

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 coast is 378 km long. Bulgaria covers an area of 110,994 sq. km.

¶BUL-025] Population

Bulgaria has more than a 1,300-year-old history. According to the National Statistical Institute, on 31 December 2015 Bulgaria's population numbered 7,153,784. Subsequent estimates show that the number of citizens is constantly decreasing—mainly, as a result of economic emigration to other EU countries, North America and Turkey. The Bulgarian diaspora 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) 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, native language 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, whilst others are 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, Gagauzes, 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 the 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 have the right to vote. After the elections, the largest parliamentary group forms the Government. A parliamentary majority is required in order that the Government (the Council of Ministers) may be approved, 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 legislative power, and exercises 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 Election Code from 5 March 2014 introduced 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 cast 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 election for the current parliament was held on 5 October 2014. 25 parties and coalitions took part in the elections. Eight parties, however, were elected to parliament after receiving more than 4 per cent of the votes. These forces are the following:

- “GERB”;
- “BSP Left Bulgaria”;
- “DPS—Movement for Rights and Freedoms”;
- “Reformatory Block—BZNS, DBG, DSB, NPSD, SDS”;
- “Patriotic Front—NFSB and VMRO”;
- “Bulgaria Without Censorship”;
- “Political Party Attack”; and

- ABV Coalition.

Taking into account that the Parliament consists of 240 deputies, the mandates were distributed in accordance with the votes as follows:

<i>Name of the political force</i>	<i>Mandates</i>
GERB	84
BSP	39
DPS	38
Reformatory Block	23
Patriotic Front	19
Bulgaria Without Censorship	15
Political Party Attack	11
ABV Coalition	11

¶BUL-125] President

The President is the Head of State and is elected by direct election once every five years. One person can be re-elected as President for only one consecutive mandate (two mandates in total). The Vice President is elected at the same time, with the same voting paper, and under the same conditions and procedure as that 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 at the 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 22 January 2012. At the end of 2016 new elections for President will be held.

¶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.

Following the elections held on 5 October 2014, Boyko Borisov was elected as Prime Minister. He heads a cabinet of members of the eight political parties.

[¶BUL-175] Judiciary

The judicial power in Bulgaria is independent. It is built on the basis of a procedure of three instances, with the exception that court proceedings regarding administrative cases have only two 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. Under the 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 public order and organising the distribution of the municipal 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.

FORMS OF DOING BUSINESS

[¶BUL-1000] 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 1 January 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 provided 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 1 January 2001, introducing the NPOs as a legally recognised form of doing business. This Act has been amended on numerous occasions.

FORMS OF DOING BUSINESS UNDER THE COMMERCIAL ACT

[¶BUL-1025] 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 also introduces 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. At that time 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 actually became operative in the beginning of 2008, when it began to gradually replace the court registers. In order to provide for the transition, every trader had to re-register before the Registry Agency by the end of 2011. Currently, the Commercial Register is the only one which is nationwide and functions 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 fight the negative effects of the anonymous research of companies.

[¶BUL-1050] 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. The minimum amount of the capital is 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 value of the shares may be different for different shareholders.

The bodies of the limited liability companies are the General Meeting of the shareholders and the Manager/Managers of the company.

The General Meeting consists of all shareholders. Each shareholder has as many votes as the number of shares held and participates in the calculation of the quorum and the majorities by the value of his, her or its share in the capital of the company. 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, amendments and the 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-1075] 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-1100] 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 idea behind 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-1125] 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” and their own property. 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 must 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 the 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-1150] 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 words “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 companies offering voluntary health insurance (in accordance with art.121c 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 convocation 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 at least 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. Recent court practice accepts that the said term also applies to written invitations delivered directly to the shareholders.

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, 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 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 concluded only after the preliminary approval of the Supervisory Board or the 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 resolution of 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-1175] 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 in 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-1200] 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 “ET”.

¶BUL-1225] 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 commercial 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-1250] European Company

On 1 January 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 apply 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, an SE seated in Bulgaria can be established through the consolidation or transformation of a joint stock company seated in Bulgaria. The Commercial Act (art.281 onwards) 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 to 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-1275] 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-1300] 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: whether 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-1325] 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 BULSTAT registration and are subject to taxation. 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 basis 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-2000] 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-2025] 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 1 January until 31 December. 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 a permanent address 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 individuals are subject to taxation for their incomes earned in Bulgaria. Within the meaning of art.5 TIIA a foreign individual shall be the individuals who are not local individuals according to the definition of art.4 of the law. 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 individuals	All incomes earned throughout the year in Bulgaria and abroad (worldwide income)
Foreign individuals	Incomes earned in Bulgaria

All incomes are subject to taxation, that is income earned inside and outside the territory of Bulgaria. At the same time, subject to taxation of the foreign individuals 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 an individual 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 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 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 individuals 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-2050] 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 exchange of property acquired via inheritance or donation shall not be considered an income. Furthermore, the incomes received by individuals 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 different for the various social security funds	

Persons that occupy a liberal profession, craftsmen, sole traders, owners and partners in commercial companies, individuals that are members of unincorporated associations, registered agricultural producers and tobacco producers bear 100% of their social security installments.

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 2016 the maximum amount is determined at 2,600 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.

TAXATION UNDER THE CORPORATE INCOMES TAXATION ACT

[¶BUL-2075] General

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 Corporate Incomes Taxation Act 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 1 January 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 Corporate Incomes Taxation Act) 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.

[¶BUL-2100] 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 the Corporate Incomes Taxation 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.

[¶BUL-2125] 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 workers, employees and to persons hired under a management and control contracts (hired persons); the expenses on fringe benefits provided in kind shall furthermore include:
 - the expenses on contributions (premiums) for additional voluntary retirement and health insurance, and life assurance;
 - the expenses on food vouchers over 60 BGN;
- the expenses related to operation of means of transport, where used to service management operations.

[¶BUL-2150] 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.

Withholding tax is not levied on dividends and liquidation shares when they are distributed to:

- a local legal person participating in the company’s capital as a representative of the state;

- a contractual fund;
- a non-resident legal person that is resident for tax purposes of a Member State of the European Union or a state party to the Agreement on the European Economic Area.

Withholding tax is also levied on the following types of income of non-resident legal persons, when these types of income have not been realised by means of a permanent establishment in Bulgaria:

- income from financial assets and from transactions with financial assets, issued by resident legal persons, the state, and the municipalities;
- interest, including interest, which is part of the payments under financial leasing;
- income from rent or other granting of movable property for usage;
- royalties;
- remuneration for technical services;
- remuneration under franchise and factoring contracts;
- remuneration for management or control of a Bulgarian legal person;
- income from rent or other granting of immovable property, located in Bulgaria, for usage;
- income from disposal of immovable property, located in Bulgaria; and
- penalties and compensations of any kind, charged to the benefit of non-resident legal persons established in jurisdictions with preferential tax regime, except for the compensations under insurance contracts.

The tax rate for the tax on the abovementioned incomes is 10 per cent.

Withholding tax shall not be levied on the following incomes:

- incomes from interest on bonds and other securities issued by local legal person, the state and the municipalities and admitted to trade on regulated market in the country or in Member State of the European Union or other state party to European Economic Area Agreement;
- incomes from interest on loan granted by foreign legal person issuer of bonds or other securities, where the following conditions are simultaneously met:
 - the issuer is a local person for taxation purposes for Member State of the European Union or other state party to European Economic Area Agreement;
 - the issuer has issued bonds or other securities with the purpose to grant the income from them as a loan to a local legal person;
 - the bonds or other securities issued are admitted to trade on regulated market in the country or in Member State of the European Union or other state party to European Economic Area Agreement.
- income from interests and royalties under the specific conditions.
- the income from interest regarding a credit with reference to which no obligations are issued and with reference to which the state or the municipalities are the borrower.

Withholding tax on income from interest and royalties shall not be levied when the following conditions have been fulfilled simultaneously:

- the owner of the income is a non-resident legal person from a Member State of the European Union, or a permanent establishment in a Member State of the European Union, of a non-resident legal person from a Member State of the European Union;
- the resident legal person paying the income, or the person whose permanent establishment in the Republic of Bulgaria is paying the income, is a person connected to the non-resident legal person—owner of the income, or to the person whose permanent establishment is owner of the income.

The regulations of the Corporate Incomes Taxation Act mentioned above assuming not levying of withholding tax shall not apply with reference to:

- income which is profit sharing or capital recovery;
- income from debt receivables which gives the right of participation in the profits of the debtor;
- income from debt receivables which gives the right to the creditor to exchange his or her interest right for the right to participate in the profits of the debtor;
- income from debt receivables with reference to which there is no clause for repayment of the principal or the repayment is more than 50-fifty years after the emission of the debt;
- income which is non-deductible for tax purposes at a place of business within the territory of the Republic of Bulgaria, with the exception in case of thin capitalization;
- income, accrued by a non- resident legal entity from a country which is not a Member State of the European Union by means of place of business in the Republic of Bulgaria;
- income from transactions whose major motive or one of the motives is deviation or avoiding taxation.

¶BUL-2175] 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-2200] 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.

Scope of the VATA

[¶BUL-2225] General

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.

[¶BUL-2250] 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;

- 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; and
- gratuitous provision of service by a holder/user for improvement of a rented or provided for use asset.

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

[¶BUL-2275] General

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.

[¶BUL-2300] 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;
- services provided by a state bailiff;

- any other deliveries which will lead to significant distortion of competition.

¶BUL-2325] 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 voluntary registration. 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-2350] 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.

Voluntary registration 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-2375] 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 an individual 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-2400] 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
- delivery of services related to import.

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-2425] 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-2450] 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;
- 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-3000] 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-3025] 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:

- working place;

- position and nature of the work;
- date of the contract's conclusion and date of work commencement;
- duration of the labour contract;
- duration of basic annual paid leave and duration of additional annual paid leaves;
- terms of notification for termination of the labour contract are equal for both the employer and the employee;
- basic salary and additional labour remunerations with constant character as well as the periods of payment (daily, weekly, monthly); and
- the duration of the working day and the duration of the working week.

Still only 1., 2. and 7. 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-3050] 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-3075] 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-3100] 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-3125] 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-3150] 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-3175] 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, they 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 prior consultation on the extension of the working time with representatives of the workers' syndicates is required. 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-3200] 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-3225] 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 10pm and 6am. For employees under the age of 16, night labour shall be considered to be work performed between 8pm and 6am.

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 8pm and 6am 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-3250] 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-3275] 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-3300] 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 an-

nual paid leave. The employer must allow annual paid leave to be used by the employee at once or in parts. The Labour Code stipulates a 2-year prescription term for the use of this right. For example, an employee can use their paid leave for 2016 by the end of 2018.

[¶BUL-3325] 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-3350] 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 employee with managerial functions, 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.

¶BUL-3375] Termination of Employment

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 employee has been provided with unpaid leave without their consent;
- the employee has acquired an entitlement to an old-age pension.

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;
- upon acquiring an entitlement to an old-age pension, upon reaching the age of 65 with regard to professors, associate professors or doctors in science;
- where the employee has been granted a reduced old-age pension;
- where the employment relationship has arisen after the appointed employee has acquired and exercised his entitlement to an old-age pension;
- where the employment relationship has arisen after the appointed employee has been granted a reduced old-age pension;
- upon change of the requirements for execution of the position, if the employee does not satisfy the said requirements;
- where performance of the labour contract is objectively impossible;
- where 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;
- a pedagogical specialist has been convicted of an intentional offence prosecuted by public prosecution, regardless of the rehabilitation.

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 of-

fer, 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.

¶BUL-3400] Collective redundancy

Collective redundancies shall be regarded dismissals effected by the employer for one or more of the legal grounds established by the Labour Code and for reasons, which are not related to the individual employee, where the number of the dismissed employees over a period of 30 days is at least 10 in undertakings having at least 20 but less than 100 employees during the previous month.

When an employer has dismissed 5 employees in a period of 30 days, any following termination of labour contract upon employer's initiative shall be taken into consideration for the purpose of calculation of the total number of dismissals as stipulated above.

If the preconditions for collective redundancies are present, a collective redundancy procedure should be followed.

First of all, the employer should start consultations with the unions and the representatives of the employees at least 45 days before collective redundancies commence and provide information with content explicitly stated in the law. In addition, the employer should file a notification in writing to the respective local department of the Employment Agency not later than 30 days prior to the dismissals, and a copy of the notification made to the unions and the representatives of the employees should be also provided.

A copy of the notification to the local department of the Employment Agency shall be presented to the unions and the representatives of the employees in a three-day term.

Afterwards, the local department of the Employment Agency shall send copy of the notification of the employer to:

- the municipality administration;
- the National Social Security Institute; and
- the Labour Inspectorate.

After the notification to the local department of the Employment Agency is made, a special team (including representatives of the Employment Agency, the employer, the representatives of the employees and the municipality administration) shall be formed upon initiative of either party to prepare a draft plan for the implementation of the necessary measures.

Collective redundancies may commence not earlier than 30 days after notification of the Employment Agency has been made.

INDUSTRIAL AND INTELLECTUAL PROPERTY

[¶BUL-4000] 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 Act, 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-4025] 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-4050] 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

<i>Type of work</i>	<i>Owner of copyright</i>
Works of fine art and works of architecture	stipulates something different 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-4075] 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 synchronise 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-4100] 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 organised 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-4125] 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-4150] 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-4175] 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-4200] 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:
 - a mark with an earlier date of filing of the application or with an earlier priority registered under the Marks Act;
 - a claimed mark with an earlier date of filing or with an earlier priority if it is registered under the Marks Act;
 - a mark registered under the Madrid Agreement and Protocol, having an earlier date of registration or an earlier priority and with a recognised effect on the territory of the Republic of Bulgaria;
 - a mark registered under the Madrid Agreement and Protocol, having an earlier date of registration or with an earlier priority, if its effect is recognised on the territory of the Republic of Bulgaria;
 - 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 recognised under Regulation 207/2009;
 - 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 recognised under Regulation 207/2009 if registered under this Regulation; or
 - 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.

Contents of the right over a mark

[¶BUL-4225] General

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

[¶BUL-4250] 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.

[¶BUL-4275] 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-4300] 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-4325] 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.

[¶BUL-4350] 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.

[¶BUL-4375] 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 categorised 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. except for the Competition Protection Act, which includes a prohibition of the use of domain name identical or similar to those of another person in a way that may cause confusion or damage a competitor. 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.

In 2014 Internet Corporation for Assigned Names and Numbers (ICANN) approved the Cyrillic country code top-level domain “бг” for Bulgaria. In 2016 the “бг” domain was added to the Root Zone at the Internet Assigned Numbers Authority (IANA). However, no rules on registration of a domain name in the “бг” zone or on the registration procedure have been adopted yet.

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.

[¶BUL-4400] Industrial Designs

Industrial designs are regulated by the Industrial Design Act. 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 it could be subject to collaterals and pledges.

PATENTABLE INVENTIONS

[¶BUL-4425] General

The Patent and Registration of Utility Models Act (hereunder referred to as the “Patent Act”) regulates the registration and use of inventions as patents and/or utility models. 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.

[¶BUL-4450] 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 Ch.6a an application for European Patent can be made in compliance with the European Patent Convention.

¶BUL-4475] 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).

¶BUL-4500] 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 realised 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.

¶BUL-4525] 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 their 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-5000] Introduction

The first Bulgarian Competition Protection Act (the CPA) was adopted in 1991 and promulgated in the *State Gazette*, issue 39, 17 May 1991, later on repealed by the CPA from 1998, promulgated in the *State Gazette*, issue 52, 8 May 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 2 December 2008) envisages a different procedure and (with few exceptions) maintains the hypotheses of unfair competition.

The regulations of the CPA regarding the restriction of competition may be illustrated with the following table:

3b2d60a7-fa37-4e73-933d-f71cfe6d820f

UNFAIR COMPETITION

¶BUL-5025] General

Unfair competition is regulated in c.7 and 7a 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.

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

¶BUL-5050] 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 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-5075] 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-5100] 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.

Prohibition of misleading advertising and comparative advertising

[¶BUL-5125] General

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.

[¶BUL-5150] 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.

[¶BUL-5175] 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-5200] 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-5225] Unfairly attracting clients

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

- 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

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.

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 2 June 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.

[¶BUL-5250] Abuse of superior bargaining position

The newly introduced Ch.7a of Pt II of CPA sets forth new form of unfair competition infringement—the abuse of superior bargaining position. The new provision comes to cover all cases where an undertaking does not hold a dominant position on the relevant market but nevertheless the essence of its activities is such that allows it to impose on its clients and partners terms that it otherwise would not be able to.

The presence of superior bargaining position is determined by the characteristics of the market structure and the specific relations between the undertakings concerned. The criteria to determine whether an undertaking holds a superior bargaining position include, amongst other things: the degree of dependency between the undertakings, the nature of their activities and the difference in their scale, the probability of finding an alternative trading partner, including the existence of alternative sources of supply, distribution channels and/or consumers.

An abuse of superior bargaining position is defined to be any act or omission of an undertaking which enjoys a superior bargaining position, which is contrary to the good faith commercial practice and infringes or may infringe the interests of the weaker party in the negotiations and the consumers' interests. Acts or omissions contradict with the good faith commercial practice when they have no objective economic grounds—e.g. unjustified refusal to supply or purchase goods or services, imposing unreasonably onerous or discriminatory conditions, unjustified termination of commercial relations, etc.

For violation of the aforementioned prohibition a pecuniary penalty is provided amounting up to 10 per cent of the turnover of the undertaking from the sale of the product being the subject of the infringement for the previous year but not less than BGN 10,000 (approx. €5,113). If there is no turnover for that product for the previous year, the Commission for Protection of Competition is entitled to impose a pecuniary penalty from BGN 10,000 (approx. €5,113) to BGN 50,000 (approx. €25,565).

[¶BUL-5275] Antitrust Regulations

Pt II of the CPA, generally named “Restriction of the Competition” also contains the antitrust regulations and other relevant 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);
4. unfair competition (Ch.7 of the CPA); and
5. abuse of superior bargaining position (Ch.7a of the CPA).

The unfair competition, including the common prohibition and the specific cases, as well as the abuse of superior bargaining position 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 shall examine in brief the different cases of restriction of the competition below.

[¶BUL-5300] 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.

¶BUL-5325] 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.

[¶BUL-5350] 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.

[¶BUL-5375] The Commission for Protection of Competition (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 profes-

sional 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-6000] 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 10 June 2006. Since then the CPA has been amended several times. These include the amendments, which implement the requirements of Directive 2011/83 of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13 and Directive 1999/44 of the European Parliament and of the Council and repealing Council Directive 85/577 and Directive 97/7 of the European Parliament and of the Council (Directive 2011/83), that entered into force on 25 July 2014, as well as the amendments which implement the requirements of Directive 2013/11 of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation 2006/2004 and Directive 2009/22 (Directive on consumer ADR). Further, Regulation 524/2013 of the European Parliament and of the Council of 21 May 2013 on online dispute resolution for consumer disputes and amending Regulation 2006/2004 and Directive 2009/22 (ODR Regulation) is also directly applicable in Bulgaria.

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 organisations of traders. The main purpose of the Consumer Protection Act is to protect the basic rights of consumers, such as:

- the right to 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 cases of unfair commercial practices and other means (approaches) for sale, unfair contract terms and warranties granted;
- the right to compensation for damages caused by defective goods;
- the right to access to judicial and alternative out-of-court procedures for consumers' protection; and
- the right to education of consumers concerning issues connected with their protection; etc.

General rules regarding consumer protection (and not only consumers) are also provided within the general contract and commercial laws, namely the Obligations and Contracts Act (the "OCA") and the Commercial Act ("the CA"), which may be applicable in cases where a certain situation is not covered by the CPA or any of the sector-specific consumer related rules. Sector-specific consumer related rules are provided in the Electronic Communications Act ("the ECA") and the related secondary legislation, the Electronic Commerce Act, the Consumer Credit Act ("the CCA"), as well as many other acts. Some of the latter will be briefly discussed below.

GENERAL RIGHTS OF THE CONSUMER

¶BUL-6025] General

The right of information of consumers is regulated in Ch.2 of the Consumer Protection Act and comprises of the general obligation for providing information, the labelling 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:

d0c88096-d36f-4e7e-8c18-eb641312cba5

The Consumer Protection Act envisages imposing pecuniary sanctions in case of infringement of the regulations concerning the right to 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 3,000 BGN;
- the infringement of the regulations concerning the labeling requirements shall be punished with a pecuniary sanction amounting to 300 BGN to 1,500 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 2,000 BGN.

[¶BUL-6050] Right to information (general obligation for providing information)

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

Regarding the goods or services offered for sale, the trader is obliged to clearly inform the customers about their main characteristics 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; identity of the trader, such as the trading name, head office and registered address, telephone number and, if available, 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 trader undertakes to deliver the goods or provide the service, and the trader's complaint handling policy; 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 existence of any characteristics that the goods or services do not possess. The trader is obliged to provide that 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 the language used shall be Bulgarian.

The trader 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 trader, and he is not absolved of responsibility if the manufacturer or the importer has not provided him with the necessary information.

[¶BUL-6075] Labelling

In accordance with art.9 of the Consumer Protection Act, every trader is obliged to offer and sell only those goods which are clearly labelled. The label must be written in Bulgarian (or in Bulgarian along with any other language) and must contain information about the manufacturer (name, company file, address of management, etc.), the importer, if applicable, the type of goods, their essential characteristics, the term of applicability and conditions for preservation of the goods, the price (in the cases where the type of goods allows labelling) and, if necessary, instructions for use. The trader 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 the consumers. If the type of product does not allow placement of a label on it, the trader is obliged to provide customers with the above information in another proper manner in writing or submit the relevant documents. Traders can meet difficulties with conforming to the labelling requirements in case of small in size goods. In this case the trader must place a sign near the goods which contains all of the necessary information.

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 case that the quantity of goods packed up in advance is not indicated by the manufacturer, the importer or the person that has packed up the goods, the trader shall be obliged to indicate the quantity of the goods on them, on the packaging or on a sign placed near the goods.

¶BUL-6100] Price indication

In addition to the above requirements, every trader is obliged to indicate 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 indicated 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 trader.

The announcement of different prices for one and the same identical 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.

According to art.18 of the Consumer Protection Act, the trader is entitled to inform the consumer in advance about his readiness to negotiate over the amount of the indicated price. In cases where the sale price of the item of goods or the service is 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 traders offering services to 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 trader is entitled to indicate the prices in a brochure, which shall be submitted to each consumer before 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 trader, 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 trader;
- 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 trader.

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 rules regarding the announcement of the prices by petrol stations and gas stations. Article 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).

[¶BUL-6125] 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 trader 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 trader 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-6150] 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. The described right of claim is an out-of-court claim which is made to the

trader and may be exercised by the consumer on his discretion. Anyway, whether this right of claim has been exercised or not, it does not impede the right to claim damages before a national court. Pursuant to art.122 of the CPA, the consumer's right of claim may be exercised in the 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 art.126 of the CPA, 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 trader, replacement of the goods, rebate of the price or repair for free. In the 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 trader or authorised by him 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 trader 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 price of the claim. The trader or the authorised persons are obliged to receive the claim, provided that it is filed within the terms described above. The trader 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 trader on the territory of Bulgaria where activities similar to those where the goods were purchased are performed.

In cases where the trader assumes that the claim of the consumer is well-grounded, the trader 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 trader 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 trader 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-6175] Payment rules

According to the Restriction of Cash Payments Act adopted in February 2011, all payments equal to or greater than 10 000 BGN shall be made by bank transfers. Every payment under that amount which is a part of a contract payment of 10 000 or greater shall also be transferred only through a bank transfer. 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.

[¶BUL-6200] Protection of personal data

The protection of personal data as a right of consumers is regulated in the Personal Data Protection Act (“the PDPA”) which entered into force as of 1 January 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 unlawful processing of personal data. The legal definition of personal data under the PDPA follows that of Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and defines 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—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, conviction status, traffic data, even IP addresses in certain situations, etc. 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.

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; or
- 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.

Personal data protection rules mainly affect banks, telecom operators, service providers, traders conducting business online, companies offering goods on lease (i.e. offering to accept payment of the goods in installments), 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.).

After years of efforts and negotiations the EU Data Protection Reform was recently adopted at EU level. The newly-adopted package of legislative acts will replace the national personal data legislation. The reform is ubiquitous and shall affect the activities of all persons in the EU who process personal data, including those in the public sector. The General Data Protection Regulation shall enter into force 20 days after its publication in the Official Journal and its provisions shall be directly applicable in all member states two years after this date, thus cancelling to a large extent the national personal data protection legislation of Member States.

The new EU legal framework for data protection includes as follows:

- Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46 (General Data Protection Regulation);
- Directive 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penal-

ties, and on the free movement of such data, and repealing Council Framework Decision 2008/977;

- Directive 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.

Rights under the CPA

[¶BUL-6225] General

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 outline 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.

[¶BUL-6250] 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, which does not correspond to the bona fide requirements and leads to significant imbalance between the rights and obligations of the trader 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 opposes 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;
- provides automatic extension of a fixed-duration contract if the consumer has failed to request its termination, and the time limit within he or she is supposed to do so is not close to the fixed-duration contract expiry date;
- does not allow the consumer to estimate the economic consequences of the contract conclusion
- 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 trader 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 trader has adopted terms of service. In most of the cases, when the trader uses terms of services, consumers are not entitled to negotiate and amend the contents of the terms included. In case that a trader 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 trader.

Article 145 of the CPA 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.

¶BUL-6275] 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.

¶BUL-6300] Safety of goods (products) and services

Pursuant to the provision of art.69. para.1 of the CPA, 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 CPA, 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, trader 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.

[¶BUL-6325] Liability for defective products

The liability for damages caused by defective products is borne by the distributor, the manufacturer and the trader. 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 Act contains the following definitions of “manufacturer”, “distributor” and “trader”:

- 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 trader shall be considered every person, other than the manufacturer, that offers goods on the market.

Pursuant to the provision of art.131 of the Act, 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 1,000 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 trader dealing with the goods. This rule will not apply in cases where the distributor or the trader 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 trader 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 CPA (concerning the material liability of the manufacturers/distributors/traders) 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 trader, 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 trader, 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.

[¶BUL-6350] 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 second-hand goods. The provision of art.106 of the CPA prescribes the obligation of the trader to deliver to the consumer goods corresponding to the sale contract. The trader bears the responsibility for each non-conformity of the goods with the agreed characteristics under the sale contract. This non-

conformity should exist on the date of signing of the sale contract or within a two-year period following this date in case that the non-conformity appeared later. The trader bears the above responsibility even in cases where he is not aware of the existence of the non-conformity. Pursuant to art.104, para.1, as a trader 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, art.103b provides that the trader 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 trader fails to deliver the goods within the respective term, the consumer may require the delivery of the goods to be carried out in an additional fixed period depending on the circumstances. If the trader 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 trader 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 trader 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 trader 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 trader 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 trader about this special requirement upon conclusion of the contract, and the trader 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 make a claim. Under this claim, the consumer asks the trader to provide the compliance of the product with the agreed characteristics under the sale contract. In cases where the trader assumes that the claim of the consumer is well-grounded, the trader is obliged to satisfy the claim and to provide goods with the agreed parameters and characteristics within a one-month term following the submission of the claim. If the

trader fails to do this within the above one-month term, the consumer is entitled to terminate the agreement and claim reimbursement of the paid price or rebate. The consumer is not entitled to claim reimbursement of the paid price or rebate where the trader 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 non-conformity is insignificant. However, the consumer is entitled to claim compensation for the damages caused as a result of the nonconformity of the goods before the court.

COMMERCIAL PRACTICES AND METHODS OF SALE

¶BUL-6375] General

These rules are contained in Ch.4 of the CPA and regulate off-premises contracts, distance contracts, methods of sale and unfair commercial practices.

¶BUL-6400] Off-premises contracts

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

- which is concluded with the simultaneous physical presence of the trader and the consumer in a place other than the premises of the trader;
- in which the consumer has made a proposal to contract under these circumstances;
- which is concluded on the business premises of the trader 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 trader and the consumer;
- which is concluded during an excursion organised by the trader 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 trader must advise on 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 trader fails to perform his obligation to inform the consumer of his right to refuse the contract, the above mentioned 14-day term is prolonged by one year. In cases where the trader 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 trader 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.

¶BUL-6425] Distance contracts

A distance contract is defined by art.45 of the CPA as any contract concluded between the trader and the consumer under an organised distance sale or service-provision scheme without the simultaneous physical presence of the trader 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 trader, 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 trader. If the trader has not complied with this obligation, the consumer shall not be bound by the contract or order — art.49, para.3 of the CPA.

In all distance contracts the trader 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 trader 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 trader 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 trader 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.

[¶BUL-6450] 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 the rules regarding the following methods of sale:

- Compulsory sale—regulated in art.62 of the Act. 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 trader 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 trader 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 announce-

ment 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 trader, 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 Act provides that:

- any act or omission which contradicts the consumer interests' protection legislation, indicated in Regulation 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.

[¶BUL-6475] 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 11 May 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 trader'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 trader 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 trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement of which the trader is aware to influence the consumer's decision with regard to the product, any onerous or disproportionate non-contractual barriers imposed

by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader, 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 trader 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.

[¶BUL-6500] Rights under the Electronic Commerce Act

The Electronic Commerce Act was adopted in 2006 and regulates information society services and electronic commerce. It implements the requirements of Directive 2000/31 of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). Information society services are defined as any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. The act, however, does not apply to information society services related to:

- establishment and collection of the public receivables;
- personal data protection, including in the field of electronic communications;
- agreements, decisions and coordinated practices under art.9 of the Competition Protection Act;
- notary practice and other professional activities, related to the exercising of official functions;
- representation before the court;
- games of chance.

The Act stipulates rules regarding the general information and any other to be provided to the consumer (including pre-contractual information), cookies, unsolicited commercial communications, obligations regarding the conclusion of contracts by electronic means, the *mere conduit* principle with respect to service providers. A service provider is defined in the Act as any natural or legal person providing an information society service.

[¶BUL-6525] Rights under the Electronic Communications Act

The Electronic Communications Act was adopted in 2007 as a result of Bulgaria's accession to the EU. It implements EU legislation regarding electronic communications networks and/or services. The Electronic Communications Act and the relevant secondary legislation provide numerous rules aimed at consumer protection. Most importantly,

those acts contain rules regarding the conclusion of contracts for the provision of electronic communication services and/or networks. Non-exhaustively, the following rules are stipulated:

- the maximum initial contract period is fixed and is set to 2 years;
- the mandatory contents of the general terms and conditions of the contracts for the provision of electronic communication services and/or networks;
- the mandatory contents of the individual contracts between the consumer (user) and the undertaking; and
- rules regarding data retention, confidentiality, privacy, data location, traffic data in the electronic communications sector, e.g. that traffic data may be retained by undertakings for a maximum period of 6 months;

¶BUL-6550] Rights under the Consumer Credit Act

This Act was adopted in 2010 and is the result from the implementation of Directive 2008/48 on credit agreements for consumers as well as Directive 2011/90 and Directive 2008/49. The act regulates the requirements regarding consumer credit contracts and the marketing of the respective contract (including when concluded through an intermediary), the provision of more clear and detailed information, including pre-contractual information to consumers when concluding consumer credit contracts, the right of withdrawal from the contract and out-of-court dispute settlement procedures.

The CCA is also applicable in the following cases:

- multiple credit contracts entered into between the consumer and the creditor when their total amount exceeds the maximum of 147,000 BGN (provided in art.4, para.1 of the Act);
- credit contracts in the form of overdraft when the credit must be acquitted within a term longer than three months;
- lease or rent contracts with the possibility of purchase of goods—subject of the lease or rent contracts is envisaged.

An explicit list of examples when the act is inapplicable is provided in art.4 of the CCA.

The latest amendments in the act provides that even though the creditor may collect charges and fees for additional services related to the consumer contract, he is deprived for the right to collect more than once a charge and/or fee for one and the same action.

Bodies and organisations for protection of consumers

¶BUL-6575] CPA, Electronic Commerce Act, Consumer Credit Act, etc.

According to the CPA the following bodies have primary role with respect to consumer protection.

The main state body responsible for consumer protection is the Consumer 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 Non-Profit Organisations Act. Their main purpose is to help consumers by:

- Receiving information about future legislative amendments 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 traders;
- 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 organisation 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.

[¶BUL-6600] Alternative dispute resolution

Following the transposition of the ADR Directive, the CPA stipulates procedures for alternative resolution of national or cross-border disputes related to obligations arising from sales or service contracts between a trader, established on the territory of the European Union and a consumer residing on the territory of the European Union, performed by an alternative dispute resolution entity and ending with the proposal of a resolution, imposing a resolution or meeting with the parties to the dispute with the purpose of helping the reaching of a feasible solution based on a mutual consent. The law defines that an “Alternative consumer dispute resolution entity” (ADR entity) is every entity, regardless of its name, which is established, continually performs activities in the

sphere of the alternative consumer dispute resolution and is present in the list under art.181p. The ADR entity may be sole or collective entity. ADR entities must be approved by an order issued by the Minister of Economy. The law provides that ADR entities shall be divided in two groups: General Conciliation Committees and Sector-specific Conciliation Committees (e.g. Conciliation Committee for disputes in the sector of electronic communications within the Commission for Consumer Protection, Conciliation Committee for disputes in the sector of postal services within the Commission for Consumer Protection, etc.). Currently, there are 15 ADR entities (one general and 14 sector-specific committees) approved by the minister.

ADR is not applicable to:

- procedures before dispute resolution entities where the natural persons in charge of or participating in the dispute resolution are employed or remunerated exclusively by the particular trader;
- procedures before consumer complaint-handling systems operated by the trader;
- non-economic services of general interest provided by the state or on behalf of the state;
- disputes between traders;
- direct negotiation between a consumer and a trader for the purpose of dispute resolution;
- attempts made by a judge to settle a dispute in the course of a judicial proceeding concerning that dispute;
- procedures initiated by a trader against a consumer;
- health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices; or
- public providers of further or higher education.

The ADR entity examines national disputes between consumers and traders related to obligations arising from concluded, including online, sales or service contracts, including contracts for digitalised content sale or its provision against payment. The ADR entity also considers cross-border disputes between consumers and traders with reference to obligations, arising from concluded online sales or services contracts through a dispute resolution online platform in accordance with requirements of the ODR Regulation.

The CPA defines domestic dispute' means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in the same Member State as that in which the trader is established. A cross-border dispute means a contractual dispute arising from a sales or service contract where, at the time the consumer orders the goods or services, the consumer is resident in a Member State other than the Member State in which the trader is established.

[¶BUL-6625] Online dispute resolution

Online Dispute Resolution (ODR) is regulated by the ODR Regulation which was already mentioned. In compliance with the ODR platform launched recently by the European Commission, Bulgarian legal framework (the CPA) provides that the traders selling goods, services or digital content to consumers online (via their website or an

online marketplace), will have to inform consumers on the existence of the online dispute resolution (ODR) platform as well as on the possibility of using the platform for resolving disputes, namely by providing on their website(s), and in their email signature in case they make commercial offers to consumers via email, an electronic link to the ODR platform. This link shall be easily accessible for consumers (art.181n, para.4 and para.6 of the CPA). Information on the existence and the use of the ODR platform shall also be contained in the General terms and conditions applicable to online sales and service contracts provided by the trader. If a trader needs to use a particular ADR entity e.g. for telecom or financial services disputes, it shall also be set out on the trader's website.

[¶BUL-6650] Sector-specific bodies and organisations

- Communications Regulation Commission;
- the Ministry of Environment and Waters;
- General Labor Inspectorate Executive Agency;
- Supervisory authorities under the Food Act;
- Supervisory authorities under the Health Act;
- Supervisory authorities under the Technical Requirements of Products Act; and
- many other sector-specific organisations.

ENVIRONMENTAL RULES**[¶BUL-7000] Introduction**

The main legislative act in this field is the Environmental Protection Act, which was adopted in 2002. The Act 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-7025] 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-7050] 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.

OTHER LEGISLATIVE ACTS WITH RESPECT TO ENVIRONMENTAL ISSUES

[¶BUL-7075] 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.

[¶BUL-7100] 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.

[¶BUL-7125] 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.

[¶BUL-7150] 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.

[¶BUL-7175] 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.

[¶BUL-7200] 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.

[¶BUL-7225] 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.

[¶BUL-7250] 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.

[¶BUL-7275] 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.

[¶BUL-7300] 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 favourable conservation status of such habitats or species;
- damage to waters which has significant adverse effects on the status of:
 - the ecological, chemical and qualitative conditions or the ecological potential of surface water and underground waters according to the Waters Act, with the exception of the cases applicable pursuant to art.156f of the Waters Act; or
 - the condition of the environment surrounding seas according to the Waters 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.

[¶BUL-7325] 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 specialised plant protection services and the subsequent control;
- measures implementing Regulation No. 2003/2003 of the European Parliament and of the Council;
- requirements for fertilisers, soil improvers, biologically active substances and food substrates, and control on the production, launch on the market and their use.

[¶BUL-7350] 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.

[¶BUL-7375] 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.

[¶BUL-7400] 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-8000] Introduction

In accordance with art.19, para.1 of the 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 state 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 state 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 state 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 state 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-8025] 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 state 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 state court. However, at the first hearing before the state court, the other party is entitled to object to the competence of the state court on the grounds of the arbitration clause. In this case, the state 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 state 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 23 February 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.

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. The following table indicates how these charges are calculated:

<i>Value of the claim (€)</i>	<i>Arbitration clause (€)</i>
up to €500	€200
from €501 to €5,000	€200 plus 4% for the amount over €500
from €5,001 to €50,000	€380 plus 3.8% for the amount over €5,000
from €50,001 to €250,000	€2,090 plus 3.2% for the amount over €50,000
from €250,001 to €500,000	€8,490 plus 2% for the amount over €250,000
over €500,000	€13,490 plus 1% for the amount over €500,000

In case pursuant to an arrangement between the parties to an international case, the latter is conducted in a language other than Bulgarian, then the arbitration charge set as per the table above shall be increased by the coefficient 1.2.

When a claim or a set-off plea is filed in a foreign currency, the price of the claim or the set-off plea shall be turned into BGN according to the exchange rate of the Bulgarian National Bank on the day of presentation. The arbitration charge and deposit shall be

fixed in BGN and in EURO in international cases according to the fixed exchange rate of the EURO. The parties may pay arbitration charges and deposits in their preferred currency for which BCCI has opened accounts. Upon reimbursement, the amounts will be returned in the currency in which they have been deposited.

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. When a partial claim is filed, the charge is calculated on the claimed partial amount, but not less than 10 per cent of the full 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. A decrease in the amount of 30 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:

- 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
- 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.
- 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-8050] Court of Arbitration at the Bulgarian Industrial Association

The Bulgarian Industrial Association (<http://www.bia-bg.com> [Accessed 18 July 2016]) 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:

“All disputes arising out of the performance under the present contract, as well as disputes on filling in gaps in the contract or its adjustment to new circumstances will be solved by the Court of Arbitration at BIA.”

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 is not subject to evaluation, 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 900 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 unless the calculated amount of the due fee is 900 BGN. 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 Court of Arbitration 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-8075] Arbitration Court at KRIB

Another arbitration court gaining popularity is the Arbitration Court at KRIB (<http://arbitration.bg> [Accessed 18 July 2016]). 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.

The fee is determined in accordance with the following table:

<i>Amount of claim</i>	<i>Fee</i>
up to 25,000 BGN	1,000 BGN

<i>Amount of claim</i>	<i>Fee</i>
from 25,001 to 50,000 BGN	1,000 BGN plus 4% over the amount exceeding 25,000 BGN
from 50,001 to 100,000 BGN	2,000 BGN plus 2.75% over the amount exceeding 50,000 BGN
from 100,001 to 250,000 BGN	3,375 BGN plus 2.5% over the amount exceeding 100,000 BGN
from 250,000 to 500,000 BGN	7,125 BGN plus 2% over the amount exceeding 250,000 BGN
from 500,000 BGN to 1,000,000 BGN	12,125 BGN plus 1.5% over the amount exceeding 500,000 BGN
from 1,000,000 BGN to 3,000,000 BGN	19,625 BGN plus 1.4% over the amount exceeding 1,000,000 BGN
from 3,000,000 BGN to 5,000,000 BGN	47,625 BGN plus 1.3% over the amount exceeding 3,000,000 BGN
from 5,000,000 BGN to 10,000,000 BGN	73,625 BGN plus 1.2 per cent over the amount exceeding 5,000,000 BGN
from 10,000,000 BGN to 50,000,000 BGN	133,625 BGN plus 1.1 per cent over the amount exceeding 10,000,000 BGN
over 50,000,000 BGN	573,625 BGN plus 0.4 per cent over the amount exceeding 50,000,000 BGN but not more than 1,000,000 BGN

The amounts of the proportional fees shall be applied in the events when the Arbitral Tribunal consists of three arbitrators. In the events when the case is resolved by a sole arbitrator, the amounts of the proportional fees shall be calculated in accordance with the table of fees, and shall be divided in two, whereas the amount of the proportional fee for a single claim may not exceed 500,000 BGN. The sum of the proportional fees shall be reduced by 2 per cent in the events when the party has agreed to sending and receipt of written notifications and documents by electronic means.

The proportional fees shall be paid in advance in two equal parts. When submitting claims for the payment of monetary sums in foreign currency, the proportional fee shall be calculated in accordance with the value of the claim in BGN on the basis of the Bulgarian National Bank's exchange rate on the day of the submission of the Statement of Claim. A registration fee and proportional fee shall also be payable in the events when a Counterclaim has been submitted and a right to set-off has been claimed. In the event of an alternative or conditional joinder of claims in a single Statement of Claim against different persons, the proportional fees shall be payable with regard to the claims against each person. In the event of an increase of the claim, an additional proportional fee shall be payable, and its size shall represent the difference between the paid fee, and the fee which is payable upon the value of the claim after the increase. In the event of an alternative or conditional joinder of claims in a single Statement of Claim against one person, a proportional fee for one claim shall be payable, which shall be calculated on the claim

with the highest value. The fee for the consideration of a request for imposing interim measures shall be 1,000 BGN.

Proportional fees shall be reimbursed in the following cases:

- when in accordance with the Rules, the dispute is resolved without conducting hearings with the participation of the parties, the parties shall be reimbursed 10 per cent of the proportional fees paid by them;
- when during the case hearing, but prior to the award making, all parties to the case express their agreement that the decision shall not contain motives, then each of the parties shall be reimbursed up to 30 per cent of the proportional fees paid by them;
- when the arbitral award reproduces a settlement reached between the parties, which is presented to the Arbitral Tribunal prior to the making of the award, each of the parties shall be reimbursed up to 30 per cent of the proportional fees paid by them for the consideration of the claims which are the subject of the settlement; and
- when the main claim against a person is joined with a conditional claim against a third party, the decision upon which depends on the justifiability of the main claim, and the main claim has been found well-grounded with the arbitral award, and as a result the consideration of the conditional claim is not necessary, the party which submitted the conditional claim shall be reimbursed up to 30 per cent of the proportional fee paid for its consideration.

Regardless of the number of present preconditions within one case, the total amount of the sums to be reimbursed to a party to the case may not exceed 30 per cent of the proportional fees paid by it. In the events when the proceedings have been terminated due to the withdrawal of one or more of the submitted claims or made set-off statements, or due to the lack of jurisdiction of the Arbitration Court, the proportional fees paid for the consideration of the corresponding claims and set-off statements, the proceedings upon which have been terminated, shall be reimbursed up to 30 per cent depending on the moment when the waiver or withdrawal were made or the lack of jurisdiction was declared. When the withdrawal is made after the commencement of the award making the fees paid shall not be reimbursed.

COURT SYSTEM

[¶BUL-9000] 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-9025] 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-9050] 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 claim 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;
- claims adjoined to other claims which are subject to hearing by a district court, irrespective of the cost of the adjoined claim; and
- other claims when envisaged under other legislative acts.

[¶BUL-9075] 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-9100] 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-9125] 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.

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.

¶BUL-9150] 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 20,000 BGN in commercial cases. The law prescribes an exception to this rule for the decisions on cases for ownership and other rights in rem to an immovable, including the adjoined claims in such cases which are of decisive importance for the outcome of the respective case. Besides, in all cases and irrespective of the material interest, 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.

There are a number of court cases that are not subject to cassation at all, such as these alimony matters, marriage disputes, most labour cases, and some others.

It is worth noting here that the 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". This requirement restricts 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.

SUPREME ADMINISTRATIVE COURT

¶BUL-9175] General

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.

¶BUL-9200] 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 three of which are always the chairman of the Supreme Cassation Court, the chairman of the Supreme Administrative Court, and the Chief Prosecutor. By amendments in the Constitution made in the year of 2015, the Supreme Court Council consists of two colleges – judicial and prosecution. The judicial college consists of 14 members, including the chairmen of the two supreme courts, six

members elected by the judges and six members elected by the Parliament. The prosecution college consists of 11 members – the Chief Prosecutor, four members elected by the prosecutors, one member elected by the examining magistrates and five members elected by the Parliament.

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;
- addressing organisational issues of the judiciary;
- organising the qualifications of the judges, prosecutors and investigators, and others.

In accordance with its professional competence, each of the two colleges is in charge of:

- determining the number of judges, prosecutors and examining magistrates; and
- appointing, promoting, demoting, transferring and dismissing the judges, the prosecutors and the examining magistrates, determining their remuneration, imposing disciplinary sanctions on them, etc.

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

¶BUL-9225] 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, 16 August 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, by the Chief Prosecutor or by the Supreme Bar Council. 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 amendments made in 2006 and 2015 give right of the Ombudsman and the Supreme Bar Council 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.

