood of confusion includes the likelihood of association with the earlier trade mark;
- the mark applied for is identical with or similar to an earlier mark and is intended for goods or services that are not identical with or similar to those of the earlier mark, where that earlier mark has reputation within the territory of the Republic of Bulgaria and where the use without due cause of the mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier mark.

[¶BUL-1450] Contents of the right over a mark

The right over a mark includes the powers and rights of the owner described below.

Right of use

It is worth noting that when the owner of the mark has not begun “genuine use” of the mark on the territory of the Republic of Bulgaria for the goods or services that it has been registered for within a period of five years after the date of registration, or when the genuine use of the mark has ceased for a period of five years, the registration of the mark could be revoked unless there is a valid reason for not using the mark. “Genuine use” is considered to be the following actions:

- affixing of the mark to the goods or to their packaging;
- offering for sale of the goods under that sign or putting them on the market;
- stocking of goods under that sign for the purpose of sale;
- offering or supplying services under that sign;
- importing and exporting the goods under that sign;
- using the sign on business papers and in advertising;
- use of the mark by its owner in a form, which does not differ essentially from the registered form of the mark;
- affixing of the mark to goods or packaging, regardless of the fact that the goods are prepared only for export.

The use of the mark, pursuant to the above, by third person/s on grounds of the consent of the owner, shall be considered as a use by the owner of the mark. If the mark is owned by several persons, each one is entitled to use the mark without the consent of the others being necessary, unless the owners of the mark have agreed otherwise in a written form. When using the mark, the owner is entitled to indicate the registration of the mark and therefore the ownership over the mark by placing near the mark the sign ®.

The registration of the mark is valid for a period of 10 years following the date of filing the application for registration. The owner is entitled to make a renewal of the registration for an unlimited number of new ten-year periods of time. The registration may be renewed on the grounds of a request by the owner, filed before the Patent Office. The request shall be filed at the tenth year of the relevant period or within six months after the expiration of the ten-year period, but in this case an additional fee has to be paid. If the owner wants to make a renewal of the registration of the mark for only some of the goods and services, this must also be indicated in the request. The renewal is in force as of the date following the date of expiration of the relevant ten-year period.

Right of disposal

The owner of the mark is entitled to transfer it to third person/s for all or part of those goods or services for which it is registered. This transfer may be performed without a transfer of the enterprise being needed from the merchant. If the mark is owned by several persons, the mark shall be transferred with the written consent of all the owners, unless they have agreed otherwise in advance. The transfer shall be entered into the Register at the Patent Office on the grounds of a request filed by one of the parties. The parties shall

also enclose a document which evidences the change of the ownership over the mark. The Patent Office then issues a new certificate in favour of the new owner of the mark.

The owner of the mark may further allow third persons to use the mark, without transferring the ownership over the mark. This may be performed on the grounds of a written license agreement concluded between the parties. With this contract the owner of the mark (licensor) renders to the licensee the right to use the mark for all or part of the goods or services for which it is registered, for a part or for the whole territory of the Republic of Bulgaria. Normally, the owner renders this right against remuneration which shall be paid by the licensee. If the mark is owned by a number of people, all of them must agree with the signing of the license agreement, unless they have agreed otherwise in advance. The granted license may be exclusive or non-exclusive—this must be stipulated in the license agreement. Unless otherwise stated, the license is taken to be non-exclusive. In the case of a granted exclusive license the owner of the mark (the licensor) does not have the right to sign license agreements with other persons. Furthermore, when the granted license is an exclusive one, the licensor has the right to use the mark only as it is explicitly envisaged under the license agreement. In accordance with the regulations of the Marks Act, the license agreement is subject to entry with the Register of the Patent Office. The licensee is obliged to file a request for this entry and to attach the necessary documentation. The Patent Office then issues a certificate in favour of the licensee. The license agreement shall be considered in force in respect of third parties only after its entry into the Register.

¶BUL-1475] Right to prohibit third persons to use a sign in the course of trade

Use in the course of trade means the following: affixing of the mark to the goods or to their packaging; offering the goods, putting them on the market or stocking them for these purposes under that sign; offering or supplying services under that sign; importing and exporting the goods under that sign; using the sign on business papers and in advertising. This applies when:

- the sign is identical with the registered mark and the goods and services are also identical;
- because of its identity with or similarity to the mark and the identity or similarity of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public, where the likelihood of confusion includes the likelihood of association with the earlier trade mark;
- the sign is identical or similar to the mark and is used for goods and services, which are not identical or similar to those for which the mark is registered, but the mark is well known on the territory of the Republic of Bulgaria and the use of the sign will lead to unfair advantage only on grounds of the fact that the mark is well known and because of its distinctive character.

Note that the owner of the mark cannot prohibit a third person's use of it in the course of trade if the use does not contradict fair commercial practice, the following data and indications: name and address; instructions, referring to the type, quantity, quality, value, geographical origin, time of manufacture of the goods or rendering the services or other characteristics of the goods or services; the mark, when it is necessary to indicate what the goods or services are actually aimed at.

[¶BUL-1500] Revocation of the mark's registration

In accordance with art.25 of the Marks Act, the registration of the mark may be revoked on the grounds of a request by any person, when:

- the mark has not been used for a period of five years, as described above;
- in consequence of acts or inactivity of the proprietor, the trade mark has become the common name in the trade for a product or service in respect of which it is registered;
- the use made of the mark by its proprietor or with his/her consent in respect of the goods or services for which it is registered, the trade mark is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

When the request for revocation concerns only a part of the goods or services, for which the mark has been registered, the revocation shall be made only for these goods or services.

Geographical Indications

The Marks Act provides for two types of geographical indications: designations of origin and geographical indications. Designation of origin shall mean the name of a country, a region or a specific location within that country, serving to designate goods that originate therefrom and whose quality or characteristics are due essentially or exclusively to the geographical environment, including natural and human factors. Geographical indication is the name of a country, a region or a specific location within that country, serving to designate goods that originate from it and whose quality, reputation or another characteristic is attributable to that place of origin. Traditional names, which meet the requirements for designations of origin or geographical indications, are likewise deemed geographical indications.

A geographical indication is granted legal protection through its registration with the Patent Office. The legal protection involves prohibition for:

- any commercial use of the geographical indication for goods similar to those for which the said indication is registered, in so far as the renown of the registered indication is exploited;
- improper use or imitation of the geographical indication, even where the genuine origin of the goods is specified, or use of the indication in translation or in combination with expressions such as "sort", "kind", "type", "imitation", and the like;
- use of any other false or misleading indication of the source, origin, nature or essential properties of the goods designated on their packaging, in advertising material or documents related to the goods, where such indication is likely to mislead consumers as to the genuine origin of the goods;
- any other action that may mislead consumers as to the true origin of the goods.

In addition, registered geographical indications may not be turned into generic names as long as they enjoy protection under the Marks Act.

Any person who carries out production activity in the specified geographical locality, provided that the goods produced by that person conform to the established properties or

specifications, is entitled to apply for registration as a user of an already registered geographical indication.

Domain Names

The successful registration of the domain names in the top level domain (TLD) with extension “bg”, in many cases, is closely connected with the trade marks. The naming authority for the TLDs with extension “bg” is a commercial company—Register.bg Ltd. Detailed information about the company, the registration and payment procedure can be found at the following link: <http://www.register.bg>.

Domain names with extension "bg" could be registered by a wide range of applicants, including:

- persons (individuals or legal entities) having court or commercial registration in Bulgaria or other member of the EU;
- persons (individuals or legal entities) established by a Bulgarian government authority;
- entities, established by virtue of an agreement between Bulgaria and other countries;
- legal entities and organisations registered abroad that have branches or representative offices in Bulgaria;
- natural persons who are citizens of the Republic of Bulgaria, persons who have a permanent residence permission or citizens of an EU member state;
- legal entities registered abroad that have authorised a proxy (if the proxy falls into the above categories).

There are two types of domain names in the top level zone .bg: unprotected and protected. A protected domain name is one for which documents have been presented during the registration by the registrant, certifying grounds to use it or the domain name has been registered and continuously supported for more than five years. The applicant is entitled to register a protected domain name with extension “bg”, provided that one of the following essential requirements is met:

- the requested domain name is the name of the registrant;
- the requested domain name is the firm (i.e. the name) of the legal entity pursuant to its registration;
- the requested domain name is a registered trade mark or a geographical indication of the registrant or any such in process of registration in the Patent Office of the Republic of Bulgaria. In the latter case it is necessary to sign a conditional agreement for registration of the domain name. Any such trade mark or geographical indication shall be valid on the territory of the Republic of Bulgaria. The name of the trade mark or the geographic designation cannot be abbreviated;
- the requested domain name is a registered name of a publication (for example with an ISSN or ISBN);
- the requested domain name is a name of a programme or a project of the state, regional, or municipal administrations and institutions of an EU member state;
- the requested domain name is acquired by the registrant according to licenses valid in the territory of Republic of Bulgaria;

- the requested domain name is the name of a consortium or non-personified civil association;
- the requested domain name is a name of a media programme or a show;
- the requested domain name is a name of a cultural, sport, scientific or other event;
- the requested domain name is a name of a coalition, initiative committee or other name, used by a candidate for a campaign in parliamentary, presidential or local elections;
- the requested domain name is a name whose use is permitted by a franchising contract;
- the requested domain name is a name of an artistic group formed and registered according to art.83 of the Copyright Act;
- the requested domain name is a name of a categorized tourist site;
- the requested domain name is a name of a construction site;
- the requested domain name is a name of a vessel.

In the case that one of the above requirements is met, the applicant is also required to submit a number of documents, including the following:

- an application form for registration of the domain name (found on the following website: https://www.register.bg/user/blanks/eng/ApplicationForm_request.html);
- identification documents;
- some documents evidencing rights over the name:
 - a court or commercial decision or certificate for registration of a company;
 - a certificate (issued by the Bulgarian Patent Office for registration of a trade mark);
 - copy of the relevant license, contract, certificate, statute, etc.

In some cases the documents need to be certified by a public Notary.

The fees, which need to be paid for initial registration and maintenance of the domain name is €30 (net of VAT) for annual support fee. An initial registration fee is not needed.

It is worth noting here that the registration procedure and the rules for registration of a domain name are adopted by Register.bg Ltd, which is a commercial company. There is still no Bulgarian legislative act that regulates the domain names concerning their nature, right of use, reservation, maintenance, etc. Therefore, in practice, certain disputes may arise about the persons who are authorised to register a domain name, especially in the case where several persons have rights over one and the same name. Taking into account that the internet, including the domain name, is becoming a very important feature of business, it is recommended that legislative regulation be implemented.

There are some other Acts in the field of the industrial and intellectual property, such as the Industrial Design Act, the Topology of the Integral Schemes Act, the Patent and Registration of Utility Models Act, etc. The Topology of the Integral Schemes will not be subject to examination, because of the wide scope of the update. We shall examine in brief the regulations under the Patent and Registration of Utility Models Act. The Patent and Registration of Utility Models Act (hereunder referred to as the “Patent Act”) is

adopted by the parliament and promulgated in *State Gazette*, issue 27, April 2, 1993. Since its promulgation, the Patent Act has numerous amendments. The last amendment is dated May 18, 2012. The Patent Act regulates the relations, connected with the creation, protection and use of the patentable inventions and the utility models. This is envisaged under the regulation of art.1 of the Patent Act.

Industrial Designs

Industrial design is the appearance of the whole or a part of a product resulting from the features of, in particular, the shape, lines, pattern, ornamentation, colours or a combination of them. The registration procedure is carried out before the Patent Office of the Republic of Bulgaria. Novelty and originality of the design are not subject to examination by the Office. After its registration the industrial design is protected for a period of ten years as of the date of the application. The registration can be extended with no more than three five-year periods. The scope of protection is determined by the image of the registered design and includes any design which does not produce on the informed user a different overall impression. The right over industrial design includes the right of the proprietor of the design to use, to transfer and to prohibit other parties without his/her consent to copy or use in their commercial activity a registered design. The right over industrial design can be licensed or transferred as well as subject to collaterals and pledges.

Patentable Inventions

Pursuant to the Patent Act, as “patentable” inventions (inventions, which are subject to patent protection) shall be considered inventions in any field of the techniques, which are new, have an inventive step and are industrially applicable. In case the invention meets the criteria under the preceding sentence, a patent may be issued for this creation. Therefore, we may conclude that there are three main requirements, which the invention needs to meet. Pursuant to the definitions, contained in the Patent Act, the above requirements shall have the following meaning:

- novelty — the invention shall be considered new in case that it is not a part of the state of the art. The “state of the art” includes within its scope everything which is made known to the public by means of written or oral description, by use or in any other way, anywhere in the world, before the date of filing of the patent application. The “state of the art” shall further include the contents of all applications for registration of a patent, filed with an earlier date. These may be national or European and international applications (in which Bulgaria is a designated country) for registration of a patent with an earlier date;
- inventive step—this means that the invention does not appear to be obvious, it is one for a person skilled in the art, taking into account the state of the art as described above (everything, which is available to the public by means of written or oral description, by use or in any other way, anywhere in the world);
- industrial application—means that the subject of the inventions could be produced or used repeatedly in any field of the industry and the agriculture.

Legal protection

The legal protection of the inventions is granted with the patent. The patent certifies the existence of the patentable invention, the priority and the exclusive rights of the inventor over the invention. Pursuant to the regulation of art.2 of the Patent Act, an inventor shall be considered the person who has created the invention or the utility model. In the case where more than one person creates the invention or the utility model, all of them shall be considered co-inventors. The inventor has the right for his/her name to be included in the application for the registration of the patent, in the patent certificate, as well as in the publications concerning the patent or the utility model. This right is considered personal and non-transferable. The patent enters into force in respect of third persons following the publication for its issuance in the official bulletin of the Patent Office. The term of validity of the patent, pursuant to the regulation of art.16 of the Patent Act, is 20 years as of the date of filing the application for registration. Temporary protection of the patent is granted for the period following the filing of the application for registration until the publication of the grant of the patent.

The exclusive right of the inventor over the invention includes within its scope the following rights:

- the right of use of the invention. The right of use includes within its scope the production of the invention, the offering for sale, trade with the subject of the invention, including import, application and use of the invention in accordance with its purpose;
- the prohibition for third parties to use the invention without the consent of the inventor;
- the right of disposal with the invention.

It is worth noting here that pursuant to the new Chapter 6a an application for European Patent can be made in compliance with the European Patent Convention.

Licensing agreement

The patent, regardless of whether it is in the process of registration or already registered, may be subject to a licensing agreement. This is the so-called contractual license. The licensing agreement may envisage exclusive or non-exclusive, full or partial licensing. We should note that the exclusive licensing shall be explicitly envisaged under the agreement. Otherwise, it shall be assumed that the licensing concerning the patent has the nature of a non-exclusive one. The licensor under an agreement, which envisages the granting of an exclusive licence to the licensee, does not have the right to grant license in favour of third parties with the same subject. The licensing agreement is considered effective in respect of third parties following its entering with the register of the Patent Office.

We should note that art.32 of the Patent Act envisages also the so-called compulsory licensing. Pursuant to the regulation of the said article, any person concerned, after making unsuccessful attempts to conclude a fair licensing agreement, may request a compulsory license from the Patent Office for the use with a patent protected invention in case any of the following conditions are met:

- the invention has not been used for a period of four years following the filing of the application for registration or at least three years following the issuance of the patent (the longer term applies);
- the invention has not been used to the adequate extent within the above-mentioned terms for meeting the needs of the national market, unless the inventor succeeds to prove reasonable grounds for this;
- when the public interest imposes this even without any negotiation made; or
- when an invention is subject to a later patent certificate and falls within the scope of an earlier patent certificate, but represents important technical progress with substantial economic significance, and the holder of the earlier patent certificate has denied conclusion of a fair licensing agreement (the earlier patent holder has a right of a cross-license with fair terms in this case).

Utility Models

Utility models which are new, have an inventive step and are subject to industrial application, could be registered. Pursuant to protection, pursuant to the Patent Act, the above requirements shall have the following meaning:

- novelty — the invention shall be considered new in case that it is not a part of the state of the art. The “state of the art” includes within its scope everything which is made known to the public by means of use in the Republic of Bulgaria through written or oral description, or in any other way, anywhere in the world, before the date of filing of the patent application. The “state of the art” shall further include the contents of all applications for registration of a patent, filed with an earlier date. These may be national or European and international applications (in which Bulgaria is included as a designated country) for registration of a patent with an earlier date;
- inventive step — this means that the invention cannot be easily realized by a person with ordinary skills in the field, taking into account the state of the art as described above;
- industrial application — means that the subject of the utility model could be produced or used repeatedly in any field of the industry and the agriculture.

The registration of the utility model has a validity of four years, following the date of filing of the application for registration and can be extended with no more than two three-year periods. The total maximum period of validity shall be 10 years.

Protection of Industrial and Intellectual Property Rights

The possible means for protection of industrial and intellectual property rights include the following options:

- civil protection: it could be accomplished by bringing an action before the court. The rightholder may claim cessation of the infringement, damages, as well as destruction of the infringing goods because of violation of his/her rights.
- administrative protection: it is in the competence of state authorities, mainly of the Patent Office and the Ministry of Culture. In case of violation of the industrial

and intellectual property rights the state officials are entitled to impose administrative penalties for each violation.

criminal protection: the violation of intellectual property rights could be qualified as a crime according to the Bulgarian legislation and the violator can be subject to criminal liability.

COMPETITION LAW

[¶BUL-1525] Introduction

The first Bulgarian Competition Protection Act (“the CPA”) was adopted in 1991 and promulgated in the *State Gazette*, issue 39, May 17, 1991, later on repealed by the CPA from 1998, promulgated in the *State Gazette*, issue 52, May 8, 1998. This second act was adopted as a comparatively new one and envisaged rules that the undertakings and the participants on the Bulgarian market are obliged to observe. The law was adopted in accordance with the requirements of the European Union’s legislation, and there were difficulties in practice with the application of the law. These difficulties arise from the fact that the CPA was adopted as a modern Act, and the participants on the market were not ready to meet all of the CPA’s requirements. The new CPA (in force from December 2, 2008) envisages a different procedure and (with few exceptions) maintains the hypotheses of unfair competition.

UNFAIR COMPETITION

[¶BUL-1550] General

Unfair competition is regulated in c.7 of the CPA. The different cases of unfair competition are distinguished very clearly. In addition, a general prohibition of unfair competition is contained in the regulation of art.29 of the CPA, which states that any action or omission in the performance of economic activities which contravenes good trade practice and impairs or may impair the interests of competitors in their mutual relations or in their relations with the consumers shall be prohibited. Article 29 of the CPA represents the common prohibition of unfair competition and the following eight articles of the law (arts 30–37) describe the specific cases of unfair competition prohibited by law.

[This image is being removed for this update]

The following paragraphs provide a brief overview of the different cases of unfair competition.

[¶BUL-1575] Common prohibition

We shall examine first the common prohibition of the unfair competition (art.29 of the CPA). It is worth noting here that all different cases of unfair competition shall cover the preconditions of the common prohibition. The Commission for the Protection of Competition (“the CPC”) should always investigate whether all of the preconditions under art.29 of the CPA are met. If all of the conditions are met, the CPC investigates whether there is a breach of any of the specific cases under arts 30–37. If any of the conditions under art.29 are not met, the CPC assumes that there is no breach of the law and therefore that there is no unfair competition in the relevant case.

The preconditions included in the common prohibition of the unfair competition are the following:

- performance of economic activities by undertakings which appear to be competitors on the relevant market; and
- performance of any action or omission in the performance of economic activities which contravenes good trade practice and impairs or may impair the interests of competitors.

[¶BUL-1600] Compromising the good name of competitors

The law envisages that compromising the good name of competitors, as well as compromising confidence and trust in competitors, is forbidden. Furthermore, the compromising of goods or services offered by competitors is forbidden, regardless of whether this compromise is caused by the allegation or distribution of untrue information (data) or by the distribution of misleading facts (art.30).

In this case, as well as in most of the other cases of unfair competition, the performance of an infringement requires only the potential risk—it is not necessary for an actual impairment of the interests of competitors to have occurred.

It is worth noting that the former CPA envisaged additional cases of compromising—the attribution by means of advertising, or in any other way, of non-existent qualities to the goods and services in comparison with the goods or services of competitors, as well as the attribution of non-existent disadvantages to the goods or services of competitors (art.31, para.2 of the old CPA). Now such cases are included in the hypothesis of the forbidden comparative advertisement which will be further examined.

Concrete cases of infringements of art.30 of the CPA may be quite different in the real business activities of undertakings on the Bulgarian market, depending on the particular undertakings, their scope of activity, etc.

[¶BUL-1625] Misleading

Article 31 of the CPA prohibits the allegation or distribution of untrue information (data) or distribution of misrepresenting facts which may lead to the confusion of consumers regarding the essential characteristics of the goods and services or the method of usage of the goods or services.

[¶BUL-1650] Prohibition of misleading advertising and comparative advertising

With the adoption of the new CPA, two new cases of unfair competition were added. It is worth noting that similar cases existed in the Consumer Protection Act (examined below). These hypotheses were revoked and actually “moved” in the CPA. Whether this is the right decision is still to be seen.

According to art.32, para.1, misleading advertising, as well as unpermitted comparative advertising, shall be prohibited. Paragraph 2 of the same article states that both the advertiser and the advertising agency which produce the advertisement shall be held liable in such cases.

Misleading advertising

Article 33, para.1 states that misleading “advertising” shall be any advertising which in any way, including its presentation, deceives or is likely to deceive the persons to whom it is addressed or whom it reaches and which, by reason of this, is likely to affect the economic behaviour of the said persons or which, for these reasons, injures or is likely to injure a competitor.

When determining whether an advertisement is misleading or not, account should be taken of all of its features, including:

- the characteristics of the goods and services;
- the price or the manner in which the price is calculated, and the conditions on which the goods are supplied or the services are provided; and
- data about the advertiser or the advertising person.

Comparative advertising

Pursuant to art.34, para.1, “comparative advertising” shall be any advertising which explicitly or by implication identifies a competitor or goods or services offered by a competitor.

Comparative advertising is forbidden unless it falls under the exception of para.2 of art.34. There are certain conditions that have to be met in order for comparative advertising to be allowed as follows:

- it is not misleading within the meaning given by art.33 (cases of misleading advertising) of the CPA and is not an unfair commercial practice within the meaning given by articles 68e, 68f, 68g of the Consumer Protection Act;
- it compares goods or services meeting the same needs or intended for the same purpose;
- it objectively compares one or more characteristic features of the goods and services which are material, comparable and representative of those goods and services, including the prices thereof;
- it does not lead to confusion of the advertiser with the competitors thereof, or of the trade marks, trade names, other distinguishing marks, goods or services of the advertiser with those of the competitors thereof;
- it does not discredit or denigrate the trade marks, trade names, other distinguishing marks, goods and services, activities, or circumstances of competitors;

- it compares goods of the same designation of origin;
- it does not take unfair advantage of the reputation of a trade mark, trade name or other distinguishing marks of competitors, or of the designation of origin of competing products; and
- it does not present goods and services as imitations or replicas of goods or services bearing a protected trade mark or trade name.

If it is not in compliance with one of these conditions, the comparative advertisement shall not be allowed. When determining whether such an advertisement should be allowed or not, in addition to the conditions above, the provisions of Council Regulation (EC) 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs¹ shall be taken into account.

[¶BUL-1675] Imitation

Imitation is regulated in art.35, paras 1, 2 and 3 with three different cases as follows:

- paragraph 1 of art.35 states that the offering for sale or the advertising of goods or services with facade (appearance), package, marking, name or other signs which mislead or may mislead the consumer/s about the origin, the manufacturer, the seller, the manner (know-how) and place of manufacture, the source and method of acquisition or utilisation, the quantity, quality, nature, consumer characteristics and other essential characteristics of the goods or the services is forbidden;
- the second case of the imitation is regulated in para.2 of art.35, which states that the usage of a company name, copyrights, signs, or other distinctive rights, identical or similar to those of other persons, in a way that may lead to the impairing of the interest of the competitors is prohibited; and
- paragraph 3 of art.35 regulates the third case of imitation—the usage of a domain or appearance of an internet site, identical or similar to those of other persons, in a way that may lead to misleading or/and to impairing of the interest of the competitors is prohibited.

The above regulations, as well as the name of the article (“imitation”) lead to the conclusion assumed also by the CPC that in the case of imitation the unfair business conduct of the relevant merchant could be associated with the following: the merchant intentionally places external signs, marks, inscriptions, etc. on the goods or services in order to make the good or service look like another good or service offered by another merchant. Therefore, the merchant is trying to mislead the clients into buying the goods or services offered by him while being confident that they are buying another product.

[¶BUL-1700] Unfairly attracting clients

Article 36, entitled “unfairly attracting clients”, includes four cases of when clients have been unfairly attracted:

¹ Council Regulation (EC) 510/2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs has been repealed by Regulation (EU) 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs; however, the reference has still not been changed in the CPA.

- the performance of unfair competition aimed at attracting clients which results in the termination or violation of agreements concluded with competitors or thwarting the conclusion of agreements with competitors is prohibited (art.34, para.1 of the CPA);
- the offer or provision of supplements to the product or service sold free of charge or against a fictitious price for other goods or services, with the exception of: advertising materials of insignificant value (no more than 10% of the value of the goods/services) and bearing a clear indication of the advertiser; objects or services which, according to the trade practice, shall be considered accessories to the product sold or the service provided; goods or services as a rebate for the sale of bigger quantities, (art.36, para.2 of the CPA);
- advertising games — regulated in art.36, para.3 of the CPA where their prize is exceeding considerably the price of the goods sold or the services rendered. Pursuant to the law, the CPC shall adopt rules which define when the value of the game prize is exceeding considerably the price of the goods or services;
- the sale of significant quantities of goods on the internal market for comparatively long periods of time at prices lower than the production and marketing costs for the purposes of unfair attraction of clients (art.36, para.4 of the CPA).

We explained above the definition of the unfair competition and the manner in which the CPA regulates it. We may conclude that the unfair competition is regulated in ch.7 of the CPA and includes the common prohibition for the performance of unfair competition and the specific cases of the unfair competition.

It is worth paying attention to the amendments, in the new CPA regarding the unfair attracting of clients. The unfair attraction of clients includes four specific cases. One of them is regulated in art.36, para.3 of the CPA and states the following:

“The sale, if accompanied by something offered or promised that is to be received depending on: resolving problems, puzzles, questions, riddles; collection of series of coupons, etc.; games of fortune with cash or object prizes the value of which considerably exceeds the value of the product or of the service sold, shall be prohibited.”

This regulation actually concerns the so-called “advertising games” and had the same redaction in the old CPA.

With the recent adoption of the new CPA it is the CPC’s duty to adopt rules which explicitly define when the value of the game prize is exceeding considerably the price of the goods or services. These rules had to be adopted no later than June 2, 2009, but the CPC issued a resolution on the matter instead. The resolution defines that the prize considerably exceeds the value of the product if it exceeds more than 100 times the product value or the excess amounts to more than 15 times the minimum wages (the minimum wage currently being 310 BGN).

This limitation appeared to be a problem for the big companies which organise such games and receive a lot of income and a big turnover. Therefore, these companies were ready to pay the penalty and actually treated the penalty as a “normal expense”. However, this is not an acceptable situation because the idea of the law is to protect the competition, and in particular to protect the customers who should buy goods and services because of the goods/services themselves, not because of the opportunity to win something—a car,

an excursion, a digital photo camera, a DVD, etc. Thus, the normal conduct of the customers is deviated and their motivation to buy goods or a service because of its characteristics is replaced by the chance to win a prize. In this connection, with the new CPA the fixed size of the penalty was removed and a new penalty system brought in. At present, the penalty which can be imposed in case of breach of the regulations of the law (including breach of the regulation of art.36, para.3) is up to 10 per cent of the last annual turnover of the undertaking. This is a serious penalty even for the big undertakings.

It is worth noting here again that, in accordance with the CPA, a breach of the competition rules shall not only be considered to be cases where there is an actual damage of the interests of competitors, but also where there is a risk of such damage. The rule is a very common one and intends to include in its scope all kinds of actions which may constitute such a breach.

Restriction of the competition

Unfair competition is included in ch.7 of Pt II of the CPA, named “Restriction of the Competition”. This Part also contains four other cases of restriction of the competition, as follows:

- (1) prohibited agreements, decisions and concerted practices (ch.3 of the CPA);
- (2) monopoly and dominant position (ch.4 of the CPA);
- (3) control over concentration between undertakings (ch.5 of the CPA); and
- (4) unfair competition (ch.7 of the CPA).

The unfair competition, including the common prohibition and the specific cases, has already been examined in this chapter.

Although the sector analyses and intercession for the competition (ch.6 of the CPA) are included in Pt II, this chapter rather envisages measures that could be taken by CPC than actual cases of restriction of the competition. The chapter includes two possibilities:

- sector analyses — the CPC prepares sector analysis in cases where in a specific sector, branch, sub-branch or region, the competition may be averted, restricted or violated; and
- intercession for the competition — to protect the free initiative and to ward against the restriction, the CPC assesses (in compliance with the provisions of CPA) normative acts and their drafts and acts drafted by associations of undertakings, which regulate their members activity.

We will illustrate the different cases of the restriction of the competition, pursuant to Pt II of the CPA, with the following diagram:

We shall examine in brief the different cases of restriction of the competition below.

Prohibited agreements, decisions and concerted practices

This type of restriction of the competition is regulated in art.15 of the CPA, which contains the common prohibition. The regulation of art.15 of the CPA states that all kinds of agreements between undertakings, decisions by associations of undertakings, as well as concerted practices between two or more undertakings shall be considered prohibited in the case that they have as their object or effect the prevention, restriction or distortion

of competition on the relevant market. As already explained in this chapter, the definition of the term “relevant market” is included in s.1, item 15 of the Additional Provisions of the CPA. The “relevant market” includes two different markets, namely the “product market” and the “geographical market”. The “product market” includes all products and services which may be accepted by the clients as substitutable in respect of their characteristics, prices and usage. The “geographical market” includes a specific territory on which the above substitutable goods and services are offered for sale and on which the competition conditions are the same and at the same time this competition conditions differ from the competition conditions in neighbouring regions. We shall illustrate the definition of the relevant market with the following figure:

It is worth noting here that the determination of the relevant market is a very important issue. The CPC always investigates which is the “relevant product and geographical market” upon hearing different cases and making decisions on them. The proper estimation of the relevant product and geographical market is the basis for determination of a monopoly or dominant position of a certain undertaking on the market, for determination of the presence or lack of concentrations, agreements, decisions and concerted practices. In order to make the above clear, we would like to give some examples.

In a case where a certain undertaking files a complaint against another undertaking claiming that the second undertaking has performed any actions which have as a result the unfair attraction of clients, the CPC shall investigate if both undertakings are performing commercial activities on one and the same relevant market, i.e. on one and the same product and geographical market. In other words, the CPC shall first check if the two undertakings are actually competitors. And if this is not the case, unfair competition can hardly occur. Another appropriate example is the case where the CPC makes an appraisal as to whether a certain undertaking possesses a dominant position in the relevant market. It is clear that in order to make such an evaluation, the CPC shall first determine the scope of the relevant market, and namely the scope of the geographical and the product market.

In connection with the above, we shall note that under art.8, item 10 of the CPA the CPC is empowered to prepare sector analyses (as examined above, see Restriction of competition) in which the relevant markets are defined. The analyses should contain explanation of the main conceptions in connection with the defining of the relevant market, the criterion for determination of the relevant market, the determination of the participants (undertakings) in the relevant market, the manner in which the market shares of the undertakings on the relevant market shall be calculated, etc.

In art.15, para.1, the CPA further non-exhaustively enumerates that the prohibited agreements, decisions and concerted practices may have as their object or effect the following:

- direct or indirect fixing of prices or other commercial conditions;
- distribution of markets or sources of supply;
- restriction or control over the production, trade, technical development or investments;
- application of dissimilar conditions under equivalent contracts regarding certain partners, thereby placing them at a competitive disadvantage;

- making the conclusion of agreements subject to acceptance by the other party of supplementary obligations or conclusion of supplementary contracts, which by their nature or according to commercial use have no connection with the subject of the main contract, nor with its performance.

In accordance with the imperative regulation of art.15, para.2 of the CPA, the above-described prohibited agreements and decisions shall be considered null and void. We shall note that the nullity and voidance of these prohibited agreements follows also the regulation of art.26 of the Obligations and Contracts Act. In accordance with this article, agreements that contradict the law shall be considered null. Therefore, the regulation of art.15, para.2 confirms the logical conclusion for nullity of these agreements and avoids any contradictory interpretations.

However, we should note here that the prohibition under art.15 para.1 of the CPA should not apply in respect to agreements, decisions and concerted practices which have an insignificant effect over the competition. An insignificant effect shall be considered in case that the aggregate market share of the undertakings participating on the relevant market of product and services, subject to the agreement of the decision of the concerted practice does not exceed:

- 10 per cent of the relevant market in case that the participants appear to be competitors;
- 15 per cent of the relevant market in case that the participants are not competitors on the relevant market.

Regardless of the above-described, even in the case where the effect over the competition could be determined as insignificant, pursuant to the above criterion, the exception from the common prohibition of art.15, para.1 shall not apply in case that the agreements, decisions and concerted practices have as their object or effect direct or indirect fixing of prices or other trading conditions, or distribution of markets or sources of supply or restriction over production and sales.

There are certain cases that may be exempted from this prohibition. The CPC is entitled to make a decision that the common prohibition applies or to exempt the relevant agreement, decision or concerted practice.

The CPC adopts decisions for exemption of the prohibition in cases where the exempted agreements, decisions and concerted practices contribute to the increasing and improvement of the production of goods and rendering of services or contribute to the technical and economic growth, and guarantee to the consumers' equitable share of the gained benefits. However, the exempted agreements, decisions and concerted practices shall not impede the competition regarding an essential part of the relevant market, etc. The CPC is entitled to adopt a decision stating that the prohibition under art.15 of the CPA shall not apply for a certain type of agreement in case that the above-described conditions are met. Such decisions of the CPC shall be published in a specific electronic register. The undertakings shall prove the presence of the circumstances above. Block exemption could also be given in compliance with the relevant EU Regulation if no breach of art.101 (ex art. art.81) of the Treaty has occurred. If the agreements, decisions or concerted practices are not in compliance with any of the relevant prerequisites, the CPC shall give a deadline in which they should be corrected.

Monopoly and dominant position

This type of restriction is regulated in arts 19, 20 and 21 of the CPA. Pursuant to the definition contained in art.19, a monopoly shall be considered the position of an undertaking, which on the grounds of the law has the exclusive right to perform certain economic activity. The monopoly position may be granted to a certain undertaking only on the grounds of a law and when it is granted to the State. Pursuant to art.18, para.4 of the Constitution of the Republic of Bulgaria, which is the supreme legislative act, state monopoly could be established only on the grounds of the law over the railway transport, the national postal and telecommunications networks, the usage of nuclear energy, the production of radioactive products, weapons, explosives and strong biological substances. The granting of a monopoly position in breach of the above-described conditions shall not be considered a valid one.

A dominant position shall be considered the position of an undertaking, which, in view of its market share, financial resources, abilities for access to the market, technological level of development and economic relations with other undertakings, may hinder the competition in the relevant market because the undertaking appears to be independent of its competitors, suppliers or clients. Pursuant to the CPA, the possession of a monopoly or a dominant position is not prohibited. Prohibited are just the abusive activities (actions) of an undertaking having a monopoly or dominant position, as well as the activities of two or more undertakings having a joint dominant position, which activities have as their object or effect the prevention, restriction or distortion of the competition or violation of the consumers' rights, such as:

- direct or indirect setting of prices for purchase or sale or other unfair (disloyal) trading conditions;
- restriction of the production, trade and technical development to the prejudice of the consumers;
- application of dissimilar conditions to equivalent contracts regarding certain partners, thereby placing them at a competitive disadvantage;
- make the conclusion of contracts subject to acceptance by the other party of supplementary obligations or conclusion of supplementary contracts which, by their nature or according to commercial use, have no connection with the subject of the main contract, nor with its performance;
- ungrounded refusal for delivery of goods, provision of service to an actual or potential client with the aim to impede its economic activity.

Concentration of economic activity

Pursuant to the definition of the term “concentration of economic activity”, it shall be considered in the following cases where there is a constant change in control, as follows:

- merger or acquisition of two or more independent undertakings;
- one or few persons, already exercising control over an undertaking, gained through purchase of securities, shares or property, through a contract or in any other manner, direct or indirect control over other undertakings or parts thereof.

The control in this case shall be construed as acquisition of rights, conclusion of contracts or other means which, separately or jointly and in view of the existing factual circumstances and the applicable law, grant the ability of exercising of dominant influence over the relevant undertaking through:

- (i) acquisition of ownership title or right of use over the entire or part of the undertaking's property;
 - (ii) acquisition of rights, including on the grounds of a contract, which provide the ability of exercising a serious influence over the composition, voting or decisions of the undertaking's bodies.
- the creation of a joint venture which performs on a permanent basis all the functions of an independent economic entity.

We shall note here that pursuant to the explicit regulation of art.23 of the CPA, the following cases shall not be considered as concentration of economic activity:

- cases, in which organisations, such as banks and other financial institutions (other than banks) or insurance companies, whose activity include transactions with securities on their own or on a third party's account, possess on a temporary basis securities of a certain undertaking with the purpose to re-sell these securities, provided that:
 - (a) the above organisations do not exercise the right to vote related to these securities in order to influence the competitive conduct of the undertaking; or
 - (b) they (the organisations) exercise the right to vote only in order to prepare the disposal of the securities, which needs to be done within a one-year term following the securities' acquisition.
- cases where the control is acquired by a person who pursuant to the legislation in force performs certain functions related to the winding up or declaring insolvency of the undertaking;
- the cases where some of the above envisaged actions are performed by financial holding companies, but only where the control acquired by these companies is exercised for the purposes of preservation of the full value of the invested capital, but not for the purposes of exercising influence, directly or indirectly, over the competitive conduct of the companies in which the holding company participates.

The undertakings are obliged to notify the CPC in advance about their intention to perform concentration of economic activity when the aggregate turnover of the participants in the concentration on the territory of the Republic of Bulgaria exceeds BGN 25 million and: (i) the turnover of each one of at least two of the participants on the territory of the Republic of Bulgaria exceeds BGN 3 million for the previous year; or (ii) the turnover of the acquired undertaking on the territory of the Republic of Bulgaria exceeds BGN 3 million for the previous year. When the concentration concerns the acquisition of control over part of one or more undertakings, regardless of whether these undertakings are separate legal entities or not, the turnover shall be calculated in respect to the part that is subject to control. The notification to the CPC pursuant to the former CPA contained the following data:

- the undertakings — participants in the concentration of the economic activity;
- the character and the legal form of the concentration;
- the type of the goods and services encompassed by the concentration;
- the undertakings that are subject to control by the undertakings — participants in the concentration, if this is the case or type of concentration;
- the aggregate market share and turnover of the undertakings — participants in the relevant market;
- the main competitors, suppliers and buyers.

The notification also contains the request for the CPC to allow the described concentration of economic activity.

In the present CPA the content of the notification is not described.

The notification has to be made after concluding an agreement but before undertaking specific actions for the implementation of the planned transaction. The CPC issues a decision which prohibits or allows the concentration of the economic activity. The CPC allows the concentration in case that this will not lead to creation or strengthening of a dominant position, which will significantly hinder the effective competition on the relevant market. We shall note that the CPC is entitled to allow the concentration even if it leads to creation or strengthening of a dominant position, provided that the concentration is aimed at modernising the respective economic activity, improvement of the market structures, better satisfying of the consumers' interests, and as a whole prevails over the negative effect over the competition on the relevant market.

The Competition Protection Commission (CPC)

The CPC is an independent and specialised state body which has the status of a legal entity having its headquarters in Sofia. The CPC consists of seven members — a chairman, a deputy chairman and five members. All of the members of the CPC are elected by the Parliament with a five-year term of service. The CPC is financed by the state budget. The members of the CPC need to be Bulgarian citizens who possess university degree in law or economics, at least five years' practice in law or economics, high moral and professional qualities, etc. The chairman of the CPC is required to meet all requirements, except that s/he should possess a university degree in law only and have at least 10 years' practice in law.

The CPC is empowered by the law regarding the following:

- ascertaining the infringements of the CPA and arts 81 and 82 of the Treaty (art. 101 and 102 of the TFEU) and imposing the envisaged sanctions;
- issuing the envisaged permissions under the CPA;
- interact with the governmental and municipal bodies, non-government organisations and other institutions through participation in writing and giving opinions on drafts and legislative acts;
- imposing temporary measures;
- performing sector analysis of the relevant markets;
- proposing to the authorised bodies to amend or repeal their administrative acts which can prevent, restrict or distort competition;
- pronouncing on other issues connected with the CPA;

- enacting suspension for infringements under the CPA related to prohibited agreements, abuse with monopoly and a dominant position, unfair competition; and
- creating and supporting a special electronic register.

The CPC is obliged every year not later than May 30 to submit before Parliament the annual report for the activity of the CPC for the previous year. The report is also made known to the public by means of publication on the internet.

SALES CONDITIONS AND CONSUMER PROTECTION

[¶BUL-1725] Introduction

The main legislative act in the field of consumer protection is the Consumer Protection Act (“the CPA”). The National Assembly of the Republic of Bulgaria adopted this law in December 2005 and it entered into force on June 10, 2006. Since then the CPA has been amended numerous times, and the latest amendments, which implement the requirements of Directive 2011/83/EU of the European Parliament and of the Council of October 25, 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (Directive 2011/83), enter into force on July 25, 2014. The Consumer Protection Act, is aimed at regulating the protection of consumers, the rules for the performance of trade, the relations between the state bodies, associations of consumers and the organisations of traders. The main purpose of the Consumer Protection Act, is to protect the basic rights of consumers, such as:

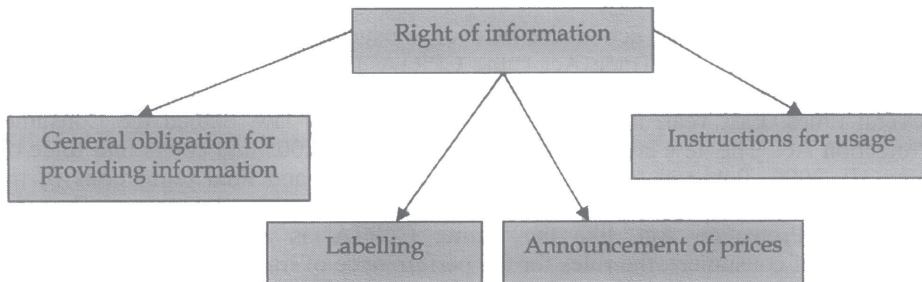
- the right of information concerning goods and services;
- the right to protection against the risks connected with the acquisition of goods and services which may be a danger to the life, health and property of consumers;
- the right to protection of the economic interests of the consumers in connection with the acquisition of goods and services in case of unfair commercial practices and other means (approaches) for sale, unfair contract terms and warranties granted;
- the right of compensation for damages caused by defective goods;
- the right of access to judicial and alternative out-of-court procedures for consumers’ protection; and
- the right of education of consumers concerning issues connected with their protection; etc.

RIGHTS OF THE CONSUMER

[¶BUL-1750] General

The “protection of personal data” as a right of consumers is regulated not in the Consumer Protection Act, but under the Personal Data Protection Act. This is a very important right and will be discussed below. Under the Consumer Protection Act, the right of information of consumers is regulated in Chapter 2 and comprises the general obligation for providing information, the labeling of goods, the instructions for usage of

goods, the announcement of prices of goods and services. Below is an illustration of the scope of the right of information:



The Consumer Protection Act envisages imposing pecuniary sanctions in case of infringement of the regulations concerning the right of information of consumers, as outlined below:

- the infringement of the general obligation for providing information shall be punished with a pecuniary sanction amounting to 500 BGN to 3000 BGN;
- the infringement of the regulations concerning the labeling requirements shall be punished with a pecuniary sanction amounting to 300 BGN to 1500 BGN ;
- the infringement of the regulations concerning the instructions for usage and the announcement of prices shall be punished with a pecuniary sanction amounting to 500 BGN to 2000 BGN.

¶BUL-1775] Right of information (general obligation for providing information)

The general obligation for providing information is contained in arts.4–8 from the Consumer Protection Act. The right of information is a basic right which grants consumers the opportunity to understand who the merchant is and exactly what they are buying, regardless of whether it is goods or a service. The merchant is obliged to place near the entrance of his establishment information regarding the name and address of management, opening hours, and the full name of the person responsible for the operation of establishment. The announced opening hours are considered mandatory for the merchant and shall be observed.

Regarding the goods or services offered for sale, the merchant is obliged to clearly inform the customers about the main characteristics of the goods or services, to the extent appropriate to the medium and the particular goods or services, including information on the contents and packaging, instructions for use and maintenance; the identity of the merchant, such as the trading name, the head office and registered address, telephone number and, if available, the electronic address and internet page; the total price of the goods or services inclusive of taxes; all additional freight, delivery or postal charges or; the arrangements for payment, delivery, performance, the time by which the merchant undertakes to deliver the goods or provide the service, and the merchant's complaint handling policy; the duration of the contract and the conditions for terminating the contract, and other information required by Directive 2011/83.

The above information is considered an inseparable part of the contract and must be true, complete and clear. The information shall not be misleading and shall not give a false impression to the consumer of the existence of any characteristics that the goods or services do not offer. The merchant is obliged to provide the information in a written form or in another adequate manner which allows its proper understanding by the consumer. In cases where the information is provided in writing, it shall be in Bulgarian.

The merchant shall inform consumers in a proper manner and offer for sale at especially designated places in the shops, second-hand goods, goods the term of applicability of which has expired, goods with characteristics different from those listed, goods subject to bargain sale, etc. However, all of these goods must not endanger the life and health of consumers. This is especially applicable for second-hand goods and those whose period of use has expired.

The above obligations are mandatory for the merchant, and the merchant is not absolved from responsibility if the manufacturer or the importer has not provided the merchant with the necessary information.

[¶BUL-1800] Labeling

In accordance with art.9 of the Consumer Protection Act, every merchant is obliged to offer and sell only those goods which are clearly labelled. The label must be written in Bulgarian (or in Bulgarian too) and must contain information about the manufacturer (name, company file, address of management, etc.), the importer, if applicable, the type of goods, the essential characteristics of the goods, the term of applicability and conditions for preservation of the goods, the price (in the cases where the type of goods allows labeling) and, if necessary, instructions for use. The merchant is not entitled to remove or change the label or other information provided by the manufacturer or the importer if this will result in misleading consumers. The information displayed on the label must be easily understood and must not mislead or confuse consumers. If the type of product does not allow the placement of a label on it, the merchant is obliged to provide the customer with the above information in another proper manner in writing or submit the relevant documents. Merchants can meet difficulties in conforming to the labeling requirements in the case of small goods. In this case the merchant must place a sign near the goods which contains all of the necessary information.

The goods which are packed up or parcelled in advance shall contain information on the packaging about their quantity. The manufacturer or the person who has packed the goods shall be responsible for the performance of this obligation. When the goods are subject to import, the importer shall be responsible. In cases where the quantity of goods packed up in advance is not indicated by the manufacturer, the importer or the person who has packed the goods, the merchant shall be obliged to indicate the quantity of the goods on them, on the packaging or on a sign placed near the goods.

[¶BUL-1825] Announcement of prices

In addition to the above requirements, every merchant is obliged to place in advance the price of the goods in a visible place near the goods. The prices of the goods offered in catalogues shall be indicated next to the picture or the description of the goods. The price

shall be announced in the relevant unit (e.g. price per kilo, litre, etc.) or for one item, (i.e. price per unit). The price must be written in Bulgarian currency. The sale price indicated for the relevant goods must include value added tax (VAT), which amounts to 20 per cent, as well as any other relevant taxes. The total price must also include the prices of all the goods and services, which must be paid additionally by the consumer in the cases where the said goods and services shall be mandatorily sold by the merchant.

The announcement of different prices for one and the same goods in the establishment is forbidden, except in the cases of sale of second-hand goods, goods the term of applicability of which has expired, goods with characteristics different from those listed, and goods subject to bargain sale.

Pursuant to the regulation of art.18 of the Consumer Protection Act, the merchant is entitled to inform the consumer in advance about his readiness to negotiate for a rebate over the amount of the announced price. In the cases where the sale price of the item of goods or the service is a compound of a few elements with sale prices (separate prices) per each element, the sum of these separate prices shall be indicated clearly as a final sale price.

The merchants offering services to the consumers are obliged to indicate the prices of the offered services in advance via a price list placed at a visible place in the shop (establishment). In case that this proves to be inconvenient because of the large number of the services offered, the merchant is entitled to indicate the prices in a brochure, which shall be submitted to each consumer before the rendering of the service and at the time of its payment.

In the cases where the consumer desires to receive a service which differentiates from the services offered by the merchant, the latter is entitled to submit an offer for the specific service, where the price shall be individually negotiated. The Consumer Protection Act explicitly envisages that the offer for the specific service shall include the following data:

- the name and the address of the merchant;
- the type and nature of the service rendered, and the eventual supplies which shall be performed;
- the price prepared in connection with the specific service demanded by the consumer;
- the term of validity of the offer.

Where the preparation of the offer for the specific service is not free of charge, the consumer shall be informed in advance by the merchant.

Similar to the sale price of the goods, the sale price indicated for the relevant service shall be in BGN and shall include VAT, all other taxes and fees due by the consumer, as well as the prices of all goods and services which shall be paid additionally by the consumer. The indication of different prices in the shop (establishment) for one and the same services is forbidden. However, if this happens, the consumer shall have the right to receive the service at the lower price.

The Consumer Protection Act stipulates certain regulations concerning the announcement of the prices of the petrol stations and gas stations. The provision of art.29 of the act explicitly stipulates that the companies performing commercial activities in petrol

stations and gas stations shall be obliged to place boards indicating the prices of the fuels in such a manner as to allow the drivers to see them from the road. A similar regulation is stipulated concerning the announcement of the prices of the paid garages and the paid parking places. These prices shall be visibly indicated for the consumers and placed near the entrances of the garages and the parking places (as per the regulation of art.28).

Instructions for usage of goods

The Consumer Protection Act envisages that certain goods shall be accompanied with instructions for use prepared by the manufacturer. The manufacturer and the merchant are further obliged to provide the instructions for use in Bulgarian. The goods that require instructions for usage, pursuant to the regulation of art.13 of the Consumer Protection Act, are as follows:

- goods the use of which requires certain technical knowledge from the consumers;
- goods containing dangerous substances;
- goods the use of which requires special skills or the observance of special safety requirements.

The instructions for usage shall provide information necessary for the proper and safe usage, installation, connection, maintenance or preservation of the goods. If necessary, the instruction for usage shall also contain a list with the separate parts and details of the goods. The merchant shall be further obliged to demonstrate the way of operation of the goods, when requested by the consumer and if the relevant good allows this.

[¶BUL-1850] Right of claim

In accordance with the Consumer Protection Act, the consumer has a right of claim, regardless of whether the manufacturer has provided a guarantee regarding the goods or the services. Pursuant to the provision of art.122 of the law, the consumer's right of claim may be exercised in cases where there is any incompliance (inconformity) of the goods, including second-hand goods, with the agreed parameters and characteristics. The inconformity of the goods with the agreed characteristics can be established after delivery when the initial inspection is performed or after that upon the preservation, assembly, testing or exploitation of the goods. In accordance with the regulation of art.126 of the law, the consumer must file the claim within two years following the delivery of the goods, but not later than a two-month term after the date on which the inconformity of the goods is found. At the same time, the consumer is entitled to file a claim within a 14-day term after the date on which the inconformity of the services is found. The consumer is entitled to claim reimbursement of the price paid to the merchant, replacement of the goods, rebate of the price or repair for free. In cases where the claim concerns a service, the consumer is entitled to claim rendering of the service as agreed under the contract, rebate of the price or reimbursement of the paid price.

Pursuant to the provision of art.125 of the CPA, the claim must be filed in writing or verbally before the merchant or the authorised person. The consumer must indicate the subject of the claim, one of the above-described methods for satisfying the claim (which is preferred by the consumer), respectively the claimed amount, as well as the contact details. The consumer must further submit to the merchant the document on which the

claim is based, such as a receipt or an invoice, protocols, statements or other documents evidencing the inconformity of the goods or service with the agreed characteristics, or other documents ascertaining the grounds for and the amount of the claim. The merchant or the authorised persons are obliged to receive the claim, provided that it is filed within the terms described above. The merchant or the authorised person is also obliged to maintain a register of the filed claims which shall contain a description of each claim filed. The consumer must be provided with a document stating the date on which the claim has been accepted, the number under which the claim has been entered into the register, the type of the goods and signature of the person accepting the claim. The claim may be filed in any establishment of the merchant on the territory of Bulgaria where activities similar to those where the goods were purchased are performed.

In cases where the merchant assumes that the claim of the consumer is well-grounded, the merchant is obliged to satisfy the claim and to provide the conformity of the goods with the agreed parameters and characteristics within a one-month term following the submission of the claim. If the merchant fails to do this within the above one-month term, the consumer is entitled to choose whether to terminate the agreement and claim reimbursement of the paid price, or to receive a rebate. The consumer is not entitled to claim reimbursement of the paid price or rebate where the merchant agrees to replace the goods with new ones or to repair the goods within the above-mentioned one-month term, as well as in the case where the inconformity is an insignificant one. However, the consumer is entitled to claim compensation for the damages caused as a result of the inconformity of the goods.

[¶BUL-1875] Protection of personal data

The protection of personal data is regulated in the Personal Data Protection Act (“the PDPA”) which entered into force as of January 1, 2002. The PDPA regulates the protection of individuals against illegal processing and access to their own personal data. The Act is aimed at guaranteeing the immunity of individuals against the above-mentioned illegal processing of personal data. The definition of the personal data of individuals under the PDPA follows that of Directive 95/46/EC of the European Parliament and of the Council of October 24, 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and states that personal data means any information relating to a natural person who is or may be identified directly or indirectly, in particular by reference to an identification number or to one or more specific factors. Thus, the definition of “personal data” is quite wide and includes in its scope all kinds of information for an individual—his/her marital status, eye colour, property and real estate possessed by the individual, bank accounts, education, contracts concluded, phone numbers, addresses, email addresses, sexual orientation, health condition, etc. This personal data protection is applicable to all individuals, regardless of whether or not they are “consumers”, i.e. personal data shall not only be protected in connection with the “business-to-consumer”, relationship, but everywhere and in all other activities in which the individual partakes.

Personal data controllers are entitled to process individuals’ personal data if at least one of the grounds for such processing provided in the law is present. One of the

commonly used grounds for personal data processing is the consent of the individual whom the data concerns. The individual's consent needs to be freely given, specific, informed and unambiguous. The data controller may receive such a valid consent of the individual only after the data controller has informed the individual of:

- the purpose and means of the processing of the personal data;
- whether the provision of personal data is obligatory or voluntary, and the consequences of the individual's refusal to provide personal data;
- the recipients or the category of the recipients to whom the personal data may be disclosed;
- the rights of access and correction of the gathered personal data of the individual;
- the name and address of the data controller or the person processing the data if it is different from the data controller, etc.

In addition to receiving the valid consent of the data subject, processing of personal data is also allowed where:

- it is necessary for the compliance with a legal obligation to which the controller is subject;
- it is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- it is necessary for the protection of the individual's health or life;
- it is necessary for the performance of a task carried out in the public interest;
- it is necessary for the exercising of official authority vested in the controller or in a third party to whom the data are disclosed.

it is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests of the data subject.

Therefore, personal data may be processed: if the data subject has unambiguously given his consent; if the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; if the controller has obligations by law which require the processing of certain personal data; where there is a necessity for the protection of the individual's health or life; where the personal data is processed on the grounds of the performance of an obligation under a contract concluded between the controller and the individual, or in order to take steps at the request of the data subject prior to entering into such a contract; or where there is a legal interest of the controller, of a third party or of a person to whom the personal data is disclosed, provided that the interest of the controller or the third party are not overridden by the interests for fundamental rights and freedoms of the individual whose personal data is disclosed.

This mainly affects banks in Bulgaria, companies offering goods on lease (i.e. offering to accept payment of the goods in instalments), insurance companies, and companies issuing credit cards that require data regarding, for example, property and bank accounts possessed by the individual, in order to be able to evaluate the credit risk regarding the relevant customer and to make a decision as to whether or not to enter into an agreement

with the customer. These companies can even require information about relatives and friends of the individual regarding their personal property. When doing this, the companies usually try to do their best to comply with the requirements of the law. They have certain declarations which shall be signed by the individuals, stating that the personal data is provided wholly voluntarily and that the individual agrees his relatives and friends to be contacted in order to check information which has been provided. Furthermore, it is explicitly written in the declaration that the provision of personal data is not mandatory and not a precondition for the successful conclusion of the relevant contract (a loan contract, a lease contract, a contract for issuance of a credit card, etc.).

The CPA

We have already explained above that the main legislative act in the field of consumer protection is the Consumer Protection Act. Some of the important issues subject to regulation by this Act were also examined above, namely the labeling requirements, the consumer's right of information and right of claim, the requirements in respect to the announcement of prices, etc. We shall note that the consumer protection further concerns the unfair contract terms, the safety of goods, the liability for defective products, etc. These will be examined in brief below, pursuant to their regulation under the Consumer Protection Act. In order to outline the persons who benefit from the protection, we must remember that, pursuant to the regulation of para.13, item 1 of the Additional Provisions of the Consumer Protection Act, a consumer may fall under two categories of natural persons, as follows:

- every individual who acquires goods or uses services that are not designated for performing commercial or other professional activity;
- every individual who, as a party to a contract regulated under the Consumer Protection Act, performs activity not falling within the scope of their own commercial or professional activity.

Unfair contract terms

The regulations concerning the unfair contract terms are contained in Ch.6 of the Consumer Protection Act. In accordance with the provision of art.143 of the law, "unfair contract terms" means a provision included in the contract with the consumer, which contains a stipulation to the detriment of the consumer, does not correspond to the bona fide requirements and leads to significant imbalance between the rights and obligations of the merchant or the supplier and the consumer. The contract term is considered unfair if it:

- releases from responsibility (liability) or limits the responsibility (liability) of the manufacturer, the merchant or the supplier (where such responsibility is envisaged under the law) in case of body injury or death of the consumer caused as a result of the action or omission of the merchant or the supplier;
- excludes or restricts the rights of the consumer (arising on the grounds of the law) against the merchant in case of full or partial non-performance of contractual obligations, including the exclusion of the right of the consumer to set-off an

obligation of the consumer against another obligation of the merchant towards the consumer;

- makes the performance of a contractual obligation dependent on a certain condition the performance of which depends only on the will of the merchant;
- allows the merchant to keep the funds paid by the consumer in case that the latter refuses to conclude or fulfil the contract, while at the same time the contract does not envisage the right of the consumer to receive compensation at the same amount in case of non-conclusion or non-performance of the contract due to the fault of the merchant;
- obliges the consumer to pay unreasonably high compensation or penalty in case of non-fulfilment of the consumers' obligations;
- allows the merchant at its own discretion to release itself from the obligations under the contract, while at the same time the consumer is not allowed to do so;
- allows the merchant to keep an amount for an obligation which the merchant has not fulfilled because of termination of the contract by the merchant at its own discretion;
- allows the merchant to terminate a contract concluded for an indefinite period of time, unless the merchant has reasonable grounds to terminate it;
- envisages unreasonably short term for automatic prolongation of the contract in case that the consumer does not oppose to the prolongation within the expiration of this short term;
- compels the consumer to accept clauses which the latter was not allowed to know before the conclusion of the contract;
- allows the merchant or the supplier to unilaterally amend clauses of the contract on grounds which are not envisaged in the contract;
- allows the merchant or the supplier to unilaterally amend the characteristics of the products and services, without having grounds to do so;
- provides for determination of the price at the time of receiving the product or rendering of the service;
- entitles the merchant to increase the price, and at the same time the consumer does not have the right to refuse the contract in case that the increased price considerably exceeds the price, negotiated at the time of the conclusion of the contract;
- entitles the merchant to decide whether the products or services meet the conditions stipulated under the contract or render the merchant the exclusive right to construe the clauses of the contract;
- obliges the consumer to fulfil its obligations envisaged under the contract, even in cases where the merchant has not fulfilled its own obligations;
- confers on the merchant, without the consumer's consent, the right to transfer its own rights and obligations under the contract to another person, when this may lessen the guarantees of the consumer;
- expels or hinders the right of claim of other legal approaches for protection of the consumer by means of appointment of an arbitrator who does not settle the dispute in accordance with the law, illegally restricts the evidence resources granted in favour of the consumer or illegally transfers the burden of proof from the merchant to the consumer;

- limits the binding character of the obligations of the merchant or the supplier when assumed by its representatives;
- makes the merchant's or supplier's obligations dependent on the observance of a certain condition;
- sets other similar conditions.

The Consumer Protection Act stipulates that the terms of the contracts offered for conclusion with consumers need to be drawn up in a clear and unambiguous manner. In case of any doubt concerning the meaning of a term, it shall be construed in favour of the consumer. The unfair contract terms, pursuant to the explicit regulation of the law, shall be considered null and void. However, the rule under the preceding sentence shall not apply in case that these terms are individually negotiated (stipulated). Terms that are drafted by the merchant in advance and because of this the consumer was not entitled to influence their content shall not be considered as individually negotiated. This particularly applies in cases where the merchant has adopted terms of service. In most of the cases, when the merchant uses terms of services, consumers are not entitled to negotiate and amend the contents of the terms included. In case that a merchant claims that a term included in a contract, accompanied by terms of service, is individually negotiated, the burden of proof that this is really the case falls on the merchant.

The provision of art.145 of the Consumer Protection Act envisages that the appraisal of whether a contract term is unfair shall be made taking into account the type of the goods or the service (subject of the contract), all of the circumstances connected with the conclusion of the contract at the date of its conclusion, as well as all other clauses of the contract or the clauses of other related contracts. The above appraisal shall not include, and shall not be influenced by, the determination of the subject of the contract, as well as the proportion between the price or the remuneration, on one hand, and the goods or the service, on other hand, provided that these clauses of the contract are clear and comprehensible.

Safety and quality of goods and services, warranty, right of claim, liability for defective products

Pursuant to the Consumer Protection Act, the safety of goods, the warranty, the right of claim and the liability for defective goods (products) are regulated in Ch.5. These matters, which are interconnected and which are extremely important, can be illustrated with the following:

The right of claim was already examined in the chapter. The consumer has a right of claim, regardless of the fact if the manufacturer has provided a warranty (guarantee) regarding the products. We will examine below in brief the requirements concerning the safety of goods and services, the warranty of goods and the liability for defective products pursuant to the provisions of the Consumer Protection Act.

Safety of goods (products) and services

Pursuant to the provision of art.69. para.1 of the law, the manufacturers of goods and the persons rendering services are obliged to offer for sale on the market only safe products and services. In case of non-compliance with this requirement, the law envisages the

imposition of a pecuniary sanction which may vary from 5,000 BGN to 25,000 BGN. Pursuant to the provision of para.2 of the same art.69, as manufacturers shall be considered the following persons:

- any person established within the territory of the European Union or of a Contracting Party to the Agreement on the European Economic Area, who or which has manufactured or processed the product, and any other person established within the territory of the European Union or of a Contracting Party to the Agreement on the European Economic Area, who or which presents himself, herself or itself as the manufacturer by affixing to the product the name, trade mark or other distinctive mark thereof;
- the manufacturer's representative, where the manufacturer is not established within the territory of the European Union or in a Contracting Party to the Agreement on the European Economic Area, or the importer of the product, where the manufacturer has no representative in the European Union or in a Contracting Party to the Agreement on the European Economic Area;
- any other person that participates in the process of realisation of the goods whose activity may influence the safety characteristics of the goods.

A person rendering a service shall be considered every person that, within the scope of its professional activity, renders or performs services against consideration.

Products may be distributed and services may be rendered only after it is ascertained that these products and services are in compliance with the applicable safety requirements. The expenses for the appraisal and ascertaining the compliance of the goods and services with the safety requirements, shall be borne by the manufacturers and the persons rendering the services.

Pursuant to the provision of art.71 of the law, goods or services are considered safe when they correspond to certain requirements contained in a legislative act. Furthermore, the goods and services shall be considered safe in respect of risks and the group of risks covered by the Bulgarian standards, which implement the harmonised European standards (published by the European Commission in the Official Gazette of the European Union). In case that there are no legislative requirements or standards, the appraisal of the compliance of the goods and services with the common safety requirements shall be made based on the following:

- Bulgarian standards implementing European standards, other than the above described;
- Bulgarian standards developed at a national level, in the lack of standards under the previous item;
- Recommendations of the European Commission containing directions for appraisal of the safety of goods in the lack of standards under the previous item;
- Codes for good practice in respect of the safety of goods and services in the relevant sector, in the lack of recommendations under the previous item;
- The actual level of science and the technique — in the lack of codes of good practice under the previous item;
- The level of safety which the consumers may reasonably expect where the criteria under the previous item is not applicable.

The manufacturers and the persons rendering services are obliged to provide consumers with information, allowing them to appraise the risks for their life and health connected with the normal conditions of usage of the products, including their duration. Even in cases of performance of the obligation under the preceding sentence, the manufacturer, importer, merchant is obliged to stop the distribution of the products which appear to be dangerous for the life, health or the property of the consumers, and must immediately notify in an appropriate manner the consumers and the state bodies exercising control, of all the risks connected with the usage of the products. This is the case where certain risks have been found out after the distribution of the defective products has already begun.

Liability for defective products

The liability for damages caused by defective products is borne by the distributor, the manufacturer and the merchant. The liability shall be borne in cases where the defective product is manufactured or supplied by one of the above. The provision of art.130 of the law contains the following definitions of “manufacturer”, “distributor” and “merchant”:

- As a manufacturer shall be considered every person, that by profession:
 - produces goods which are ready for use;
 - produces raw materials and composite parts used for the production of other goods;
 - represents himself/herself/itself as a manufacturer by placing on the goods his/her/its name, trade mark or other distinctive features;
 - imports goods on the territory of the European Union for sale, lease or leasing, or uses any other form of distribution of the imported goods on the territory of the European Union.
- As a distributor or merchant shall be considered every person, other than the manufacturer, that offers goods on the market.

Pursuant to the provision of art.131 of the law, subject to indemnification are the damages caused by:

- Body injury or death of a natural person;
- Spoiling or abolition of goods, other than defective goods, the value of which is not less than 1000 BGN, provided that the goods are ordinarily designated for private use and have been used in accordance with their functions.

The manufacturer is strictly liable for any damage caused by a defect in the goods. In cases where the identity of the manufacturer or the person that imported the goods on the territory of the European Union could not be established, the responsibility shall be borne by every distributor or merchant dealing with the goods. This rule will not apply in cases where the distributor or the merchant submits information about the name and the address of the manufacturer or the importer. The information must be submitted within a 14-day period. The distributor and the merchant are not entitled to provide information to the consumer about a person who is not located in Bulgaria. The law also envisages joint responsibility where two or more persons bear responsibility for one and the same damage.

The person who has suffered damage shall prove the damage, the defect, and the fact that the damage is really caused as a result of the existence of the defect.

The manufacturer may release itself from liability if it successfully proves that:

- it has not released the products on the market; or
- the defect has not existed at the time of releasing the product on the market or the defect has appeared afterwards; or
- it has not produced the product for sale or for another form of commercial distribution and has not manufactured or distributed the product within the scope of its professional activity; or
- the defect is determined by the need of observation with mandatory requirements for compliance set by state bodies; or
- the level of the science and technical development at the moment of realising the product on the market has not made possible the detection of the defect; or
- it is a manufacturer only of a separate part of the product and the defect of this part is due to the development or assembling of the product by another manufacturer, or is due to the false instructions of the latter for transportation, storage or exploitation.

The liability under the law has the character of a material one. Consumers are entitled to claim (in accordance with the law) material compensation for the damages suffered. It should be noted that the provisions under the law (concerning the material liability of the manufacturers/distributors/merchants) do not deprive consumers of their right to seek compensation for the immaterial damages suffered as a result of the use of a defective product. As mentioned above, the person who has suffered damages as a result of the use of a defective product must prove the damage and the defect, and shall also prove that the damage was caused as a result of the usage of the defective product.

In cases where the contract between the merchant, the manufacturer or the distributor, on the one hand, and the consumer, on the other hand, envisages the release or limitation of the liability of the merchant, respectively the manufacturer or the distributor, such a clause shall be considered null and void. The consumer is entitled to claim damages suffered within a three-year period following the date on which the consumer became aware of or was obliged to know the suffered damage, the defect, and the identification of the manufacturer. The right of claim of the consumer shall be considered terminated with the expiration of the 10-year period following the date on which the manufacturer released the products on the market, unless the consumer has already filed a claim before the expiration of this period.

Warranty

The Consumer Protection Act contains the regulation concerning the warranty for the consumer's goods. Consumer's goods are considered in this context to be every movable material thing, with the exception of the second-hand goods. The provision of art.106 of the law obliges the merchant to deliver to the consumer goods corresponding to the sale contract. The merchant bears responsibility for each nonconformity of the consumer's goods with the agreed characteristics under the sale contract, which nonconformity has existed on the date of signing of the sale contract or within a two-year period following

this date in case that the inconformity has appeared later. The merchant bears the above responsibility even in those cases where the merchant is not aware of the existence of the nonconformity. Pursuant to art.104, para.1, a merchant shall be considered every natural person or legal entity that sells consumer's goods on the grounds of a sale contract within the scope of their professional or commercial activity.

Recent amendments to the CPA provide for additional protection of consumers in compliance with Directive 2011/83. Thus, the new art.103b provides that the merchant is obliged to deliver the goods to the consumer without undue delay within 30 days from the conclusion of the contract, unless otherwise agreed by the parties. If the merchant fails to deliver the goods within the respective term, the consumer may require the delivery of the goods to be carried in an additional fixed period depending on the circumstances. If the merchant fails to deliver the goods in this further specified period, the consumer is entitled to terminate the contract. In addition, the consumer has the right to terminate the contract immediately, without giving an additional term for delivery, in the following cases:

- the merchant has refused to deliver;
- delivery of the goods within the agreed delivery period is essential for the user, taking into account all the circumstances of the conclusion of the contract;
- the consumer has informed the merchant before the conclusion of the contract that it is essential that the delivery be made on a specific date or not later than the specified date.

Upon termination of the contract, the merchant shall reimburse the consumer without undue delay all amounts paid under the contract. The consumer may also claim compensation or damages under the general rules.

The conformity of the goods (product) with the agreement between the merchant and the consumer under the sale contract will be considered reached in cases where the following conditions are met:

- the product corresponds to the characteristics determined by the parties to the sale contract and is fit for use in accordance with its normal usage;
- the product corresponds to the description provided by the seller in the form of a sample;
- the product is fit for special use, which is desired by the consumer, provided that the consumer has informed the merchant about this special requirement upon conclusion of the contract, and the merchant has agreed with it; and
- the product meets the usual qualities and characteristics of the goods of the same type, which the consumer may reasonably expect.

As already explained above, in cases where the product does not correspond to the agreement between the parties under the clauses of the sale contract, the consumer is entitled to file a claim. Under this claim, the consumer asks the merchant to provide the compliance of the product with the agreed characteristics under the sale contract. In cases where the merchant assumes that the claim of the consumer is well-grounded, the merchant is obliged to satisfy the claim and to provide goods within the agreed parameters and characteristics within a one-month term following the submission of the claim. If the merchant fails to do this within the above one-month term, the consumer is entitled to

terminate the agreement and to claim reimbursement of the paid price or rebate. The consumer is not entitled to claim reimbursement of the paid price or rebate where the merchant agrees to replace the goods with a new one or to repair the goods within the above mentioned one-month term, as well as in those cases where the nonconformity is an insignificant one. However, the consumer is entitled to claim compensation for the damages caused as a result of the nonconformity of the goods.

Trade practices

The regulations concerning the trade practices are contained in Ch.4 of the CPA and include within their scope three different cases.

Off-premises contract

An off-premises contract shall be considered any contract between a merchant and a consumer:

- which is concluded with the simultaneous physical presence of the merchant and the consumer in a place other than the premises of the merchant;
- in which the consumer has made a proposal to contract under these circumstances;
- which is concluded on the business premises of the merchant or by means of distance communication, immediately after a personal and individual contact with the consumer at a location other than the business premises, with the simultaneous physical presence of the merchant and the consumer;
- which is concluded during an excursion organised by the merchant for the purpose or effect of selling or promoting the sale of goods or services to the consumer.

The consumer has the right to refuse the contract without specifying a reason and without liability within a 14-day term following its conclusion (for services, contracts for the supply of water, gas or electricity, where they are not put up for sale in a limited volume or set quantity, or of district heating, as well as for contracts for digital content which is not supplied on a tangible medium) or a 14-day term following the receipt of the goods. When the consumer has ordered many items in one order and they are delivered separately, the term shall be counted from the date on which the final product was received. When the contract is for the supply of goods consisting of multiple lots or pieces, the term shall be counted from the date on which the last lot or piece was accepted. When the contract is for regular delivery of goods carried out over a period of time, the term shall be counted from the date on which the goods was accepted for the first time.

The merchant must advise of this right in a clear and comprehensive manner, and also inform the consumer of the address and the persons who need to be contacted in cases where the consumer makes a decision to exercise their right to refuse the contract. In cases where the merchant fails to perform its obligation to inform the consumer of the latter's right to refuse the contract, the above mentioned 14-day term is prolonged by one year. In cases where the merchant provides the necessary information to the consumer within one year as of the conclusion of the contract or receipt of the goods, the 14-day term shall be counted as of the moment of provision of the information.

The above rules do not apply in respect to the following contracts:

- for social services, including social housing, childcare and support of families and persons, permanently or temporarily in need, including long-term care;
- for healthcare provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensing and provision of medicinal products and medical devices;
- for gambling, which involves wagering a stake with pecuniary value in games of chance, including lotteries, casino games and betting transactions;
- for financial services;
- for the acquisition or transfer of immovable property or for the establishment, acquisition or transfer of limited real rights over immovable property;
- for the construction of new buildings, the substantial conversion of existing buildings and rental of accommodation for residential purposes;
- for tourist package travels;
- timeshare, long-term holiday product, resale and exchange contracts;
- concluded by a public office holder who has a statutory obligation to be independent and impartial and who must ensure, by providing comprehensive legal information, that the consumer only concludes the contract on the basis of careful legal consideration and with the knowledge of its legal scope;
- for the supply of foodstuff, beverages or other goods designated for current consumption in the household and physically supplied by a merchant on frequent and regular rounds to the consumer's home, residence or workplace;
- for passenger transport services, with certain exceptions specified in the law;
- concluded by means of automatic vending machines or automated commercial premises;
- concluded with telecommunications operators by public payphones for their use or concluded for the use of one single connection by telephone, internet or fax established by a consumer.

Distance contracts

A distance contract is defined by art.45 of the CPA as any contract concluded between the merchant and the consumer under an organised distance sale or service-provision scheme without the simultaneous physical presence of the merchant and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded. The following means of communication may be used by the suppliers and the consumers upon conclusion of distance contracts:

- printed materials, whether addressed or not;
- standard letters;
- advertisement in the press containing a coupon for order;
- catalogue;
- phone (with or without human participation);
- radio;
- TV;
- video TV;

- video text;
- PC;
- email;
- internet;
- fax;
- any other means of communication that could be used for conclusion of distance contracts.

The supplier is obliged to provide the consumer with information of the name and the address of the supplier, the main characteristics of the products or services, the price of the goods and services with all taxes and fees included, the quality, the amount of the postal and transportation expenses, which are not included in the price, the way of payment, delivery and performance of the contract, the right of the consumer to refuse the contract, the conditions under which the products may be sent back or the services rejected, as well as the duration in which the offer and the price shall be considered binding to the merchant, as well as other information explicitly listed and detailed in the law. In addition, the law provides special rules for cases where the contract is concluded via an internet site. Thus, art.49, para.2 of the CPA provides that if placing an order entails activating a button or a similar function, the button or the similar function shall be labelled in an easily legible manner only with the words “order with the obligation to pay” or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the merchant. If the merchant has not complied with this obligation, the consumer shall not be bound by the contract or order — art.49, para.3 of the CPA.

For all distance contracts the merchant is obliged to provide the consumer with the confirmation of the contract concluded, on a durable medium within a reasonable time after the conclusion of the distance contract, and at the latest at the time of the delivery of the goods or before the start of performance of the service. The confirmation has to include all the information detailed in the law that the merchant is obliged to provide to the consumer before the conclusion of the contract, unless this information has already been provided on a durable medium before the conclusion.

As with the off-premises contracts, the consumer is entitled to release himself/herself from the already concluded contract within a 14-day term as of the date of delivery of the product or the conclusion of the contract (depending on the different hypothesis detailed above), without being obliged to pay any penalty or compensation. In cases where the merchant has not notified the consumer about their right to release themselves from the contract and the above information, the 14-day term shall be prolonged with one year. In cases where the merchant provides the necessary information to the consumer within one year as of the conclusion of the contract or the receipt of the goods, the 14-day term shall be counted as of the moment of provision of the information.

The rules concerning the distance contracts do not apply in respect of the types of contracts listed above with regard to the rules on off-premises contracts.

Methods of sale

Section II of Chapter 4 of the CPA contains rules for protection of consumers when different methods of sale are applied. The law determines that there shall be rules regarding the following methods of sale:

- Compulsory sale — regulated in art.62 of the law. A compulsory sale is the sale of products, including supply of water, gas or electricity, district heating and digital content, or rendering of services to consumers against consideration, without such products or services being explicitly requested by consumers in advance. The compulsory sale is prohibited on the grounds of explicit regulation of the law. In the case of a compulsory sale, the consumer is not obliged to return the received goods and is entitled to keep them, without being obliged to pay the price of the products or the services. The lack of any answer from the consumer does not mean that the latter accepts the sale.
- Contracts with a fixed term — art.62a of the CPA provides that in case of contracts concluded for a particular term, the term of the contract may be extended only with a written consent of the consumer regarding the conditions for its continuation. In the absence of such agreement, after the expiry of the contract it is automatically converted into a contract under the same conditions, but without a fixed term for its application. Consumers may then terminate such converted contracts with a one-month notice, without owing penalties. Any provisions which are contrary to the cited rule shall be considered void.
- Announcement of a price decrease — this shall be accompanied with clear, complete and unambiguous information regarding the relevant products and services or about the group of the relevant products and services and also about the terms and the period of the price decrease. The announcement of a price decrease must be made by one of the following methods:
 - the old price and the reduced (new) price must be marked together and the old price must be scored through;
 - the old price and the decreased price must be marked together, and indicated with the words “new price” and “old price”;
 - the per cent of the decrease must be indicated, as well as the old and the new price, and the old price shall be scored through.

Therefore, we may conclude that every notification of a price decrease must contain the old price which the merchant has applied for a certain period of time before the date of the announced price decrease. An “old price” must be considered the price that the merchant has applied, for a period of at least one month before the date of the announced price decrease. The requirement for a minimum one-month period, in accordance with the preceding sentence, does not apply to food and other perishable goods.

The notification of the total decrease of the prices must be considered prohibited, unless the prices of all of the products and services offered at the relevant shop are subject to discount.

The notification of the price decrease may not be applied for a period exceeding one month and must also be announced for more than one day. In certain cases the announcement of a price decrease may be applied for a period up to six months. The exception concerns the following cases:

- Full or partial clearance sale of the goods in a commercial establishment, when the establishment is subject to sale;

- Full or partial clearance sale of the goods in a commercial establishment, in case of a partial suspension of the commercial activity of the merchant, provided that such suspension has not been made during the last three years;
- Performance of reconstruction or other building activities in the commercial establishment which will exceed 30 business days;
- Transfer of the enterprise or liquidation.

In addition to the above, the law provides that:

- any act or omission which contradicts the consumer interests' protection legislation, indicated in Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws of the European Union Member States, is prohibited;
- the Council of Ministers shall make a decision to determine the authorities responsible for protection of the economic interests of consumers, within the meaning of Regulation (EC) No 2006/2004 of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws of the European Union Member States; and
- the Council of Ministers shall adopt an ordinance on the terms and procedure for the participation of the authorities under the previous item in the administrative cooperation with the European Union Member States and with the European Commission.

Unfair commercial practices

In addition to the rules implementing Directive 2011/83, the CPA implements the requirements of Directive 2005/29/EC of the European Parliament and of the Council of May 11, 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ("Unfair Commercial Practices Directive"). In compliance with this Directive, the CPA prohibits unfair commercial practices and provides definitions for different types of such practices. Thus, art.68d of the CPA provides that a business-to-consumer commercial practice shall be considered unfair if it is contrary to the requirements of good faith and professional diligence and it materially distorts or is likely to materially distort the economic behaviour of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group of consumers where the commercial practice is directed to a particular group of consumers.

Further, the CPA defines the following particular types of unfair commercial practices:

- Misleading commercial practices – a commercial practice shall be regarded as misleading if it contains false information and is therefore untruthful or in any way, including overall presentation, deceives or is likely to deceive the average consumer, even if the information is factually correct, in relation to one or more

of several elements explicitly detailed in the law, and in either case causes or is likely to cause the consumer to take a transactional decision that he/she would not have taken otherwise. Among the elements to which misleading could be applicable are the existence or nature of the product, the main characteristics of the product, such as its availability, benefits, risks, execution, composition, accessories, after-sale customer assistance and complaint handling, method and date of manufacture or provision, delivery, fitness for purpose, usage, quantity, specification, geographical or commercial origin, or the results to be expected from its use, or the results and material features of tests or checks carried out on the product, the extent of the merchant's commitments, the motives for the commercial practice and the nature of the sales process, any statement or symbol in relation to direct or indirect sponsorship or approval of the merchant or the product, the price or the manner in which the price is calculated, or the existence of a specific price advantage, the need for a service, a part, replacement or repair, etc.

The practice shall also be considered misleading if in its factual context, taking account of all its features and circumstances and the limitations of the communication medium, it omits material information that the average consumer needs, according to the context, to take an informed transactional decision, and thereby causes or is likely to cause the average consumer to take a transactional decision that he/she would not have taken otherwise. The law also contains a list of the types of information that should be considered material and whose omission would constitute misleading.

In addition, the CPA contains a vast and detailed listing of particular examples of most common misleading practices, which, however, is not exhaustive, and any commercial practice which has the general characteristics of a misleading practice is forbidden, regardless of whether it is explicitly described as such.

- Aggressive commercial practices – according to art.68h of the CPA, a commercial practice shall be regarded as aggressive if in its factual context, taking account of all its features and circumstances, by harassment, coercion, including the use of physical force or undue influence, it significantly impairs or is likely to significantly impair the average consumer's freedom of choice or conduct with regard to the product or services and thereby causes the consumer or is likely to cause the consumer to take a transactional decision that he would not have taken otherwise. In determining whether a commercial practice uses harassment, coercion, including the use of physical force or undue influence, it shall be taken account of the timing, location, nature or persistence of the practice, the use of threatening or abusive language or behavior, the exploitation by the merchant of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement of which the merchant is aware to influence the consumer's decision with regard to the product, any onerous or disproportionate non-contractual barriers imposed by the merchant where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another merchant, as well as any threat to take any action that cannot legally be taken.

The CPA also contains a detailed list of particular examples of aggressive practices, which, as the list of misleading practices, is not exhaustive.

When the national authority – the Consumers Protection Commission, finds that a particular commercial practice is unfair, the chairman of the Commission shall issue an order for prohibiting the implementation of the respective commercial practice. The chairman may decide to give the respective merchant the opportunity to prove that the practice is not actually unfair. If the practice is declared unfair and the prohibition order has not been appealed, or it has been upheld by the court, the consumer may terminate the contract concluded as a result of the application of the unfair practice and to request indemnification under the general rules.

Bodies and organisations for protection of consumers

According to the CPA, there are two types of such organisations: state bodies and consumer associations.

The main state body created for consumer protection is the Consumers Protection Commission, whose administrative staff is managed by three commissioners. The Commission's main purposes are:

- Planning and performing check-ups (including for the safety of goods);
- Imposing of control measures over infringers and with regard to unfair practices;
- Bringing class actions before the courts;
- Preparation of recommendations regarding specific unfair terms in contracts;
- Supervision on the safety of goods and services in accordance with the requirements of the CPA.

Consumer associations can be registered as non-profit organisations under the NPOA. Their main purpose is to help consumers by:

- Receiving information about future laws and other enactments and their drafts in cooperation with the relevant authorities;
- Making written opinions on such drafts;
- Informing the state bodies of any infringements to the CPA;
- Assisting in arguments between consumers and merchants;
- Bringing class actions in courts according to the procedural laws;
- Concluding collective settlements with traders' associations.

When the organisation meets certain criteria detailed in the law, it may apply for and be given the position of a representative organisation of consumers. The representatives of such organisations may then participate in the work of another body for protection of consumers – the National Council for Consumer Protection. The National Council is a consultative whose task is to assist the Ministry of Economy and Energy, consisting of a chairman – the Minister of Economy and Energy, a deputy chairman and 12 members. The National Council for Consumer Protection:

- advises the Minister of Economy and Energy to conduct an effective consumer policy;
- prepares programmes for conducting consumer policy;

- makes proposals for amendments to the legal regulation of consumer protection;
- makes proposals to the relevant government authorities in relation to the effective implementation of the legislation relating to consumer protection;
- gives opinions on draft legislation related to consumers' rights;
- promotes agreements between consumer associations and associations of traders;
- discusses other issues related to consumer protection.

The National Council for Consumer Protection may also create committees and working groups to solve individual problems.

ENVIRONMENTAL RULES

[¶BUL-1900] Introduction

The main legislative act in this field is the Environmental Protection Act, which was adopted in 2002. In accordance with art.1, the law regulates the following relations, regard to:

- the protection of the environment for current and future generations, and protection of the health of the population;
- the preservation of the biological diversity in accordance with the natural and biogeographical characteristics of the country;
- the protection and usage of the components of the environment (e.g. air, water, soil minerals, etc.);
- the control and supervision over factors which may harm the environment (e.g. disposal of waste, genetically modified organisms, etc.);
- exercising control over the state of the environment and sources of pollution;
- preventing and limiting pollution;
- the establishment and operation of a national system for the control of the environment;
- strategies, programmes and plans for the preservation of the environment;
- the collection of and access to information regarding the environment;
- the economical organisation of activities related to the protection of the environment;
- the rights and obligations of the State, the municipalities, the legal entities and natural persons regarding the protection of the environment.

[¶BUL-1925] Competent bodies

The competent bodies under the Environmental Protection Act are the following:

- the Minister of Environment and Waters;
- the Executive Director of Executive Agency for the Environment;
- the Directors of the Regional Inspections for the Environment and Waters;
- the Directors of Divisions;
- mayors, etc.

[¶BUL-1950] Ecological assessment and environmental impact assessment

The ecological assessment and the environmental impact assessment are performed in respect to plans, programmes, investment plans for construction, different activities and technologies and their alteration, provided that these plans, activities, building works, etc. may lead to serious impact on the environment.

- The ecological assessment is prepared in respect of plans and programmes which are in the process of drafting and/or approval by the Parliament or by central or local bodies of the executive power.
- An environmental impact assessment is performed with respect to investment plans for construction and different activities and technologies, in accordance with the enumerations under Appendix 1 and Appendix 2, which form an integral part of the Environmental Protection Act. The investment plans under the appendices include the following activities: refineries, nuclear power stations, installations for processing nuclear fuel, installations for processing steel, installations for processing black metals, installations for processing non-ferrous metals, etc. There are a great number of activities and investment plans which are subject to environmental impact assessment and the enumeration of all of them is not possible here.

The terms and procedures for the performance of the environmental impact assessment for the impact on the environment are regulated by an Ordinance issued by the Council of Ministers. The Ordinance is adopted on the grounds of art.101, para.1 of the Environmental Protection Act. The Ordinance regulates the requirements for:

- the appraisal of the necessity of performing an environmental impact assessment for the activities under Appendix 2 to the Act;
- the terms and procedures for the performance of discussions and consultations with the bodies, the public and those persons that may be affected by the implementation of the relevant investment plan or activity;
- the scope, contents and the form of the report which shall be prepared on the grounds of the environmental impact assessment;
- the criteria for the evaluation of the quality of the prepared report on the environmental impact assessment;
- the terms and the procedures of the organisation of the public discussion of the report on the environmental impact assessment;
- the grounds for taking decisions for environmental impact assessment, including how the public opinion has been taken into consideration;
- the terms and the procedures for exercising control and supervision over the performance of the prepared and adopted report on the environmental impact assessment;
- the content and maintenance of the register containing data for the performed procedures for environmental impact assessment. As of 2012, the access to the register is available online.

The procedure for the performance of an environmental impact assessment is the following:

- notifying those people who will be affected by the implementation of the investment plan;
- deciding whether an environmental impact assessment is necessary;
- carrying out the consultations;
- determining the scope, contents and the form of the report on the environmental impact assessment
- making an evaluation of the quality of the prepared report;
- organising public discussions of the report on the environmental impact assessment;
- making a decision on the environmental impact assessment;
- exercising control over the conditions and measures contained in the decision on the environmental impact assessment or in the decision on the necessity of performing an environmental impact assessment.

[¶BUL-1960] Other legislative acts with respect to environmental issues

The Waste Management Act adopted in 2012

This Act regulates the measures and supervision of environmental and human health protection by preventing or reducing the harmful impact of waste generation and management, as well as by reducing overall impact of resource usage and improving the efficiency of this usage. The Act also determines the requirements to products which in their manufacturing process or after their final use form any dangerous or widespread waste, as well as extended responsibility requirements to producers of such products, in order to stimulate reusing, prevention, recycling and other utilization of waste. The provisions of the law apply to: 1. Household waste; 2. Industrial waste; 3. Construction waste; 4. Hazardous waste.

The Biological Diversity Act adopted in 2002

This Act regulates the relations between the State, municipalities, legal and natural persons with respect to the conservation and sustainable use of biological diversity in the Republic of Bulgaria. Under to the Act "biological diversity" means the variety of all living organisms in all forms of their natural organisation, the natural communities and habitats thereof, the ecosystems and the processes occurring therein. The main purposes of the Act are as follows:

- conservation of natural habitat types representative of the Republic of Bulgaria and Europe, and habitats of endangered, rare and endemic plant, animal and fungal species within the National Ecological Network;
- conservation of the protected plant, animal and fungal species of the flora, fauna and mycota of the Republic of Bulgaria, as well as of those as are subject to use and trade;
- conservation of the genetic resources and the diversity of plant and animal species outside the natural surroundings thereof;
- regulation of the introduction of non-native and the reintroduction of native plant and animal species into the wild;

- regulation of trade with specimens of endangered species of wild flora and fauna;
- conservation of centuries-old and remarkable trees.

The Protected Areas Act adopted in 1998

This Act regulates the categories of protected areas, the assigned use thereof and the regime of protection and use, designation and management of the said areas. The following categories of protected areas are defined in the Act: 1. nature reserve; 2. national park; 3. natural monument; 4. managed nature reserve; 5. natural park; 6. protected site. The protected areas consist of forests, terrestrial and aquatic areas.

The Soils Act adopted in 2007

The Act regulates the social relations with regard to the protection of soils and their functions, as well as their sustainable use and long-term restoration as an environmental medium. The purposes pursued by the Act are as follows:

- prevention of damage to the soil and to the soil functions;
- lasting protection of soil functions;
- restoration of damaged soil functions.

The Ambient Air Purity Act adopted in 1996

This Act regulates the specification of indices and standards of ambient air quality, the limitation of emissions, the rights and obligations of the state and municipal authorities, of legal entities and natural persons as regards the control, management and maintenance of the ambient air quality, the requirements for the quality of liquid fuels, including the control of compliance with the requirements for liquid fuel quality at the time of their placing on the market and their distribution, transportation and use, the limitations on the emissions of sulphur dioxide from the use of liquid fuels, the limitations on the sulphur content of oil derivatives and the method of their combustion by vessels staying in the ports of the Republic of Bulgaria, the Bulgarian part of the Danube river, the inland sea waters, the territorial sea and the exclusive economic zone.

The Waters Act adopted in 1999

This Act regulates the ownership and management of waters within the territory of the Republic of Bulgaria as a national indivisible natural resource and the ownership of the water development systems and facilities.

The objective of the Act is to ensure an integrated water management in the interest of society and for protection of public health. The measures for achieving these objectives are provided in the Act. Art.3 explicitly defines which waters fall within the scope of the law:

- the surface waters;
- the ground waters, including mineral waters;
- the internal marine waters and the territorial sea;
- the waters of the River Danube, the River Rezovska and the River Timok within the international borders of the Republic of Bulgaria.

The Underground Mineral Resources Act adopted in 1999

The Act regulates the terms and procedures for:

- prospecting, exploration and extraction of subsurface resources on the territory of the Republic of Bulgaria, its continental shelf and the exclusive economic zone in the Black Sea;
- conservation of the bowels of the earth through rational use of the subsurface resources in the course of prospecting, extraction and primary processing.
- management of mining waste resulting from prospecting, extraction and primary processing of subsurface resources.

It does not apply to activities pertaining to:

- research, training and teaching activities;
- extraction of gold from river beds via manual cradling;
- extraction of salts and elements from sea water.

The extraction of underground mineral resources is prohibited in river beds, riversides, lands around water reservoirs and floodplains of rivers.

The Protection against the Harmful Impact of Chemical Substances and Mixtures Act adopted in 2000

As provided in art.1, the Act regulates:

- the rights and obligations of natural persons and legal entities, the production, launch on the market, use, storage and export of chemical substances or mixtures thereof, with the purpose of health protection and environment protection;
- the powers of the state authorities supervising the production, launch on the market, use, storage and export of chemical substances or mixtures thereof;
- the measures for applying (the following as a non-exhaustive list): Regulation No. 1907/2006 of the European Parliament and the Council, Regulation No. 1272/2008 of the European Parliament and of the Council, Regulation No. 648/2004 of the European Parliament and of the Council, etc.

The Protection from Environmental Noise Act adopted in 2005

According to art.1 of the law, it regulates:

- The assessment, management and control of environmental noise emitted by road, railway, air and water traffic, as well as by industrial installations and facilities, including the categories of industrial activities referred to in Appendix No. 4 to art.117, para.1 of the Environmental Protection Act, and by local noise sources;
- The establishment of the degree of environmental noise by measurement, assessment and mapping of environmental noise levels and by strategic noise mapping;
- The acoustic planning by development of action plans based on noise-mapping results, with a view to prevention and reduction of environmental noise, particularly where the exceeding of certain noise levels can cause harmful effects on human health, or for preserving environmental noise levels where the latter are not exceeded;

- The access to and provision of information to the public on environmental noise and its effects;
- The competencies of the governmental authorities and the local government authorities, the rights and obligations of legal entities and sole proprietors involved in the assessment, management and control of environmental noise.

The Liability for Prevention and Remedying of Environmental Damage Act adopted in 2008

This Act regulates the liability for the prevention and remedying of environmental damage in compliance with the "polluter pays" principle and the principle of sustainable development.

Environmental damage, as defined in the Act, shall be:

- damage to protected species and natural habitats, which is any damage that has significant adverse effects on reaching or maintaining the favorable conservation status of such habitats or species;
- damage to water and water bodies, which is any damage has significant adverse effects on the status of surface water and underground water, with the exception of the cases pursuant to art.156f of the Water Act;
- soil damage, which is any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction in, on or under land of substances, preparations, organisms or micro-organisms.

The Plant Protection Act

The Plant Protection Act governs public relations with respect to:

- phytosanitary measures under the International Plant Protection Convention, the protection of plants and plant products from economically important pests;
- monitoring, diagnosis, prognosis and signaling in plant protection;
- integrated production of plants and plant products and control on the integrated production;
- phytosanitary control on plants and plant products, and protective measures against the introduction into the country of quarantine pests on plants and plant products, as well as the protective measures against their spread within the country according to the requirements of Directive 2000/29/EC;
- measures implementing Regulation No. 1107/2009 of the European Parliament and of the Council;
- the requirements for plant protection products in order to safeguard human and animal health, the environment, their use and biological testing in accordance with the requirements of Directive 2009/128/EC of the European Parliament and of the Council, and the control on production, launch on the market, trade, repackaging and use;
- requirements for performing specialized plant protection services and the subsequent control;

- measures implementing Regulation No. 2003/2003 of the European Parliament and of the Council;
- requirements for fertilizers, soil improvers, biologically active substances and food substrates, and control on the production, launch on the market and their use.

The Energy from Renewable Sources Act

This Act regulates the public relations relating to the production and consumption of: electricity, heating and cooling energy from renewable sources; gas from renewable sources; and biofuels and energy from renewable sources in transport.

The primary objectives of the Act, as set forth in art.2, are:

- promotion of production and consumption of energy produced from renewable sources;
- promotion of production and use of biofuels and energy from renewable sources in transport;
- creating conditions for inclusion of gas from renewable sources in the natural gas transmission and distribution networks;
- creation of conditions for inclusion of heating and cooling energy from renewable sources in heating transmission networks;
- providing information regarding the support schemes, the benefits and practical specifics of the development and use of energy from renewable sources of all stakeholders involved in the process of production and consumption of electricity, heating and cooling energy from renewable sources, production and consumption of gas from renewable sources, as well as the production and consumption of biofuels and energy from renewable sources in transport;
- creating conditions for achieving sustainable and competitive energy policy and economic growth through innovation, and implementation of new products and technologies;
- creating conditions for achieving sustainable development at the regional and local levels;
- creating conditions for increasing the competitiveness of small- and medium-size enterprises by production and consumption of electricity, heating and cooling energy from renewable sources;
- security of energy deliveries, supplies and technical safety;
- environmental protection and restricting climate change;
- heightening the standard of living through economically effective use of energy from renewable sources.

The Forestry Act

The public relations regarding the preservation, management and use of the forest areas in Bulgaria aimed at guaranteeing the multifunctional and stable governance of the forest ecosystems are regulated by the Forestry Act. The main purposes of the Act are:

- preservation and expansion of the forest areas;
- maintenance and improvement of the conditions of the forests;

- guaranteeing the ecosystem, social and economic functions of the forest areas;
- guaranteeing and increasing the manufacturing of wood and non-wood forest products by environmental management thereof;
- maintaining the biological and landscape variety, and improving the condition of the populations of the species from the wild flora, fauna and mycota;
- providing opportunities for recreation and improving the recreation conditions;
- achieving balance between the interests of society and of the owners of forest territories;
- promotion and encouragement of the owners of land in forest territories;
- fulfillment of international and European commitments for preservation of the forest habitats.

The Climate Change Mitigation Act

This Act regulates the social relations with respect to:

- the implementation of the state policy on climate change mitigation;
- the implementation of the mechanisms for fulfilling the obligations under the United Nations Framework Convention on Climate Change and the Kyoto Protocol;
- the functioning of the National Green Investment Scheme;
- the functioning of the National Inventory System for Air Pollutants and Greenhouse Gas Emissions;
- the implementation of the EU emissions trading system;
- the administration of the National Register for Trading of Greenhouse Gas Emissions Quotas;
- measures to reduce greenhouse gas emissions from fuels used for transport and energy;
- fulfillment of the obligations arising from the Decision No. 406/2009/EC of the European Parliament and of the Council;
- operation of the voluntary emission reductions scheme.

ARBITRATION

[¶BUL-1975] Introduction

In accordance with art.19, para.1 of the new Civil Procedure Code, the parties to a property dispute may agree that this dispute should be resolved by an arbitration court. However, the Civil Procedure Code explicitly excludes certain disputes which cannot be resolved by an arbitration court:

- disputes regarding ownership rights and other real estate rights over immovables (real estate, land, houses, flats, etc.);
- disputes regarding possession over immovables;
- disputes regarding the right of alimony;
- disputes regarding rights under labour relations.

Pursuant to art.19, para.2, the arbitration court may deal with a domicile abroad if one of the parties to the dispute has its registered seat or actual management (if it is a legal entity) abroad or has a habitual residence (for entities and individuals) abroad. The arbitration proceeding has a number of advantages compared to the normal court proceedings. The decisions issued by the arbitration courts, as well as the agreements concluded by the parties to the dispute before the arbitration courts, have the same validity as court decisions issued by normal courts. These decisions and agreements are also subject to compulsory enforcement if there is no voluntary performance by the relevant party. It is worth noting here that the arbitration proceedings are normally faster than the normal court proceedings. In addition, the arbitration decision is final and binding to the parties, and the arbitration procedure consists of only one instance. The parties avoid the jurisdiction of the normal courts and refer the dispute to a person whom they trust, by means of nominating the arbitrators. Further, the arbitration proceeding is cheaper because there is only one instance (and the parties pay only once for translators, experts, lawyers, etc.).

¶BUL-2000] Arbitration Court at the Bulgarian Chamber of Commerce and Industry

This Arbitration Court (<http://www.bcci.bg/arbitration/index.html>) is a jurisdiction institution which is independent from the Chamber (<http://www.bcci.bg>). The competence of the arbitration court includes civil property disputes, as well as disputes for filling gaps in contracts or their adjustment to newly arisen circumstances between the contractual parties (natural persons and legal entities), residing or having their domiciles in the Republic of Bulgaria or abroad, provided that the said disputes are submitted to this Arbitration Court by virtue of an arbitration agreement or an international treaty. As discussed above, disputes regarding property rights or possession of immovables, as well as regarding labour relationships or alimony rights, may not be subject to the arbitration court.

Therefore, the parties may agree that if any disputes arise, the arbitration court on the grounds of an arbitration agreement will resolve these disputes. The arbitration agreement must be in writing. The agreement is assumed to be in writing even if it is contained in correspondence exchanged between the parties. In most cases, the arbitration agreement represents only one clause, which is included in the contract. The wording of the clause, which is recommended by the Bulgarian Chamber of Commerce and Industry, is as follows:

“All disputes, arising from this contract or related to it, including those arising from or concerning its interpretation, invalidity, performance or termination, as well as the disputes for filling gaps in this contract or its adaptation to newly established facts, shall be referred for resolution to the Court of Arbitration at the Bulgarian Chamber of Commerce and Industry in compliance with its Rules for Litigations, based on arbitration agreements.”

This clause is recommended by the Bulgarian Chamber of Commerce and Industry to be included in the contracts in order to avoid misunderstandings and to avoid disputes of whether the parties have agreed to refer the dispute to the arbitration court or whether the dispute is subject to normal court proceedings. The recommended arbitration clause shall apply both to domestic and to international commercial and civil contracts. As far as international commercial contracts are concerned, it is advisable for the parties to such

contracts to agree in the arbitration clause on the substantive law which shall apply. Even in the case of an “arbitration clause” included in the contract, each of the parties is entitled to file a claim before the normal court. However, at the first hearing before the normal court, the other party is entitled to object to the competence of the normal court on the grounds of the arbitration clause. In this case, the normal court will be obliged to terminate the proceedings.

It is worth remembering here that the decisions issued by the arbitration courts, as well as the agreements concluded by the parties to the dispute before the arbitration courts, have the same validity as the court decisions issued by the normal courts. These decisions and agreements are also subject to compulsory enforcement in case there is no voluntary performance by the relevant party.

The General Meeting of the Arbitration College has adopted Ethical Rules concerning the conduct of the arbitrators. Pursuant to the Statutes of the Arbitration Court, the Arbitration College consists of all of the arbitrators with the court. The Arbitration College is empowered to make decisions concerning organisational issues related to the court, to discuss the report of the chairman for the previous year and make decisions concerning the report, as well as debate on the practice of the court in view of its harmonisation. The document containing these rules was adopted on February 23, 2005. The Ethical Rules apply in respect of the conduct of the arbitrators and are aimed at supporting the professionalism and quality of the arbitrators’ work (activities). The Rules are further aimed at strengthening the principle for justice and equity of the arbitration proceedings and are also intended to raise the public trust on the arbitral method for resolving disputes. Pursuant to the rules, the arbitrators are declared independent and are obliged to obey only the Constitution of the Republic of Bulgaria, the international contracts (which Bulgaria is a party to), the laws and the equity rules. The arbitrators are obliged to observe the rules not only in their professional activities, but also in their public undertakings and private life. Any personal interest of the arbitrator in connection with the outcome of the cases, heard and resolved by this arbitrator, is considered inadmissible. In this connection, it is forbidden for an arbitrator to participate in this capacity in the resolution of a certain dispute in case that this arbitrator:

- appears to be a party to the dispute, representative of a party to the dispute, relative of a party to the dispute or of its representative;
- works together with a representative of any of the parties to the dispute in one and the same law firm or in other form of association of lawyers;
- is a relative with another member of the panel;
- has consulted a party to the dispute in respect of any of the issues which fall within the scope of the dispute;
- has been an expert, witness or private evaluator to the dispute;
- has common rights or common obligations or other common interests (common work under labour or assignment relations) with a party to the dispute or with its representative;
- has any relation with a party to the dispute.

Therefore, the arbitrators are entitled to adopt the choice of the parties or the assignment to resolve a certain dispute only in case they are independent and capable to perform

their obligations in an unprejudiced manner. The arbitrators must also possess the necessary professional experience, knowledge and competence needed for the resolution of the dispute. The arbitrators must also estimate whether they have the time and ability to resolve the dispute within the time-frame regulated by the Rules of the Arbitration Court.

Further, the arbitrators may not accept, directly or indirectly, any benefits like gifts, services, hospitality, engagement in other legal cases, employment, rendering of services and consultations to the arbitrator's relatives or any other similar benefits, from a party to the dispute or from its representative, including indirectly, i.e. from a third party.

In addition to the in-brief rules for professional conduct of the arbitrators, the Ethical Rules also contain regulation concerning the appropriate conduct of the arbitrators in their personal life, as well as the appropriate conduct in connection with the relations with the state institutions.

The Ethical Rules for the conduct of the arbitrators envisage that their infringement may constitute a ground for expulsion of an arbitrator from the list of arbitrators.

As has already been explained, the Arbitration Court is a jurisdiction institution which is independent from the Chamber, and having examined the competence of the court, we will go on to explain in brief the structure of the Arbitration Court. The internet address of the website of the Arbitration Court at the Bulgarian Chamber of Commerce and Industry is the following: <http://www.bcci.bg/arbitration/index.html>. The internet address of the website of the Bulgarian Chamber of Commerce and Industry is the following: <http://www.bcci.bg/>. Detailed information regarding the activities of the Chamber and useful business information can be found on the website. It is worth noting here that the competence of the Arbitration Court includes civil property disputes, as well as disputes for the filling of gaps in contracts or their adaptation to newly arisen circumstances between the contractual parties (natural persons and legal entities), residing or having their domiciles in the Republic of Bulgaria or abroad, provided that the said disputes are submitted to this Arbitration Court by virtue of an arbitration agreement or an international treaty.

The structure of the Arbitration Court consists of the Presidium, Chairman, Arbitrators and Secretariat. The Presidium consists of a chairman, two deputy chairmen and four members. The Management Board of the Bulgarian Chamber of Commerce and Industry elects the Presidium for a five-year mandate. Pursuant to the Statutes of the Arbitration Court, the Presidium is entitled to elect the arbitrators to the court, to undertake the appropriate measures for performance of the decisions adopted by the Arbitration College, as well as to make decisions concerning the activities of the Arbitration Court.

The Chairman is entitled to represent the Arbitration Court both in Bulgaria and abroad. Furthermore, the Chairman convokes the sessions of the Presidium and the Arbitration College, reports the activities of the Arbitration Court before the Presidium and the Management Board of the Chamber, implements the decisions of the Presidium and performs the functions envisaged under the rules of the court.

The arbitrators are subject to entry into the lists of the arbitrators in the court. The arbitrators are being elected on the grounds of a decision adopted by the Presidium. The arbitrators are elected for a period of two-and-a-half years. There are two separate lists of arbitrators — one for domestic disputes and one for international disputes. A domestic

dispute is considered a dispute between parties residing or having their domicile in the Republic of Bulgaria. International disputes shall be considered disputes in which at least one of the parties has its residence or domicile abroad.

The Secretariat of the court consists of secretaries and other officers appointed by the President of the Chamber, following the approval of the Chairman of the court. The secretaries of the court are obliged to organise the files for the disputes, to run the correspondence of the court and perform all other obligations in accordance with the rules of the Arbitration Court.

As clarified above, the disputes are divided into two main categories: domestic disputes and international disputes. The hearing and resolving of the disputes by the arbitrators requires that the arbitration charges be paid. The Arbitration Court collects arbitration charges depending on the value of the claim and also depending on the nature of the dispute — domestic or international one. The charges which the Arbitration Court collects for the hearing of international disputes, have already been examined in this chapter. The following table indicates how these charges are calculated:

<i>Value of the claim (€)</i>	<i>Arbitration clause (€)</i>
up to €1000	€150
from €1,001 to €5,000	€150 plus 12% for the amount over €1,000
from €5,001 to €10,000	€630 plus 9% for the amount over €5,000
from €10,001 to €50,000	€1,080 plus 6% for the amount over €10,000
from €50,001 to €100,000	€3,480 plus 4% for the amount over €50,000
from €100,001 to €200,000	€5,480 plus 2% for the amount over €100,000
from €200,001 to €500,000	€7,480 plus 1% for the amount over €200,000
from €500,001 to €1,000,000	€11,980 plus 1.2% for the amount over €500,000
over €1,000,000	€17,980 plus 1% for the amount over €2,000,000

The charges collected by the Arbitration Court for hearing and resolving of domestic disputes are calculated on the basis of the same criteria, and namely the value of the claim (but in BGN, not in EUR). The charges of the Arbitration Court for hearing of domestic disputes shall be calculated pursuant to the following table:

<i>Value of the claim (BGN)</i>	<i>Arbitration charge (BGN)</i>
up to 1,000	200
from 1,001 to 10,000	200 plus 4.5 per cent for the amount over BGN 1,000
from 10,001 to 100,000	605 plus 3.5 per cent for the amount over BGN 10,000
from 100,001 to 500,000	3,755 plus 2.5 per cent for the amount over 100,000
from 500,001 to 1,000,000	13,755 plus 1.5 per cent for the amount over 500,000
over 1,000,000	21,255 plus 1 per cent for the amount over 1,000,000

In accordance with the Tariff of the Court, the arbitration charge must be paid in advance. In cases where the arbitration charge is paid by wire transfer, it shall be considered paid on the day the bank account of the Bulgarian Chamber of Commerce and Industry is credited with the due amount. In case of an increase of the value of the claim,

an additional arbitration charge must be paid in order to cover the difference between the amount of the initially filed claim and the increased value of the claim. Bulgarian undertakings and companies are obliged to pay the arbitration charges in BGN, irrespective of the currency in which the claim has been filed. In this case, the official exchange rate fixed by the Bulgarian National Bank for the date of filing the claim shall apply. A decrease in the amount of 50 per cent to the arbitration charge will apply if the parties agree the dispute to be heard by one arbitrator. Furthermore, the arbitration charge is subject to refund in case of termination of the arbitration procedure, regardless of the reasons for this termination, as follows:

- (1) refund at the amount of 75 per cent of the paid charge if the procedure is terminated before the arbitration court has performed any proceedings; and
- (2) refund at the amount of 50 per cent of the paid charge in case that the procedure is terminated after the arbitration proceedings have begun.
- (3) refund at the amount of 25 per cent of the paid charge in case that the objection of incompetence has been decided with the arbitration award, in case of partial termination with the arbitration award of the arbitration procedure concerning eventual claim or eventual set-off objection, and when the parties have requested termination within the term for issuing the arbitration award.

¶[BUL-2025] Court of Arbitration at the Bulgarian Industrial Association

The Bulgarian Industrial Association (<http://www.bia-bg.com/court+of+arbitration+at+bia-services/1/MIW-gRSP15WzIxKfUfK3YVOHc9O-MBeTMzazYJK-Qte3g1eHQdebU1eLQhaP11m7>) is a non-profit organisation of Bulgarian business and industry. The Court of Arbitration is an independent institution which resolves civil and commercial disputes, including disputes regarding intellectual property, as well as disputes for filling gaps in contracts or their adjustment to newly arisen circumstances.

The competence of the Court of Arbitration is envisaged in art.1, para.2 of the Rules of the Court as follows:

“The Court of Arbitration at BIA shall hear and resolve civil and commercial disputes within the jurisdiction provided for by the Civil Procedure Code, including disputes regarding intellectual property, disputes on filling of gaps in a contract, or its adjustment to newly arisen circumstances. The Court of Arbitration at BIA shall administer mediation of disputes that have arisen or may arise among the parties.”

Pursuant to the prohibition envisaged under the Civil Procedure Code, the Court may not hear and resolve disputes on rights to or possession of real property, or disputes on employment relationships.

The Court of Arbitration is entitled to hear disputes or to administer mediation on the grounds of an arbitration agreement. Pursuant to art.3 of the Rules of the Court, the arbitration agreement is the consent of the parties to submit a dispute regarding a contractual or non-contractual relationship among them for resolution by the Court. The mediation shall be the consent of the parties to mediate disputes that have arisen or may arise among the parties. In accordance with art.3, para.3, the arbitration agreement and the mediation agreement may be a separate contract or a clause in a contract (arbitration or mediation clause) on which a dispute has arisen or may arise regarding its performance. In

accordance with para.4 of the same article, the arbitration agreement and the mediation agreement inserted as a clause into a contract are considered independent of other terms of the contract. Therefore, the nullity or the voidance of the contract shall not affect the arbitration or the mediation clause (agreement).

The Court of Arbitration collects fees for resolved disputes and administered mediations. The amount of the fee is determined on the grounds of the filed claim, respectively on the grounds of the amount of the interest in a mediation procedure. (It is worth noting that the fee which shall be paid in a mediation procedure is half the fee determined for claims pursuant to the table. Therefore, the Court of Arbitration at BIA shall collect a mediation fee based on the amount of the interest, and it shall be half the amount of the arbitration fee calculated under the table above.) The fee is determined in accordance with the following table:

<i>Amount of claim</i>	<i>Fee</i>
up to 10,000 BGN	900 BGN
from 10,001 to 50,000 BGN	900 BGN plus 3 per cent over the amount exceeding 10,000 BGN
from 50,001 to 100,000 BGN	The arbitration fee due for the amount up to 50,000 BGN plus 2,5 per cent over the amount exceeding 50,000 BGN
from 100,001 to 1,000,000 BGN	The arbitration fee due for the amount up to 100,000 BGN plus 2 per cent for the amount exceeding 100,000 BGN
over 1,000,000 BGN	The arbitration fee due for the amount up to 1 million BGN plus 1,5 per cent over this amount

As envisaged under the Tariff, if the amount of the claim is reduced, the arbitration fee paid shall not be refunded. However, if the amount of the claim is increased, an additional arbitration fee shall be paid to the full amount of the interest under the claim. If the interest of the claim cannot be determined because of its nature, the President of the Court shall determine the arbitration fee. The fee will be determined at the discretion of the President with a minimum of 600 BGN. The minimum mediation fee is set at 900 BGN. The payment of the fee is a precondition for the commencement of the proceedings. The fee must be paid in advance and in Bulgarian levs. Foreign natural persons and legal entities shall also pay the fee in levs, based on the official exchange rate of the relevant currency set by the Bulgarian National Bank as of the date on which the claim is filed. The arbitration fee is reduced by 50 per cent if a single arbitrator hears the proceeding. In addition to the above fees, the Tariff of the Court envisages that an administrative fee at the amount of 100 BGN must be paid for each filed claim and each request for mediation proceedings.

The arbitration proceedings before the Arbitration Court at the Bulgarian Chamber of Commerce and Industry and before the Arbitration Court with the Bulgarian Industrial Association are quite identical. The arbitration proceedings commence with the filing of a claim before the arbitration court by one of the parties. The claim must contain the following information:

- full names of the parties;
- addresses of the parties and contact details (telephone number, fax number, telex number, etc.);
- price of the claim, i.e. the amount of the claim;
- description of the circumstances and grounds of the claim;
- description of the claim, i.e. description of what exactly the claimant requests;
- the name of the arbitrator or request for appointment of an arbitrator by the Chairman of the Arbitration Court; and
- list of the documents attached to the statement of claim;
- signature of the claimant.

The claimant must attach to the statement of claim the following documents: the arbitration agreement, documents evidencing the current status of the claimant and the defendant (these documents certify the names, addresses of management, persons authorised to represent the companies, etc.), a receipt or another financial document evidencing that the arbitration fees (charges) are paid, copies of all documents for the defendant and the arbitration court. Normally, in order to save time and hearings, the arbitration courts request all documents and evidence to be attached to the statement of claim. If the statement of claim is not complete, the required documents are not attached, or there are other defects, the Secretary of the Court informs the claimant of this and gives the claimant a term to adjust the non-compliances in the claim. After the preliminary check is performed on grounds of the documents submitted by the claimant, the Secretary of the Court submits copies of all of the documents to the defendant. Together with the documents, the Secretary also submits a list of the arbitrators to the defendants. The documents are sent to the defendant together with a letter from the Secretary of the Arbitration Court. With this letter, the defendant is informed that he/she is entitled to prepare and submit his/her answer to the statement of claim, together with all documents and other evidence within a 2-week term (4-week term when the defendant has a domicile or head office abroad, following the date on which the defendant receives the statement of claim. If the defendant does not submit an answer, this shall not be considered as avowal (admission) of the claim.

It is also possible for the claimant to submit a statement of claim without an arbitration agreement attached. In this case, the Secretary of the Arbitration Court is obliged to ask the claimant to submit the arbitration agreement within a one-week term or to declare that he/she wishes a copy of the statement of claim to be submitted to the defendant without the arbitration agreement. The Secretary of the Arbitration Court is also obliged to do this if he considers the submitted arbitration agreement null or void. The defendant is entitled to make an objection stating that the Arbitration Court is not competent to resolve the dispute with the answer to the statement of claim or at the first hearing of the dispute before the court at the latest. Therefore, even without an arbitration agreement concluded between the parties, the Arbitration Court may appear to be competent to resolve the dispute provided that the defendant makes no objection within the stipulated terms. However, the Arbitration Court is entitled at its own discretion to accept such objections even after the deadline (which is the first hearing of the dispute) if the defendant has serious reasons for the delay.

The Arbitration Court resolves the disputes by a panel of arbitrators, which may consist of one or (normally) three arbitrators. Each of the parties appoints one arbitrator, and these two appointed arbitrators choose the third arbitrator, who is the chairman of the panel. Each of the parties shall also appoint one reserve arbitrator. The parties to a dispute may further agree the dispute to be resolved by only one arbitrator. In this case the Chairman of the Arbitration Court shall appoint the arbitrator. Once the panel of arbitrators is appointed, the panel shall examine the documents, i.e. shall examine the dispute in advance and shall undertake all necessary actions for the clarification of the circumstances of the case. Furthermore, the panel is entitled to schedule a preparatory hearing of the case without summoning the parties. The panel is also entitled to order the Secretary of the Court to undertake certain actions to prepare the hearing of the case. The Secretary shall also summon the parties, witnesses, experts, and interpreters for the date of the case hearing scheduled by the Chairman of the Arbitration Panel. All of the above-described actions are aimed to save time and money and to resolve the disputes as soon as possible. The parties to the dispute shall be summoned to the arbitration hearing by notices, which must be received by the parties at least two weeks in advance, i.e. two weeks prior to the date appointed for hearing the case. If a party to the dispute has its residence or head office outside the territory of the Republic of Bulgaria, the period for summons shall be extended to four weeks. The notices which are sent to the parties shall include information regarding the case number, the parties to the case, the date and the time of hearing the case. In order to simplify the procedure and avoid postponement of hearings, it is considered that the parties shall not be given notices if they have attended a previous hearing of the Arbitration Court, during which the case has been scheduled for the next hearing. The dispute shall be resolved in one or more hearings. The parties are entitled to attend the hearings personally or through authorised representatives (attorneys-at-law). After the opening of the first arbitration hearing, the arbitrator/s are obliged to suggest that the parties resolve the dispute on the grounds of a mutual consent by signing of a settlement agreement. The arbitrator/s is entitled to suggest the signing of such a settlement agreement at any time prior to issuance of the arbitration decision (award). If the parties reach an agreement before the issuance of the arbitration award, this agreement shall be entered into the minutes of the hearing and signed by the parties and the arbitrator/s. The parties may further request the terms and conditions contained in the agreed settlement be set forth in the arbitration award. If the parties to the dispute have not determined the applicable law, or the choice of law is inadmissible, the arbitration panel shall apply the law determined by the rules of conflict of laws that it considers applicable to the case. Normally, the arbitration proceedings shall conclude with the rendering of an award. The award shall be issued when there are no impediments to resolving the case on its merits. The Court shall also render an award in case of acknowledgment of the claim.

The arbitration decision (award) shall contain the following information:

- name of the arbitration court;
- place and date of issuance of the arbitration decision;
- names of the chairman and the members of the arbitration panel, i.e. names of the arbitrators;
- names of the parties to the dispute, as well as names of the third parties to the dispute;

- subject of the dispute and short description regarding the circumstances and nature of the dispute;
- motives of the arbitration award;
- disposition, including a decision regarding the issues who shall bear the cost for the arbitration proceedings; and
- signatures of the chairman and the members of the panel.

After the single arbitrator, or at least two members of the arbitration panel, signs the arbitration award, it shall be entered into the book of awards and announced to the parties to the dispute. The parties shall be provided with copies of the issued arbitration decision only if the arbitration fees are paid in full. If one of the parties requests so, the arbitration panel is entitled to issue a supplementary arbitration award with regard to the claim or claims that it has failed to rule on. The supplementary award shall be considered an integral part of the initial award. The arbitration award, once issued, is considered final and binding to the parties. The parties shall be under obligation to execute the award voluntarily. If there is no voluntary compliance, the arbitration award shall be enforced in accordance with the procedure envisaged under the Civil Procedure Code.

[¶BUL-2040] Arbitration Court at KRIB

Recently, the Arbitration Court at KRIB has been gaining popularity. Many of its arbitrators have solid experience in solving cases by examining and applying the FIDIC rules, and the leading experts have participated in the arbitration of the International Chamber of Commerce in Paris. In the Statute of the Arbitration Court at KRIB many guarantees are developed to ensure prompt and effective hearing of the case, as well as enacting objective, fair and lawful decisions. It is provided that every decision should be checked for compliance with the formal requirements by a special commission, which also performs a consultative function. Many rules are based on the principles of promptness and procedural economy, including many opportunities for the parties to solely determine the hearing procedure, the applicable law, the admissible evidence, place and language of proceedings, etc. Original solutions are present, reducing the necessary procedural actions to a minimum and preventing any attempts at misuse of procedural rights or deliberate delaying of the procedure by one of the parties, at the same time observing the principle of careful and specific consideration of the case facts, taking into account all relevant changes. Last but not least, this arbitration is also attractive in financial terms, as it provides for many hypotheses of payment of reduced fees, depending on the specific course of the particular procedure.

COURT SYSTEM

[¶BUL-2050] Introduction

In accordance with art.117 of the Constitution of the Republic of Bulgaria, the judicial power is independent. The judicial power protects the rights and legal interests of the citizens, the legal entities and the State. The independency of the judicial power is guaranteed by its own budget and by the independence of the judges and the prosecutors. When performing their obligations, judges are obliged to comply only with the facts and

the law. The courts perform the jurisdiction. Pursuant to art.119 of the Constitution, the court system includes the following courts: the Supreme Cassation Court, the Supreme Administrative Court, courts of appeal, district courts, martial courts, and regional courts. The Supreme Court Council determines the number, the court regions, and the headquarters of the regional courts, the district courts and the courts of appeal.

[¶BUL-2075] Regional court

The regional court is the basic first-instance court in the court system for criminal and civil trials (cases). The jurisdiction of the regional court comprises all civil lawsuits which are not under the jurisdiction of the district court as a first-instance court. Therefore, the regional court is competent to hear and resolve on the following lawsuits:

- civil and commercial lawsuits with a material interest of the claim under 25,000 BGN;
- alimony claims;
- claims for protection of rights over real estates (ownership and possessory actions) with a material interest of the claim under 50,000 BGN;
- labour lawsuits, i.e. claims under the Labour Code; and
- claims for receivables under deficit deeds.

If a lawsuit which is within the competence of the regional court is resolved, and a court decision is issued by the district court, this shall not constitute a legal ground for revocation of the decision. The reason for this is that the judges from the district court have a longer length of service and are therefore considered more experienced. On the contrary, it is not admissible for a lawsuit which is within the competence of the district court to be resolved by the regional court. Such a decision will be subject to appeal and most probably will be revoked.

[¶BUL-2100] District court

The district court is competent to hear as a first-instance the following civil cases:

- civil and commercial lawsuits with a material interest of the claim exceeding 25,000 BGN;
- claims to establish or disavow filiation, to terminate adoption, any actions for interdiction or for vacation of interdiction;
- claims for ownership and other rights in rem to an immovable with a cost of action exceeding 50,000 BGN;
- claims to establish inadmissibility or nullity of a recording, as well as for non-existence of a recorded circumstance, where so provided for by law; and
- other claims when envisaged under other legislative acts.

[¶BUL-2125] Administrative Court

The Administrative Court acts as a first instance to all administrative cases, except those in the competence of the Supreme Administrative Court. It also acts as a cassation instance for cases for appealing infringement acts for imposing fines.

[¶BUL-2150] Specialised Penal Court

With the amendments of the Judicial System Act from January 2011 a new court has been created. Its jurisdiction includes cases of high social hazard. The Specialised Penal Court is made equal in standing to a district court and its decisions can be appealed before a Specialised Penal Court of Appeal.

[¶BUL-2175] Court of Appeal

The Court of Appeal acts and issues court decisions in the second instance on the grounds of appeals filed against the decisions issued by the district court in the first instance .

[This image is being removed for this update]

The regional court acts as a first instance court, the decision of the regional court will be subject to appeal before the district court, but not before the Court of Appeal .

[This image is being removed for this update]

[¶BUL-2200] Supreme Cassation Court

The Supreme Cassation Court is the upper court instance in the court system for criminal and civil trials (cases). The territorial competence of this court is comprised of the whole territory of the country. The Supreme Cassation Court's headquarters are in Sofia. The Supreme Cassation Court is competent to resolve claims filed against court decisions issued by the district courts or the courts of appeal in their capacity as second instance courts, where the material interest is at least 5,000 BGN in civil cases and at least 10,000 BGN in commercial cases. Besides, the decision has to be pronounced on a material issue of law or procedural law which:

- is addressed in conflict with the case law of the Supreme Court of Cassation;
- has been addressed by the courts in a conflicting manner;
- is relevant to the accurate application of the law, as well as to the progress of law.

It is worth noting here that the new Civil Procedure Code states that any claim to the Supreme Cassation Court must be countersigned by a lawyer or a legal adviser, save as where the appellant or the appellant's representative possesses a licensed competence to practise law. There are certain opinions that such a regulation is not in compliance with the Constitution and therefore must be declared unconstitutional by the Constitutional Court of the Republic of Bulgaria in particular art.122. The latter article states that "Citizens and legal entities shall have the right to legal counsel at all stages of a procedure". Paragraph 2 of the same article states "the procedure according to which the right to legal counsel is exercised shall be established by statute". Such requirement restrict some citizens from being able to appeal against incorrect court decision in front of the highest instance. However no legal action has been taken in this connection.

¶BUL-2225] Supreme Administrative Court

The Supreme Administrative Court is the upper instance in the court system regarding the administrative jurisdiction, i.e. for administrative cases. The territorial competence of this court is comprised of the whole territory of the country. The Supreme Administrative Court's headquarters are in Sofia.

The legal proceedings under administrative lawsuits which are within the competence of the Supreme Administrative Court are regulated by the provisions of the Administrative Procedure Code (APC). The Supreme Administrative Court performs supreme control over the strict and equal application and execution of the laws in the field of the administrative proceedings. This court is the only one which is entitled to issue court decisions regarding the lawfulness of acts issued by the Council of Ministers, acts issued by Ministers, as well as to issue court decisions regarding the lawfulness of other acts which are envisaged in other laws as subject to appeal only before the Supreme Administrative Court.

The Supreme Administrative Court is competent to resolve on the following claims and protests filed against:

- the contest of the statutory instruments of secondary legislation, except such issued by the municipal councils;
- the contest of acts of the Council of Ministers, the Prime Minister, the Deputy Prime Ministers and the Government Ministers;
- the contest of decisions of the Supreme Judicial Council;
- the contest of acts of the bodies of the Bulgarian National Bank;
- cassation appeals and protests against first-instance court judgments;
- interlocutory appeals against rulings and orders;
- motions for reversal of effective judicial acts on administrative cases; and
- the contest of other acts specified in a law.

The judicial power

We explained above that pursuant to art.117 of the Constitution of the Republic of Bulgaria, the judicial power is independent and the judicial power protects the rights and legal interests of the citizens, the legal entities and the State. We also clarified that pursuant to art.119 of the Constitution, the court system includes the following courts: the

Supreme Cassation Court, the Supreme Administrative Court, courts of appeal, district courts, administrative courts, specialised penal courts, martial courts and regional courts. The Supreme Court Council determines the number, the court regions, and the headquarters of the regional courts, the district courts and the courts of appeal.

The Supreme Court Council is the body which administers the court system. The Supreme Court Council consists of 25 members — 11 members are elected by the Parliament, 11 members are elected by the bodies of the court system (i.e. by the judges, the prosecutors and the examining magistrates), and the last three members are always the chairman of the Supreme Cassation Court, the chairman of the Supreme Administrative Court, and the Chief Prosecutor. The members of the Council must always have at least 15 years length of service and high professional and moral qualities. The mandate of the members who are subject to election is five years and there is a prohibition for re-election in two consecutive mandates. The hearings of the Supreme Court Council are always presided over by the Minister of Justice, who has no right to vote, i.e. the Minister is only presiding. The powers of the Supreme Court Council include the following rights:

- proposing to the President of the Republic of Bulgaria for the appointment and dismissal of the chairmen of the Supreme Cassation Court and the Supreme Administrative Court, as well the appointment and dismissal of the Chief Prosecutor;
- determining the number, the court regions, and the headquarters of the regional courts, the district courts and the courts of appeal on the grounds of proposal submitted by the Minister of Justice;
- determining the number of judges, prosecutors and examining magistrates;
- appointing, promoting, demoting, transferring and dismissing the judges, the prosecutors and the examining magistrates, and determining their remuneration, etc.

We have clarified above the competence of each court for hearing and resolving cases.

The Constitutional Court of the Republic of Bulgaria

Although the Constitutional Court is not a typical court and is not included in the court system, it is worth examining in brief this institution because of its important powers. Some authors describe the Constitutional Court as the fourth power after the legislative, the judicial, and the executive power. The main legislative framework concerning the Constitutional Court is contained in the Constitution of the Republic of Bulgaria and the Constitutional Court Act (CCA). The Constitutional Court Act is adopted by the Parliament and promulgated in the State Gazette, issue 67, August 16, 1991. Since its promulgation, the Act has had few amendments.

Pursuant to art.147 of the Constitution of the Republic of Bulgaria, the Constitutional Court consists of 12 judges, one third of whom are elected by the Parliament, one third are appointed by the President of the Republic, and the last four members are elected by the General Meeting of the judges of the Supreme Administrative Court and the Supreme Cassation Court. The term of service of the constitutional judges is nine years. Re-election is not allowed because of an explicit prohibition contained in the Constitution. Every

three years, four of the judges (from the relevant quota — the quota of the President, the quota of the Parliament or the quota of the Supreme Administrative Court and Supreme Cassation Court) are replaced by new judges.

The Constitutional Court is empowered on the grounds of the Constitution with the following rights:

- to issue mandatory interpretations concerning the Constitution of the Republic of Bulgaria;
- to resolve disputes concerning competence between the Parliament, the President of the Republic, and the Council of Ministers, as well as disputes for competence between the local authorities and the central executive authorities;
- to make a decision, when being requested, as to whether there is a contradiction of the Constitution with laws and other legislative acts issued by the Parliament, as well with acts issued by the President. It is worth noting here that pursuant to art.5 of the Constitution, the Constitution is the supreme legislative act and other laws could not contradict the Constitution. Furthermore, the regulations contained in the Constitution operate immediately, which means that the elaboration (i.e. the concretisation) of the provisions in laws, regulations, etc. is not a precondition for the operation of the provisions of the Constitution. Therefore, we shall conclude that the provisions of the Constitution have “immediate effect”, which is actually explicitly stated in art.5, para.2 of the Constitution;
- to pronounce on the compliance with the Constitution of international contracts concluded by the Republic of Bulgaria prior to their ratification, as well as to pronounce on the compliance of the Constitution with the generally acknowledged regulations of the international law and international contracts which Bulgaria is a party to;
- to pronounce on disputes regarding the compliance of the political parties and coalitions with the Constitution;
- to pronounce on the lawfulness of the election of a president, vice-president of the Republic of Bulgaria and deputies of the Parliament;
- to pronounce on accusations raised by the Parliament against the President and the Vice-President of the Republic of Bulgaria.

The above powers of the Constitutional Court are enumerated by art.149 of the Constitution. These powers could neither be revoked, nor supplemented on the grounds of a law. The Constitutional Court is entitled to exercise its powers when requested by at least 48 deputies of the Parliament (which is one fifth of the Parliament), by the President, by the Council of Ministers, by the Supreme Administrative Court, by the Supreme Cassation Court or by the Chief Prosecutor. The Supreme Administrative Court and the Supreme Cassation Court are entitled to stop the hearing of a court case when they establish contradiction of the law with the Constitution and to notify the Constitutional Court. We shall note that the municipal councils (in their capacity as local authorities) are entitled to notify the Constitutional Court in cases of dispute concerning competence between the local authorities and the central executive authorities. It is also worth noting that an amendment was made in 2006 which gives right of the Ombudsman to approach the Constitutional Court with a petition to establish unconstitutionality of law whereby any rights and freedoms of citizens are violated.

The Constitutional Court enacts its decisions with a majority of more than half of all of its judges. The decisions of the Constitutional Court are subject to promulgation in the State Gazette within a 15-day term following their adoption. The decisions enter into force after the expiration of three days following their promulgation. In case that pursuant to the decision of the Constitutional Court, a certain legislative act or part of it contradicts the Constitution, this act or part of it shall not apply as of the date the decision enters into force. This part of the law which does not contradict the Constitution preserves its effect and continues to apply in the future.

INDEX

- Administrative Court** BUL-2125
- Advertising**
 - . misleading and comparative BUL-1650
- Air quality** BUL-1950
- Annual leave** BUL-1175
- Arbitration**
 - . conduct of arbitrators BUL-2000
 - . courts
 - . . Chamber of Commerce and Industry BUL-2000
 - . . Industrial Association BUL-2025
 - . . KRIB BUL-2040
 - . generally BUL-1975
- Associations**
 - . civil BUL-550
 - . generally BUL-525
- Biological diversity** BUL-1950
- Branches** BUL-450
- Chemical substances**
 - . protection against harmful impact ... BUL-1950
- Civil associations** BUL-550
- Climate change** BUL-1950
- Commercial Act**
 - . commercial companies under
 - . . branches BUL-450
 - . . company limited by shares BUL-400
 - . . general partnership BUL-350
 - . . joint stock company BUL-375
 - . . limited liability company BUL-275
 - . . limited partnership BUL-325
 - . . sole trader BUL-425
 - . . sole-proprietorship limited liability company BUL-300
 - . commercial register BUL-250
 - . generally BUL-225; BUL-250
- Commercial register** BUL-250
- Companies**
 - . Commercial Act – see Commercial Act
 - . taxation – see Corporate income tax
- Company limited by shares** BUL-400
- Comparative advertising** BUL-1650
- Competition law**
 - . generally BUL-1525
 - . unfair competition – see Unfair competition
- Constitution** BUL-075
- Constitutional Court** BUL-2225
- Consumer protection** – see Sales conditions and consumer protection
- Contracts**
 - . distance BUL-1875
 - . employment – see Employment contracts
 - . fixed-term BUL-1875
 - . off-premises BUL-1875
 - . unfair terms BUL-1875
- Copyright**
 - . authors BUL-1300
 - . contents BUL-1325
 - . free use of work BUL-1350
 - . licensing BUL-1360
 - . persons to whom copyright belongs .. BUL-1300
 - . scope of protection BUL-1275
- Corporate income tax**
 - . generally BUL-650
 - . legislation BUL-650
 - . rates BUL-650
- Court of Appeal** BUL-2175
- Court system**
 - . Administrative Court BUL-2125
 - . arbitration
 - . . Chamber of Commerce and Industry BUL-2000
 - . . Industrial Association BUL-2025
 - . . KRIB BUL-2040
 - . Constitutional Court BUL-2225
 - . Court of Appeal BUL-2175
 - . district court BUL-2100
 - . generally BUL-175; BUL-2050
 - . regional court BUL-2075
 - . Specialised Penal Court BUL-2150
 - . Supreme Administrative Court BUL-2225
 - . Supreme Cassation Court BUL-2200
- Definitions and meanings**
 - . biological diversity BUL-1950
 - . commercial companies BUL-250
 - . comparative advertising BUL-1650
 - . compulsory sale BUL-1875
 - . concentration of economic activity .. BUL-1700
 - . delivery of goods BUL-700
 - . designation of origin BUL-1500
 - . distance contracts BUL-1875
 - . dominant position BUL-1700
 - . environmental damage BUL-1950
 - . geographic indication BUL-1500
 - . goods BUL-700
 - . independent economic activities BUL-700
 - . industrial application BUL-1500
 - . intra-Community delivery of goods ... BUL-700
 - . inventive step BUL-1500
 - . licensed warehouse keeper BUL-850
 - . marks BUL-1400
 - . misleading advertising BUL-1650
 - . monopoly BUL-1700
 - . novelty BUL-1500
 - . off-premises contracts BUL-1875
 - . patentable inventions BUL-1500
 - . service BUL-700
 - . state of the art BUL-1500
 - . tax subject BUL-850

- . tax warehouse BUL-850
- . unfair contractual terms BUL-1875
- . use in the course of trade BUL-1475
- Distance contracts** BUL-1875
- District court** BUL-2100
- Domain names** BUL-1500
- Employment contracts**
 - . additional BUL-950
 - . content of labour relation BUL-1025
 - . election, labour relations on grounds
 - of BUL-1000
 - . generally BUL-900
 - . selection process, labour relations on grounds
 - of BUL-975
 - . termination BUL-1240
 - . trial period BUL-925
- Employment law**
 - . contracts – see Employment contracts
 - . discipline BUL-1225
 - . generally BUL-875
 - . labour contracts – see Employment contracts
 - . leave
 - . annual BUL-1175
 - . unpaid BUL-1200
 - . termination of employment BUL-1240
 - . working time – see Working time
- Energy**
 - . renewable sources, from BUL-1950
- Environmental rules**
 - . ambient air quality BUL-1950
 - . biological diversity BUL-1950
 - . chemical substances, protection against harmful
 - impact BUL-1950
 - . climate change mitigation BUL-1950
 - . competent bodies BUL-1925
 - . ecological assessment BUL-1950
 - . energy from renewable sources BUL-1950
 - . environmental damage, liability for prevention
 - and remedying BUL-1950
 - . forestry BUL-1950
 - . generally BUL-1900
 - . impact assessment BUL-1950
 - . noise BUL-1950
 - . plant protection BUL-1950
 - . protected areas BUL-1950
 - . soils BUL-1950
 - . underground mineral resources BUL-1950
 - . waste management BUL-1950
 - . waters BUL-1950
- Ethnic structure** BUL-050
- European Company** BUL-475
- Excise duty** BUL-850
- Expenses**
 - . corporate taxation BUL-650
- Forestry** BUL-1950
- Foundations** BUL-525
- General partnership** BUL-350
- Geographical indications** . BUL-1375; BUL-1500
- Geography** BUL-000
- Government** BUL-150
- Income tax** – see Corporate income tax – see Individual income tax
- Individual income tax**
 - . generally BUL-600
 - . legislation BUL-600
 - . non-taxable income BUL-625
 - . rates BUL-625
 - . taxable income BUL-625
- Industrial and intellectual property**
 - . copyright – see Copyright
 - . domain names BUL-1500
 - . generally BUL-1250
 - . geographical indications . BUL-1375; BUL-1500
 - . industrial designs BUL-1500
 - . marks – see Marks
 - . means of protection BUL-1500
 - . patents BUL-1500
 - . utility models BUL-1500
- Industrial designs** BUL-1500
- Inventions**
 - . patentable BUL-1500
- Joint stock companies** BUL-375
- Judiciary** – see Court system
- Labour contracts** – see Employment contracts
- Limited liability companies**
 - . generally BUL-275
 - . sole-proprietorship BUL-300
- Limited partnerships** BUL-325
- Local executive authorities** BUL-200
- Marks**
 - . contents of the right over BUL-1450
 - . generally BUL-1375; BUL-1400
 - . meaning BUL-1400
 - . refusal of registration, grounds BUL-1425
 - . revocation of registration BUL-1500
 - . right of disposal BUL-1450
 - . right of use BUL-1450
 - . signs used in course of trade, right to
 - prohibit BUL-1475
- Mineral resources**
 - . underground BUL-1950
- Misleading advertising** BUL-1650
- Night work** BUL-1100
- Noise**
 - . environmental rules BUL-1950
- Non-profit organisations**
 - . associations BUL-525
 - . foundations BUL-525
 - . generally BUL-500
 - . types BUL-525
- Offences and penalties**
 - . labour discipline BUL-1225
- Overtime** BUL-1150
- Parliament** BUL-100
- Partnerships**
 - . general BUL-350
 - . limited BUL-325
- Part-time working** BUL-1075

- Patentable inventions** BUL-1500
- Patents** BUL-1500
- Personal data**
 - . protection BUL-1875
- Plant protection** BUL-1950
- Political structure**
 - . Constitution BUL-075
 - . Government BUL-150
 - . judiciary BUL-175
 - . local executive authorities BUL-200
 - . Parliament BUL-100
 - . President BUL-125
- Population** BUL-025
- President** BUL-125
- Prime Minister** BUL-150
- Product safety** BUL-1875
- Protected areas**
 - . environmental rules BUL-1950
- Regional court** BUL-2075
- Religion** BUL-050
- Sales conditions and consumer protection**
 - . aggressive commercial practices BUL-1875
 - . announcement for prices decrease ... BUL-1875
 - . compulsory sale BUL-1875
 - . consumer associations BUL-1875
 - . Consumer Protection Commission ... BUL-1875
 - . distance contracts BUL-1875
 - . fixed-term contracts BUL-1875
 - . generally BUL-1725; BUL-1875
 - . legislation BUL-1725
 - . liability for defective products BUL-1875
 - . misleading commercial practices BUL-1875
 - . off-premises contracts BUL-1875
 - . organisations for consumer protection BUL-1875
 - . rights of consumers
 - . . announcement of prices BUL-1825
 - . . generally BUL-1750
 - . . information BUL-1775
 - . . labelling of goods BUL-1800
 - . . protection of personal data BUL-1875
 - . . right of claim BUL-1850; BUL-1875
 - . . safety of goods BUL-1875
 - . . trade practices BUL-1875
 - . . unfair contractual terms BUL-1875
 - . . warranty BUL-1875
- Shift work** BUL-1125
- Social security contributions** BUL-625
- Soils**
 - . environmental protection BUL-1950
- Sole traders** BUL-425
- Sole-proprietorship limited liability company** BUL-300
- Specialised Penal Court** BUL-2150
- Supreme Administrative Court** BUL-2225
- Supreme Cassation Court** BUL-2200
- Taxation**
 - . alternative taxes BUL-650
 - . corporate income tax BUL-650
 - . excise duty BUL-850
 - . generally BUL-575
 - . individual income tax – see Individual income tax
 - . value added tax – see Value added tax
 - . withholding tax BUL-650
- Termination of employment** BUL-1240
- Trade marks** – see Marks
- Trial periods**
 - . employment law BUL-925
- Unfair competition**
 - . advertising games BUL-1700
 - . common prohibition BUL-1575
 - . Competition Protection Commission . BUL-1700
 - . compromising the good name of competitors BUL-1600
 - . concentration of economic activity .. BUL-1700
 - . dominant position BUL-1700
 - . generally BUL-1550
 - . imitation BUL-1675
 - . misleading and comparative advertising BUL-1650
 - . misleading customers BUL-1625
 - . monopoly BUL-1700
 - . prohibited agreements, decisions and concerted practices BUL-1700
 - . restriction of the competition BUL-1700
 - . unfairly attracting clients BUL-1700
- Unfair contractual terms** BUL-1875
- Unpaid leave** BUL-1200
- Utility models** BUL-1500
- Value added tax**
 - . exempt transactions BUL-825
 - . generally BUL-675
 - . meanings BUL-700
 - . rates BUL-800
 - . registration
 - . . foreign persons BUL-775
 - . . mandatory, specific cases BUL-750
 - . . scope of legislation BUL-700
- Warranties**
 - . consumer protection BUL-1875
- Waste management** BUL-1950
- Waters**
 - . environmental protection BUL-1950
- Withholding tax** BUL-650
- Working time**
 - . generally BUL-1050
 - . night work BUL-1100
 - . overtime BUL-1150
 - . part-time BUL-1075
 - . shift work BUL-1125

FRANCE

Contributor

John C. Newman
Kenlan Schwiebert Facey & Goss, P.C.

71 Allen Street
Rutland, Vermont
United States

Tel: +1 (802) 773-3300 ext 2740

Direct Dial: +1 (802) 665-2740

Fax: +1 (802) 775-1581

Website: *<http://www.kenlanlaw.com>*

FRANCE

TABLE OF CONTENTS

Paragraph

INTRODUCTION

General	¶FRA-000
Political structure	¶FRA-025
Sources of French law	¶FRA-050
Economic policy	¶FRA-075
Visits to France	¶FRA-085

FORMS OF DOING BUSINESS

General	¶FRA-100
Establishment of a branch	¶FRA-125
Entities under French law	¶FRA-150
SA, SAS and SARL	
General	¶FRA-175
Articles of incorporation and by-laws	¶FRA-200
Formation	¶FRA-225
Company formality centres; internet filing	¶FRA-230
Company name	¶FRA-250
Registered office	¶FRA-275
Purpose	¶FRA-300
Duration	¶FRA-325
Shareholders	¶FRA-350
Individual limited liability company	¶FRA-370

continued over

	Paragraph
Capital	¶FRA-375
Shares	¶FRA-400
Transfer of shares.....	¶FRA-425
Management	
General.....	¶FRA-450
SA.....	¶FRA-475
SAS.....	¶FRA-500
SARL	¶FRA-525
Meetings of Shareholders	
SA.....	¶FRA-550
SAS Shareholder Meetings.....	¶FRA-575
SARL	¶FRA-600
Auditors	
SA.....	¶FRA-625
SAS.....	¶FRA-650
SARL	¶FRA-675
Shareholders' Right to Additional Information	
General.....	¶FRA-700
SA.....	¶FRA-725
SAS.....	¶FRA-750
SARL	¶FRA-775
Increases and Reductions of Capital	
SA.....	¶FRA-800
SAS.....	¶FRA-825
SARL	¶FRA-850
Distribution of profits.....	¶FRA-875
Transformation	
SA.....	¶FRA-900
SAS.....	¶FRA-925
SARL	¶FRA-950
Mergers and split-ups.....	¶FRA-975
Subsidiaries and cross-holdings	¶FRA-1000
Dissolution.....	¶FRA-1025
Civil and criminal sanctions	¶FRA-1050
Takeover bids and acquisition of control blocks	
of shares.....	¶FRA-1075

continued over

	Paragraph
Distribution and agency agreements	¶FRA-1100
Professional residence permit.....	¶FRA-1125

INVESTMENT AND FINANCE

General.....	¶FRA-1150
Administrative Declaration	
General.....	¶FRA-1175
Sensitive sectors.....	¶FRA-1200
Statistical declarations	¶FRA-1325
Sanctions	¶FRA-1350

TAX SYSTEM

General.....	¶FRA-1375
Tax treaties.....	¶FRA-1400
Corporate Income Tax	
Entities subject to tax.....	¶FRA-1425
Rate of tax	¶FRA-1450
Profits subject to tax (Territoriality rules)	¶FRA-1475
Computation of taxable incomes.....	¶FRA-1500
Special declaration	¶FRA-1525
Losses.....	¶FRA-1550
Interest	¶FRA-1575
Taxation of dividends: parent subsidiary rules	¶FRA-1600
Depreciation of fixed assets	¶FRA-1625
Special company car tax: depreciation of	
company cars.....	¶FRA-1650
Bonus depreciation.....	¶FRA-1675
Sponsorship expenses.....	¶FRA-1750
Gifts to employees and non-profit associations	¶FRA-1775
Special deduction for acquisition of art.....	¶FRA-1800
Political contributions.....	¶FRA-1825
Scientific and technical research.....	¶FRA-1850
Software expenditures	¶FRA-1875
Tax holiday for new enterprises in incentive zones.....	¶FRA-1900
ZFU Zones	¶FRA-1950

continued over

	Paragraph
R&D tax credit.....	¶FRA-1975
Venture capital companies.....	¶FRA-2000
Overseas departments.....	¶FRA-2025
Tax consolidation.....	¶FRA-2075
Electronic sending of tax returns	¶FRA-2100
Reserves	
General.....	¶FRA-2125
Depreciation in inventory	¶FRA-2150
Publications.....	¶FRA-2225
Compulsory profit-sharing plan	¶FRA-2250
Medium-term export credit risks.....	¶FRA-2275
Bad debts.....	¶FRA-2300
Price increases	¶FRA-2325
Oil, gas and mineral depletion.....	¶FRA-2350
Taxes accrued	¶FRA-2400
Capital gains and losses	
General.....	¶FRA-2425
Short-term gains.....	¶FRA-2450
Long-term gains.....	¶FRA-2475
Mergers and re-organisations	¶FRA-2500
Withholding Taxes	
Distribution of Profits	
French companies.....	¶FRA-2525
French branches of foreign companies.....	¶FRA-2550
Interest	
Loans to creditors domiciled or registered in France	¶FRA-2575
Interest paid to creditors domiciled or registered outside France	¶FRA-2600
Royalties	¶FRA-2625
Anti Avoidance Measures	
Controlled foreign companies (CFCs).....	¶FRA-2650
Transfer pricing.....	¶FRA-2675
Other.....	¶FRA-2675
Tax on real property of foreign-based companies	¶FRA-2725

continued over

Paragraph

Taxes and Social Contributions Based on Payroll	
General.....	¶FRA-2750
Employer's payroll tax.....	¶FRA-2800
Compulsory investment in construction	¶FRA-2825
Apprenticeship tax	¶FRA-2850
Contribution for continuing vocational training.....	¶FRA-2875
Social Security and Related Contributions	
General: Social Security Ceiling	¶FRA-2900
Social insurance.....	¶FRA-2925
Family benefits	¶FRA-2950
Housing allowance	¶FRA-2975
Surviving spouse insurance.....	¶FRA-3000
Workers' compensation.....	¶FRA-3025
Financing of public transportation.....	¶FRA-3050
Unemployment insurance and salary	
payment guarantee	¶FRA-3075
Additional retirement benefits	¶FRA-3100
Local Taxes	
General.....	¶FRA-3125
Property tax.....	¶FRA-3150
Business tax.....	¶FRA-3175
Personal dwelling tax	¶FRA-3200
Registration Taxes	
Documents, contracts and transactions.....	¶FRA-3250
Gift and estate taxes.....	¶FRA-3275
Succession duties on trusts	¶FRA-3280
Individual Income Tax	
Persons subject to tax	
French nationals domiciled in France.....	¶FRA-3300
Non-residents.....	¶FRA-3325
US residents	¶FRA-3350
Taxable income	
General.....	¶FRA-3375
Income from investments; foreign	
trust income.....	¶FRA-3400
Social surtaxes	¶FRA-3425

continued over

	Paragraph
Deductions.....	¶FRA-3450
Family coefficient	¶FRA-3475
Tax schedule.....	¶FRA-3485
Adjustments and credits	¶FRA-3500
Formulary taxation	¶FRA-3510
Exit tax	¶FRA-3515
Wealth tax	¶FRA-3525
Taxation of foreign trusts	¶FRA-3530
Capital Gains Tax	
Transfers of real property or moveable	
property other than securities.....	¶FRA-3550
Transfers of securities	¶FRA-3575
French CFC rules	¶FRA-3625
Turnover and other indirect taxes	¶FRA-3650
Value Added Tax (TVA)	
General	¶FRA-3675
Scope of TVA	¶FRA-3700
Criterion of location	¶FRA-3725
Exempt transactions	¶FRA-3750
Banking and financing activities	¶FRA-3775
TVA treatment of foreign suppliers.....	¶FRA-3800
Tax base.....	¶FRA-3825
Rates	¶FRA-3850
Right to deduction	¶FRA-3875
Exercise of deduction right	¶FRA-3900
Liability for payment of TVA.....	¶FRA-3925
Declarations relating to TVA	¶FRA-3950
Invoicing	¶FRA-3975
Imports	¶FRA-4000
Exports	¶FRA-4025
Intra-EC transactions	¶FRA-4050
TVA Refunds	
Domestic companies	¶FRA-4075
Exporters.....	¶FRA-4100
French companies.....	¶FRA-4125
TVA refunds	¶FRA-4150

continued over

	Paragraph
Miscellaneous indirect taxes.....	¶FRA-4200
Tax on sales of precious metals, jewels and other valuables	¶FRA-4225
Indirect duties and fiscal monopolies	¶FRA-4250
Powers of tax administration	¶FRA-4275
Protection of Taxpayer's Rights	
General.....	¶FRA-4300
Judicial recourse.....	¶FRA-4325
Penalties; Petitions for relief	¶FRA-4350
Ex officio relief and refunds	¶FRA-4375

EMPLOYMENT LAW

General.....	¶FRA-4400
Collective agreements	¶FRA-4425
Annual and triennial employer/union negotiations.....	¶FRA-4450
Company-level agreement	¶FRA-4475
Employees' freedom of expression.....	¶FRA-4500
Internal regulations.....	¶FRA-4525
Labour inspectors.....	¶FRA-4550
Minimum Standards	
General.....	¶FRA-4575
Wages	¶FRA-4600
Working week.....	¶FRA-4625
Legal holidays	¶FRA-4650
Paid vacations	¶FRA-4675
Other conditions	¶FRA-4700
Employee Organisations	
Unions; union sections	¶FRA-4725
Employee representatives	¶FRA-4750
Works council	¶FRA-4775
Health, safety and working conditions committee	¶FRA-4800
Right to strike	¶FRA-4825
Labour Contracts	
General.....	¶FRA-4850
Hiring	¶FRA-4875
Rights and duties of the parties.....	¶FRA-4900

continued over

Termination of Employment

Types of terminations; Contracts for	
Indefinite Period	¶FRA-4920
Notice requirements	¶FRA-4925
Severance pay (indemnité de licenciement)	¶FRA-4950
Indemnity for paid vacation	¶FRA-4975
Wrongful dismissal (rupture abusive); dismissal	
without cause	¶FRA-5000
Dismissal procedure, for personal reasons	¶FRA-5025
Dismissal for economic reasons	¶FRA-5050
Contracts for fixed period; temps;	
umbrella companies	¶FRA-5075
Travelling salesmen	¶FRA-5100
Special protection for employee representatives	¶FRA-5125
Non-competition after termination	¶FRA-5150
Optional profit-sharing system	¶FRA-5175
Mandatory profit-sharing system	¶FRA-5200
Employee stock option plan	¶FRA-5225
Company savings plans	¶FRA-5250
Social security and other benefits	¶FRA-5300
Alien work permits	¶FRA-5325
EU Blue Card	¶FRA-5335

INDUSTRIAL AND INTELLECTUAL PROPERTY

Filing of foreign agreements	¶FRA-5350
Patents	
General	¶FRA-5375
Patentability	¶FRA-5400
Application	¶FRA-5425
Licences	¶FRA-5450
National defence, medicines, semiconductors	¶FRA-5475
European patent regimes	¶FRA-5485
Infringement	¶FRA-5500
Trade Marks	
General	¶FRA-5525
Registration, examination	¶FRA-5550

continued over

	Paragraph
Extent of protection.....	¶FRA-5575
Assignment, licence	¶FRA-5600
Infringement	¶FRA-5625
Designs and models	¶FRA-5650
Copyright	
General.....	¶FRA-5675
Rights.....	¶FRA-5700
Special rules	¶FRA-5725

COMPETITION RULES

General.....	¶FRA-5750
Price controls	¶FRA-5800
Price fixing	¶FRA-5810
Invoicing requirements	¶FRA-5825
Publication of prices and conditions of sale	¶FRA-5850
Illegal Pricing, Advertising and Sales Promotions	
Discriminatory practices and back margins	¶FRA-5875
Sales with a gift or bonus.....	¶FRA-5900
Refusal to sell.....	¶FRA-5925
Sales without a prior order; forced sales	¶FRA-5950
Sales at a loss.....	¶FRA-5975
Abusively low prices.....	¶FRA-5980
Use of French language and advertising rules.....	¶FRA-6000
Comparative and misleading advertising	¶FRA-6025
Council for Competition	¶FRA-6075
Concerted Actions and Agreements Restricting Competition, Dominant Positions	
General.....	¶FRA-6100
Exemptions	¶FRA-6125
Procedure and sanctions.....	¶FRA-6150
Control of Concentrations	
Transactions subject to review.....	¶FRA-6175
Notification of concentration.....	¶FRA-6200
Penalties	¶FRA-6225
Investigatory powers.....	¶FRA-6250

continued over

SALES CONDITIONS AND CONSUMER PROTECTION

General ¶FRA-6275

Consumer Protection

General ¶FRA-6300

Unfair contract terms ¶FRA-6325

Consumer credit ¶FRA-6350

Consumer safety ¶FRA-6375

Consumer associations ¶FRA-6400

Failure of Professionals to Comply with Safety

Obligations

General ¶FRA-6425

Criminal liability ¶FRA-6450

Civil liability ¶FRA-6475

Tort liability ¶FRA-6500

Fraud and Adulteration

General ¶FRA-6525

Fraud ¶FRA-6550

Adulteration ¶FRA-6575

Conditions of Sale

General ¶FRA-6600

Pricing information ¶FRA-6625

Products and Services Information

General ¶FRA-6650

Quality of products and services ¶FRA-6675

Product labelling ¶FRA-6700

Discounts and rebates ¶FRA-6750

Sales Methods

Sales requiring authorisation ¶FRA-6775

Canvassing and door-to-door sales ¶FRA-6800

Distance sales ¶FRA-6825

ENVIRONMENTAL RULES

General ¶FRA-6850

Dangerous, Unhealthy or Noxious Facilities

General ¶FRA-6875

Administrative requirements ¶FRA-6900

continued over

	Paragraph
Special taxes.....	¶FRA-6925
Penalties and enforcement.....	¶FRA-6950
Air Pollution Control	
General.....	¶FRA-6975
Operational requirements of establishments.....	¶FRA-7000
Pollution standards.....	¶FRA-7025
Water Pollution	
General.....	¶FRA-7075
Discharge, disposal and deposit.....	¶FRA-7100
Industrial Waste	
General.....	¶FRA-7150
Disposal of waste.....	¶FRA-7175

ARBITRATION

General.....	¶FRA-7250
Domestic Arbitration	
General.....	¶FRA-7275
The arbitration clause: submission to arbitration.....	¶FRA-7300
Arbitrators.....	¶FRA-7325
Proceedings.....	¶FRA-7350
Award.....	¶FRA-7375
Legal remedies.....	¶FRA-7400
Enforcement.....	¶FRA-7425
Enforcement of foreign and international awards.....	¶FRA-7450

COURT SYSTEM

General.....	¶FRA-7475
Judicial Jurisdiction	
General.....	¶FRA-7500
Courts of First Instance	
Courts of general civil jurisdiction.....	¶FRA-7525
Commercial courts.....	¶FRA-7550
Crimes.....	¶FRA-7575
Courts of appeal.....	¶FRA-7600
Supreme Court.....	¶FRA-7625

continued over

Paragraph

Administrative jurisdiction..... ¶FRA-7650
Constitutional Council ¶FRA-7660

activity or by creating a for-profit subsidiary. In addition, earnings from assets held by a non-profit association for investment purposes are subject to French corporate income. The tax is imposed at a reduced 24 per cent rate on rental income from real estate and on earnings from agricultural or forest lands. A reduced 15 per cent corporate income tax rate will apply to all dividend income received by a French non-profit association, whether the dividends are French-source or foreign-source dividends. A reduced 10 per cent tax rate applies to income from fixed income investments of various descriptions.

¶[FRA-1450] Rate of tax

The standard corporate income tax amounts to 33.33 per cent of the taxable income. As is discussed below, a social surtax is imposed on certain larger capital companies at a 3.3 per cent rate. Qualified small- and medium-sized companies (SMEs) benefit from a reduced 25 per cent corporate income tax rates on the first €38,120 of taxable income. A qualifying SME has (i) turnover excluding VAT that is less than €7,630,000 for the first year that the reduced rate is taken; (ii) that is not the parent of a tax-integrated group for the first year that the reduced rate is taken; and (iii) whose capital is entirely paid up and at least 75 per cent is held by individuals or by other qualifying SMEs.

The “temporary” corporate surtax is imposed on French corporate taxpayers who realise a turnover of €250 million or more for financial years closing between December 31, 2011 and December 30, 2016. The surtax only reaches corporate income taxpayers subject to company tax at the standard 33.3 per cent rate and the 19 or 15 per cent rates on long-term capital gains. Originally, the surtax was five per cent. For tax years closing on or after December 31, 2013, it was raised to 10.7 per cent. The surtax is imposed on a corporate income taxpayer’s final tax bill based on tax paid at the standard 33.3 per cent rate or the reduced 19 and 15 per cent rates. The surtax is imposed on the gross amount of tax calculated by the taxpayer. Tax credits may be taken only after the surtax is calculated (with the exception of foreign tax credits allowed by tax treaties).

A social surtax is imposed on French corporate taxpayers. When a company is not an exempt SME, the corporate social surtax will be imposed at a 3¹/₃ per cent rate on that part of its corporate income tax bill that exceeds €763,000. This means that a company must realise corporate income of at least €2,289,000 taxed at the normal 33¹/₃ per cent rate before the corporate surtax will apply.

August 2012 tax legislation added a corporate distributions surtax to the financial burden of French companies and foreign companies subject to French corporate income tax. The tax base comprises corporate distributions made after the effective date of this legislation (August 17, 2012). The tax rate is three per cent, and this corporate surtax is not a deductible expense for corporate income tax purposes.

The 2014 Finance Law imposes a 50 per cent tax on enterprises that pay high salaries during the 2013 and 2014 calendar years. It is imposed on enterprises subject to corporate income tax, sole proprietorships, and partnership entities that exploit an enterprise in France. The tax base consists in remuneration (broadly defined to include pensions, benefits, and stock options, etc.) that is deductible for corporate and personal income tax purposes. The tax is imposed on that part of such remuneration that exceeds €1 million per individual receiving such high compensation payments. The tax has a ceiling set at five per cent of turnover realised by the business taxpayer the year for which it is due.

[¶FRA-1475] Profits subject to tax (Territoriality rules)

The corporate income tax is levied on net profits from all commercial and industrial activities (*bénéfices industriels et commerciaux*) in French territory, including operating profits and capital gains (CGI art.38 and art.209). The full description of this territoriality rule is given above (¶FRA-1425) in discussing entities subject to tax.

In principle, companies located in France are not subject to the tax on their operations that are deemed to occur outside French territory. In other words, French taxing jurisdiction is based on a border principle. A French company that has an establishment outside of France is not taxed on such operations when:

- (1) such operations are related to an establishment which is situated outside French territory and which is of an autonomous and permanent character (e.g. factory, branch, sales counter);
- (2) are carried out by a dependent agent; or
- (3) cover a complete commercial cycle (such as the purchase and sale of merchandise).

By the same token, losses incurred in such foreign operations may normally not be set off against profits realised in France.

Certain new small and medium-size industrial and commercial enterprises are, as a business incentive, exempt from the corporate income tax in their early years (see ¶FRA-1900).

From 2009, the French source income of a foreign corporation explicitly includes income from real property located in France that would be taxed to a foreign individual for personal income tax purposes. This new rule brings income from real property located in France that does not constitute a permanent establishment in France into the French tax system. It also includes income from quoted shares in companies whose assets are principally composed of French real estate or real estate rights, and capital gains realized on real property or real estate rights located in France. This new definition of French source income may be overridden by an apical bilateral tax treaty, but such treaties typically allocate taxation of such income in France.

[¶FRA-1500] Computation of taxable incomes

Taxable income is based on a balance sheet principle. The difference between net assets at the beginning and at the end of a given fiscal year, as shown by the accounts, is what is deemed to be taxable income.

Taxable income is calculated by deducting “all expenses” (CGI art.39-1). An expense is tax deductible provided that it is incurred in the direct interest of the business and at arm’s length. Also, the expense must correspond to an actual charge; it must be appropriately booked in the accounts and documented, and it must not be of a capital nature. This is to say, the expense must result in a decrease of the entity’s net assets as opposed to an increase in the value of fixed assets.

Some expenses are expressly non-deductible, mainly:

- luxury expenses, i.e. expenses relating to hunting, fishing activities which do not fall within the company's corporate purpose, expenses relating to holiday and leisure accommodation, yachts and pleasure boats (CGI art.39-4);
- some fines and penalties concerning price control or crimes; and
- some taxes such as corporate income tax and the the corporate social surtax, as well as company car tax (for entities subject to corporate income tax).

As an anti-tax haven measure, payments made by French companies to persons or entities who are domiciled in a foreign state or a territory situated outside France and who are subject to a "privileged tax regime" are deemed abnormal by the French tax authorities. They are, therefore, not recognised as deductible expenses for tax purposes unless the French company shows that the tax deduction which is claimed relates to real operations, and that the expenses are not excessive (CGI art.238A). Two criteria are used to determine whether a certain country has a privileged tax system (i) the payee is not subject to tax where domiciled or established; or (ii) the payee is subject to tax at a markedly lower rate. A markedly lower rate will be presumed to be fulfilled when the tax or taxes on income or profits applicable to the payee in the country where domiciled or established is at least one-third less than it would be in France. Any financial expense, royalty payment or compensation for services can fall within the scope of the anti-tax-haven presumption.

France imposes general transfer pricing rules when reviewing a French or a foreign corporation's taxable income. These transfer pricing requirements (codified in CGI art.57) generally follow OECD principles. As such, to make a transfer pricing adjustment, the French tax authorities must:

1. prove that the parties to the transaction are dependent enterprises, meaning that one controls the other or that they are under mutual control (although this condition is not required while one of the entities is proved to be subject to a privileged tax regime); and
2. demonstrate the existence of a commercial or financial advantage granted to the dependent entity (i.e. that the price of the transaction performed is not at arm's length: e.g. an excessive royalty payment).

Once the existence of such an advantage is established by the French tax authorities, related payments will be added back to the taxable income of the French entity unless the taxpayer proves that no income was transferred abroad as a result of the transaction.

¶¶FRA-1525] Special declaration

Certain company expenses exceeding a specified limit must be entered on a special declaration (Form 2067), which must be filed along with the annual income tax return (CGI art.39-5 and 54 *quater*). The following ceilings apply:

- €150,000 for compensation of any kind paid to the five highest paid employees, for companies which have fewer than 200 employees;
- €300,000 for compensation paid to the ten highest paid employees, for companies with more than 200 employees;
- €15,000 for travel expenses incurred by the five (or ten) highest paid employees;

- €30,000 for expenditure for cars and other property at the disposal of these employees and real property expenses not directly related to business expenses;
- €3,000 for gifts of any kind (except gifts for advertising and whose value per unit does not exceed €60 per beneficiary); and
- €6,100 for entertainment expenses.

Taxpayers who fail to declare these amounts are subject to a fine amounting to five per cent of the non-declared expenses. However, this penalty is reduced to one per cent provided there has been no default during the preceding three years and that the expenses concerned are actually deductible (CGI art.1734 *bis*).

[¶FRA-1550] Losses

Tax losses may be carried forward indefinitely provided that the identity of the enterprise that realised the losses continues. This rule becomes important when considering a merger or other acquisition. The general rule is that the target company's losses in existence prior to the effective date of the merger cannot be used by the acquiror company. Provided that the acquiror does not change its actual business activity or amend its corporate purpose clause during the merger, its own pre-merger losses can continue to be carried over for the full five-year carryover period. Pursuant to CGI arts 209–211, with prior ministerial authorisation, the acquiror can be allowed to carry over the target's pre-merger losses, provided that the what are termed "special merger rules" were used.

Losses may be carried back pursuant to loss carryback tax credit rules. These rules permit enterprises subject to company tax to use their losses against income previously subject to tax. The excess tax paid for earlier years gives rise to a credit which may be used against tax due in subsequent years. The tax credit is reimbursed if not used within five years, and may be used as collateral for loans from French banks. These carryback tax credit rules are elective. They cannot be used for a tax year in which the enterprise is sold or stops operating, is involved in a merger or an analogous reorganisation, or is in judicial liquidation.

September 2011 legislation amended French loss carryover rules to restrict the use of losses under the general rules. To the extent that a loss during a loss given year exceeds €1 million, increased by 50 per cent of the excess of earnings over €1 million during the profit year to which the loss is carried, the loss may not be carried over to the profit year. The fraction of a corporate taxpayer's loss that may not be used may be carried over to the following financial year, and then total losses for that year will be subject to the same limitation. This calculation rule means that the ceiling rule does not apply to the extent that a corporate income taxpayer does not have more than €1 million in losses during a given year. The taxpayer may carryover the entire amount of the loss. The use of the loss carryover tax credit rules are restricted by the same euro limitation.

[¶FRA-1575] Interest

Generally, interest is deductible as long as it has been incurred in the company's direct interest.

Interest on shareholders' loans and advances is deductible for tax purposes only when the total share capital is fully paid-up, and provided it does not exceed the average rate of bank interest on variable rate loans (CGI, art.39-1-3).

This reference rate is published on a quarterly basis and can be found on the Ministry of Finance web site. To give a general idea, the maximum deductible interest rate on shareholders loans was 3.39 per cent at the end of 2013, and 2.79 at the beginning of 2014 (enterprises taxed on a calendar year basis). Companies subject to corporate income tax can deduct interest paid to those shareholders who legally or actually manage the company and/or directly hold more than 50 per cent of the company shares, to the extent that their total loans or advances do not exceed one and a half times the company's share capital. Interest exceeding the above-mentioned ratio is non-deductible and is, in principle, characterised as a deemed dividend (CGI art.212).

This last restriction does not apply to interest relating to loans granted by a company qualifying for the parent subsidiary regime (CGI art.212.1°.b) explained immediately below ((see ¶FRA-1600)).

The French tax authorities have been forced progressively to refine their legislative attack on the under-capitalisation of the French subsidiaries of foreign companies. Under these rules, with some exceptions, the tax code limits the maximum deductible interest rate to the mean rate offered by financial institutions for variable-rate loans to enterprises for more than two years. In addition, interest expenses may be cut back if the debtor is determined to be thinly capitalised to facilitate the stripping of French earnings. Thin capitalisation is based on three criteria: (1) measuring global indebtedness that exceeds one-and-a-half times its "own capital"; (2) measure interest payments to related enterprises as a percentage of what French accountants call "net intermediate accounting income" (i.e. earnings determined before deducting extraordinary depreciation, increased by interest, ordinary depreciation and leasing payments creditable to an option price); and (3) if the amount of interest that it pays to related enterprises is less than or equal to interest income that it receives from other related enterprises. To restrict the reach of the rules to truly abusive structures, the new rules have a €150,000 de minimis limit.

In addition to thin capitalisation rules, French company tax entities (and partnerships with company tax entities as partners) are subject to an interest deduction bar when the lender is a related to the borrower and when the lender is not subject to income taxation on the interest received at a rate of tax that is at least 25 per cent of the corresponding French corporate income tax rate. This new rule (codified at CGI art.212, I) applies with effect for financial years closing on or after September 25, 2013.

Finally, the 2013 Finance Law created a new limitation on French corporate taxpayer's deduction of interest expenses. When a French corporate taxpayer's net interest expenses reach a total of €3 million, the expenses are only deductible for a fraction of their amount. This new rule (codified at CGI art.212 bis) requires that, once the €3 million level is exceeded, all net interest expenses be reintegrated into a company's income for 15 per cent of their amount (25 per cent for financial years opening in 2014).

¶FRA-1600 Taxation of dividends: parent subsidiary rules

French parent companies that receive dividends from French or foreign companies may use favourable tax rules that are termed the parent subsidiary regime. This regime allows a 95 per cent dividends received exclusion. These rules may be elected for use when the following conditions are met (CGI art.145):

1. the parent company must hold a minimum of 5 per cent of the share capital of the subsidiary at the time of the dividend distribution;
2. the subsidiary shares must be either subscribed for by the parent company or acquired by it. In the latter case, the parent company must declare that it will not dispose of its shares within two years. If the shares are disposed of within this period, the exempted dividends are taxable with interest for late payment;
3. the shares must give the shareholder voting rights.

If all the above conditions are met the parent company may elect to exclude from its taxable income the dividend amount less a 5 per cent service charge (which must be included to the company's taxable income and can be limited to the amount of the total expenses incurred by the company).

[¶FRA-1625] Depreciation of fixed assets

Only two methods of calculating depreciation on a business's assets are permitted in France, the straight-line and, when authorised, the declining balance method. The Tax Code requires companies to have a total depreciation deduction in their books for each asset at least equal to that found using the straight-line method. If for any year, an asset's total write-off is less than the total amount required over the years by the straight-line method, the deficiency is definitely lost as a tax deduction. Component depreciation rules must be followed in any case. Under these rules, business enterprises must separate the principal component elements of business property and depreciate them over their separate useful lives.

Average straight-line rates are as follows:

<i>Type of asset</i>	<i>Buildings</i>	<i>Machinery</i>	<i>Equipment</i>	<i>Vehicles</i>
<i>Rate (per cent)</i>	2–5	10–15	10–20	20–25

Accelerated depreciation is possible for certain new assets (such as industrial equipment for manufacturing, processing, transport or handling and certain office equipment) whose normal depreciation period is higher than three years (CGI art.38A). Accelerated depreciation is calculated by using an accelerated depreciation factor that is applied to the straight-line depreciation rate. The following are accelerated depreciation factors for the most common assets:

<i>Useful life of the asset</i>	<i>Accelerated factor</i>
3–4 years	1.25
5–6 years	1.75
over 6 years	2.25

Amortization of intangible assets, apart from goodwill and trade marks, is deductible.

Specific amortization rules are applicable to particular investments such as software, which may be amortised over 12 months.

[¶FRA-1650] Special company car tax: depreciation of company cars

Passenger vehicles owned or used by companies are subject to special company car tax that is imposed annually. This is a rather onerous tax because the amount of which is

not deductible for corporate income tax purposes (CGI art.1010). Nevertheless, it is deductible from the taxable profits of partnerships. This tax does not apply to vehicles that are intended solely for sale or for short-term rental (provided that the rental period does not exceed 30 consecutive days), or for the performance of transportation services offered to the public, where such transactions fall within the normal scope of the owner company's business activity.

For the period running from October 1, 2011, the tax amounts to €2 per gram of CO₂ for emissions of carbon dioxides of less than 100g/km increasing to €27 per gram of CO₂ for emissions of carbon dioxide of 250g/km. These are the rates for cars acquired after 2005. For cars acquired prior to that date, the tax was based on a measurement of engine power.

The depreciation deduction for company cars is limited to €9,900 for cars that are the most polluting (emissions of carbon dioxide exceeding 200g/km) acquired since January 1, 2006. For other passenger vehicles, the maximum depreciation base is €18,300.

¶FRA-1675] Bonus depreciation

While enterprises may take exceptional depreciation write-offs when the behaviour of the asset or market conditions justify the exceptional devaluation of the assets, the Tax Code provides exceptional depreciation without any special justification for a number of categories of capital assets as a tax incentive. The following are the principal assets for which bonus depreciation is allowed.

1. Software expenditures B—enterprises may elect to write off software acquisition expenses as bonus depreciation over 12 months.
2. Energy conservation equipment—the cost of equipment designed to conserve energy acquired or manufactured by the taxpayer before January 1, 2011 may be written off over 12 months on a straight-line basis, provided that the particular type of equipment is listed on a ministerial order.
3. Anti-pollution construction—enterprises that construct buildings designed to purify industrial waste water or to fight against atmospheric pollution or odours can qualify for accelerated depreciation equal to 100 per cent of the cost over 12 months on a straight-line basis for such anti-pollution constructions finished before January 1, 2011 that are incorporated into pre-existing installations or installations placed in service before the same date.
4. Cinema and video production—companies make take bonus amortisation equal to 50 per cent of their investments in approved cinema and video companies.
5. Noise suppressing improvements—a 12-month depreciation period is accorded to equipment designed to combat the noise of, or which significantly reduces the acoustical level of, installations existing on December 31, 1990, provided that it is acquired before 2011.
6. Regional development construction—certain small- and medium-sized enterprises will qualify for bonus depreciation of 25 per cent on new construction in certain regional development zones.
7. Innovation finance companies—shares in SFIs (*sociétés financières d'innovation*) qualify for bonus depreciation of 50 per cent the year the interest

is subscribed from the issuing SFI. These companies must be approved by the state and invest in research and development projects.

[¶FRA-1750] Sponsorship expenses

Advertising expenditures, including the sponsorship of artistic, sporting and cultural events, are deductible as normal business expenses if they are incurred in the company's direct interest. The French tax authorities consider that this implies that the identity of the company concerned is clear and that the expenses incurred are in proportion to the advantages the company expects to obtain (CGI, art.39-1-7).

[¶FRA-1775] Gifts to employees and non-profit associations

Gifts and subsidies given by a company in the interest of its employees constitute deductible expenses without limitation as to amount, if the amounts are transferred without conditions. The corresponding advantage is taxed as a benefit in kind at the level of the employee. A company may give free computers to their employees, and the employees are not taxed until the value reaches €2,000. As a consequence, in the latter case, the companies concerned must add back the corresponding expenses to their taxable income.

Contributions to a variety of specifically defined non-profit associations, philanthropic, educational, scientific, social or cultural, sports and environmentally-oriented associations enter into a tax credit base for five parts per mil of turnover. The tax credit is equal to 60 per cent of the tax credit base. The tax credit is available for charitable contributions to charities operating in France, and (from January 1, 2010) to charities sited in the European Union, Iceland, or Norway. If the non-French charity is not approved by the Tax Administration, the contributing company must prove that the charity would be exempt in France if it operated there.

The amount of a given fiscal year's charitable contributions that exceeds the five part per mil ceiling may be carried forward for five years. A given year's charitable contribution tax credit is credited against the balance of tax due for the year of the contributions, and if not absorbed, against subsequent instalment payments of company tax.

[¶FRA-1800] Special deduction for acquisition of art

French corporate income taxpayers may deduct from taxable income the costs for acquiring:

- original works of living artists that will become assets of the acquiring enterprise provided that they are shown to the public or can be viewed by employees at a place accessible to them other than their offices;
- musical instruments that the company agrees to make available to performers who request their use.

The deduction is taken in equal fractions for the year the item is acquired and the four following years. Such charitable contributions are limited by and included in the same five parts per mil ceiling as applies to general charitable contributions for which a tax credit is taken.

A separate incentive is granted to businesses wishing to participate in the acquisition of what are termed “national treasures”. A tax credit is accorded enterprises equal to 90 per cent of payments that contribute to the acquisition of a national treasure by the state. A payment to the state for a given work of art gives rise to the tax credit for the financial year for which the payment is accepted by the state. The credit may not eliminate more than 50 per cent of the donor corporation’s company tax.

In addition, a second incentive provides a 40 per cent tax credit to encourage enterprises to acquire national treasures on their own account in circumstances where the prior owner of a national treasure has been denied an export permit. Once acquired by the enterprise, the work of art must be deposited in a French museum for 10 years, following which it will be classified as an historic monument or a national archival treasure.

¶FRA-1825] Political contributions

Under a law dated January 19, 1995, legal entities are no longer allowed to participate in the financing of political elections. Also, political contributions are prohibited.

¶FRA-1850] Scientific and technical research

Companies can elect to capitalise research expenditures or to deduct them immediately from taxable income (CGI art.236-I). The election to capitalise expenditures will cover all expenses related to the project for which the election is made, excluding only financial expenses. Expenditures for projects for which the capitalising election has not been made will be subject to normal tax rules, with a typical depreciable life of five years for which deductions are taken on a straight-line basis.

Certain research expenditures are encouraged by the availability of a tax credit for research expenditures. In addition, special rules permit bonus depreciation and tax credits for certain research expenditures (see ¶FRA-1675). The capitalisation of research expenditures permits the tax deduction to be delayed.

¶FRA-1875] Software expenditures

With respect to expenditures for the creation of software, companies have the same option of capitalising or deducting such expenditures as they have for scientific and technical research (CGI art.236-II). Taking bonus depreciation also is offered as an option (See, ¶FRA-1675).

¶FRA-1900] Tax holiday for new enterprises in incentive zones

A total or partial income tax holiday is offered to new enterprises that establish themselves in specified enterprise zones. These rules permit a full income tax exemption for the companies’ first 23 months following the month of their creation, and a 75, 50 and 25 per cent reduction for the following third, fourth and fifth twelve month periods. Parallel exemptions apply to the minimum corporate tax, and qualifying enterprises may benefit from local tax exemptions for the two to five year period following their creation. These rules are temporary, and they will expire at the end of 2013 unless extended or modified.

The enterprise must be located in a zone termed d’aide à finalité régionale (AFR zones). AFR zones are areas where EU regional development rules allow the use of

subsidies. Prior to 2010, the establishment of enterprises in other types of regional development zones could qualify.

To qualify, companies must engage in:

- an industrial, commercial or craft enterprise, or
- a non-commercial profession performed by a company taxpayer that employed at least three employees.

In addition to being a new qualifying new enterprise, it must be independent, meaning that it is not be related to an existing company. A company is not independent if 50 per cent or more of the capital of the company is held by another company, with the exception of certain risk capital companies.

The amount of tax reduction that is created by the incentive will be limited to the amount allowed under EU rules for AFR zones. These amounts vary depending on the size of the enterprise and the type of AFR zone where it is located.

[¶FRA-1950] ZFU Zones

Tax-free urban zones (zones franches urbaines: ZFUs) are selected from among the larger neighbourhoods (of more than 10,000 inhabitants) that suffer from particularly severe social problems, using the same objective criteria set by decree. ZFUs benefit from a long list of tax and social charge subsidies. The income tax incentive for an enterprise newly-created or newly-established in a ZFU consists in a two-step exemption. The first step involves a total exemption from income taxes for 60 months. The second step involves a glide path off the income tax exemption as follows:

- 60 per cent for years 6 through 10 inclusive, following the commencement of the incentive;
- 40 per cent for years 11 and 12; and
- 20 per cent for years 13 and 14.

This incentive is subject to the EU de minimis subsidy ceiling.

[¶FRA-1975] R&D tax credit

Industrial, commercial, and agricultural enterprises can qualify for an annual tax credit based upon their research expenditures. The rules for this credit are frequently amended, and the explanation below describes the research tax credit rules in effect for 2011 and later years.

The research tax credit is calculated based on the calendar year regardless of any fiscal year used for other tax accounting purposes. The credit has two elements, a “volume credit” and a “marginal increase credit”.

The volume of an enterprise’s research expenditure is the total research expenditures incurred by the enterprise. The volume credit percentage is 30 per cent of an enterprise’s total research expenses during the tax year up to €100 million. For research expenses in excess of €100 million—the volume credit will be 5 per cent. For an enterprise that is incurring research expenditures for the first time for the prior five years, the volume credit is equal to 40 per cent of the first year’s research expenses, which amount will become the

reference for following years' credits. For the second year, for first time users the volume credit is 35 per cent.

The second element is 40 per cent of the marginal increase in expenditure during a given year. The marginal increase element is based on the increase in qualifying research expenditures during a given year over the revalorised mean expenditure during the preceding two calendar years.

The tax credit is calculated based on specifically defined categories of research expenditure taken within certain limits and with specified coefficients. For example, depreciation on equipment used in research or directly dedicated to manufacturing prototypes enters the tax credit base for 75 per cent of its amount. General personnel expenses enter the tax credit base (including social charges), but personnel expenditures related to hiring young doctoral level personnel are taken into account for 200 per cent of their amount for the first doctoral level researcher for 12 months following the hiring. The cost of research subcontracted to public or university research institutions is accounted for at twice their amount if not related to the French taxpayer. Such subcontracted research is taken euro for euro is contracted to a private research institution, or to approved scientific or technical experts enters into the credit base, but his facility is limited to €2 million of such expenditures per year. When the research and development is subcontracted to an enterprise that is independent of the French enterprise, the limit for such expenditure is increased to €10 million. In addition, they only enter the tax credit base to the extent that they do not exceed three times the other creditable research expenditure.

R&D credits are frequently audited by the Tax Administration, and to assure some certainty to corporate taxpayers, an advanced ruling procedure is available.

¶[FRA-2000] Venture capital companies

Venture capital companies (*Sociétés de capital risque* (SCRs)), are created to invest in at least 50 per cent of their net accounting assets in non-quoted French industrial or commercial companies whose head office is located in the European Union, Iceland, Norway, or Liechtenstein (risk-portfolio). The companies comprising the risk portfolio must be liable for French corporate income tax or its foreign equivalent.

SCR are granted an exemption from French corporate income tax on their income and capital gains deriving from their risk-portfolio. Shareholders of these companies also can qualify for reduced tax rates on certain income and capital gains deriving from these companies (Law No.85-695 of 11 July 1985).

In computing the 50 per cent threshold, a variety of related investments also will qualify.

1. Within a limit of 15 per cent, advances made for the duration of the shareholding in companies that are considered as within the qualifying risk portfolio provided the SCR owns at least 5 per cent of the non-quoted company's share capital.
2. Within a limit of 20 per cent, shares quoted on a regulated exchange within the EU provided that the issuing company has low capitalisation (less than €150 million).
3. The SCR may invest in non-quoted financial holding companies or quoted holding companies with low capitalisation that have their head office within

the EU or in a country having an effective administrative assistance agreement with France.

4. FCRPs and interests in similar types of entities which have been organised within the EU or a tax treaty country whose principal purpose is to hold non-quoted shares may also be included in the risk portfolio.

The SCR's exclusive purpose must be to hold non-quoted shares in other companies. To avoid the creation of family holding companies, not more than 30 per cent of the venture capital company is held by an individual (with his spouse, children or parents). The SCR may not hold, directly or indirectly, shares in a qualifying company representing more than 40 per cent of the voting rights in this company. SCRs whose total balance does not exceed €10 million may perform services within their corporate purpose provided that the value of these services do not exceed 50 per cent of their deductible expenses and taxable income does not exceed €38,120 per 12 month period.

Distributions of income from the risk portfolio of an SCR and of capital gains from its exempt portfolio are exempt from tax in the hands of the recipient if the shareholder fulfills the following three conditions: (i) the shares of the SCR must be held for at least five years from the date of their subscription or purchase; (ii) the distribution must be immediately reinvested in the purchase or subscription of shares in the payer SCR, or in the form of a loan to the SCR which will be blocked for five years; and (iii) no tax benefits will be accorded to a shareholder or family member who holds directly or indirectly during the five preceding years more than 25 per cent of the stock in a company owned by the SCR. Social surtaxes are imposed on SCR income in the hands of individuals who are tax residents of France.

If the individual shareholder of an SCR is a non-resident, the dividend distribution will be subject to a withholding tax at a 25 per cent (or a reduced treaty) rate.

Corporate recipients of qualified SCR income pay French corporate income tax at long-term capital gains rates.

[¶FRA-2025] Overseas departments

Subject to certain conditions, there are a number of incentives (including investment deductions and tax reduction for individuals) available for investment in the Overseas Departments and Territories.

[¶FRA-2075] Tax consolidation

A tax consolidated group can be set up between French companies subject to corporate income under the following conditions:

- (1) not more than 95 per cent of the head company of the group must be held, directly or indirectly, by another French company. It can be the branch of a foreign company;
- (2) at least 95 per cent of the companies of the tax group must be held directly or indirectly by the head company;
- (3) the tax year of all members of the tax group must be twelve months in length and this fiscal year must begin and end in each company on the same dates;

- (4) formal elections must be filed with the tax authorities prior to the beginning of the fiscal year for which the application of the tax consolidation regime is claimed (election by the head company and agreement of the subsidiaries). This election is valid for a five-year period provided all the other conditions are met, and is tacitly renewed.

The group's parent company must file a consolidated group tax return enabling the aggregation of taxable income and losses of the companies which are members of the tax group. Corporate income tax is assessed on the group taxable income.

To prevent double deduction or taxation of similar items at the group level, most of the intra-group transactions are eliminated from the computation of the group taxable income or loss. For instance, consolidated taxable income is increased from provisions for intra-group losses or bad debts, and intra-group cancellations of debt are not taken into account.

Each member of the consolidated group continues to calculate its separate taxable income in order to determine the amount of the profit sharing due to its employees as well as the corporate income it must pay to the head of the tax group.

The group's parent company is the only one liable for payment of the corporate income tax on the group taxable income. When the parent defaults in its tax obligations, each member of the group is jointly and severally liable to pay corporate tax and the IFA and, if applicable, late interest, increases and fines, for which the group's parent company is liable. This is limited to the amount that it would have been liable to pay if it had not been part of the tax consolidated group.

Tax losses realised by a tax consolidated company during the period of its tax consolidation are transferred to the head of the tax group. Pre-consolidation losses remain available for the subsidiary and can be used to offset the taxable income realised by the subsidiary during its tax consolidation.

When a subsidiary ceases to be part of the tax consolidated group or when the group regime ceases to apply, some of the effects of the neutralisation of the intra-group transactions may be challenged.

¶FRA-2100] Electronic sending of tax returns

To facilitate computer processing of tax declarations, the Tax Administration replaced the tax forms formerly used by companies with new simplified forms. As of January 1, 2013, all corporate income taxpayers, whatever their turnover, must file their tax declarations electronically. The French Tax Administration created a division to handle France's largest enterprises (termed the Direction des grandes entreprises (DGE)), located at Pantin in the Seine St. Denis department, a suburb of Paris. The large enterprise division has will have jurisdiction over any enterprise whatever its legal form whose annual turnover (excluding VAT) or whose gross assets on its balance sheet at the end of a financial year is at least €400 million. Enterprises under the DGE's jurisdiction will file most of their tax declaration directly with this division.

Reserves

¶FRA-2125] General

The Tax Code allows a business taxpayer to deduct from gross income reserves (termed provisions in French) intended to cover a clearly specified tax-deductible loss or expense that current events make probable and not merely possible or potential. The facility for a business to set up a tax-deductible reserve is subject to four substantive conditions: (i) that the amount credited to the reserve account is otherwise deductible; (ii) that the expense is clearly specified; (iii) that the loss is probable; and (iv) that the expense's factual support is based on events that have occurred or are in process during the fiscal year. A business must list all of its tax-free reserves on a special declaration annexed to its annual tax declaration. The failure to list a reserve will attract a penalty equal to 5 per cent of the undeclared amounts. This penalty is reduced to 1 per cent if the reserves are determined to be deductible.

¶FRA-2150] Depreciation in inventory

Companies can establish a tax-deductible reserve for depreciation in their inventory when the market value (i.e. the value that the company can realise from sale of items to normal customers) of a particular category of inventory is less than its cost price at the end of the fiscal year (CGI art.38-3).

¶FRA-2225] Publications

Companies that publish newspapers, periodicals, and online press reports that are largely devoted to political information may credit an expense reserve for certain specifically-defined investment expenses. The expense reserve may be established for five years, after which time it must be reintegrated into income. The maximum deductible is limited to 60 per cent of income for dailies (80 per cent if turnover is less than €7.6 million) and 30 per cent for other publications and for online press services.

¶FRA-2250] Compulsory profit-sharing plan

Two categories of employers may establish special investment reserves associated with their payments into the mandatory profit-sharing system:

- Those whose profit-sharing plans provide for contributions that exceed the legal minimum;
- Those who are not required to set up such a plan but who opt to do so.

Enterprises in the first category (which make excess contributions) may set up a special tax-deductible investment reserve equal to one-half of the excess payment. For employers in the second category (whose normal payroll is less than 50 employees and who voluntarily instituted a profit-sharing plan), the special investment reserve is equal to 25 per cent of the normal mandatory contribution to the plan.

For plans implemented before February 20, 2003, the reserve credit is 50 per cent.

[¶FRA-2275] Medium-term export credit risks

Companies which incur medium-term credit risks (two to five years) on the sale of goods or services abroad may under certain conditions deduct contributions to a reserve up to 10 per cent of such credits. No particular risk of loss is required to be stated if the transaction is taxable in France. Credits of less than two or more than five years also qualify if guaranteed by the COFACE.

[¶FRA-2300] Bad debts

Companies may establish a reserve for bad debts provided they can demonstrate the debt is probably uncollectable and its amount can be estimated with sufficient certainty.

[¶FRA-2325] Price increases

If a company finds at the end of a financial year that the per unit book value of a product in stock has increased by more than 10 per cent with respect to the book value of the same product at the end of one of two preceding financial years, the company can establish a tax-free reserve for such product in an amount equal to the per unit incremental price increase above 10 per cent multiplied by the number of units in stock. The amount of the reserve is capped. It will be deductible only up to a ceiling equal to €15 million plus 10 per cent of the amount otherwise deductible.

This exemption from tax is, however, temporary and is only available for six years. At the end of this period, the reserve must be added back to income.

[¶FRA-2350] Oil, gas and mineral depletion

Companies that undertake research and exploration of oil and gas and the extraction of solid minerals may, under certain conditions, be entitled to deduct a depletion allowance, which must be placed in a special reserve. The annual deduction for oil and gas may not exceed the lesser of 23.5 per cent of the amount of sales or 50 per cent of the net income from such sales. The annual deduction for minerals may not exceed the lesser of 15 per cent of sales or 50 per cent of net income from such sales.

The Finance Bill for 2001 has limited the application of this regime to research into and exploration of oil and gas performed in France or in the French Overseas Departments. Subsequently, the 23.5 per cent/50 per cent ceilings refer only to research into and exploration of gas and oil fields located in France or in the French Overseas Departments (CGI art.39 *ter*).

[¶FRA-2400] Taxes accrued

Companies can establish a deductible reserve for taxes and other fiscal charges that are deductible expenses for corporate tax purposes, provided such amounts are related to transactions or operations actually performed by the company during the relevant accounting period. For example, the amount of employer's payroll tax due on salaries paid during the accounting period can be deducted from the company's gross income. This reserve account also could be credited with other payroll taxes due (but not yet paid) on salary payments already made to employees.

Capital gains and losses

[¶FRA-2425] General

The tax treatment of gains and losses from the sale or transfer of fixed assets or securities varies according to whether the gains or losses are short or long-term (CGI, art.39 *duodecies* to 39 *quindecies*). Gain or loss is calculated by comparing the net sales price to the net book value.

Profits and losses derived from bonds, shares in French or foreign UCITS (in France: SICAV, *fonds communs de placements*), participating shares, rights to subscribe for bonds and certain other securities are, however, taxable or deductible according to the normal rules, i.e. as operating profits or losses.

[¶FRA-2450] Short-term gains

As from January 1, 1997, capital gains are in principle taxable at the standard corporate income tax rate. The length of holding is not relevant anymore.

However, for entities that are not subject to corporate income tax, the previous regime still applies (CGI art.39 *duodecies*).

Short-term gains are generally:

- (1) those resulting from the sale or transfer of assets acquired or created within the previous two years; and
- (2) the portion of any gains arising from the sale or transfer of assets held for two years or more and corresponding to tax depreciation.

The short-term gains and short-term losses during the fiscal year are set off against each other. If there is a net short-term gain, such gain is taxable at the ordinary corporate rate of 33.33 per cent. A previously permitted three-year spread for such gains was eliminated by the 1988 Finance Law, as regards legal entities subject to company tax. The three-year spread still is available to companies which are not so subject. If there is a net short-term loss, such loss is deducted from the net operating profits of the fiscal year. If the net operating profits are insufficient to absorb all of such loss, the unabsorbed loss can be carried forward for up to five years.

[¶FRA-2475] Long-term gains

For entities not subject to corporate income tax, all gains on fixed assets other than short-term gains are long-term gains. In addition, proceeds from the transfer or licence of patents may also benefit from the long-term regime provided certain conditions are met.

Concerning companies liable to corporate income tax, as from January 1, 1997, the long-term regime is solely applicable to:

- controlling interests issued or held for at least two years (securities held for long-term purposes as opposed to investment securities, which are eligible for the parent-subsidiary regime or have a value of at least €22,800,000);
- units or shares of specific venture capital funds and companies (FCPR and SCR) when held for at least five years;
- the net result of licences of patents, provided:

- (i) the licensor held the patent, process or technique for at least two years before receiving the proceeds (this requirement does not apply if the patent has been discovered, created by the company or acquired for free);
- (ii) the corresponding proceeds were not deducted from the licensee's own income;
- (iii) the licensee is not affiliated with the licensor (CGI art.39 *terdecies*); and
- (iv) dividends received from SCR companies, if the dividends were withdrawn on the capital gains deriving from the sale, during the four preceding years, of qualifying stock and shares held for at least two years.

Long-term gains and losses of a given fiscal year are set off against each other. If there is a net long-term gain, it may be set off against either the long-term losses carried forward from the 10 preceding years or the net operating loss for the year or any operating losses that have been carried forward from previous years. For tax years beginning January 1, 2005 and thereafter, the long-term capital gains rate is reduced from 19 per cent to 15 per cent. For tax years beginning in 2007, capital gains on participatory securities will be exempt from corporate income taxation (with the exception of tax on the formulary ten per cent service charge). Amounts distributed by SCRs and FCPRs (two types of venture capital mutual funds) to company tax entities that are taxed as capital gains also are taxed at a zero rate.

¶FRA-2500] Mergers and re-organisations

Corporate re-organisations in France, whether mergers (*fusions*), split-ups (*scissions*), or partial split-ups (*apports partiels d'actifs*), may give rise to the imposition, or otherwise affect the imposition of, four types of taxes:

- (1) registration tax imposed on the assets transferred as a result of the re-organisation;
- (2) corporate income tax and capital gains tax, if any, imposed on the parties to the re-organisation;
- (3) corporate income or individual income tax imposed on the shareholders of the parties to the re-organisation; and
- (4) value added tax (TVA) that is payable as a result of the re-organisation.

If certain conditions are satisfied and, in certain instances, if the prior authorisation of the Ministry of Economy, Finance, and the Budget is obtained, the tax consequences of the re-organisation are rendered less onerous. For example, in the case of a merger between two legal entities subject to corporate income tax, the following tax advantages may be obtained (CGI art.210A, 210B and 115) provided that the absorbing company enters into certain commitments in the merger instrument:

- the merger is subject to a fixed duty of €500, €375 if capital is less than €225,000 (CGI art.816);
- net capital gains on fixed assets contributed by the absorbed company are not subject to corporate income tax;

- capital gains realised by the absorbing company upon cancellation of the absorbing company shareholding (if any) in the absorbed company or upon liquidation of the absorbed company's shareholding (if any) in the absorbing company, are exempt from tax;
- reserves booked by the absorbed company are taxed only if they are no longer justified; and
- taxation of capital gains realised by shareholders (either individuals or companies) upon the exchange of shares in the absorbed company for shares in the absorbing company are postponed until the sale of the shares received (CGI art.38.7 bis).

benefit from such regime, the following obligations must be fulfilled:

- the absorbing company must reinstate in its balance sheet the reserves that have not been taxed at the level of the absorbed company, including the special reserve for net long term gains (if any);
- the capital gains/losses to be realised on the sale of fixed assets that cannot be amortised, must be computed on the basis of the value those assets had in the balance sheet of the absorbed company; and
- capital gains realised on the depreciable assets received as a result of the merger must be added back to the absorbing company's taxable income during the five following fiscal years (15 years for buildings).

Similar favourable tax treatment may apply to an "*apport partiel d'actif*" contribution of part of the assets and liabilities from one company to another) and to a "scission" (split-up).

An "*apport partiel d'actif*" may qualify for the favourable tax regime provided that the hive-down concerns a complete business line which is autonomous. In addition, the contributing company must undertake to keep the shares it received as a result of the hive-down for at least three years.

WITHHOLDING TAXES

Distribution of Profits

¶[FRA-2525] French companies

When earnings are distributed by a French company to a shareholder located or established outside France, the gross amount is subject to a 30 per cent withholding tax collected by the paying institution (2012 and later years' rate). It is due on all payments that are within the definition of a distribution. The withholding tax rate is reduced to 21 per cent (2012 and later years' rate) for income distributed by French companies to individuals who are domiciled in the European Union, Iceland, Norway, or Lichtenstein. The withholding tax is 15 per cent when the dividends are paid to non-profit associations located in the European Union or in an EEA state provided that the EEA state has an effective administrative assistance treaty with France in tax matters (currently the case with Iceland and Norway). Dividends paid to non-resident OPCVM mutual funds, OPCI mutual funds, and SICAV mutual funds are exempt from the French-source dividends withholding tax, provided established in EU member states or in other foreign countries

provided that such other foreign countries have tax treaties with France providing for effective information exchanges in tax matters.

The dividend articles of tax treaties not only may reduce the rate of the domestic withholding tax on dividends but may also limit the source country's right to impose the withholding tax at all by having a more restrictive definition of the distributions to which the dividends withholding tax may validly apply. Each tax treaty's language must be examined for its definitional scope.

The French dividends withholding tax is imposed at a 75 per cent rate when the dividends are paid by a French company to an ETNC state, meaning a state that explicitly is on the list of tax haven countries established annually by the Tax Administration.

Under EU law, the French dividends withholding tax has to ceased to apply to dividends paid by French company-tax entities to EU parent companies.

In all of the above cases, special rules apply to the redistribution by a parent company to its shareholders of dividends received from a subsidiary (CGI art.145 and 216I).

¶[FRA-2550] French branches of foreign companies

As a general rule, the withholding tax is assessed at the rate of 25 per cent on the profits (after deduction of the corporate income tax) of the French branch of a foreign company, whether or not such profits are actually transferred to the head office and whether or not there is actually any distribution by the foreign company to its shareholders. The after tax profits, therefore, are deemed paid to the foreign company. This payment is, however, only provisional. The amount of tax withheld is refundable:

- (1) to the extent that the foreign company can show that it has distributed its profits to French residents; and/or
- (2) to the extent that the withholding tax base exceeds the overall amount of profits distributed by the company in the 12 months following the end of the fiscal year concerned (CGI art.115 *quinquies*).

The branch tax does not apply anymore if the effective management of the foreign company takes place in an EU member state where the foreign company is subject to corporate income tax (CGI art.115 *quinquies* 3).

Interest

¶[FRA-2575] Loans to creditors domiciled or registered in France

Interest on various types of loans and fixed-return investments, such as bonds and certificates of deposit, must normally be declared as income by the person receiving the interest on the annual tax declaration, and income or company tax must be paid. As is also the case for dividend incomes received by French resident individuals, the 2013 Finance Law replaced the formal favorable prepayment taxes on interest payments that were in final discharge of the taxpaying individual's liability on that income item with mandatory withholding taxes before subjecting the same income to taxation at progressive tax rates under the normal income tax schedule. The withholding taxes are then taken as a credit on the taxpayer's annual tax return. An individual can request to be exempt from interest withholding when the individual is a member of a taxpaying household whose reference

income of the second preceding year was less than €25,000 for a single person and €50,000 for a married couple. A few other exceptions apply, such as for certain passbook savings accounts. As is discussed in the income tax section, income subject to the mandatory withholding tax on interest income is subject to a “social levy” (§FRA3425). In general, the mandatory withholding rates are:

- (1) Fifteen per cent on income from negotiable bonds and other negotiable instruments, income from loan-backed mutual funds and interest on the blocked current account of shareholders (CGI art.125 C), certificate of deposit, treasury notes and interest on advances, deposits and guarantees, as well as on income from certain non-anonymous bonds issued as from January 1, 1995 (a 35 per cent rate applies to the bonds issued from January 1, 1990 to December 31, 1994).
- (2) Sixty per cent on income from anonymous bonds.

§FRA-2600 Interest paid to creditors domiciled or registered outside France

The 2009 Technical Amendments Finance Law re-wrote interest withholding tax rules to limit their scope. From March 1, 2010, the mandatory tax prepayment levy on payments of income from fixed income securities is only imposed when the payment is made to a listed tax haven country (an ETNC state)—regardless of the tax residence of the actual beneficiary of the payment—or when the payment is made directly to a person located in an ETNC state. The prepayment withholding tax is not imposed on payments to non-residents in cooperative (i.e. non-ETNC states). The rate of the withholding tax, when it is imposed, is pushed from 24 to 75 per cent. Social surtaxes (§FRA3425) are not withheld on such securities income unless the beneficiary of the payment is domiciled in France.

§FRA-2625 Royalties

Royalties paid to non-residents are, in principle, subject to a withholding tax of 33.33 per cent (CGI art.182B). Under the Franco-American tax treaty, the withholding tax is reduced to a rate of five per cent on the gross amount of royalties paid, provided that the royalties are derived from sources within France by a resident of the US. The meaning of the term “royalty” has been enlarged in a significant way under the new Franco-American Tax Treaty (Franco-American Tax Treaty art.12), so that almost any royalty is now eligible for the five per cent reduced withholding tax rate. It indeed includes:

- (1) payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic, or scientific work or any neighboring right (including reproduction rights and performing rights);
- (2) any cinematographic film, any sound or picture recording, or any software;
- (3) payments of any kind received as a consideration for the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience; and

- (4) gains derived from the alienation of any such right or property described in this paragraph that are contingent on the productivity, use, or further alienation thereof.

Anti Avoidance Measures

¶FRA-2650] Controlled foreign companies (CFCs)

French legislation includes anti-tax haven legislation known as the CFC provisions (CGI, art.209B). It applies to any French company subject to corporate income tax owning, directly or indirectly, at least 10 per cent of the shares in terms of financial rights or voting rights, or a shareholding worth at least €22,800,000 in an offshore subsidiary that qualifies for a privileged tax system (which is the case when the tax on profits is at least one-third less than it would be in France).

Such a company will be subject to French corporate income tax on the profits of the offshore company in proportion to its shareholding. Taxation is calculated separately under French tax rules and there is no offsetting of taxable income between the French company and the offshore company. The CFC provisions were extended in 1993 to cover permanent establishments, foreign groups and other similar entities located in tax haven countries.

To avoid this taxation, French companies can prove that the main consequence of the offshore operations is not to locate profits in a tax haven. This condition is presumed to be fulfilled where the French company evidences that:

- the subsidiary or branch is running an effective industrial or commercial activity; and
- the subsidiary or branch performs most of its operations in the local market.

If the foreign structure is located in the European Union, French CFC rules will not apply if the French taxpayer's ownership of the foreign company cannot be regarded as an artificial tax structure designed to avoid French taxation. For foreign structures outside the EU, under CGI art.209 B, III, French CFC rules cannot be applied if the positive income from the foreign structure originates from a real commercial and industrial activity. Pursuant to the 2009 Technical Amendments Finance Law, under a rebuttable presumption the CGI art.209 B, III safe harbor rule will not apply if the holding structure is in an ETNC state.

¶FRA-2675] Transfer pricing

France has anti-avoidance legislation under which the tax authorities can adjust profits if inter-company transactions are not carried out at an arm's length price. The French transfer pricing rules operate by reference to arm's length principles and follow the OECD transfer pricing guidelines (CGI art.57, see also ¶FRA-1500).

According to art.L13 B of the Tax Proceedings Code, where the French tax authorities have identified (during an audit of accounts) some elements that presume probable transfer pricing pursuant to art.57 of the French Tax Code, the tax authorities may request certain data from the French company. This will be data regarding transactions with

foreign companies or groups, the method applied for the determination of the transfer prices, the activity of the foreign company or groups and the tax treatment of the operations. Failing receipt of an exact answer, the French tax authorities may determine transfer pricing on the basis of its own data.

Multinational companies may request a ruling from the tax authorities on the determination of the price method used. Pursuant to CGI art.L 13 AB, additional documentation is required if a transfer is made to a dependent enterprise located in an ETNC state.

[¶FRA-2700] Other

- (1) According to art.L 64 of the French Procedural Code, the French tax authorities are entitled to disregard or disqualify a transaction on the grounds of the abuse of law, provided one of the two following conditions is met:
 - (i) the said transaction, although formally correct, is fictitious; and/or

[¶FRA-2800] Employer's payroll tax

Employers resident in France or doing business in France on a regular basis and at least 90 per cent of whose transactions are not subject to TVA must pay a payroll tax (*taxe sur les salaires*) on the total amount of wages, salaries and other remuneration paid to their employees (CGI, art.231). Because most businesses in France are subject to VAT on the vast majority of their transactions, the employers' payroll tax is imposed primarily on banks and financial institutions. Farmers are exempt from the payroll tax, except to the extent that they are engaged in processing or trade in agricultural products in establishments having an industrial or commercial character. Co-operatives and like organisations and local governments are also exempt. The revenue from the payroll tax is allocated to the general budget.

For 2014 salary payments, the rate is 4.25 per cent on the first €7,666 of annual salary, 8.5 per cent on the amount between €7,666 and €15,308, 13.6 per cent on the amount between €15,308 and €151,207, and 20 per cent on the excess. Employers whose annual tax does not exceed €840 will not have to pay the payroll tax. At the same time, employers whose payroll tax is between €840 and €1,680 are accorded a tax reduction equal to one-half of the difference between their normal payroll tax bill and €1,680. This tax is deductible for corporate income tax purposes.

[¶FRA-2825] Compulsory investment in construction

All employers with twenty or more employees are required to invest each year an amount equivalent to a specified percentage of their payroll for the preceding year in residential housing construction (*investissement obligatoire dans la construction*; CGI, art.235 bis). Farmers are exempt from this charge. The required rate of investment for a given year is 0.45 per cent of the prior year's payroll. The investment must be maintained for a period of 20 years. As an alternative to this direct investment, employers can contribute to authorised collecting funds. Failure to pay this fee results in a penalty tax of two per cent of the payroll payable to the national housing fund. The construction tax is deductible from the tax base.

[¶FRA-2850] Apprenticeship tax

Most employers engaged in commerce, industry or a trade or craft, most entities subject to corporate income tax (but not non-profit organisations) and agricultural co-operatives of all types are subject to the apprenticeship tax (*taxe d'apprentissage*) subject to certain exemptions and waivers (CGI, art.224). Enterprises which employ one or more apprentices and whose tax base for the year is not over six times the annual minimum wage ((€98,280), and educational institutions are exempt. Amounts contributed through official agencies for technical or vocational training may be deducted from the tax base.

The apprenticeship tax rate is 0.5 per cent of the amount of salaries and wages paid as defined for social security contribution purposes. In some French departments this rate is lower.

For enterprises with 250 or more employees, the apprenticeship tax is increased by a supplementary contribution of 0.1 per cent when the average annual number of employees under apprenticeship contracts is less than a set ceiling. Until the end of 2011, this ceiling

was set at three per cent of the work force. It was raised to four per cent for 2012 and later years. The actual rate of the supplementary contribution can be lower (0.05 per cent when the apprenticeship work force is between three and four per cent), and it can be higher (two per cent when the apprenticeship work force is less than one per cent).

[¶FRA-2875] Contribution for continuing vocational training

All employers resident in France or doing business in France on a regular basis (except specified public bodies) must contribute annually to the financing of continuing vocational training (*financement de la formation professionnelle continue*; CGI art.235 *ter C*). This obligation may be fulfilled by financing training programmes for the employer's own employees, by contributing to specified job training funds, or (for a limited portion of mandatory contribution) by contributing to specified vocational training organisations.

Three sets of contribution rules apply, depending on average annual employment. For employers of less than ten employees (including temp agencies), the contribution is 0.55 per cent of payroll. For employers of ten to 19 employees, the employer must contribute 1.05 per cent of payroll. For employers of 20 employees or more, the employer must contribute 1.6 per cent of payroll.

Any balance of the mandatory percentage not spent for one or more qualifying purposes must be paid to the state. Amounts paid for continuing vocational training may be deducted from the tax base. A penalty is payable to the state if an employer with a work force of at least 50 employees cannot prove that the personnel committee (*comité d'entreprise*) was consulted regarding the vocational training programme.

In 2015, this apprenticeship tax will be replaced with a single contribution made to a collection organisation. It will be payable before March 1, 2016. eEnterprises with at least ten employees will pay this tax at a one per cent rate.

SOCIAL SECURITY AND RELATED CONTRIBUTIONS

[¶FRA-2900] General: Social Security Ceiling

Social security contributions and other charges imposed for the benefit of employees are not covered by the General Tax Code but by the Social Security Code or the Labour Code. They are discussed in this context because, although not fiscal in nature, they are statutory levies that must be paid by employers, and in some cases also by employees.

A number of these contributions are limited to a ceiling established each year, termed the social security ceiling. For 2014 social contributions, the social security ceiling is €3,129 per month, €37,032 annually, indexed for inflation each year. This figure is commonly referred to as the "social security ceiling".

[¶FRA-2925] Social insurance

The contribution for medical insurance (*assurance maladie*) covers sickness insurance covers sickness, maternity, disability and death. The contribution rate is 12.8 per cent for the employer and 0.75 per cent for the employee, imposed on total salary as computed for social security purposes. Social surtaxes imposed on personal incomes

substantially replaced financing by the employee's share, which explains why it is only 0.75 per cent.

The contribution rate for social security retirement is a total of 15.25 per cent, 8.5 per cent for the employer and 6.8 per cent for the employee. This contribution is collected on wages only up to the social security ceiling.

The general reduction in social charges incentive (called the Fillon reduction, codified at CSS art.L241-13) provides a subsidy to employers of employees whose salaries are at the lower end of the scale. The reduction in the employer's share of social charges is progressive, and it phases out at 1.6 times the *salaire minimum de croissance* minimum wage. The maximum reduction in social charges 26 per cent of covered salary, with the higher reduction being closer to the *salaire minimum de croissance* (SMIC) minimum wage.

[¶FRA-2950] Family benefits

Contributions to finance the family benefits system (*allocations familiales*) are payable only by the employer. The employer's contribution is 5.25 per cent of total wages.

[¶FRA-2975] Housing allowance

Employers must also pay a housing allowance equal to a specified percentage of the employee's wages or salary up to the social security ceiling (*Code de la Sécurité Sociale*, art.L 831-1ff. and R 831ff.). This contribution, like other social security contributions, is collected by social security agencies. It is used to finance the national fund for housing assistance (*fonds national d'assistance au logement*). The percentage is 0.1 per cent of the amount within the ceiling for all employers, plus an additional 0.45 per cent of total wages for employers having more than nine employees.

[¶FRA-3000] Surviving spouse insurance

[Repealed]

[¶FRA-3025] Workers' compensation

A contribution representing a specified percentage (depending on the risk involved in the particular enterprise or job) of each employee's wages is payable by the employer to insure against work-related injuries.

[¶FRA-3050] Financing of public transportation

Special charges apply to enterprises employing ten or more persons in Paris and other large urban areas. These charges are designed to finance public transportation and are assessed on wages within the social security ceiling at a specified percentage (e.g. 2.7 per cent for Paris). In addition, the employer must subsidise a portion of the employee's transportation costs.

[¶FRA-3075] Unemployment insurance and salary payment guarantee

Unemployment insurance (*assurance chômage*) is governed by a simplified system administered by UNEDIC (*Union nationale interprofessionnelle pour l'emploi dans*

l'industrie et le commerce) and financed through a contribution to ASSEDIC (*Association pour l'emploi dans l'industrie et le commerce*) (*Code du Travail*, art.L 351). The contribution base is four times the social security ceiling. The employer's rate is 4 per cent. The employee's rate is 2.4 per cent. These are the rates at the beginning of 2014.

An employer must also purchase insurance to guarantee payment of his employees in the event of bankruptcy or liquidation. The amount of this insurance (termed AGS insurance) is 0.43 per cent of the same wage base as unemployment contributions.

[¶FRA-3100] Additional retirement benefits

Special retirement systems have been created for management-level employees (i.e. *cadres*) and non-executive personnel. These retirement benefits, which also cover disability and death, are financed by contributions by the employer and the employee.

In order to finance the programme of additional benefits for retirement, disability or death of executives (*régime de retraite et de prévoyance des cadres*), the employer is required to pay an amount equal to 4.58 per cent (and the employee is required to pay 3.05 per cent) of the amount of the monthly salary of each executive (*cadre*) below the social security ceiling. For the slice of salary above the social security ceiling and up to four times the social security ceiling, the employer's contribution is 12.68 per cent, and the employee's share is 7.75 per cent. Contributions above four times the social security ceiling and up to eight times the social security ceiling vary depending on the plan, with a minimum overall contribution of 20.43 per cent divided between employer and employee shares according to the plan agreement.

The required contribution to the programme for additional retirement benefits for non-executives (*régime de retraite complémentaire du personnel non-cadres*) has a wage base of up to three times the social security ceiling. The overall contribution of 7.63 per cent is divided between the employer (4.58 per cent) and the employee (3.05 per cent).

Local Taxes

[¶FRA-3125] General

There are several local taxes (*taxes locales*) that finance the activities of the local authorities. The rates of these taxes vary greatly according to locality. The principal local taxes are the property tax, the professional tax and the personal dwelling tax.

[¶FRA-3150] Property tax

There is a property tax on unimproved land (*taxe foncière sur les propriétés non bâties*) and also on improved land (*taxe foncière sur les propriétés bâties*) (CGI, art.1380–1406 and 1415–1417). The property tax is due to be paid by the owner of the land as at January 1 of each calendar year and is based on the real estate rental value minus a standard rebate of 50 per cent (for improved land) or 20 per cent (for unimproved land). The property tax is calculated by applying the tax rates decided by local authorities to this basis.

[¶FRA-3175] Business tax

Local governments have venerable sources of revenue from businesses located within their taxing jurisdiction, be it the region, the department, or the localities. The oldest of these taxes is the *patente*, which dates from the time of Napoleon. In 1975, it was replaced with a tax called the business licence tax (*taxe professionnelle*) which was a tax based on a business's real property and investment in machinery and equipment. The tax policy underlying the business licence tax was to impose a tax that did not change based on the taxpaying enterprises income and that was computed on a strictly local tax base. The business licence tax was replaced by a new tax, called the Territorial Economic Contribution (*Contribution Économique Territoriale*: CET) because the former business licence tax weighed most heavily on the industrial sector. This new tax is composed of two elements.

1. CFE. A local tax is imposed on the rental value of real property used in a business activity (*Cotisation Foncière des Entreprises*: CFE). Unlike the business license tax, the rental value of equipment and personal (movable) property is not within the tax base.
2. Tax on value-added. A progressive-rate tax on the enterprise's value added figure (*Cotisation sur la Valeur Ajoutée des Entreprises*: CVAE) forms the second prong of the CET. The tax rate is zero up to €500,000 in value added, increasing to a flat 1.5 per cent rate for value added above €50,000,000.

Even though the CET is a local tax, the financial burden that this tax imposes on businesses can be significant.

[¶FRA-3200] Personal dwelling tax

The personal dwelling tax (*taxe d'habitation*) is assessed against any person who occupies or has use of a dwelling as at January 1 of each year, regardless of whether such person owns the dwelling or the furnishings (CGI art.1407–1417). The tax is based on the gross rental value of the dwelling, not taking into account the furnishings.

Registration Taxes**[¶FRA-3250] Documents, contracts and transactions**

There are a number of different legal instruments and contracts that, when executed in France or when concerning French assets, must be registered within a specified period after signature and that give rise to the application of a registration tax (*droit d'enregistrement*). Certain transactions (such as the sales of specific French real estate rights or all or part of the goodwill of a French company) are subject to the registration tax even if they are not evidenced in a written document.

For some transactions the tax is a small fixed amount, regardless of the amount involved in the transaction. For other transactions, the rate of tax varies according to the type of transactions involved and the tax due is based on the transaction value.

Hereafter are listed the main transactions subject to registration duties:

- (1) The sale of real estate consisting of either residential or professional real property triggers the application of a 5.09 per cent transfer tax assessed on the

sales price of the real estate. A temporary facility expiring March 1, 2016 allows the local communities to increase the registration duty on the sale of real property to 5.8 per cent by local decision.

- (2) The sale of a business or of a customer list (*clientele*) entails the payment of a 4.80 per cent tax calculated as follows:
 - (i) from 0 to €23,000 = 0 per cent;
 - (ii) i.ii. between €23,000 and €200,000 = 3 per cent;
 - (iii) €200,000 = 5 per cent.
- (3) Registration taxes at the time of the creation of the company:
 - Contributions made in exchange for shares are in principle exempted (cash, assets other than buildings, rights in real estate, business, customer list, leasehold). Other assets (buildings, rights in real estate, business, customer list, leasehold) are exempted provided they are made to entities that are not subject to corporate income tax, or when the contributor and the beneficiary are both subject to corporate income tax.
 - Contributions of real property, rights to real property, businesses, customer lists or leaseholds are taxed at a rate of 5.09 per rate when made to a company subject to corporate income tax by an entity that is not subject to corporate income tax. However, no registration duty applies if the contributor undertakes to keep the shares received in exchange for its contribution(s) for at least five years.
 - Contributions that are subject to value added tax (such as new buildings) are exempted from registration duties.
- (4) Registration taxes applicable during the life of the company:
 - (i) Increases in capital of an entity subject to corporate income tax by incorporation of undistributed profits: fixed duty of €230.
 - (ii) Capital increases resulting from contributions of real estate (if the company that receives the contribution is subject to corporate income tax): 4.80 per cent, unless the contributor undertakes to keep the shares received in exchange for its contribution(s) for at least five years. In this latter case, the registration tax is the €230.
 - (iii) Share capital decreases in view of offsetting book losses: €75.
 - (iv) Where mergers, splits and partial mergers are concerned, registration duties are those applicable to capital contributions. Should these operations benefit from the special regime (see ¶FRA-2500), no registration duties are applicable except a €230 tax.
 - (v) Transfer of shares in a SARL: 3 per cent.
 - (vi) Transfer of shares in a SA listed on the stock exchange are exempt from duties when there is no written deed of sale. Such transfers are subject to a 1.1 per cent duty limited to €5,000 in the other cases (i.e., when there is a written deed of sale or if the SA is unquoted (CGI, art.810, 812 and 726)).

¶FRA-3275] Gift and estate taxes

The tax on transfers by deed of gift (*droits de donation*) or through an estate (*droits de succession*) is collected by the registration tax authorities. Both types of transfer are subject to the same graduated rates of tax. Since 2007, a testamentary transfer between spouses or between couples who have entered into a PAC domestic partnership is an exempt transfer for succession duty purposes.

These taxes are calculated on the portion allocated to a beneficiary less the following base abatements (2011 figures, actualised each year for inflation):

- €80,724 for gifts between spouses;
- €156,357 when the transfers are made to parents and to living or represented children;
- €15,932 when the transfers are between brothers and sisters.

When transfers are made in a direct line, the estate tax rates range from 5 to 40 per cent. There are also deductions varying from €1,594, applicable when no other deduction is allowed, to €159,325 in favour of physically or mentally handicapped heirs, and that may, in the case of a deduction in favour of handicapped heirs, be added to the deduction applicable to children, ascendants, brothers and sisters. As for brothers, sisters and other individuals, the remainder is subject to tax at rates ranging from 35 to 60 per cent (CGI, art.777 ff.).

¶FRA-3280] Succession duties on trusts

July 2011 legislation established rules for the imposition of succession and gift duties on assets passing through trusts. Rather than recognize the existence of trusts, the Tax Code created its own tax definition of a trust in a new CGI art.792-0 bis. Under the Tax Code, the settlor is the individual who settles the trust, or, if it was settled by an individual acting in a professional capacity or by a legal entity, the individual who place the assets or legal rights in trust. This article refines the definition of settlor to create a new notion, “tax settlor”. A tax settlor is an individual other than the initial settlor defined above. To permit French gift and succession duties to be imposed as assets pass down generations within a trust, a beneficiary will become a tax settlor when such a beneficiary is the deemed recipient of some or all of the assets of a trust. The Tax Code imposes succession and gift duties on any transfers realized via a trust, whether or not they may be qualified as transfers under French civil law. For example, assets contained in a trust are subject to succession duties when the settlor dies even if the assets that are taxed are not immediately transferred to a beneficiary.

When the transfer via trust can be clearly discerned as a succession or gift, succession and gift duties are imposed under normal tax rules. When the character of the transfer through a trust is indeterminate, one of three different rules will apply. First, when upon the death of the settlor a specific share is given to a specified beneficiary, the transfer is taxed under normal rules based on the family relationship with the decedent. Second, when at the date of the decedent’s death a share of the trust is held for a number of the settlor’s descendants without specific shares allocated among beneficiaries, a specific duty of 45 per cent is applied. Third, if the first and second rules do not apply, then the transfer by

trust is taxed at a 60 per cent rate. This 60 per cent rate will be the tax rate when the assets remain in the decedent's trust at death or when a share of the trust passes to a group of beneficiaries that are not all descendants of the decedent. Fourth, when the trustee is subject to the law of an tax listed haven tax haven state or when a trust is settled by a French resident after 11 May 2011, the tax rate on any transfers will be 60 per cent.

Succession duties are a liability of the trustee. When not paid by the trustee, or when the trustee is subject to the law of state without a tax treaty with France with a mutual assistance clause for tax collections, then the beneficiaries are jointly and severally liable for the duties. The trustee of trusts whose net asset values are taxable in France must make periodic information filings. The penalty for a failure to file a required declaration is €10,000 or five per cent of the total value of the trust, whichever is greater.

These rules apply to transfers by gift or succession occurring on or after July 31, 2011.

Individual Income Tax

PERSONS SUBJECT TO TAX

¶FRA-3300] French nationals domiciled in France

French nationals whose "tax domicile" is in France are taxable on all their income from all sources worldwide. A taxpayer is considered to have a "tax domicile" in France if:

- (1) the taxpayer's home or principal place of residence (183 days or more presence in France) is in France; or
- (2) the taxpayer engages in a professional activity in France which is not ancillary in nature; or
- (3) the centre of the taxpayer's economic interests is in France (i.e. major investments, main office or source of majority of income) (CGI, art.4A and 4B).

A French national whose "tax domicile" is outside France but who has a secondary residence in France is generally taxable either on three times the rental value of the secondary residence or on his or her total income from French sources (subject to tax treaty provisions), whichever is greater. The lump sum minimum base (three times the rental value of the dwelling at their disposal in France) does not apply to French nationals or nationals of countries which have signed a non-discrimination treaty with France who, in their country of residence, are subject to an income tax on the whole of their income at least equal to two-thirds of the tax they would pay in France on the same base.

¶FRA-3325] Non-residents

Individuals (whether French or foreign) not having a French tax domicile are subject to taxation only on their income from French sources (CGI art.164A) or on three times the rental value of the dwelling at their disposal in France (see above). Foreigners who have a residence in France, but are not tax domiciled in France are taxable on the basis of three times the rental value of such residence. However, this taxation does not apply in the following cases:

- where the entire income from French sources is greater than the standard taxation;
- if they are domiciled in a state that has concluded a tax treaty with France (CGI art.164C);
- if they are French nationals or nationals of a country that has concluded a reciprocity treaty with France and if they justify being subject in the country of their tax residency to a personal income tax on all their income and if this taxation is at least equal to $\frac{2}{3}$ to the one they would have been subject to in France on the same taxable basis; and
- if they are French nationals and during the year of transfer of residency out of France and the two following years where their tax residency was in France, on a continuous basis, during the four-year period preceding the year of transfer of residency and when the expatriation is due to professional reasons.

In these cases, they are taxable on the basis of their entire income from a French source.

¶FRA-3350] US residents

Special rules apply to US residents as a result of the Franco-American Tax Treaty. The most important provisions of the Treaty concerning individual income tax are the following:

- (1) Remuneration derived by a resident of the US in respect of employment exercised in France is exempt from French income tax if (a) the recipient is present in France for a period not exceeding in the aggregate 183 days in any 12 month period starting or ending in the taxable period concerned, (b) the remuneration is paid by, or on behalf of, an employer who is not a French resident, and (c) the remuneration is not borne by a permanent establishment which the employer has in France (Franco-American Tax Treaty, art.15).
- (2) The rate of withholding tax on dividends received from a French corporation by a US resident shall not exceed (art.10 of the France-US tax treaty) 15 per cent (and is reduced to five per cent for a US corporation that owns directly or indirectly, at least 10 per cent of the capital of the company paying the dividends if such company is a resident of France, except if the dividends are paid by a French “*société d’investissement à capital variable*”, where the 15 per cent rate will apply).
- (3) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

Such royalties may also be taxed in the Contracting State in which they arise but if the beneficial owner is a resident of the other Contracting State, the tax shall not exceed five per cent of the gross amount of the royalties. Such a withholding tax may only apply to payments of any kind received in consideration for:

- the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial, or scientific experience; and
- gains derived from the alienation of any such right or property described in this paragraph that are contingent on the productivity, use, or further alienation thereof (art.12 of the France-US tax treaty).

Payments of any kind received as a consideration for the use of, or the right to use any copyright of literary, artistic or scientific work or any neighbouring right (including reproduction rights and performing rights), any cinematographic film, any sound or picture recording, or any software arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that Other State.

TAXABLE INCOME

[¶FRA-3375] General

Taxable income is broken down into a number of categories including wages and salaries, industrial and trading profits, income from an independent profession, agricultural profits, capital gains, director's compensation, interest income and dividends, income from real property. Different rules concerning allowable deductions against income are applicable to each category. Special rules apply to income from real estate. For most of the other categories, expenses incurred in earning the income may generally be deducted from such income. With a few exceptions, losses in one category of income may be set off against profits in another category. Certain deductions are allowed from aggregate income, such as support payments and social security contributions. Tax credits encourage taxpayers to give to charities, hire home help, and make certain investments.

With respect to wages and salaries, an automatic deduction of 10 per cent, up to a ceiling (€120,970) is allowed for professional expenses. Pension income also qualifies for a ten per cent allowance up to a maximum allowance of €3,689. These are the allowance ceilings for taxation of 2013 incomes.

As a form of low income relief, individuals whose taxable income is below €8,680 are exempt from income tax, even if the normal application of the tax table would have resulted in a taxation (CGI art.5-2 *bis*). This threshold is €9,460 for persons over the age of 65.

A tax discount also is offered to low income taxpayers. When a household's tax bill is €1,016 or less, income tax is reduced by the difference between that figure and the tax due under the tax schedule. This means that when tax calculated as due under normal rules is less than €508, the tax discount zeros out the tax.

An allowance is granted to disabled or older persons. The general allowance that an aged or infirmed individual may deduct from their otherwise taxable income is €2,332 when taxable income does not exceed €14,630. The allowance is reduced to €1,166 when income is between €14,600 and €22,930.

These figures for these three types of low income relief are the figures for taxation of 2013 incomes. They are actualised each year for inflation.

The tax authorities also have the right to assess tax on the basis of the taxpayer's living standard when this is considered to be grossly disproportionate to his declared income (CGI art.168).

[¶FRA-3400] Income from investments; foreign trust income

Investment capital is composed of income from securities (dividends from stocks, negotiable bond interest) and income from loans that are not represented by securities.

Beginning January 1, 2013, taxpayers in receipt of dividends income will be able subject to a 21 per cent mandatory withholding tax before the dividend is added to ordinary income and taxed by the progressive income tax schedule (§FRA-2575). Also beginning January 1, 2013, in the absence of an exception, income from fixed income investments will be subject to taxation at normal rates imposed by the progressive income tax schedule. Exceptions are provided for: (1) bond and interest income exempt under CGI art.57 (passbook savings accounts, bond interest from incentive bonds); and (2) income for which prepayment levies are maintained; and (3) interest income that remain taxed at fixed rates.

Dividends received by individuals are subject to personal income tax after the application of a 40 per cent allowance. Expenses related to investment income are deducted after the 40 per cent allowance is applied Social surtaxes (§FRA-3425) are applied before the application of the 40 per cent allowance, but after the deduction of expenses. As such, dividend incomes escaping income tax as results of the allowance nevertheless are subject to social surtaxes. Non-residents are not subject to social surtaxes.

CGI art.120, 9° specifies that income from a foreign trust, whatever the assets comprising the trust estate, is taxed as if such distributions were foreign securities income. In July 2011, this article of the Tax Code was amended to specify that only income “distributed” by a trust is subject to income tax. In exceptional cases, reinvested income from a foreign trust could be caught by French rules taxing tax-haven personal holding companies because these rules apply to “foreign structures”, which explicitly includes trusts. Distributions of principal from a trust will be subject to the specific rules applying succession and gift duties imposed on transfers accomplish via trusts (§FRA-3280).

§FRA-3425] Social surtaxes

As a general rule, social surtaxes on incomes have replaced the employee’s share of social security contributions to finance health, disability, and death benefits. As such, taxpayers considered as tax residents of France have to pay the following surtaxes on their incomes:

- (1) 8.2 per cent general social contribution (CSG) on most categories of income (reduced to 6.6 per cent on “replacement income”, such as disability pensions, old age pensions);
- (2) a surtax to reduce the social debt of 0.5 per cent; and
- (3) a permanent social levy of 4.5 per cent.

A 2.0 per cent social levy also applies on financial and real estate capital income.

Revenues from the CSG benefit the Caisse National des Allocations Familiales, the social security entity which manages family-related social security payments. The CSG base is the same as the generally applicable taxable base, whereas the CSG base for salaries and assimilated income (e.g. wages, unemployment and early retirement benefits, pensions, royalties) is the base used to calculate social security contributions. A formulary 1.75 per cent allowance is accorded to salary income and assimilated payments, on salary up to four times the social security ceiling. Moreover, as regards unemployment and early retirement indemnities, the CSG may be avoided in full if the taxable individual is exempt from personal income tax. It may be partially avoided if its application would cause the

taxed individual's income to fall below the legal minimum wage and then only with respect to the portion of the CSG which would cause such a threshold to be breached.

With respect to salaries and assimilated income, the CSG is withheld by the payer, who must transfer the CSG to the social security administration under whose authority the payee falls (URSAAF, Mutualité Sociale Agricole, ACOSS or AGESSA). The withholding of the CSG must appear on the payee's payslip. As regards CSG due for income derived from property, it is to be collected under the same conditions as income tax for such profits. The social security authorities are responsible for enforcing the CSG payments which are to be paid directly to them, whereas the tax authorities are responsible for the payments due to them.

The CSG is deductible for income tax purposes, with the exception of that part of the payment that corresponding to a 2.4 per cent rate of tax on income from activities and a 3.8 per cent rate of tax concerning "replacement income".

¶[FRA-3450] Deductions

French tax law limits the deductions that may be taken against income to specific categories of authorised payments. Formerly, deductions were allowed to taxpayers as incentives for particular types of investments and expenses. These incentives now take the form of tax reduction credits (¶3450).

The following are the principal deductions allowable against general income.

- (1) Support payments to family. A taxpayer may deduct reasonable support payments to care for ascendants or descendants under the taxpayer's Civil Code support obligation (CGI art.156-II 2°). A taxpaying household may deduct up to €3,386 (2013 figure) for in-kind benefits accorded to a person more than 75 years old and living in the household.
- (2) Losses. A taxpayer may deduct net losses realised in one schedular category against income realised in other schedular categories up to certain limits. For example, agricultural losses are deductible against income in other schedular categories if the family's income in such categories does not exceed €107,080. Losses on rental real estate may be deducted for the first €10,700 of expenses other than mortgage interest.
- (3) Child support payments. A non-custodial parent may take a deduction for child support payments made pursuant to a court order. In the absence of a court order, such child support payments must be in a reasonable amount.
- (4) PERP. Within certain rather low limits, an individual may make voluntary contributions to a PERP supplemental retirement plan (typically funded by an insurance contract that will pay a future annuity).

¶[FRA-3475] Family coefficient

The income of all members of a family living together is usually reported in the return filed by the head of the household (CGI art.194–199). The total taxable income is then divided into a number of equal shares based on the number of dependants claimed. The head of the household and the spouse each count for one full share, and each

dependant child counts as one-half share, except that from the third child, children count as one full share. The tax saving that the taxpayer may enjoy by claiming each one-half part is limited beyond a certain income threshold depending on the marital status of the taxpayer. For 2013 incomes the limit is fixed at €1,500 for each one-half share in addition to the two full shares for the taxpaying spouses. When the taxpayer is single, divorced or separated and bringing up children alone, the limit is fixed at €4,040 for the first child (CGI art.197–2).

Unmarried children of 18 years or older are, in principle, taxed separately, but they can elect to be taxed with their parents. In this case, the parents benefit from one supplementary half part for each child electing for such taxation (CGI art.196B). Such an election can be made if one of the following conditions is fulfilled:

- being less than 21 years old;
- being less than 25 years old, if the child can demonstrate commitment to full time education; or
- doing military service, whatever the age of the child.

Married children, regardless of their age, are taxed separately, except when they are less than 21 years old, or less than 25 years old and in full-time education, or (without limitation of age) doing military service upon election. In this case, the parents do not benefit from one supplementary half-part, they benefit from an allowance of €5,698 per person, for 2013 incomes (CGI art.196B).

The tax for one share of income is determined by reference to the progressive rates for the various brackets of income (¶3480). The amount is then multiplied by the number of shares. The reduction in tax through this share system is then limited by the ceiling rule.

¶FRA-3485] Tax schedule

The tax schedule applicable to one family share is the following for taxation of 2010 incomes.

<i>Income</i>	<i>Rate</i>
Below €6,011	0%
Between €6,011 and €11,911	5.5%
Between €11,911 and €26,631	14%
Between €26,631 and €71,397	30%
Between €71,397 and €151,200	41%
Above €151,200	45%

The tax schedule is actualised each year for inflation through amendments made in the annual finance law passed by Parliament in December of the year for which the tax rules are established.

For 2011 and later calendar years, the French Tax Code (CGI art.223 sexies) imposes what it terms an “exceptional tax” on high earning individuals. Under the new tax’s territoriality rules, it is imposed on individuals subject to personal income tax in France. The surtax is imposed on “reference income” as used to determine whether an individual

household qualifies for the residence tax exemption (§FRA-3200). In general, reference income is all income subject to the progressive income tax rate schedule, investment income subject to reduced rate withholding taxes, and otherwise income-tax-exempt expatriation and impatriation income. Subject to contrary rules in tax treaties, the exceptional contribution is due by individuals whose tax domicile is in France or who have French source income that is considered as “reference income” for purposes of the new tax. The tax rate for this exception contribution is three per cent of reference income between €250,000 and €500,000 for single persons and between €500,000 and €1,000,000 for married couples. The tax rate is increased to 4 per cent on the amount of reference income above these slices of reference income.

For non-residents, tax is computed according to the same tax schedule, but a minimum rate of 25 per cent applies to the income from French sources (18 per cent for income from overseas department sources) when the taxpayer cannot show that his worldwide income, if taxed in France, would be subject to a lower effective rate (CGI, art.197A). In this case, this lower rate would be applicable to the French income.

§FRA-3500 Adjustments and credits

The Tax Code accords a tax reduction credit for certain categories of expenditures. These tax reduction credits are subtracted from income tax found due after the application of the family coefficient rules. These tax benefits are subject to a limitation designed to cut back on most tax benefits. If tax reduction credits exceed tax due, then the corresponding credit is lost.

The following is the list of principal tax reduction credits:

- (1) certain expenses incurred in connection with the acquisition or improvement of the taxpayer’s principal residence (CGI art.199 *sexies* and art.200 *ter*);
- (2) qualifying investments in rented real estate in officially-classified tourism residences (CGI art.199 *decies* E to art.199 *decies* G);
- (3) investments in the share capital of small business companies;
- (4) premiums paid for certain kinds of annuities (CGI art.199 *septies*);
- (5) charitable gifts;
- (6) expenses linked to the children schooling (maximum €183) (CGI art.199 *quater* D and 199 *quater* F);
- (7) investments in FCPI shares (mutual funds) (CGI art.199 *terdecies*-O-A);
- (8) 50 per cent of the expenses linked to an employee at home, with a ceiling of 16,000 for a married couple;
- (9) alimony paid to a former spouse in the form of a lump sum payment (CGI art.199 *octodecies*);
- (10) child care costs (CGI art.199 *quater* D);
- (11) fees paid to a chartered accounting centre (CGI art.199 *quater* B);
- (12) hospitalisation expenses (CGI art.199 *quindicies*); and
- (13) contributions to a political party or to a trade union (CGI art.199 *quater* D).

The use of the above tax reduction credits is limited. For taxation of 2011 and subsequent years’ incomes, the maximum amount of tax reduction credits that may be

used is limited to a set Euro amount. For taxation of 2013 incomes, the ceiling on the use of tax reduction credits is reduced to a fixed ceiling of €10,000.

¶[FRA-3510] Formulary taxation

When the application of normal tax reporting rules is insufficient for the Tax Administration to be comfortable with the taxpayer's declaration is correct in light of the taxpayer's lifestyle, the Tax Administration can use a special tax base evaluation system. To facilitate a formulary assessment, the official form used for a household's annual tax declaration contains a section requiring the taxpayers to indicate the rental value of all primary and secondary residences, the number and types of cars, boats and aeroplanes owned, the number of domestic servants employed, and other information concerning leisure activity expenditures. The Tax Administration may then use a formulary tax base for the taxpayer based on these values. To use this formulary basis of assessment, the total formulary tax base must exceed a trigger figure (€45,132 for 2013), and the formulary tax base must exceed the taxpayer's declared income for the year in question and the preceding year by one-third.

According to French statutory law, the formulary tax base is increased by 50 per cent when it exceeds twice the above minimum base for a given year (€89,544 for 2010 income), but in January 2011, the Constitutional Council held that this rule violates the Constitutional principle that all taxpayers must be equal before the tax.

The taxpayer can refute the formulary presumption that his income exceeds his declared income by showing that his income, savings, or loans actually permitted the taxpayer to acquire the elements of his personal life style used in the formulary tax base. In appropriate cases, the Tax Administration will apply the formulary evaluation rules to individuals who are not tax residents of France.

¶[FRA-3515] Exit tax

In 1998, France attempted to implement an exit tax on expatriating taxpayers, which applied until the rules were repealed with effect from January 1, 2005. This repeal stemmed from an adverse decision of the European Court of Justice (Decision C-9/02 of March 11, 2004), which declared the exit tax rules a violation of the freedom of establishment principle protecting EU and EEA nationals. The July 2011 Technical Amendments Finance Law instituted a new exit tax designed to comply with EU standards (codified at CGI article 167 bis). The Technical Corrections Finance Law for 2013 yet again changed the rules for imposing the exit tax.

The 2013 exit tax rules provides that the transfer of tax domicile from France will result in taxation of three categories of deferred income under the personal income tax and social surtax rules. These three categories of deferred income are: (1) latent capital gains from holding at least a 50 per cent interest in a company or an interest in a company worth more than €800,000; (2) capital gains resulting from a corporate reorganisation or other tax-free exchange whose gains are deferred; and (3) earn out payments on a sale of shares. Latent capital gains and deferred earn-out payments will be taxed on departure only if the taxpayer was domiciled in France during at least 6 out of the 10 years preceding the date of transfer of domicile outside of France.

The exit tax is equal to the difference between: (1) the French tax due based on the application of the progressive rate schedule (§32-640) to the taxpayer's French- and foreign-source income, integrating the above three categories of deferred into the amount so calculated; and (2) the French tax actually due for the year of expatriation without reintegrating the three categories of deferred income items. These amounts are calculated with social surtaxes.

A deferral of the exit tax is granted automatically when the taxpayer transfers his tax domicile to another EU country or to a country within the EEA that has entered into an administrative assistance agreement to fight tax fraud and a mutual assistance agreement involving tax collections similar to agreements provided by EU Council Directive 2010/24 of 16 March 2010. Payment of the exit tax may be deferred upon request when the transfer of domicile is to non-EU or non-EEA country, in particular, if the taxpayer offers guarantees adequate to cover the tax due. Guarantees are not required when the taxpayer departs France for professional reasons and moves to a country that itself has entered into a mutual assistance agreement in tax matters with France. In general, any deferral ends when the related securities are sold or transferred by the taxpayer.

¶[FRA-3525] Wealth tax

France imposes a net wealth tax that reaches higher net worth individuals (codified at CGI article 885A to 885X). July 2011 legislation simplified prior tax rules, notably by reducing the highest margin rate of 1.8 per cent on net worth over €16,790,000 to a flat 0.5 per cent rate once an individual's net worth exceeds €3 million. A 0.25 per cent rate applies when net worth reaches €1,300,000. At the same time, the ceiling rule that generally limited an individual's overall income tax and net wealth tax burden to a maximum of 85 per cent of a household's income was eliminated.

The rules used for establishing domicile for net wealth tax purposes are the same as those used for determining domicile for income tax purposes. The net wealth tax is determined at the fiscal household level and includes all property, rights and securities belonging to the household. This tax applies to taxable property owned on January 1 of each year. Households that exceed the annual threshold must file declarations and pay the required tax by June 15 of each year.

The rules for calculating the wealth tax are the same as those applicable to estate tax, so that the actual tax base is equal to the estate tax value of the taxable property on January 1 of the year of taxation, reduced by the amount of the taxpayer's debts outstanding, subject to production of proof of such debts.

Prior to 2011, the net wealth tax schedule was:

<i>Fraction of taxable property value</i>	<i>Rate</i>
Below €800,000	0%
Between €800,000 and €1,310,000	0.5%
Between €1,310,000 and €2,570,000	0.7%
Between €2,570,000 and €5,000,000	1%
Between €5,000,000 and €10,000,000	1.25%
Above €10,000,000	1.5%

To attenuate the cliff effect of the new tax rates, when a taxpayer's net worth (NW) is between €1,300,000 and €1,400,000, a discount is applied that is equal to €17,500 – (€7 x 0.25 per cent NW).

For individuals considered as domiciled in France for ISF purposes, the ISF is subject to a ceiling (based on the combined amount of ISF net wealth tax and the personal income tax) so that the combined taxation does not exceed 75 per cent of the taxpayer's income. The amount of the ISF will be reduced in implementation of this rule. The taxpayer's income is defined for these purposes as: (1) worldwide income, net of professional expenses and after deducting losses allowable against each category of income; (2) income exempt from income taxes realised in France or abroad; and (3) income subject to withholding taxes in complete satisfaction of tax liability.

Debts (including income tax owed and loans for the purchase of real property) can be deducted from the value of a household's assets.

A variety of categories of property are excluded from the net wealth tax base, either totally or partially. The following are the principal excluded assets:

- works of art, antiques, collectors' items;
- retirement assets;
- business assets (e.g. assets necessary for their owner to engage in his or her normal business activity, provided it is of an industrial, commercial, agricultural or professional nature);
- financial investments of non-residents (except participation securities where the holding represents at least 10 per cent of the capital of the company and shares in unlisted companies where the company's assets consists principally of real property located in France and not used for business tax purposes);
- literary and artistic property rights (when held by the creator or his successors) and industrial property rights (e.g. patents, trade marks, designs) when held by the inventor only;
- the value of forest property is also exempt, provided the owner undertakes to engage in normal exploitation for at least 30 years (75 per cent exemption).

Agricultural properties on long-term leases may be considered as fully-exempt business assets. If they do not, they are exempt for 75 per cent of their value when the value does not exceed a figure set annually (€102,717 for 2014). For the amount above the limit, the exemption is 50 per cent.

Tax credits against the net wealth tax are accorded for taxpayer investments in small- and medium-sized (SME) companies and for charitable donations. The tax credit for SME investments is equal to 50 per cent of the taxpayer's direct or indirect investment in a qualifying SME or proximity fund. The tax credit for charitable donations is 75 per cent of qualifying contributions. The maximum allowable tax credit is a cumulative €45,000.

France has negotiated treaties with a number of countries, including the US, to eliminate the double taxation of net wealth (see ¶FRA-1400 above). For example, art.23 of the France-US income tax treaty modifies the normal residency rules of the French net wealth tax by providing that any assets situated outside France that an individual resident of France who is a citizen of the US and not a French national owns on the first of January of each of the five years following the calendar year in which he becomes a resident of

France, shall not be taxable to wealth tax relating to each of those five years. If such an individual loses the status of a resident of France for at least three years, then again becomes a resident of France, the assets situated outside France and owned by such a resident on the first of January of each of the five years following the calendar year in which he again becomes a resident of France shall be excluded from the base of assessment of the tax relating to each of those five years. Other countries are negotiating similar provisions in their tax treaties with France.

[¶FRA-3530] Taxation of foreign trusts

The same July 2011 legislation that amended net wealth tax rates created a scheme for the taxation of foreign trusts under succession duties and for ISF purposes. For net wealth tax purposes, the settlor (*constituent*) of a trust is the person liable for net worth tax on assets held in trust. Under general territoriality rules, when the settlor is a French resident, all of the assets in the trust are taxed in France. When the settlor is not a French tax resident, only French *situts* assets (other than exempt financial assets) are taxed in France. Assets that the French taxpayer transfers into an irrevocable charitable trust may escape tax in France provided that the trustee subject to the law of a country with a tax assistance agreement and the charitable beneficiary would qualify as such under CGI article 795.

A specific 0.50 per cent tax is imposed on the assets of a trust when the deemed owner does not regularly declare the assets for net wealth tax purposes. This means that, if a taxpayer must include the trust in his taxable net worth following an audit, the trust assets will be taxed twice, once under the net wealth tax rules and a second time under the special levy. The beneficiaries of the trust are jointly and severally liable for any tax payment not made by the trustee. The new levy applies for the first time to assets of trusts held at January 1, 2012. The declaration for the specific levy is independent of the obligation imposed on trustees to file annual information declarations.

Capital Gains Tax

[¶FRA-3550] Transfers of real property or moveable property other than securities

Individuals are subject to a capital gains tax on transfers for consideration of real property, certain types of tangible personal (moveable property), and on the sale of securities. The French Tax Code does not have a general set of rules for taxing transfers of such property.

Not all real property capital gains are taxed because quite a few categories of sales are exempt by statute. The principal exemptions are (i) the sale of the taxpaying individual's principal residence in France (or the principal residence in France of certain non-residents); (ii) gains realised on the transfer of real property occurring in certain expropriation and reorganisation transactions; and (iii) (since February 1, 2012) the first sale of residential premises when the taxpayer does not own his own principal residence. The taxpayer's gain on the sale of real property and real property rights is exempt from taxation if the sales price is less than €15,000.

Unlike for other types of capital gains, for real estate capital gains, the Tax Code disregards the distinction between short-term and long-term gains. The holding period is

taken into consideration to determine whether a base abatement is applicable for a holding property beyond a certain period.

Taxable capital gains are the difference between the adjusted basis of the property and its adjusted sales price.

The rules for taxing real property capital gains have varied almost annually since early 2012. As of September 2014, the following rules apply. For real property acquired by purchase, the price indicated on the deed of transfer is the starting figure for computing the adjusted basis. Real property acquired by gift has a tax basis equal to its fair market value on the date of the gift. When computing gain, the taxpayer may elect to increase the cost basis of the property by 7.5 per cent for acquisition expenses instead of computing the exact expenses incurred to acquire the property. Any amount paid as succession or gift duties by the seller will be added to the adjusted basis of the asset when it is sold.

The cost basis also may be increased by 15 per cent when the taxpayer has owned the property for more than five years and has performed substantial renovation work for which no receipts were retained. With regard to the amount of tax basis, for capital gains purposes, the taxpayer is permitted to reduce the gross sales price by an abatement per year of holding period. Prior to September 1, 2013, the abatement was:

- 2 per cent per year for each year held beyond the 5th year;
- 4 per cent per year for each year held beyond the 17th year; and
- 8 per cent per year for each year held beyond the 24th year.

This base abatement yielded a complete exemption of the capital gains after 30 years. By administrative action (confirmed by the 2014 Finance Law), with effect from September 1, 2013, the cadence of the base abatement for income tax purposes was increased (except for sales of building land) to result in a complete exemption after 22 years of the holding period. It remained the same as before for social surtax purposes (¶FRA-3425), resulting in a complete exemption of the gain for social surtax purposes after 30 years. The prior abatement schedule remains valid for sales of building land, which is exempt after 30 years. From September 1, 2013 to August 31, 2014, an additional abatement of 25 per cent is added to the above abatements per holding period. The expiration date for the special abatement will be December 31, 2016 for the sale of buildings designated for demolition in dense urban zones. Capital losses realised on the sale of real property within the scope of the rules for taxing individuals' gains are not deductible, and they cannot be used to offset gains on other transactions.

Real property gains for individuals are taxed at a flat 19 per cent rate. Formerly, taxable gain was added to the taxpayer's other taxable income and subject to the progress rate schedule. For French tax residents, social surtaxes increase the effective rate of the fixed 19 per cent tax rate to 34.2 per cent, which is withheld from the purchase price by the notary closing the real estate transaction.

Persons whose property is close to infrastructure projects financed by the Greater Paris Company will be subject to a surtax on the sale of their properties.

Gains on sales of real property made by persons who buy and sell real property on a "habitual" basis (*marchands de biens*) are subject to income tax under normal rules for such traders.

Special tax rules apply to sales of precious metals, works of art, collectors' items and antiques.

Subject to contrary rules in international tax treaties, capital gains realised on an occasional or non-professional basis by taxpayers domiciled outside of France on the sale of real property or real property rights are liable for a withholding tax, in principle equal to one-third of the capital gains resulting from the sale. Individuals who are residents of EU Member States, Iceland and Norway are accorded a reduced withholding tax rate of 19 per cent, the one-third withholding tax is increased to 50 per cent for such real estate gains paid to an ETNC (tax-haven) state, regardless of the tax residence of the actual beneficiary of the payment or when the paid directly to a person located in an ETNC state. The one-third withholding tax also applies to non-resident legal entities. The one-third withholding tax may be credited against the French corporate income tax due by the selling company, and the excess tax payment is refunded to the taxpayer if a tax refund claim is filed. The withholding tax is paid under the responsibility of a fiscal representative designated by the seller. For individuals, certain transactions automatically will exempt the seller from having to designate a fiscal representative. The most significant exemption applies when the purchase price is less than €150,000. A special non-resident capital gains exemption for sales of personal residences is provided for individuals who are non-residents of France and who are citizens of a state in the European Union, Iceland or Norway (or from another state and are protected by a non-discrimination clause in a tax treaty). From 2014, the exemption is limited to €150,000.

¶[FRA-3575] Transfers of securities

Formerly, capital gains realised upon the sale of stock or securities by an individual were taxed separately at a flat 19 per cent rate. The 2013 Finance Law eliminated the fixed capital gains rates by making capital gains subject to taxation according to the progressive income tax schedule, after application of an abatement for any holding period exceeding two years.

There are two exceptions to this general rule: (1) when the shares sold are in real estate company, the gains are taxed under CGI, art.150A bis; and (2) professional professional capital gains that are taxed in the BNC category as professional capital gains. In addition to personal income tax, social surtaxes (¶[FRA-3450]) are imposed from the first euro of capital gain income, without any abatement.

Capital gains are calculated by comparing the sales price to the tax basis of the securities. Losses on securities of the same type (meaning all securities subject to these unified rules) may be used to offset gains on such securities. As an administrative tolerance, profits realised on a futures or options market and gains realised from closing a PEA saving account before the expiration of the five-year holding period will be included in the definition of losses on "similar types of securities". The net gain is reduced by a formulary abatement before being added to the taxpaying household's income subject to the progressive rate schedule. The abatement reduces the net gain as calculated on each taxable gain transaction. The abatement is:

- 20 per cent for a holding period between two and four years;
- 30 per cent for a holding period between four and six years; and

- 40 per cent after the capital asset has been held for six years.

Net securities losses may be carried over for 10 years and used against gains on sales of similar securities.

These rules for the taxation of an individual's capital gains only apply to securities held in a personal capacity. When the individual is engaged in habitual trading, the related gains and losses are taxed in the non-commercial schedular category under calculation rules that are similar to those for companies. When the shares sold are in a real estate company, the gains are taxed under rules designed to capture the real estate gain and to tax it as if the individual sold the underlying real property.

In general, persons not domiciled in France are not subject to French income tax on the sale of securities, whether French or foreign. There are two exceptions. First, gains realised from the shares in French real estate holding companies are taxed under rules that allow the notary handling the transaction to calculate and withhold the gain (which is taxed at the same flat rate as for individuals, but without imposing social surtaxes). Second, gains realised by non-residents on the sale of substantial participations in companies subject to French company tax are subject to a 19 per cent flat rate capital gains tax. This particular securities capital gains tax reaches non-residents when selling a participation that represents more than 25 per cent of the French company-tax entity's issued stock.

¶[FRA-3625] French CFC rules

Income arising from a 10 per cent participation in certain foreign entities can be taxed in France under rules similar to US controlled foreign corporation (CFC) rules.

According to these provisions, a French individual tax resident holding, whether directly or indirectly, an investment participation of at least 10 per cent in an entity (i.e. company, partnership, or trust) located abroad and benefiting from what is termed "a privileged tax regime" and whose assets are primarily composed of monetary or financial assets, is personally taxed on this participation. A structure that cost the French taxpayer at least €22,800,000 will also trigger the CFC rules whatever the parent company's ownership percentage.

The French Tax Administration considers that a company or entity is benefiting from a "privileged tax regime" when it is liable to taxation that is one-third less than the French income tax on the corresponding category of assets.

The taxable income taken into account under these rules is the totality of the profits realised by the foreign entity, whether distributed or not.

The profits of the foreign company are determined by a method based on the French tax rules concerning the taxation of corporations. Individuals with holdings are subject to income tax under the schedular category of income from investment capital. The income of the entity taxed in the hands of French tax residents is in proportion to their participation (financial rights) held in the foreign entity. No tax credit is allocated in such cases. Please note that the tax paid locally will be deducted from the deemed distributed income at the level of the individual.

If the foreign company is located in a country that has not signed a tax treaty with France, including an administrative assistance clause, or does not benefit from any tax

treaty, the minimum taxable income is determined by applying a rate equal to the rate mentioned under art.39-1-3° of the French Tax Code to the part of the net asset corresponding to the holding of the individual. This rate refers to director's current accounts in a company. Therefore, in the absence of taxable profit from the entity, French taxation is due on this minimum income.

The profits of the foreign company are considered as acquired as of the first day of the month following the closing of the tax year or, if no fiscal year was closed during the year, as of December 31.

[¶FRA-3650] Turnover and other indirect taxes

A majority of France's tax revenue is derived from indirect taxes, mainly from value added tax (TVA) (see ¶FRA-3675). Besides TVA, which is a turnover tax, there are several other taxes on turnover, some of them closely or tenuously linked to TVA, as well as various other duties and charges, mostly excise taxes, that are collected to provide revenue for specific funds or purposes, which bear no relationship to TVA whatsoever.

VALUE ADDED TAX (TVA)

[¶FRA-3675] General

TVA (*taxe sur la valeur ajoutée*), the most important turnover tax, is a general tax on consumption that is levied at rates proportional to the price of goods or services and assessed at each stage of the manufacturing and distribution process.

[¶FRA-3700] Scope of TVA

Value added tax applies on a compulsory basis to a broad range of transactions carried out in France in the course of an economic activity and to certain specifically defined transactions. It may also be applied at the taxpayer's option to certain normally exempt transactions.

Subject, in principle, to TVA are deliveries of tangible moveable property, certain real property transactions, and the performance of services, where these are effected by a taxable person acting as such, in exchange for consideration (CGI art.256). Deliveries of intangible moveable property, work on real property, and commissions, assembling, and like subcontract transactions are considered services.

Liable for TVA are natural or legal persons, who independently carry out, either habitually or occasionally, one or more transactions subject to TVA, irrespective of legal status, status with respect to other taxes, or the form or nature of their involvement (CGI art.256A). Wage earners and other employees and home workers whose earnings are treated as wages are not considered as acting independently.

[¶FRA-3725] Criterion of location

Only transactions deemed to have been carried out in France are subject to TVA in France. Thus, deliveries of tangible moveable goods are subject to TVA when the goods are situated in France at the time they are shipped or transported for delivery to the recipient or, in the absence of shipping or transport, upon delivery to the recipient. The same

applies for goods assembled or installed in France. Where the point of departure is situated in a non-EU member state, the delivery of the goods is subject to the French TVA only when the delivery is performed in France by the importer or for the importer's account (CGI art.258-I). As for real property, taxable transactions on such property are only subject to French TVA when the property is situated in France (CGI art.258-II). For intra-EU transactions, only intra-EU acquisitions of goods which are situated in France at the time of the arrival of their transport to the recipient are in principle subject to French TVA (CGI art.258C).

The performance of services is, as a rule, subject to TVA where the seat of the supplier is in France or where the supplier maintains a permanent establishment or domicile in France or resides in France habitually (CGI art.259). The criterion of location in France of the supplier does not apply, however, with respect to the service, the place of performance of the service or the location of the property benefiting from the service. The concept of physically located services for which French TVA applicability depends on the place of utilisation of the service, the place of performance of the leasing of means of transportation, under certain circumstances, services relating to real property situated in France, transport services, services in the cultural, artistic, sports, scientific, educational, or recreational fields, work and expertise on tangible moveable property, and to the supply of lodging and food for consumption on the spot (CGI art.259A).

Certain service transactions are subject to TVA when they are carried out by a supplier established abroad and the recipient is liable for TVA and has either a principal or a permanent establishment in France for which the service is supplied, or is domiciled in France, or habitually resides in France. Such services include transactions relating to industrial, intellectual, or similar property rights; advertising; the leasing of personal property other than means of transportation; the services of consultants, notaries, receivers in bankruptcy, engineers, accountants etc.; the processing and supply of information; banking, financing, and insurance transactions; loaning of employees and the telecommunication services. Also included are the services performed by intermediaries, acting on behalf and under the name of another party, in these instances and compliance with a non-competition clause relating to the foregoing services. On the other hand, these service transactions are not subject to TVA in France even if the supplier is established in France, where the recipient is established outside the EU or is subject to TVA in another EU member state (CGI art.259B). They are, however, subject to TVA in France when the supplier is established outside the EU and when the recipient is established or domiciled in France and is not liable for TVA there, provided the service is used in France (CGI art.259C).

As for transport and other services ancillary to intra-EU transactions on goods, these services are subject to TVA in France when the customer provides the service supplier with its TVA identification number in France or, if the customer does not provide the service supplier with any TVA identification number, when the place of departure of the transport is situated in France.

¶[FRA-3750] Exempt transactions

Several TVA exemptions are available including certain operations and services in the farm and fisheries sectors, sales of industrial scrap, services performed by persons in

the liberal professions (e.g. members of the medical and paramedical professions, educators, translators, authors, composers, artists other than architects, actors and other entertainers) (CGI art.261). Also exempt are certain real property transactions, land leases (CGI art.261D), transactions effected by brokers and agents in the insurance and reinsurance fields (CGI art.261C), certain banking and finance operations (see ¶FRA-3775), most transactions involved in the activities of non-profit service organisations and associations, churches, and philanthropic societies, gambling (which is subject to a special tax) (CGI art.261E), and exports and related services (see ¶FRA-4025).

¶FRA-3775] Banking and financing activities

Banking and financing activities are, as a general rule, subject to TVA. Some banking and financing activities are, however, exempt from TVA (CGI art.261C), while others are subject to the tax if the taxpayer so elects (CGI art.260B).

¶FRA-3800] TVA treatment of foreign suppliers

Foreign suppliers, where they deliver goods or perform services in France, are generally subject to the same tax as French suppliers carrying out the same types of transaction. Procedures differ, however, depending on whether or not they are established in France.

French subsidiaries, branches, and sales establishments of foreign firms, as well as foreign persons whose domicile or habitual residence is in France and who carry out taxable transactions in France, must comply with the same formalities and pay TVA under the same conditions as French legal and natural persons. Where the transactions of foreign suppliers are carried out by intermediaries acting for the account of the suppliers (e.g. by commission agents or representatives), the intermediaries are liable for the full amount of TVA on the transactions (CGI art.266(1)(b)), but persons acting simply as go-betweens such as general brokers or forwarding agents are not.

Under current law, a reverse charge mechanism (termed *autoliquidation* in French tax parlance) is used to collect TVA under certain circumstances. The reverse charge mechanism, pursuant to which the customer or client pays the TVA that would otherwise be due by the supplier, applies to two categories of transactions.

- (1) General rule. In the absence of an exception, the French reverse charge mechanism applies to all supplies of goods and services from suppliers established outside France (whether within or without the EU) to clients in France that are identified for VAT purposes in France. The reverse charge mechanism is mandatory, but under the *répondant* rules, the foreign supplier can agree to pay and report the VAT liability of the French customer if the supplier registers in France under normal rules.
- (2) Specific transactions. Specific reverse charge rules are imposed on certain categories of transactions: (1) the supply of immaterial services; (2) the intra-Community transportation of goods and related services; and (3) the services of transparent intermediaries.

TVA will be payable on a reverse charge basis by any taxable or non-taxable legal person to whom services covered by the general TVA territoriality rule are supplied if the

services are supplied by a taxable person not established within the territory of the Member State. When the general rule does not apply, TVA due on a supply of services to a taxable customer established in the Member State with the right to tax the services by a supplier that is not established there, TVA must be paid by the supplier, unless the exceptions to prevent double or no taxation apply. The reverse charge mechanism, pursuant to which the customer or client pays the TVA that would otherwise be due by the supplier, applies to two categories of transactions.

¶[FRA-3825] Tax base

TVA is imposed on the taxpayer according to one of two systems, depending on the taxpayer's turnover: a small businesses system (*régime des micro-entreprises*) or a system based on actual turnover (*régime du chiffre d'affaires réel*).

The small businesses system is applicable, under certain conditions, to businesses with an annual turnover not in excess of €82,200, in the case of enterprises engaged mainly in sales of goods, retail sales or supply of lodging, or €32,900, in the case of other small rendering of services businesses (2014 figures). These figures include all duties and taxes.

Under the system based on actual turnover, businesses whose turnover is no more than €783,000 in the case of enterprises engaged mainly in sales of goods, retail sales or the supply of lodging or €236,000 in the case of other businesses may elect, on an annual basis, to apply a simplified procedure for compliance with the TVA system based on actual turnover (CGI art.302 *septies* A and 302 *septies* A *ter*). These are the figures for 2014

For TVA payable on the basis of actual turnover, the tax base is, in principle, whatever is received by the supplier in exchange for the goods and/or services supplied, i.e. money, instruments, goods or services (CGI art.266(1)(a)). For the determination of their tax base, intermediaries in supply or purchase of either goods or services are considered to be buyers-sellers when acting on behalf of another party and under their name (non-transparent intermediaries) (CGI art.266(1)(b)). Included in the tax base are all taxes, duties and levies except the TVA itself, as well as costs incidental to the transactions (e.g. commissions, interest, packing, shipping and insurance costs billed to the customers) (CGI art.267I). Not included in the tax base are cash discounts, allowances, rebates, refunds and other price reductions granted to customers directly, as well as amounts reimbursed to intermediaries (CGI art.267II). For certain transactions, such as deliveries to self, intermediary transactions, construction work etc., special rules apply for the determination of the tax base.

¶[FRA-3850] Rates

As of the beginning of 2014, France has three general TVA rates: (1) standard rate: 20 per cent; (2) intermediary rate: 10 per cent; and (3) historic reduced rate: 5.5 per cent. The intermediate ten per cent rate applies to supplies of the following goods and services:

- the sale of medicines and approved pharmaceutical products for use by humans other than those the cost of which is wholly or partially reimbursed by social security;

- the sales of raw agricultural products (including floral, horticultural and forest products) and unprocessed products from fishing and bee cultivation;
- organic animal feed and certain organic agricultural fertilisers;
- public transportation of passengers and related services;
- the supply of furnished lodgings (in the rare cases they are taxable);
- the rental of camping sites in regulated campgrounds and rentals of camp grounds where nomadic travelers may stay;
- the furnishing of meals in company cafeterias;
- supplying meals in hospitals and socially-orientated establishments such as senior citizens associations;
- services related to the supply or removal of water;
- the sale of food designed to be eaten immediately (such as sandwiches and salads in take-away packaging);
- certain public entertainment such as fairs, theme parks, and gardens;
- the fee for pay television;
- wood used for heating;
- the construction and self-delivery of real property used for “social” housing (public rental units, for example) under a variety of different programs, including mixed public/private developments; and
- contracting work used to improve, transform, develop, or maintain personal residences whose construction has been completed for at least two years, including certain equipment invoiced to the client for such construction work (such as bathtubs, home heating units, hot water heaters, etc.).

As from 2014, these goods and services taxed at the 5.5 per cent rate are:

- the sale of water through the regular water system;
- most food products destined for human consumption, except for alcoholic beverages, confectionery, margarine, certain chocolate products, caviar, and meals in restaurants;
- the sale of equipment for handicapped persons;
- contracts for the delivery of electricity and gas through public networks;
- supplies of services by home care enterprises that have received official approval;
- home health services exclusively linked to providing essential support for handicapped and aged dependent persons
 - live performances, such as in theatres, at concerts, at circuses, and variety performances (except variety performances where drinks and food are customarily served);
 - tickets to movie theatres (except those showing pornographic films or films inciting violence);
 - books whether in print or electronic versions;
 - the importation and intra-Community acquisition of art work, collectibles, and antiques, including the sale of works by the artist himself or his heirs and assigns;
- the furnishing of meals in secondary and primary schools;

- furnishing lodging and meals in collective housing for the needy (centre d'accueil), for rehabilitation services, and for young workers;
- improvement and rehabilitation expenses relating to low-cost housing subsidised by the state and local governments (logements sociaux), and other targeted social lodging transactions; and
- (from 2014) renovation work improving energy efficiency performed on lodgings whose construction was finished over two years before the work was started

The particular rate of TVA applies to deliveries of certain drugs and medical supplies (CGI art.281 *quater* and 281 *octies*), newspapers and newspaper like periodicals (including their online versions) and livestock for butchery.

Special provisions apply in Corsica and in the overseas departments. No TVA is levied in Guyana and lower rates and special exemptions apply in Guadeloupe, Martinique, Réunion and Corsica.

¶[FRA-3875] Right to deduction

TVA is levied on each sale of taxable goods or services at each stage of the manufacturing and distribution process on a non-cumulative basis. The suppliers of the goods or services invoice their customers, in addition to the net sales price before TVA, the TVA expressed as a percentage of the net sales price. The suppliers pay to the tax authorities the TVA received from customers less the TVA they themselves have paid on their own purchases (CGI art.271(1)). The burden of the tax is thus borne, in principle, by those persons whose TVA payments to suppliers exceed their TVA collections from customers. Since end consumers, especially individuals, pay TVA on their purchases of goods and services but as a rule do not carry out any further transactions on which they themselves could invoice TVA, they in fact bear the main burden of TVA.

As an example of how TVA operates (using the pre-2014 19.6 per cent rate), assume that a product is subject to TVA at the normal rate of 19.6 per cent at each stage of distribution. If the net selling price (before TVA) charged for the product by a wholesaler is €60, the TVA payable on the sale of the product to a retailer will be €11.76 ($€60 \times 19.60$ per cent). The total amount to be invoiced by the wholesaler and paid by the retailer is thus €69.60 ($€60 + €19.60$). If the retailer resells the product at a net selling price (before TVA) of €100, the total price to be invoiced to the customer will be €100 (net selling price) plus TVA in the amount of €19.60, making a total price of €119.60. The retailer must account to the tax authorities for the €19.60 collected for VAT. The retailer can however, credit against this €19.60 tax liability the €11.76 TVA that was paid when the retailer purchased the product from the wholesaler. The retailer's actual tax liability is thus only €7.84 ($€19.60 - €11.76$), which the retailer must pay directly to the tax authorities.

In some instances, TVA paid by an enterprise is not deductible from its total TVA liability, in particular where the goods or services concerned are not necessary for carrying out its business activities (CGI Annex II art.230). Other examples of cases where TVA is not deductible are gifts to customers, suppliers or to employees, except where they are of little value and are distributed for advertising purposes (CGI Annexe II art.238),

management's entertainment expenses for, in principle, expenses concerning employees and managers. In all cases, deduction of TVA requires that the tax be mentioned on a supporting document (an invoice, for example).

¶[FRA-3900] Exercise of deduction right

The right to deduct TVA arises at the time of the taxable event, i.e. the delivery of the goods or the performance of the services (CGI art.269). It is exercised following different rules, depending on whether the tax relates to fixed assets, to other assets or to services (CGI Annex II art.205).

In the case of fixed assets, enterprises that are liable for TVA with respect to all their activities may deduct the full amount of TVA assessed (CGI Annex II art.209). However, if, prior to the expiration of the fourth year following the year in which the right to a deduction arose, the assets are transferred or in any way disposed of, or if they have disappeared (e.g. through theft), the deduction must be adjusted and part of the deduction initially taken must be repaid to the tax authorities (CGI Annex II art.210). The amount of the repayment is the initial deduction reduced by one-fifth for each calendar year or portion of a calendar year that the asset was kept. The four-year period is extended to 19 years in the case of real property, and thus the amount of the repayment is then the initial deduction reduced by one-twentieth for each calendar year or portion of a calendar year that the real property was kept. The repayment obligation does not apply where the assets were destroyed (subject to production of proof) or where, in the case of a merger or a contribution in kind to another enterprise, the absorbing or recipient company undertakes to make the repayments that would have been incumbent on the absorbed or contributing company. Enterprises that are not liable for TVA with respect to all of their activities may deduct a percentage of the TVA assessed that represents the ratio between receipts subject to TVA and the total receipts of the enterprise (CGI Annex II art.212).

Enterprises liable for TVA with respect to all of their activities are entitled to deduct the full amount of TVA assessed (CGI Annex II art.218). Partially taxable enterprises may deduct the full amount of TVA assessed on goods and services used entirely in the realisation of transactions subject to TVA (CGI Annex II art.219). No deduction is allowed when the goods and/or services contributed to the realisation of transactions exempt from TVA, but when the goods and/or services concurrently contributed to both taxable and exempt transactions, a partial deduction is allowed. As in the case of fixed assets, provision is made for repayment of part of the TVA deducted in the event the conditions governing the right to deduct cease to exist.

¶[FRA-3925] Liability for payment of TVA

Payment of the TVA to the tax authorities is incumbent on the supplier of the goods or services, except in certain limited cases where the supplier is established abroad and the beneficiary is liable to TVA, although the supplier, however, is jointly liable (CGI art.283). Anyone who enters TVA on an invoice or similar document is thereby liable for payment thereof.

[¶FRA-3950] Declarations relating to TVA

All persons subject to TVA must file with their tax office a special declaration (*déclaration d'existence*) drawn up according to a standard model, within 15 days of commencing operations or carrying out a major modification of their legal status. A declaration must also be filed with the same authorities no more than 30 days after cessation of operations. In addition, taxpayers must furnish the full particulars concerning their business activities on a printed form supplied by the tax authorities. They must also maintain records concerning all transactions carried out, as well as all relevant documents, and produce them to tax officials at branches or agencies as well as at the head office.

As of October 1, 2012, all corporate income taxpayers will have to file TVA declarations and pay TVA by electronic means. Declarations and payment are made using the “net-entreprise.fr” web site (at: <http://www.net-entreprises.fr/> [Accessed March 6, 2012]). For TVA taxpayers whose income is subject to personal income tax, the electronic filing obligation applies from October 1, 2013 if their prior financial year's turnover is €80,000 or more.

[¶FRA-3975] Invoicing

Invoices from TVA taxable persons to other TVA taxable persons must carry a variety of standard notations, among other information (CGI Annex II art.242 noniesA). December 2012 legislation harmonised French VAT invoicing rules with the requirements of EU Directive 2010/45 of 13 July 2010. Under these new rules, special indication must be made on invoices when: (1) the invoice is issued under a reverse charge payment mechanism (autoliquidation), (2) when TVA is paid on the margin, and (3) transactions for which the acquirer of the goods or services is liable for the TVA (self-invoicing).

[¶FRA-4000] Imports

Imports of goods are subject to TVA, even though no transfer of title takes place and no consideration is provided for, with certain exceptions (CGI art.291). Imports of goods originating from a non-EU member state into France are considered imports. Exempt imports include goods admitted to a warehousing free zone or placed under another customs tax deferral arrangement such as an active processing arrangement, goods in transit, goods benefiting from certain exemptions for customs duties, certain goods listed specifically, certain re-imports by the exporter, goods imported for delivery to means of international commercial transport (e.g. ships, aircraft), and certain original works of art, antiques and used goods.

The tax base is equal to the dutiable value of the import plus all taxes, duties, levies and other charges payable by reason of the import (except TVA itself) as well as all incidental expenses (packing, transport and insurance) up to the first point of destination in France or up to the final destination in another EU member country if this final destination is known when the event which renders TVA assessable overcomes, i.e. the place mentioned on the bill of lading. It does not include discounts, rebates or other price reductions already in effect at the time of import (CGI art.292). Goods exported for repair, processing, or other work performed abroad out of the EU are, upon re-importation, subject to TVA on the value of the goods and services performed by the foreign supplier (CGI art.293).

[¶FRA-4025] Exports

The deliveries of goods to a non-EU member state are considered as exports. Exports and deliveries treated as exports are exonerated from TVA. In addition to exports by the seller or for the seller's account, exonerated transactions thus include deliveries of goods sent or taken out of France by or for a buyer who is not established in France, deliveries of goods under waiver of customs duty, or under a warehousing, active processing, in-transit or temporary admission arrangement, and deliveries of gold to the Bank of France or other institutions of issue (CGI art.262). Services related to such exonerated transactions are also exempt. Eligibility for exoneration is subject to production of documentary proof of export.

An exonerated transaction is not only exempt from TVA but, unlike an exempt transaction, it permits the taxpayer engaging therein to deduct the TVA paid on the goods and services acquired in order to engage in the transaction. Exonerated transactions can therefore be considered to be transactions subject to TVA at a rate of zero per cent.

[¶FRA-4050] Intra-EC transactions

From January 1, 1993 imports and exports to or from other EC member states are considered respectively as intra-EC acquisitions and intra-EC supplies.

Intra-EC acquisitions are subject to TVA in France when situated in France. The rate is the rate applicable to domestic transactions relating to the same kind of goods. The tax base is, as for domestic transactions, whatever is received by the supplier in exchange for the goods (CGI art.266). Payment of the TVA on intra-EC acquisitions to the French tax authorities is required of the recipient of the goods, although the supplier is considered jointly liable when the recipient is not established in France (CGI art.283). The recipient can deduct the TVA assessed on the intra-EC acquisition under the conditions described above.

Intra-EC supplies of goods transported by or on behalf of the vendor or the recipient are exonerated from TVA when the recipient is liable for TVA and established in another EC member state (CGI art.262 *ter*). Special provisions apply when the recipient of the goods is a non-liable person or a liable person who carries out only supplies of goods or of services that are not deductible.

All persons who perform intra-EC acquisitions or intra-EC supplies must file an Intrastat form each month, within 10 days after the month to which the declaration relates, showing all intra-EC transactions performed during that month (CGI art.289 B-I).

TVA Refunds**[¶FRA-4075] Domestic companies**

If at the end of a period of several months, a company has more TVA credits than TVA due on its own transactions, the company can obtain a refund of such accumulated tax credits either quarterly, if the amount at the end of a calendar quarter is at least FF 5,000 provided each monthly TVA declaration during the quarter showed an excess credit, or annually, if the credit on December 31 is at least equal to €150 (CGI Annex II art.242-0-A and C).

[¶FRA-4100] Exporters

Exporters who wish to obtain a refund of excess TVA credits from their operations can utilise either the general refund procedure described above or a special refund procedure for exporters. This election of refund procedure is effected by sending in the appropriate form (CGI Annex II art.242).

[¶FRA-4125] French companies

In order to qualify for the re-imburement, the company must be subject to TVA in France, must not be established in the country in which re-imburement is requested, and must not deliver goods or services in that country.

French companies can generally obtain a refund of foreign TVA imposed on the input components of the French company's taxable transactions to the extent to which they would qualify for a deduction in the foreign country if carried out there.

[¶FRA-4150] TVA refunds

EU Directive 2008/9 was required to be implemented in all 28 EU member states by January 1, 2010. Under this new procedure, a TVA taxable person located outside of France who seeks a refund of French TVA will file his TVA refund request by electronic means in the Member State where he is established. Each Member State must create an internet portal for this purpose. Refund claims may be quarterly or annual, but they must be filed by September 30 of the civil year following that in which the TVA was paid. The minimum refund claim that can be made quarterly is €400. The minimum annual claim (or partial year claim) is €50. The Directive's arts 8 and 9 set forth the information that is required on a valid refund claim form.

[¶FRA-4200] Miscellaneous indirect taxes

A number of taxes are imposed on the production or sale of specific products, either in addition to or in lieu of TVA. They are designed in many cases to raise money for a specific purpose in the sector concerned, for example the development or technical improvement of a particular industry, or for cultural purposes.

[¶FRA-4225] Tax on sales of precious metals, jewels and other valuables

When an individual acting in his private (non-business) capacity sells or exchanges precious metals or objects, the individual will usually have to pay a tax equal to a fixed percentage of the purchase price in lieu of capital gains tax. This provision applies to sales or exchanges of: (1) precious metals, whatever the value of the transaction; and (2) jewelry, art, collectors' items or antiques, but only if the value of a given transaction exceeds €5,000.

Taxable sales and exportations of jewels, collectors' items, antiques and art objects are subject to a six per cent flat capital gains tax (increased by 0.5 per cent by the RDS contribution). The rate is ten per cent (plus the RDS contribution) for sales and exportations of precious metals.

[¶FRA-4250] Indirect duties and fiscal monopolies

Strict governmental supervision is exercised over the production and sale of alcoholic beverages as well as of equipment used for the production of alcohol. The production of ethyl (rectified) alcohol other than that manufactured by distillers for their own use in the production of spirit beverages is reserved for the state. A series of duties (*contributions*) (CGI art.303–520A) are imposed on the manufacture, circulation, wholesale and retail sale, and consumption of alcoholic beverages. Special duties apply to beer and non-alcoholic beverages.

Precious metals are subject to strict assay and marking requirements and are subject to a guarantee duty (CGI art.521–541) (CGI Annex II, art.242-0M).

Other duties include the liquor licence taxes (CGI art.562, 562 *bis*).

The state has a monopoly on the production and the sale of manufactured tobacco, which is therefore subject only to a consumption tax, the rate of which varies depending on the product. This tax is collected either upon import or when the product leaves the factory (CGI art.565–575M).

[¶FRA-4275] Powers of tax administration

The tax administration has the power to submit to audit any tax declarations, information returns, or similar documents that the taxpayers must prepare for the purpose of establishing their tax liability, whether in the area of direct taxes or in the areas of TVA, indirect taxes, or registration and stamp duties.

The administration has at its disposal a number of investigatory means, including the right to ask for clarifications and proof with respect to declared income, certain rights to information such as the right to inspect the taxpayer's documents, the right to demand documents and information from third parties (such as banks), the right to search premises and to seize documents, and the right to conduct full audits at the taxpayer's business locations. Subject to a few exceptions, the taxpayer's right to professional secrecy must be respected.

CGI, art.L13B sets forth a particular audit procedure that allows the Tax Administration to request an expanded category of information when conducting a transfer pricing audit. Once initiated (and certain restrictions protect taxpayers), the audited business will have to supply the information requested by the Tax Administration or incur substantial tax penalties.

PROTECTION OF TAXPAYER'S RIGHTS**[¶FRA-4300] General**

A taxpayer may contest actions taken by the tax office on procedural grounds (in the case of proceedings instituted against him) or on the grounds that the tax liability is non-existent, or that it concerns an incorrect amount or that the payment thereof cannot be demanded (in the case of the official notice procedure).

The taxpayer who receives a deficiency notice has 30 days to respond to the Tax Administration's assessment. This period runs from the date that the notice is received and expires the 31st day following. When the taxpayer acquiesces, a tax bill will be issued

based on the increased tax base. The taxpayer can file for a refund after the Tax Administration has issued its tax bill, but the taxpayer then has the burden of proof. The situation is the same when the taxpayer fails to respond to the Administration within the 30 days allowed. The burden of proof shifts to the taxpayer.

When a taxpayer contests their deficiency notice through a timely oral or written response, the Tax Administration must either respond to the taxpayer's arguments or abandon its position. If the Tax Administration then persists, it normally has the burden of proof before the courts.

A taxpayer has the right to appeal against the amount of tax assessed by the Tax Administration (*recours contentieux*). This type of appeal is different from contesting the manner in which the tax is collected (*contentieux de recouvrement*) or requesting a discretionary reduction in tax that is admittedly due (*recours gracieux*). A *recours contentieux* is pursued at different jurisdictional levels. First, the taxpayer is required to file an administrative claim with the tax service. Only if expressly or tacitly denied can the taxpayer then file a claim in the administrative tribunal (or *tribunal de grande instance* for registration duties). Having lost at the tribunal level, the taxpayer can then take an appeal to the administrative court of appeals, and then to the *Conseil d'État* (or *Cour de Cassation* for decisions of the *tribunal de grande instance*).

¶[FRA-4325] Judicial recourse

Although appeals from adverse decisions on administrative tax claims will be heard in the *tribunal de grande instance* for registration duties, the following paragraphs discuss only the procedure before the administrative tribunal, which handles matters involving direct taxes, VAT, and certain indirect taxes.

- (1) **The Administrative Stage.** Any taxpayer can file a claim with the Tax Administration to reduce or eliminate excess assessments of French taxes. Such a claim is mandatory before appealing an assessment before the tribunal or appellate jurisdictions. The general time period in which the taxpayer can file a claim expires on December 31 of the second year following the event that begins the running of the open claims period. This event can change depending on the type of tax.
- (2) **Administrative Tribunal.** The taxpayer normally has two clear months to appeal an adverse decision. The appeal is presented in a simple letter (one original and two copies) indicating the name and address of the claimant. The petition must explicitly summarise the relevant facts and the taxpayer's arguments. The taxpayer can advance arguments on different points than those advanced at the administrative level in favour of reducing their liability, within the limits of the amount originally requested. A response to the taxpayer's petition (*mémoire en défense*) is prepared under the supervision of the local Director of Taxes. A copy is sent to the claimant, who can then respond to this defence. If this is done, the tax office can respond again, as can the taxpayer. Written pleadings are exchanged in this fashion for a certain time until the case seems ready to be decided. The petitioner must request permission of the court to make an oral presentation before the case is entered for a hearing or this right

will lapse. The petitioner can appear or have a lawyer present their arguments. Judgments issued by the court are given to the parties by the clerk.

- (3) Higher Court Appeals. The administrative courts of appeal (*cours administratives d'appel*) will review the decisions of the administrative tribunals *en appel*, meaning that they can overturn the findings of fact or holdings on the law. The *Conseil d'État* will review decisions of the administrative courts of appeal *en cassation*, meaning that the decision can only be overturned if founded on a procedural error or an erroneous interpretation of law. The *Conseil d'État* retains jurisdiction over cases for exceeding administrative powers (*excès de pouvoir*) *en appel*. A taxpayer must file their appeal with the *Conseil d'État* within two months of notice of the administrative tribunal's judgment.

Extreme care must be taken by the taxpayer to comply with all procedural rules at all stages of recourse.

In principle, payment of the contested tax may not be deferred, but a taxpayer may request deferment at the administrative stage with respect to the amount in issue. If granted, the deferment remains in effect until the administrative tribunal has issued its decision, but not pending a decision by the administrative court of appeal in the case of an adverse decision by the administrative tribunal. However, the administrative court of appeal may decide that the payment of the contested tax should be deferred (*Livre des procédures fiscales*, art.L 277–L 280).

In the case of a favourable decision, the taxpayer is entitled to a refund, plus interest and costs (*Livre des procédures fiscales*, art.207, L208 and R 207-1–R 208-3).

[¶FRA-4350] Penalties; Petitions for relief

The sanctions for failing correctly to file declarations, pay taxes or fulfil other tax obligations can be divided into two broad categories: tax fines; and criminal penalties. Tax fines are imposed by the Tax Administration subject to appeal to the administrative courts. Criminal penalties are imposed by criminal courts on serious offenders.

Upon petition to the tax administration submitted through the proper channels, usually the regional tax office, waiver or partial relief may be obtained with respect to penalties. Waiver or relief may also be obtained with respect to direct tax assessments, but only in hardship cases (*Livre des procédures fiscales*, art.L 247–L 250 and R 247-1–R 247-17).

A taxpayer upon whom a tax penalty is imposed has very restrictive judicial procedural protection. Under French domestic law, the judge hearing a penalty review case does not have the authority to reduce or eliminate the penalty upon a full and fair evaluation of the taxpayer's behaviour. Under the decisional law of the EU Human Rights Convention, however, French courts have been increasingly inclined to review and overturn the Tax Administration's penalty position.

[¶FRA-4375] Ex officio relief and refunds

The tax administration can, on its own initiative or following an oral or written complaint, take an informal decision to correct administrative errors committed to the taxpayer's detriment (Livre des procédures fiscales, art.R 211-1 and R 211-2).

EMPLOYMENT LAW**[¶FRA-4400] General**

The protection afforded to the individual employee by French law is very extensive.

Legislation and regulations concerning employment appear in the Labour Code (*Code du Travail*) and in numerous laws and decrees not incorporated in the Code. All citations in the Employment Law section are to the Labour Code, unless otherwise indicated.

[¶FRA-4425] Collective agreements

Collective bargaining agreements (*conventions collectives*) are agreements reached between unions (*syndicats*) and organisations of employers within given industries. The broad outlines of such agreements are established by law (art.L.131-1–L.137-1). Within such limitations, the negotiations are free and unrestricted.

A collective agreement may be applicable to only certain regions or to the whole of France. The scope of application of a collective agreement may be extended by an order of the Minister of Labour to compel the inclusion of all the enterprises within a given industry, even if these enterprises did not participate in the negotiation of, or sign, the collective agreement.

[¶FRA-4450] Annual and triennial employer/union negotiations

In all enterprises where one or more unions have been established, the employer and the unions must meet once a year in order to discuss statutorily-specified topics, such as: salary levels; working hours; the organisation of work; employee benefits; employee savings schemes; and sexual equality in the work place. The annual negotiation must be started at company level and not at the level of office or branches of the company. During the course of such negotiations, the employer may not make any unilateral decisions applicable to all employees concerning the topics under discussion. If an agreement results from these negotiations, it is deemed to be a *convention d'entreprise* (¶FRA-4475, below). If no agreement is reached, a memorandum setting out the last positions of the two parties and the unilateral steps that the employer is proposing to take must be prepared and filed with the appropriate department officials (art.L.132-27–L.132-29).

Every three years, the employer must negotiate with employees the methodology for informing and consulting employees on the business strategy of the employer and the employment prospectus for employees.

[¶FRA-4475] Company-level agreement

The employer, the employees, and the unions may supplement the legal provisions and collective agreements applicable to an enterprise by means of company-level agree-

ments (*conventions* or *accords d'entreprises*). The subject matter of these agreements may be freely fixed by the parties. Such agreements may not, however, reduce or otherwise limit the rights enjoyed by the employees pursuant to applicable law and collective agreements (art.L.132-19–L.132-26).

Every three years, the employer must negotiate with employees the methodology for informing and consulting employees on the business strategy of the employer and the employment prospectus for employees.

[¶FRA-4500] Employees' freedom of expression

All employees of French companies have the right to express, directly and collectively, their opinions on matters concerning the content, organisation and conditions of their work. If a trade union representative (*délégué syndical*) is present within the company, the employer must negotiate with the unions the frequency of the meetings which are to be held to permit the employees to express themselves. If a trade union

INDEX

- Administrative jurisdiction** FRA-7650
- Adulteration**
 - . consumer protection FRA-6525; FRA-6575
- Advertising**
 - . comparative FRA-6025
 - . French language, use FRA-6000
 - . misleading FRA-6025
- Agency agreements** FRA-1100
- Air pollution**
 - . generally FRA-6975
 - . operational requirements of
 - establishments FRA-7000
 - . pollution standards FRA-7025
- Alcohol**
 - . duties FRA-4250
- Aliens**
 - . work permits FRA-5325
- Apprenticeship tax** FRA-2850
- Arbitration**
 - . domestic – see Domestic arbitration
 - . foreign awards FRA-7450
 - . generally FRA-7250
 - . international awards FRA-7450
- Art**
 - . acquisition by companies, special tax
 - deduction FRA-1800
- Association Française de Normalisation (AFNOR)**
 - . standardisation central body FRA-6650
- Auditors**
 - . SA FRA-625
 - . SARL FRA-675
 - . SAS FRA-650
- Autorité des marchés financiers (AMF)** FRA-1075
- Awards**
 - . arbitral
 - . . . domestic FRA-7375
 - . . . foreign FRA-7450
 - . . . international FRA-7450
- Bad debts**
 - . tax-deductible reserves FRA-2300
- Banking activities**
 - . value added tax FRA-3775
- Board of directors**
 - . SA FRA-475
 - . SAS FRA-500
- Branches**
 - . establishment FRA-125
- Business tax** FRA-3175
- Canvassing**
 - . regulated sales method FRA-6800
- Capital**
 - . SA
 - . . . increase/reduction FRA-800
 - . SARL
 - . . . increase/reduction FRA-850
 - . SAS
 - . . . increase/reduction FRA-825
- Capital gains and losses**
 - . generally FRA-2425
 - . long-term gains FRA-2475
 - . short-term gains FRA-2450
- Capital gains tax**
 - . movable property other than securities,
 - transfers FRA-3550
 - . real property, transfers FRA-3550
 - . securities, transfers FRA-3575
- Cars**
 - . company, taxation and depreciation FRA-1650
- Civil companies** FRA-150
- Civil liability**
 - . consumer protection, failure of professionals to
 - comply with obligations FRA-6475
- Collective agreements** FRA-4425
- Collective savings plan**
 - . employment law FRA-5250
- Commercial agents** FRA-1100
- Commercial courts** FRA-7550
- Companies**
 - . acquisition of control of blocks of
 - shares FRA-1075
 - . agency agreements FRA-1100
 - . branches, establishment FRA-125
 - . business entities under French law FRA-150
 - . civil FRA-150
 - . cross-holdings FRA-1000
 - . distribution agreements FRA-1100
 - . employment law – see Employment law
 - . foreign-based, tax on real property FRA-2725
 - . individual limited liability companies FRA-370
 - . new enterprises in incentive zones, tax
 - holiday FRA-1900
 - . SA – see SA
 - . sanctions, civil and criminal FRA-1050
 - . SARL – see SARL
 - . SAS – see SAS
 - . subsidiaries, disclosure requirements FRA-1000
 - . takeover bids FRA-1075
 - . taxation – see Corporate taxation
 - . value added tax – see Value added tax (TVA)
 - . venture capital, taxation FRA-2000
- Company cars**
 - . taxation and depreciation FRA-1650
- Company-level agreements**
 - . employment law FRA-4475
- Comparative advertising** FRA-6025
- Compensation**
 - . workers’ FRA-3025

Competition rules

- . advertising – see Advertising
- . aggressive consumer sales practices . . . FRA-5875
- . back margins FRA-5875
- . Competition Authority FRA-6075
- . concentrations, investigatory powers of Competition Authority
 - . . . notification FRA-6200
 - . . . penalties FRA-6225
 - . . . transactions subject to review FRA-6175
- . concerted actions and agreements
 - . . . exemptions FRA-6125
 - . . . generally FRA-6100
 - . . . procedure and sanctions FRA-6150
- . conditions of sale FRA-5850
- . discriminatory practices FRA-5875
- . dominant position
 - . . . exemptions FRA-6125
 - . . . generally FRA-6100
 - . . . procedure and sanctions FRA-6150
- . forced sales FRA-5950
- . generally FRA-5750
- . gift or bonus as part of sale of
 - . . . product FRA-5900
- . invoicing requirements FRA-5825
- . misleading commercial practices FRA-5875
- . prices
 - . . . abusively low FRA-5980
 - . . . controls FRA-5800
 - . . . discriminatory FRA-5875
 - . . . price fixing FRA-5810
 - . . . publication FRA-5850
- . refusal to sell FRA-5925
- . sales at a loss FRA-5975
- . sales without prior order FRA-5950
- . unfair business-to-consumer
 - . . . practices FRA-5875

Concentrations – see Competition rules

Concerted actions and agreements – see Competition rules

Conditions of sale – see Sales conditions

Constitutional Court FRA-7660

Construction

- . residential housing, compulsory
 - . . . investment FRA-2825

Consumer credit FRA-6350

Consumer protection – see Sales conditions

- . adulteration FRA-6525; FRA-6575
- . consumer associations FRA-6400
- . consumer credit FRA-6350
- . fraud FRA-6525; FRA-6550
- . generally FRA-6275; FRA-6300
- . prices, publication FRA-5850
- . safety of consumers
 - . . . failure by professionals to comply with
 - . . . obligations FRA-6425; FRA-6450;
 - FRA-6475; FRA-6500
 - . . . unfair contract terms FRA-6325

Continuing vocational training

- . contribution FRA-2875

Contracts

- . unfair terms, consumer protection . . . FRA-6325

Controlled foreign companies

- . capital gains tax FRA-3625
- . generally FRA-2650

Copyright – see Industrial and intellectual property

Corporate taxation

- . art, special deduction for acquisition . . FRA-1800
- . bonus depreciation FRA-1675
- . capital gains and losses – see Capital gains and losses
- . company cars FRA-1650
- . dividends FRA-1600
- . electronic sending of tax returns FRA-2100
- . entities subject to FRA-1425
- . fixed assets, depreciation FRA-1625
- . gifts to non-profit associations FRA-1775
- . interest FRA-1575
- . losses FRA-1550
- . mergers and reorganisations FRA-2500
- . national treasures, acquisition FRA-1800
- . new enterprises in incentive zones, tax
 - . . . holiday FRA-1900
 - . . . overseas departments FRA-2025
- . parent-subsidiary regime FRA-1600
- . political contributions FRA-1825
- . profits subject to FRA-1475
- . rates FRA-1450
- . R&D tax credit FRA-1975
- . reserves
 - . . . bad debts FRA-2300
 - . . . compulsory profit-sharing plan FRA-2250
 - . . . depreciation in inventory FRA-2150
 - . . . generally FRA-2125
 - . . . medium-term export credit risks FRA-2275
 - . . . oil, gas and mineral depletion FRA-2350
 - . . . price increases FRA-2325
 - . . . publications FRA-2225
 - . . . taxes accrued FRA-2400
 - . . . scientific and technical research FRA-1850
 - . . . software expenditures FRA-1875
 - . . . special declaration FRA-1525
 - . . . special deductions, acquisition of art . . FRA-1800
 - . . . sponsorship expenses FRA-1750
 - . . . tax consolidation FRA-2075
 - . . . tax returns, electronic sending FRA-2100
 - . . . taxable income, computation FRA-1500
 - . . . venture capital companies FRA-2000
 - . . . ZFU zones FRA-1950

Corporations – see SA

Court of Assizes FRA-7575

Court system

- . administrative jurisdiction FRA-7650
- . Constitutional Court FRA-7660
- . generally FRA-7475
- . judicial jurisdiction – see Judicial jurisdiction

Courts of Appeal FRA-7600

Courts of First Instance – see Judicial jurisdiction

Credit transactions

- . consumer protection FRA-6350

Criminal liability

- . consumer protection, failure of professionals to comply with obligations FRA-6450

Cross-holdings FRA-1000**Definitions and meanings**

- . aggressive consumer sales practices FRA-5875
- . canvassing FRA-6800
- . commercial agent FRA-1100
- . Community scale FRA-4775
- . discount sales FRA-6750
- . tax settlor FRA-3280

Designs and models

- . industrial and intellectual property ... FRA-5650

Direct investment – see Investment and finance**Directorate**

- . SA FRA-475

Discounts

- . sales conditions FRA-6750

Discriminatory prices FRA-5875**Dismissal of employees** – see Termination of employment**Dissolution of company**

- . SARL, SA and SAS FRA-1025

Distance sales

- . sales conditions FRA-6825

Distribution agreements FRA-1100**Dividends**

- . corporate taxation FRA-1600
- . individual income tax FRA-3400

Domestic arbitration

- . arbitral award
- . . legal remedies FRA-7400
- . arbitration clause FRA-7300
- . arbitrators FRA-7325
- . enforcement FRA-7425
- . generally FRA-7275
- . proceedings FRA-7350
- . submission of dispute to arbitration ... FRA-7300

Dominant position – see Competition rules**Door-to-door sales**

- . regulated sales method FRA-6800

Economic interest group FRA-150**Economic policy** FRA-075**Employees**

- . freedom of expression FRA-4500
- . organisations – see Employment law
- . profit-sharing systems
- . . mandatory FRA-5200
- . . optional FRA-5175
- . representatives FRA-4750
- . stock option plan FRA-5225

Employers

- . annual/triennial negotiations with unions FRA-4450
- . payroll tax FRA-2800

Employment contracts

- . fixed period, termination of employment FRA-4920; FRA-5075
- . generally FRA-4850

- . hiring FRA-4875
- . indefinite period – see Termination of employment
- . non-competition clauses FRA-5150
- . rights and duties of parties FRA-4900

Employment law

- . collective agreements FRA-4425
- . company savings plans FRA-5250
- . company-level agreements FRA-4475
- . employee organisations
- . . employee representatives FRA-4750
- . . European works council FRA-4775
- . . health, safety and working conditions committee FRA-4800
- . . termination of employment, special protection FRA-5125
- . . unions and union sections FRA-4725
- . . works council FRA-4775
- . employee stock option plan FRA-5225
- . employees' freedom of expression ... FRA-4500
- . employer/union annual/triennial negotiations FRA-4450
- . employment contracts – see Employment contracts
- . generally FRA-4400
- . holidays
- . . legal FRA-4650
- . . paid FRA-4675
- . hours of work FRA-4625
- . internal regulations of enterprises ... FRA-4525
- . labour inspectors FRA-4550
- . legal holidays FRA-4650
- . minimum standards ... FRA-4575; FRA-4600; FRA-4625; FRA-4650; FRA-4675; FRA-4700
- . profit-sharing systems
- . . mandatory FRA-5200
- . . optional FRA-5175
- . right to strike FRA-4825
- . social security FRA-5300
- . temporary workers FRA-5075
- . termination of employment – see Termination of employment
- . vacations, paid FRA-4675
- . wages FRA-4600
- . working week FRA-4625

Entry into France FRA-095**Environmental rules**

- . air pollution – see Air pollution
- . dangerous, unhealthy or noxious facilities
- . . administrative requirements FRA-6900
- . . generally FRA-6875
- . . penalties and enforcement FRA-6950
- . . special taxes FRA-6925
- . generally FRA-6850
- . industrial waste
- . . disposal FRA-7175
- . . generally FRA-7150
- . water pollution – see Water pollution

Estate tax FRA-3275

- EU
 - air pollution FRA-7025
 - Blue Card FRA-5330
 - patents FRA-5485
 - value added tax
 - intra-EU transactions FRA-4050
 - refunds for EU residents FRA-4150
 - visits to France FRA-095
- European economic interest groups** FRA-150
- European works council**
 - employment law FRA-4775
- Exit tax** FRA-3515
- Expenses**
 - company, special declaration FRA-1525
- Export credit risks**
 - medium term FRA-2275
- Exporters**
 - VAT refunds FRA-4100
- Exports**
 - value added tax FRA-4025
- Extraordinary general meeting of shareholders**
 - SA FRA-550
- Family benefits** FRA-2950
- Finance** – see Investment and finance
- Financial Management and Disciplinary Council** FRA-1075
- Financial Markets Council** FRA-1075
- Foreign arbitral awards** FRA-7450
- Foreign nationals**
 - professional residence permit FRA-1125
- Foreign suppliers**
 - value added tax treatment FRA-3800
- Fraud**
 - consumer protection FRA-6525; FRA-6550
- French language**
 - advertising rules FRA-6000
- Gas depletion**
 - tax-deductible reserves FRA-2350
- General partnership** FRA-150
- Gift tax** FRA-3275
- Gifts/bonuses**
 - gifts to non-profit associations, corporate taxation FRA-1775
 - sale of product/service, competition rules FRA-5900
- Health, safety and working conditions committee** FRA-4800
- Hiring of employees**
 - generally FRA-4875
 - umbrella companies FRA-5075
- Holidays**
 - legal FRA-4650
 - paid FRA-4675
- Hours of work** FRA-4625
- Housing allowance** FRA-2975
- Illegal pricing** – see Competition rules
- Imports**
 - value added tax FRA-4000
- Income tax**
 - corporate – see Corporate taxation
 - individual – see Individual income tax
- Indirect taxes** – see Taxation
- Individual income tax**
 - adjustments and credits FRA-3500
 - exit tax FRA-3515
 - family coefficient FRA-3475
 - foreign trusts FRA-3400; FRA-3530
 - formulary taxation FRA-3510
 - persons subject to
 - French nationals domiciled in
 - France FRA-3300
 - non-residents FRA-3325
 - US residents FRA-3350
 - tax schedule FRA-3480
 - taxable income
 - deductions FRA-3450
 - foreign trust income FRA-3400
 - generally FRA-3375
 - investment income FRA-3400
 - social surtaxes FRA-3425
 - wealth tax FRA-3525
- Individual limited liability companies** FRA-370
- Industrial and intellectual property**
 - copyright
 - generally FRA-5675
 - rights of authors FRA-5700
 - special rules FRA-5725
 - designs and models FRA-5650
 - foreign agreements, filing FRA-5350
 - patents – see Patents
 - trade marks – see Trade marks
- Industry**
 - pollution caused by
 - administrative requirements FRA-6900
 - generally FRA-6875
 - penalties and enforcement FRA-6950
 - special taxes FRA-6925
 - waste disposal – see Environmental rules
- Information**
 - sales conditions
 - pricing FRA-6625
 - products and services FRA-6650; FRA-6675; FRA-6700
- Insurance**
 - salary payment guarantee FRA-3075
 - social FRA-2925
 - unemployment FRA-3075
- Intellectual property** – see Industrial and intellectual property
- Interest**
 - corporate taxation FRA-1575
 - withholding tax FRA-2575; FRA-2600
- International arbitral awards** FRA-7450
- Investment and finance**
 - administrative declaration
 - generally FRA-1175
 - requirements FRA-1200
 - sensitive sectors FRA-1200
 - construction, compulsory investment FRA-2825

- . generally FRA-1150
- . individual income tax FRA-3400
- . statistical declarations FRA-1325
- . unauthorised investments, sanctions FRA-1350
- Invoices**
 - . competition rules FRA-5825
 - . value added tax FRA-3975
- Jewels**
 - . taxation FRA-4225
- Joint ventures** FRA-150
- Judicial jurisdiction**
 - . Courts of Appeal FRA-7600
 - . Courts of First Instance
 - . . commercial courts FRA-7550
 - . . Court of Assizes FRA-7575
 - . . crimes FRA-7575
 - . . general civil jurisdiction, courts of FRA-7525
 - . . intermediate civil court FRA-7525
 - . . labour courts FRA-7550
 - . . lower civil court FRA-7525
 - . . small claims court FRA-7525
 - . . social security courts FRA-7550
 - . generally FRA-7500
 - . Supreme Court FRA-7625
- Labelling of products** FRA-6700
- Labour courts** FRA-7550
- Labour inspectors** FRA-4550
- Labour law** – see Employment law
- Legal holidays** FRA-4650
- Legal system**
 - . sources of law FRA-050
- Licences**
 - . patent FRA-5450
 - . trade mark FRA-5600
- Limited partnership** FRA-150
- Loans**
 - . withholding tax FRA-2575
- Local taxes**
 - . business tax FRA-3175
 - . generally FRA-3125
 - . personal dwelling tax FRA-3200
 - . property tax FRA-3150
- Long-term capital gains**
 - . generally FRA-2475
- Losses**
 - . corporate taxation FRA-1550
- Medicines**
 - . patents FRA-5475
- Medium-term export credit risks** FRA-2275
- Mergers**
 - . corporate taxation FRA-2500
 - . SARL, SA and SAS FRA-975
- Mineral depletion**
 - . tax-deductible reserves FRA-2350
- Misleading advertising** FRA-6025
- Models**
 - . industrial and intellectual property FRA-5650
- Movable property**
 - . capital gains tax FRA-3550
- National defence**
 - . patents, authorisation for use of
 - . invention FRA-5475
- Non-profit associations**
 - . gifts to, corporate taxation FRA-1775
- Non-residents**
 - . individual income tax FRA-3325
 - . investments by – see Investment and finance
- Oil depletion**
 - . tax-deductible reserves FRA-2350
- Ordinary general meeting of shareholders**
 - . SA FRA-550
- Overseas departments**
 - . investment in, corporate taxation FRA-2025
- Patents**
 - . application FRA-5425
 - . European regimes FRA-5485
 - . generally FRA-5375
 - . infringement FRA-5500
 - . licences
 - . . compulsory FRA-5450
 - . . contracts FRA-5450
 - . . medicines FRA-5475
 - . . national defence FRA-5475
 - . . patentability FRA-5400
 - . . semiconductors FRA-5475
- Payroll tax**
 - . employers FRA-2800
- Penalties**
 - . auditors FRA-625
 - . concentrations, competition rules FRA-6225
 - . industrial establishments presenting environmental risks FRA-6950
 - . taxpayers FRA-4350
- Personal dwelling tax** FRA-3200
- Political contributions**
 - . corporate taxation FRA-1825
- Political structure** FRA-025
- Pollution** – see Environmental rules
- Precious metals**
 - . taxation FRA-4225; FRA-4250
- President**
 - . SA FRA-475
 - . SAS FRA-500
- Prices**
 - . abusively low FRA-5980
 - . controls FRA-5800
 - . discriminatory FRA-5875
 - . fixing of prices FRA-5810
 - . increase, tax-deductible reserves FRA-2325
 - . information, sales conditions FRA-6625
 - . publication FRA-5850
- Professional residence permits** FRA-1125
- Profits**
 - . corporate – see Corporate taxation
 - . distribution
 - . . SARL, SA and SAS FRA-875
 - . withholding taxes – see Withholding taxes
- Profit-sharing**
 - . compulsory

- . . . tax-deductible reserves FRA-2250
- . . . optional system FRA-5175
- Property tax** FRA-3150
- Public transport**
- . . . financing FRA-3050
- Publications**
- . . . tax-deductible reserves for companies producing FRA-2225
- Quality control**
- . . . products, sales conditions FRA-6675
- Rates of tax**
- . . . corporate income tax FRA-1450
- . . . value added tax FRA-3850
- Real property**
- . . . capital gains tax on transfers FRA-3550
- . . . foreign-based companies FRA-2725
- Rebates**
- . . . sales conditions FRA-6750
- Redundancy pay** FRA-4950
- Refunds**
- . . . value added tax – see Value added tax (TVA)
- Refusal to sell**
- . . . anti-competitive practice FRA-5925
- Registration taxes**
- . . . documents, contracts and transactions FRA-3250
- . . . estate tax FRA-3275
- . . . gift tax FRA-3275
- Reorganisations**
- . . . corporate taxation FRA-2500
- Research**
- . . . expenditure, tax credit and bonus depreciation FRA-1975
- . . . R&D tax credit FRA-1975
- . . . scientific/technical, corporate taxation FRA-1850
- Reserves**
- . . . tax-deductible – see Corporate taxation
- Retirement benefits** FRA-3100
- Royalties**
- . . . withholding tax FRA-2625
- SA**
- . . . articles of incorporation FRA-200
- . . . auditors FRA-625
- . . . board of directors FRA-475
- . . . by-laws FRA-200
- . . . capital
- increase/reduction FRA-800
- . . . company formality centres FRA-230
- . . . company name FRA-250
- . . . cross-holdings FRA-1000
- . . . directorate FRA-475
- . . . dissolution FRA-1025
- . . . duration, legal FRA-325
- . . . formation FRA-225
- . . . generally FRA-150; FRA-175
- . . . internet filing FRA-230
- . . . management FRA-475
- . . . mergers and split-ups FRA-975
- . . . president FRA-475
- . . . profits, distribution FRA-875
- . . . purpose FRA-300
- . . . registered office FRA-275
- . . . shareholders
- meetings FRA-550
- right to additional information FRA-725
- . . . shares
- transfer FRA-425
- . . . subsidiaries FRA-1000
- . . . supervisory board FRA-475
- . . . taxation – see Corporate taxation
- . . . transformation into another form of company FRA-900
- Safety**
- . . . consumer protection, failure of professionals to comply with obligations
- civil liability FRA-6475
- criminal liability FRA-6450
- generally FRA-6425
- tort liability FRA-6500
- consumer protection generally FRA-6375
- Salary payment guarantee** FRA-3075
- Sales conditions** – see Consumer protection
- . . . canvassing FRA-6800
- . . . competition rules FRA-5850
- . . . discounts FRA-6750
- . . . distance sales FRA-6825
- . . . door-to-door sales FRA-6800
- . . . generally FRA-6275; FRA-6600
- . . . pricing information FRA-6625
- . . . prior authorisation FRA-6775
- . . . products and services information
- generally FRA-6650
- labelling of products FRA-6700
- quality control FRA-6675
- . . . rebates FRA-6750
- Salesmen**
- . . . travelling, termination of employment FRA-5100
- Sanctions** – see Penalties
- . . . civil and criminal against companies FRA-1050
- . . . restrictions of competition FRA-6150
- . . . unauthorised investments FRA-1350
- SARL**
- . . . articles of incorporation FRA-200
- . . . auditors FRA-675
- . . . by-laws FRA-200
- . . . capital
- increase/reduction FRA-850
- . . . company formality centres FRA-230
- . . . company name FRA-250
- . . . cross-holdings FRA-1000
- . . . dissolution FRA-1025
- . . . duration, legal FRA-325
- . . . formation FRA-225
- . . . generally FRA-150; FRA-175
- . . . internet filing FRA-230
- . . . management FRA-525

- . mergers and split-ups FRA-975
- . profits, distribution FRA-875
- . purpose FRA-300
- . registered office FRA-275
- . shareholders
 - . . decisions of FRA-600
 - . . meetings FRA-600
 - . . right to additional information FRA-775
- . shares
 - . . transfer FRA-425
 - . . subsidiaries FRA-1000
- . taxation – see Corporate taxation
- . transformation into another form of company FRA-950
- SAS**
 - . articles of incorporation FRA-200
 - . auditors FRA-650
 - . board of directors FRA-500
 - . by-laws FRA-200
 - . capital
 - . . increase/reduction FRA-825
 - . civil and criminal sanctions FRA-1050
 - . company formality centres FRA-230
 - . company name FRA-250
 - . cross-holdings FRA-1000
 - . dissolution FRA-1025
 - . duration FRA-325
 - . formation FRA-225
 - . generally FRA-150; FRA-175
 - . internet filing FRA-230
 - . management FRA-500
 - . mergers FRA-975
 - . president FRA-500
 - . profits, distribution FRA-875
 - . purpose FRA-300
 - . registered office FRA-275
 - . shareholders
 - . . meetings FRA-575
 - . . right to additional information FRA-750
 - . shares, transfer FRA-425
 - . split-ups FRA-975
 - . subsidiaries FRA-1000
 - . transformation FRA-925
- Scientific/technical research**
 - . corporate taxation FRA-1850
- Securities**
 - . capital gains tax on transfers FRA-3575
- Semiconductors**
 - . patents FRA-5475
- Severance pay** FRA-4950
- Shareholders**
 - . controlled foreign companies FRA-3625
 - . SA
 - . . meetings FRA-550
 - . . right to additional information FRA-725
 - . SARL
 - . . decisions of FRA-600
 - . . meetings FRA-600
 - . . right to additional information FRA-775
 - . SAS
 - . . meetings FRA-575
 - . . right to additional information FRA-750
- Shares**
 - . control blocks, acquisition FRA-1075
 - . SA FRA-400; FRA-425
 - . SARL FRA-400; FRA-425
 - . SAS FRA-425
- Short-term capital gains** FRA-2450
- Social contributions based on payroll**
 - . apprenticeship tax FRA-2850
 - . construction, compulsory investment FRA-2825
 - . continuing vocational training FRA-2875
 - . employers' payroll tax FRA-2800
 - . generally FRA-2750
 - . retirement benefits FRA-3100
 - . salary payment guarantee FRA-3075
 - . social security – see Social security
 - . unemployment insurance FRA-3075
- Social insurance** FRA-2925
- Social security**
 - . ceiling FRA-2900
 - . courts FRA-7550
 - . family benefits FRA-2950
 - . generally FRA-2900; FRA-5300
 - . housing allowance FRA-2975
 - . public transportation, financing FRA-3050
 - . social insurance FRA-2925
 - . workers' compensation FRA-3025
- Societas Europaea (SE)** FRA-150
- Société anonyme** – see SA
- Société par actions simplifiée (SAS)** – see SAS
- Sociétés à responsabilité limitée (SARL)** – see SARL
- Software**
 - . expenditures, corporate taxation FRA-1875
- Special meeting of shareholders**
 - . SA FRA-550
- Split-ups**
 - . SARL, SA and SAS FRA-975
- Sponsorship expenses**
 - . corporate taxation FRA-1750
- Stock Exchange Transactions**
 - . Commission FRA-1075
- Stock option plan**
 - . employee FRA-5225
- Stock partnership** FRA-150
- Strikes**
 - . employees' right to strike FRA-4825
- Subsidiaries**
 - . disclosure requirements FRA-1000
- Succession duties**
 - . trusts FRA-3280
- Supervisory board**
 - . SA FRA-475
- Supreme Court** FRA-7625
- Takeover bids** FRA-1075
- Tax treaties** FRA-1400
- Taxable income**
 - . corporate taxation FRA-1500

- . individual income tax – see Individual income tax
- Taxation**
 - . anti-avoidance measures
 - . . additional FRA-2700
 - . . controlled foreign companies FRA-2650
 - . . transfer pricing FRA-2675
 - . capital gains tax – see Capital gains tax
 - . corporate – see Corporate taxation
 - . fiscal monopolies FRA-4250
 - . generally FRA-1375
 - . indirect duties FRA-4250
 - . indirect taxes
 - . . miscellaneous FRA-4200
 - . . value added tax – see Value added tax (TVA)
 - . individual income tax – see Individual income tax
 - . industrial establishments presenting environmental risks, special tax FRA-6925
 - . local – see Local taxes
 - . powers of tax administration FRA-4275
 - . precious metals, jewels and other valuables FRA-4225
 - . real property of foreign-based companies FRA-2725
 - . registration taxes – see Registration taxes
 - . social contributions based on payroll – see Social contributions based on payroll
 - . tax treaties FRA-1400
 - . taxpayers' rights, protection
 - . . ex officio relief FRA-4375
 - . . generally FRA-4300
 - . . judicial recourse FRA-4325
 - . . penalties FRA-4350
 - . . petitions for relief FRA-4350
 - . . refunds FRA-4375
 - . turnover taxes
 - . . value added tax – see Value added tax (TVA)
 - . . value added tax – see Value added tax (TVA)
 - . . withholding taxes – see Withholding taxes
- Tax-free urban zones** FRA-1950
- Termination of employment**
 - . contracts for fixed period FRA-4920; FRA-5075
 - . contracts for indefinite period
 - . . dismissal for economic reasons FRA-5050
 - . . dismissal procedure FRA-5025
 - . . dismissal without cause FRA-5000
 - . . generally FRA-4920
 - . . indemnity for paid vacation FRA-4975
 - . . notice requirements FRA-4925
 - . . severance pay FRA-4950
 - . . wrongful dismissal FRA-5000
 - . employee organisations, special protection for members FRA-5125
 - . non-competition after termination FRA-5150
 - . travelling salesmen FRA-5100
 - . types FRA-4920
- Tobacco**
 - . taxation FRA-4250
- Tort liability**
 - . consumer protection, failure of professionals to comply with obligations FRA-6500
- Trade marks**
 - . assignment FRA-5600
 - . examination of applications FRA-5550
 - . generally FRA-5525
 - . infringement FRA-5625
 - . licences FRA-5600
 - . protection, extent FRA-5575
 - . registration FRA-5550
- Trade unions**
 - . annual/triennial negotiations with employers FRA-4450
 - . generally FRA-4725
 - . union sections FRA-4725
- Transfer pricing** FRA-2675
- Travelling salesmen**
 - . termination of employment FRA-5100
- Trusts**
 - . foreign, taxation FRA-3400; FRA-3530
 - . succession duties FRA-3280
- Turnover taxes**
 - . generally FRA-3650
 - . value added tax – see Value added tax (TVA)
- Unemployment insurance** FRA-3075
- Unfair contract terms** FRA-6325
- Unions** – see Trade unions
- US residents**
 - . individual income tax FRA-3350
- Vacations**
 - . paid
 - . . indemnity in lieu of, termination of employment FRA-4975
- Value added tax (TVA)**
 - . banking and financing activities FRA-3775
 - . criterion of location FRA-3725
 - . declarations relating to FRA-3950
 - . exempt transactions FRA-3750
 - . exports FRA-4025
 - . foreign suppliers FRA-3800
 - . generally FRA-3675
 - . imports FRA-4000
 - . intra-EU transactions FRA-4050
 - . invoicing FRA-3975
 - . liability for payment FRA-3925
 - . rates of tax FRA-3850
 - . refunds
 - . . domestic companies FRA-4075
 - . . EU residents FRA-4150
 - . . exporters FRA-4100
 - . . French companies FRA-4125
 - . right to deduction
 - . . exercise of right FRA-3900
 - . . scope FRA-3700
 - . tax base FRA-3825
- Venture capital companies**
 - . taxation FRA-2000
- Visas** FRA-095

Wages	FRA-4600
Waste disposal	
. industrial – see Environmental rules	
Water pollution	
. discharge, disposal and deposit	FRA-7100
. generally	FRA-7075
Wealth tax	FRA-3525
Withholding taxes	
. distribution of profits	
. . French branches of foreign companies	FRA-2550
. . French companies	FRA-2525
. interest	FRA-2575; FRA-2600
. royalties	FRA-2625
Work permits	
. aliens	FRA-5325
. EU Blue Card	FRA-5330
Workers' compensation	FRA-3025
Working conditions	
. health, safety and working conditions committee	FRA-4800
Working week	FRA-4625
Works council	
. employment law	FRA-4775
Works of art	
. acquisition by companies, special tax deduction	FRA-1800
Wrongful dismissal	FRA-5000

