Doing Business in Bulgaria

CHSH

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Preface

This booklet has been prepared by Cerha Hempel Spiegelfeld Hlawati Bulgaria ("**CHSH**").

This booklet is designed to provide some general information to those contemplating doing business in Bulgaria and is not intended to be a comprehensive or exhaustive guide to the Bulgarian legal system. The information presented in this booklet should not be construed as formal legal advice. The publication is necessarily brief and no action should be taken solely on the basis of the information contained herein.

This booklet contains information based on Bulgarian legislation as of 1st October 2009.

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The CHSH office in Sofia advises both domestic and foreign clients in Bulgaria.

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1. GENERAL INFORMATION

1.1 Economy

Bulgaria became a member of the European Union in 2007. The World Bank classifies it as a "middle-income country". Bulgaria has experienced rapid economic growth in recent years.

Bulgaria has tamed inflation since the economic crisis of 1996 and 1997 and the inflation-rate for 2009 is 7.9%. Unemployment declined from more than 15% in the mid 1990s to 8.03% in September 2009 but the unemployment-rate in some rural areas remains in double figures and due to the economic crisis it is expected to increase in 2010. Bulgaria's GDP-real growth rate for 2009 is 4.5%.

1.2 Legal System

The Bulgarian legal system recognises Acts of Parliament as the main source of law. Bulgarian jurisprudence does not regard judicial precedents as a source of law. Nevertheless, legal doctrine sometimes refers to the so called "direct sources" (Acts of Parliament, regulations, etc.) and "indirect sources" of law such as:

- case law (the practice of the courts);
- legal doctrine;
- legal custom;
- public order, and
- equity ("justice").

In addition, two types of decisions of the Constitutional Court are clearly a source of law: (i) decisions rendering binding interpretation of the Constitution and (ii) decisions declaring an Act of Parliament in violation of the Constitution or an international treaty.

The Bulgarian legal system is based on a strictly defined hierarchy of sources of law, as follows: (i) Constitution; (ii) Decisions of the Constitutional Court; (iii) International Treaties and Regulations of the European Union; (iv) Acts of Parliament and Codifications; (v) Subordinate legislation; (vi) Case law, and (vii) Legal Custom.

1.2.1 The Constitution

The Constitution is the supreme law of the land and other acts may not contradict it. The Constitution provides the basic rights and obligations of Bulgaria's citizens. Furthermore, it establishes the structure, functions and collaboration between the legislative, executive and judicial powers.

Amendments to the Constitution may be adopted by a majority of three quarters of the National Assembly; some constitutional provisions of major relevance may only be amended by a specially convened *ad hoc* "Grand" National Assembly.

1.2.2 Decisions of the Constitutional Court

The Constitutional Court makes binding interpretations of the Constitution. The Constitutional Court is also entitled to rule as to the conformity with the Constitution of treaties concluded by the Republic of Bulgaria before their ratification, and on the conformity of laws with regard to universally recognised rules of international law and with treaties to which Bulgaria is a party. The decisions of the Constitutional Court are therefore an important source of law in the Bulgarian legal system. The Constitutional Court's decisions are binding upon all state authorities, legal entities and individuals.

1.2.3 International Treaties and Regulations of the European Union

The international treaties, ratified in compliance with constitutional procedure, published and in force in the Republic of Bulgaria form a part of the domestic law of the country and have supremacy over any domestic law provisions which contradict with them.

Should a statutory instrument contravene an EU Regulation, the Regulation has precedence. EU Regulations are promulgated in the Official Journal of the European Union in Bulgarian.

1.2.4 Acts of Parliament and Codifications

The main sources of law, according to Bulgarian legal doctrine, are the Acts of Parliament. Such Acts are also passed in cases where measures at national level, necessary for the execution and implementation of acts of the European Union or of international treaties concluded by the European Union, must be adopted (*e.g.* transposing EU Directives).

Some major branches of the legal system are codified. The codes which are designated as Acts of Parliament currently in force in Bulgaria are:

- the Administrative Procedure Code 2006, in force since 12 July 2006, as amended (dealing with, *inter alia*, the procedure for the issuance and appeal of administrative deeds and with the procedure for the indemnification of private parties who have suffered damage from administrative instruments, deeds, actions or omissions) *(Административнопроцесуален кодекс)*;
- the Civil Procedure Code 2007, in force since 1 March 2008, as amended (dealing with, *inter alia*, all civil proceedings in court, with the enforcement of judgements and with injunctions; it also contains the law on evidence in civil matters) *(Граждански процесуален кодекс)*;
- the Tax and Social Insurance Procedure Code 2005, in force since 1 January 2006, as amended (dealing with, *inter alia*, the procedure for the issue of tax assessments and social security contribution assessments and their appeal and enforcement) *(Данъчно-осигурителен процесуален кодекс)*;
- the Insurance Code 2005, in force since 1 January 2006, as amended (codifying all matters relevant to the taking up and pursuit of the insurance and reinsurance business, including in an EU context) *(Кодекс за застраховането)*;

- the Social Insurance Code 1999, in force since 1 January 2000, as amended (regulating the three tiers of social insurance: obligatory state; obligatory private; and optional private; and also regulating the matters relevant to the taking up and pursuit of the pension insurance fund and fund management business) *(Кодекс за социалното осигуряване)*;
- the International Private Law Code 2005, in force since 20 May 2005, as amended (a codification of most of the conflict of law rules in Bulgarian civil and business law) *(Кодекс на международното частно право)*;
- the Labour Code 1986, in force since 1 January 1987, as amended (the paramount piece of legislation concerning employment law) *(Кодекс на труда)*;
- the Maritime Code 1970, in force since 1 January 1971, as amended (dealing with the bulk of maritime law issues, including contracts, vessel registration, flags) *(Кодекс на търговското корабоплаване)*;
- the Criminal Code 1968, in force since 1 May 1968, as amended (dealing exclusively with all matters falling within substantive criminal law) *(Наказателен кодекс)*;
- the Criminal Procedure Code 2005, in force since 29 April 2006, as amended (dealing exclusively with all matters falling under the law of criminal procedure, including the law of evidence in criminal matters) *(Наказателно–процесуален кодекс)*; and
- the Family Code 2009, in force since 1 October 2009, as amended (dealing with, *inter alia*, all legal aspects of civil marriage, divorce, matrimonial contracts, origin and lineage, but not with inheritance) *(Семеен кодекс)*.

1.2.5 Subordinate legislation

Subordinate legislation is passed in cases where measures, necessary for the execution and implementation of Acts of Parliament or of other higher-ranked legislation, must be adopted. The Constitution and a number of Acts of Parliament delegate to the Council of Ministers, the Ministers separately, or to other public bodies or officers the issuance of decrees, regulations, ordinances and instructions to thereby regulate specific areas of economic or social activity.

Subordinate legislation can be appealed before the Supreme Administrative Court if it contravenes an Act of Parliament, an international treaty or the Constitution. Subordinate legislation issued by municipal councils can be appealed before the relevant Administrative Court. The relevant court may declare the nullity, revoke in whole or in part, modify or reject the contestation of the respective legislation.

1.2.6 Case Law

The judgements rendered by Bulgarian courts in individual proceedings have no overall applicability and are solely binding on the parties involved, other courts in Bulgaria and on the administration but not on any other third parties. However, individual court judgements may have very significant practical value as persuasive authority and are thus often of interest to practitioners and are cited in other legal proceedings.

At the same time, three types of court decision have a meaning, legal strength, and practical value very similar to that of a source of law. Firstly, these are the judgements of the Supreme Administrative Court *(Върховен административен съд)* by which statutory instruments, which contradict an Act of Parliament or the Constitution, can be revoked. Secondly, in the case of contradictory or ambiguous jurisprudence on the interpretation or application of the law, an interpretative judgement can be adopted by the general assembly of the criminal, civil or commercial college of the Supreme Court of Cassation *(Върховен касационен съд)*. Thirdly, and similarly, in the case of contradictory or ambiguous jurisprudence on the interpretation or application of the law, a college or the judges of the Supreme Administrative Court can adopt an interpretative judgement.

In the case of contradictory or ambiguous jurisprudence between the Supreme Court of Cassation and the Supreme Administrative Court, the General Assembly of Judges of the respective colleges of the two supreme courts *(Общото събрание на съдиите от съответните колегии на ВКС и ВАС)* can adopt a joint interpretative decree. Interpretative judgements and interpretative decrees are binding on judicial and executive authorities, on local government authorities, as well as on all authorities issuing administrative deeds.

2. CORPORATE LAW

2.1 Forms of Business Presence

Most commonly a foreign company conducts its business in Bulgaria through one of the following legal forms:

- a separate Bulgarian legal entity;
- a branch office, or
- a representative office.

2.2 Bulgarian Legal Entities

2.2.1 Types of Bulgarian Legal Entity

Bulgarian legislation provides for a range of legal forms for legal entities, namely:

- general partnerships,
- limited partnerships,
- limited liability companies;
- joint-stock companies;
- partnerships limited by shares.

In practice, the most common are joint-stock companies and limited liability companies.

2.2.1.1 Joint-Stock Company (Акционерно дружество)

The capital of a Joint-Stock Company's (abbreviation in Bulgarian "**AD**" or "**EAD**") is divided into shares. The stock owners cannot be held personally liable for claims against the company; rather, claims can be made by creditors against the company's assets. A Joint-Stock Company may be founded by one (EAD) or more persons or legal entities (AD):

- EAD - when a Joint-Stock Company is formed by a single person or legal entity, a written constitutive deed must be prepared. The constitutive deed must approve the company's statutes and appoint the first supervisory board or board of directors.
- AD - when a Joint-Stock Company is formed by more than one person or legal entity. An AD can be founded at a constitutive meeting attended by all the persons or legal entities subscribing for shares.

The minimum value of the capital must be BGN 50,000 (approx. EUR 25,000), which must be fully subscribed. The minimum face value of a share is BGN 1 (lev). Larger face values of shares must be in full levs. Shares may be registered or bearer shares. Preferred shares and book-entry shares may also be issued. A share entitles its owner to one vote at the general meeting of shareholders, to a dividend and to a quota in the assets in case of liquidation in proportion to the face value of the share.

The organs of a Joint-Stock Company are:

- the general meeting of shareholders; and
- the board of directors (one-tier system), or the supervisory board and the managing board (two-tier system).

In an EAD, the single owner of the capital decides on issues within the competence of the general meeting of shareholders.

2.2.1.2 Limited Liability Company (Дружество с ограничена отговорност)

A Limited Liability Company (abbreviation in Bulgarian "**OOD**" or "**EOOD**") is a legal entity where the risk of its members is limited to their contributions to the company's registered capital. One (EOOD) or more (OOD) persons or legal entities may form a Limited Liability Company:

- EOOD - when a Limited Liability Company is formed by one person or legal entity, a written constitutive deed must be prepared.
- OOD - when a Limited Liability Company is formed by more than one person or legal entity, a written memorandum of association must be prepared.

The registered capital of a Limited Liability Company may not be less than BGN 2 (approx. EUR 1). The capital consists of the shares of the members. A share in a limited liability company is not considered to be a security under Bulgarian law. As a general rule, each member has a share in the company's assets the amount of which is determined in proportion to the shareholder's share in the registered capital of the company.

Dividends and voting rights are proportionate to the size of the shares.

The organs of a Limited Liability Company are:

- the general meeting;
- the managing director/manager or managing directors/managers.

The Managing Director need not be a member of the limited liability company.

The single owner of the capital (EOOD) manages and represents the company either personally or through an appointed managing director/s. If the owner is a legal entity the managing director of such legal entity or a person designated by him or her shall manage the company. The single owner of the capital (EOOD) shall resolve on the issues falling within the powers of the general meeting, minutes of which must be executed in writing.

2.2.2 Commercial Register

As of 1 January 2008, in order to obtain the status of a legal entity a company must be registered with the Commercial Register *(Търговски регистър)*. The Commercial Register is a standardised and centralised electronic database kept by the Registry Agency under the Minister of Justice *(Агенция по вписванията към министъра на правосъдието)*. A separate file in electronic form is kept for each Bulgarian legal entity and Bulgarian branch of a foreign legal entity.

Registration in the Commercial Register occurs upon filing of an application form. The application form may be filed either electronically through the official website of the Commercial Register (www.brra.bg) or in paper form at any regional office of the Registry Agency. Electronic applicants are required to authorise their filings with digital signatures. The following annexes must be attached to an application form:

- the incorporation documents (depending on the type of legal entity);
- excerpt from the commercial register (for foreign entities); where applicable, the excerpt must contain an apostille and be translated into the Bulgarian language by a certified Bulgarian translator; the signature of the translator must be certified by the Ministry of Foreign Affairs in Bulgaria;
- a document confirming payment of the capital into a bank account opened in the name of the legal entity (for Joint-Stock companies, Limited Liability Companies and Partnerships Limited by Shares), and
- a document confirming payment of the registration fee (if the fee is not paid electronically in cases of electronic filing).

Depending on the number of registration requests and the workload of the Commercial Register, the application procedure can take from a few hours to one week from the moment of filing the application. In 2009, it took one to two days in average to register a new company in Bulgaria. An additional registration of the legal entity with the National Revenue Agency and the Statistics Authorities is conducted *ex officio* through a data exchange between the Registry Agency and the respective authority.

2.2.3 Accounting Requirements

All companies in Bulgaria are required to keep accounts of their business transactions in chronological order. Primary accounting documents must be kept in the Bulgarian language, in Arabic numeral and in Bulgarian levs. Accounting documents may also be drawn up in respective foreign languages and in foreign currencies in the case of transaction negotiated in foreign currencies with foreign contractors. Accounting documents received by the legal entity in a foreign language must be accompanied by a translation into the Bulgarian language of the details of any business transactions reflected therein.

Generally, legal entities in Bulgaria are obliged to prepare and present their annual financial statements based on International Accounting Standards (IAS). Newly established legal entities during the year of their establishment and the year following, as well as small and medium-sized enterprises, may choose to prepare and present their annual financial statements on the basis of the National Financial Reporting Standards or on the basis of IAS.

2.2.4 Audit Requirements

Pursuant to Bulgarian legislation, some companies are required to have their annual financial statements audited. Unless otherwise provided for by law the annual financial statements of the following legal entities are subject to independent financial audits by registered auditors:

- Joint-Stock Companies (AD/EAD) and Partnerships Limited by Shares (KDA);
- Issuers of securities within the meaning of the Public Offering of Securities Act;

- Credit institutions, insurance and investment undertakings, additional social insurance companies and the funds managed by them;
- Legal entities for which this requirement is set out by law.

Only individual auditors or auditing firms holding a Bulgarian license may perform audits in Bulgaria.

2.3 Branch Office

As an alternative to founding or participating in a Bulgarian legal entity, a foreign company can also establish a branch office. A branch office is not a separate legal entity, although a branch is required to keep its accounts as an independent merchant and must also prepare a balance sheet. Generally, a branch office may only perform business activities in Bulgaria on behalf of its parent company.

A Bulgarian branch of a foreign commercial entity must be registered in the Commercial Register. The application must include the following documents and information:

- the application for the registration, indicating the seat and scope of business of the branch;
- particulars concerning the person who will manage the branch and concerning the scope of their powers of representation and a notarised consent including a signature specimen of the person who will manage the branch (if a foreign individual - the notarisation must be apostilled and translated);
- the relevant register and number under which the foreign parent company is recorded, if provided for by applicable law - a copy of the document confirming the incorporation of the foreign company in the country of origin, *e.g.* excerpt from the commercial register (it must be apostilled);
- the legal form and name of the foreign company, as well as the branch name, if different from the one of the foreign company;
- the law of the state applicable to the foreign person if different from the law of an EU Member State;
- the persons who represent the foreign company according to the register, where this is recorded, the manner of representation, as well as the liquidators and receivers and their powers if appropriate; and
- a document confirming payment of the registration fee (if the fee is not paid electronically in cases of electronic filing).

In addition, a transcript of the following must be submitted to the Commercial Register:

- the founding act, articles or statute of the foreign company containing all amendments and supplements, including after the registration of the branch;
- each annual financial statement of the foreign company, after it has been registered or delivered in accordance with the legislation of the country, where it is registered.

All the above-mentioned documents must either be submitted or translated into the Bulgarian language. The translation must be certified by either a Bulgarian notary public or a Bulgarian diplomatic mission abroad.

2.4 Representative Office

Under Article 24 of the Law on Incentive of Investment, foreign persons who are entitled to pursue economic activity under their national legislation can open representative offices in Bulgaria. A representative office is not a legal entity and cannot pursue economic activity in Bulgaria.

The representative office must be registered with the Bulgarian Chamber of Commerce and Industry. The Bulgarian Chamber of Commerce and Industry maintains a public database of all registered in Bulgaria foreign representative offices and provides a free of charge on-line access to it (www.bcci.bg). The Bulgarian Chamber of Commerce and Industry charges the foreign principal company an annual fee which covers the maintenance of the registration of the representative office, as well as additional services such as consultation, participation in round tables, listing in business missions, etc.

Subsequent to the registration with the Bulgarian Chamber of Commerce and Industry, the representative office must be registered with the BULSTAT Register at the Registry Agency. As a result of the registration with the BULSTAT Register, a uniform identification code is assigned to the representative office. All Bulgarian authorities, *e.g.* tax or customs authorities, identify the representative office by this uniform identification code. Any transactions entered into by the foreign company for the purposes of the representative office are treated as transactions between local persons.

2.5 Mergers & Acquisitions

The Bulgarian Commercial Act contains the general provisions regulating the merger and acquisition of public and private companies. Bulgarian companies may be restructured by means of:

- consolidation;
- merger;
- de-merger;
- spin-off; and
- transformation of the legal form of the company (for instance, transformation of a Joint-Stock Company into a Limited Liability Company or *vice versa*).

Bulgarian legislation provides detailed and precise regulation of the different forms of company restructuring, specifying the forms, consequences and measures for the protection of creditors, minority shareholders and employees.

Additionally, the restructuring of public companies is governed by specific regulations under the Public Offering of Securities Act *(Закон за публичното предлагане на ценни книжа)*.

Company restructuring procedures and takeovers are precisely regulated via mandatory requirements for entering into merger and takeover agreements, approval of merger and takeover reports and plans, mandatory tender offers, auditing of mergers and takeovers and voting majority requirements. The competent authority for disclosure of the required information is the Commercial Register of the Registry Agency.

Disclosure requirements for M&A transactions can be divided into two basic groups:

- general M&A disclosure requirements applicable to all M&A transactions; and
- disclosure requirements applicable to M&A of public companies or companies (public or private) carrying out activities subject to specific regulation.

The disclosure of information related to the intended takeover and the rules for mandatory and voluntary tender offer is required when the share participation of a shareholder in a public company reaches certain thresholds (namely 5% or 90% for the initiation of voluntary tender offers and 50% for mandatory tender offers). The regulatory body in charge of the takeover of the public companies is the Financial Supervision Commission ("**FSC**") *(Комисия за финансов надзор)*.

Usually the takeover of a company subject to such controls requires the prior consent of or a permit issued by the respective regulatory body. Takeovers that result in a concentration of economic activity or obstruct competition in a market are subject to the supervision of the Commission for Protection of Competition *(Комисия за защита на конкуренцията)*. In such cases the takeover must comply with the requirements of the applicable antimonopoly competition protection rules. A permit issued by the Commission for Protection of Competition is an additional requirement to be able to perform such takeovers.

Any shareholder which acquires directly or through related parties 5% or more than 5% (or a stake of shares equivalent to 5%) of a public company's shares must disclose such acquisition to the FSC. The same requirement applies if the share participation of the shareholders decreases to below 5% due to a transfer of shares. Disclosure must be made by written notification to the FSC and include information regarding the shareholder and the proposed transaction.

3. REAL ESTATE OWNERSHIP

3.1 Real Estate Ownership by Foreign Entities

Regarding acquisition of real property, Article 22 of the Constitution imposes certain restrictions applicable to foreign nationals. As a result of amendments to the Constitution in 2005, foreigners are no longer prohibited from acquiring land in Bulgaria. There are, however, certain requirements for acquisition of land by foreigners. The constitutional amendment imposes different acquisition regimes depending on whether the foreigner is a citizen or entity of a European Union ("**EU**") or a European Economic Area Agreement ("**EEAA**") member-state, or whether the foreigner is a citizen or entity of a non-EU/EEAA state.

3.1.1 EU and EEAA Citizens/Entities

Generally, EU and EEAA nationals are not subject to any restrictions for acquiring real property in Bulgaria. However, under the Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union, the constitutional prohibition repealed in 2005 has some residual effect within a certain timeframe after Bulgaria's accession to the EU.

As a result, until 1 January 2012, the acquisition of ownership over land for secondary residence by EU/EEAA citizens/entities is prohibited. Only natural persons who inherit such land by operation of law can acquire ownership over it. However, EU and EEAA natural persons who are legally resident in Bulgaria are treated equally to Bulgarian nationals and no restrictions apply to them.

In addition, until 1 January 2014, the acquisition of agricultural land, forests and forestry land by EU/EEAA citizens/entities is prohibited. Only natural persons who inherit such land by operation of law can acquire ownership over it. However, self-employed farmers who are EU nationals and who wish to establish themselves and legally reside in Bulgaria are treated equally to Bulgarian nationals and no restrictions apply to them.

Under the Property Act, EU/EEAA individuals and legal entities can acquire ownership over buildings as well as right of use without any restrictions.

3.1.2 Non-EU/EEAA Citizens/Entities

Non-EU/EEAA citizens and entities cannot acquire ownership over land if there is no international treaty that allows such acquisition. However, foreign natural persons who inherit land by operation of law can acquire ownership over it without any restrictions.

Under the Property Act, non-EU/EEAA individuals and legal entities can acquire ownership over buildings as well as right of use without any restrictions.

3.1.3 Circumventing the Restrictions

Due to the aforesaid restrictions for acquisition of land by foreigners, investment in real property and development projects is usually made through acquiring indirect ownership over the land. This can be achieved through establishing a company under Bulgarian law (usually a single-

member limited liability company, *i.e.* an EOOD) or by share-acquisition of an existing Bulgarian company which acquires or owns the land.

3.2 Acquisition of Real Property

Conveyance of real property in Bulgaria is usually effected through a sale and purchase agreement. The statute of frauds requires the conveyance agreement to be executed either in writing (when the seller is the Bulgarian State or a municipality) or in notarial form (when the seller is a private entity). Bulgarian law requires recording with the Property Registry for the conveyance to be perfected.

3.2.1 Binding Pre-Closing Agreement

It is a fairly common practice for parties to enter into a binding pre-closing agreement prior to the conveyance agreement (closing) at the outset of a transaction. The advantages of signing a binding pre-closing agreement are that it exposes deal-breaking issues (saves time and expense), memorises the deal (minimising misunderstandings), facilitates obtaining financing (when needed), exposes the level of interest, allows parties to conduct due diligence, and sets timetable for closing.

Under Bulgarian law, pre-closing agreement for conveyance of real property must be entered into in writing.

3.2.2 Due Diligence

Prior to entering into final conveyance agreement, it is recommended that the purchaser undertakes a thorough due diligence of the real property. During this process, the purchaser should collect information about the real property and identify risks and uncertainties regarding the price of the real property, ownership issues (prior transfers, title deed, encumbrances), zoning restrictions, existing leases, tax risks, etc. Overall, a sound due diligence should evaluate the total financial impact of the purchaser's investment in the particular real property.

In order to avoid conflicting interests due to prior transfers of the real property as well as encumbrances, an independent search of the Property Registry is recommended. In addition, it is recommended that a potential purchaser secures seller's representations and warranties regarding its title with adequate indemnifications.

3.2.3 Notarial Conveyance (Title Deed)

The notarial deed is an agreement whose form and content are prescribed by law. Such an agreement is entered into by the parties and executed by a notary public licensed to practice within the region where the real property is located.

As the notary public's statutory functions require conducting a legal due diligence of the conveyance, the notarial deed offers considerable security to purchasers of real property. The notarial due diligence entails identification of the parties, their legal capacity to enter into the transaction, power of attorney (if applicable), the title of the seller, as well as whether the parties are familiar with the terms of the deal and their legal consequences. In addition, before executing

a notarial deed, the notary public must verify whether an injunction under the Criminal Assets Forfeiture Act has been imposed on the real property.

The amount of the notary fee for the execution of the notarial deed is calculated on the basis of the purchase price. The notary fee cannot exceed BGN 6,000 (approximately EUR 3,000).

3.2.4 Registration in the Property Registry

In order to be opposable to third parties, conveyance of real property needs to be perfected through registration in the Property Registry. A notary public will file a registration in the Property Registry.

The amount of the registration fee is 0.1% of the purchase price. If the purchase price is lower than the valuation of the real property determined by the tax authorities, the registration fee is 0.1% of such valuation.

3.3 Lease Agreements

Generally, lease agreements are concluded for a limited period of time. Pursuant to Bulgarian law, lease agreements cannot be concluded for a term longer than ten years. If a lease agreement is concluded for an indefinite time, it is considered to have been concluded for no longer than ten years. As an exception to the general rule, commercial lease agreements are not covered by the ten years restriction; therefore, such leases can be concluded for an indefinite term. A lease agreement, *inter alia*, must contain the obligations of the parties. However, it does not result in subsequent constitution of ownership. It is recommended that lease agreements are concluded in a written form.

A lease agreement can be binding upon the purchaser of a real property if (i) the lease has been recorded into the Property Registry; (ii) the lease agreement has a certified date, or (iii) the tenant is in possession of the real property.

Lease agreements concluded for an indefinite period can be terminated by giving one-month's notice. The termination of lease agreements is usually a matter to be freely determined by the parties under the respective lease agreement.

3.4 Taxes and Fees

Within two months from the date of recording of the notarial deed into the Property Registry, the purchaser must file a tax return to the tax authority office where the real property is located.

3.4.1 Real Property Transfer Tax

Generally, sale of real property is subject to transfer tax. The real property transfer tax rate is between 2% and 4% as determined under a municipal council decision depending on the municipality where the real property is located. The tax base is the purchase price. If the purchase price is lower than the valuation of the real property provided by the tax authorities, the calculation is based on such valuation. Generally, the purchaser has the duty to pay the real property transfer tax, unless otherwise provided by the conveyance agreement.

Real property transfer tax has to be paid to the municipality where the property is located. Payment of the real property transfer tax is condition precedent to recording the notarial deed in the Property Registry.

3.4.2 Value-Added Tax

The Value-Added Tax ("**VAT**") rate in Bulgaria is 20%. Under the VAT Act, transactions involving development land are VAT taxable except when the transaction concerns land adjacent to buildings in use.

Generally, conveyance of land or of limited *in-rem* rights over land (*e.g.* right of use, title over buildings) is exempt from VAT. However, the seller could elect such transaction to be VAT assessable. The establishment of limited *in-rem* right to superficies (*i.e.* to construct on someone else's land) is considered VAT exempt until the completion of the basic construction. Transactions involving buildings in use or units in such buildings (*e.g.* apartments) are VAT exempt.

3.4.3 Property Tax and Property Fees

The local real property tax rate is between 1.5‰ and 3‰ as determined under a municipal council decision depending on the municipality where the real property is located. The local household garbage collection fee is determined under a municipal council decision depending on the municipality where the real property is located.

Agricultural lands and forests (unless developed) are exempt from local real property tax. Further, if the tax base (*i.e.* the valuation of the real property provided by the tax authorities) is below BGN 1,680 (approximately EUR 860), such property is exempt from local real property tax. Local real property tax on new buildings is due from the month following the month of completion of the building or its operation.

The real property tax is payable in four equal instalments: (i) by March 31; (ii) by June 30; (iii) by September 30, and (iv) by November 30 of the year for which the tax is due.

3.5 Construction Permits and Usage Permits

Construction is allowed on the basis of construction permits which are issued by various competent authorities. Construction permits are issued on the basis of an approved schematic or working development-project design or approved conceptual design. They are multiple-tier. The issuing authority can revoke construction permits in case of violations that have occurred during construction.

After the construction of a building is completed a usage permit should be obtained. Issuing the usage permit is based on evaluation of the building by different authorities (Construction Control Directorate, fire protection authority, electricity, heating and water & sewage authorities, etc.). If all of the relevant authorities approve the relevant construction documents, then a usage permit is granted.

3.6 Mortgages

The creation of a mortgage is possible under Bulgarian law and is very widespread. A special form of a notarial deed and recordation with the Property Registry are required in order for a mortgage to become effective. Mortgages always secure liabilities (monetary obligations). If the debtor fails to fulfil its obligations under the loan agreement, the mortgage deed is a basis for obtaining of an enforcement order and commencement of an enforcement procedure, *i.e.* the secured creditor does not have to first obtain a judgement in court.

A mortgage secures the claim irrespective of any changes that may have occurred in the latter, but only to the amount covered by the recordation. However, if the claim is interest-bearing, the mortgage also secures the interest for the two years preceding the year the writ of summons for voluntary performance is served on the owner and for the current year and all following years until the date of sale of the property. In addition, the mortgage secures the creditor's claims for expenses incurred for its creation and renewal, as well as any court and enforcement expenses.

The recordation of a mortgage can be deleted with the secured creditor's consent, which must be certified by a notary public, or on the basis of a court judgement. Deletion can be initiated by an application to which the deed of consent or a copy of an enforceable court judgement is attached. The deletion from the Property Registry extinguishes the mortgage.

4. EMPLOYMENT REGULATION

The Labour Code of Bulgaria and subordinate legislation principally govern labour relations in Bulgaria. The state labour inspectorates perform controlling functions with respect to employers' compliance with labour legislation and collective and individual employment agreements.

4.1 Collective Agreements

Collective agreements regulate issues dealing with the industrial and social-security relations of employees which are not regulated by mandatory provisions of the law. Collective agreements may not contain clauses which are less favourable to the employees than the statutory legal provisions or the provisions contained in a collective agreement which is binding on the employer. The Labour Code provides for the mandatory registration of collective agreements with the local labour inspectorate.

4.2 Working Hours

According to the Labour Code the length of the working week should not exceed 40 hours and the working day 8 hours. In certain circumstances the law provides for shorter working hours, *e.g.* allocation of working time, shift work, night work, etc. Generally, overtime is prohibited. It is permitted as an exception only in specific cases. The duration of overtime work performed by one employee within a single calendar year may not exceed 150 hours or 3 hours of day work during two successive working days. The employer is obliged to keep a special book to account for overtime work. Any overtime work performed must be reported to the labour inspectorate every six months, and must be remunerated at a higher level.

4.3 Taxes

The income tax rate is 10% and is not dependent on yearly income (*i.e.* flat-rate income tax). Payroll costs (*e.g.* social-security payments) incurred by a company may be up to 33% of the company's wage costs.

4.4 Probation period

When an employer wishes a probationary period for a new employee, the employment agreement may provide for a probation period of up to six months. Such a provision may also be concluded when the employee wishes to verify whether the work is suitable for him or her. During the probation period the parties have the same rights and duties as under the final labour agreement. A labour agreement for a probation period may be concluded with the same employee for the same type of work with the same employer only once. Each party has the right to terminate the employment contract during the probation period without written notice.

4.5 Labour Books and Employment Contracts

A labour book of a standard type is an official document certifying the matters contained therein in connection with the employment record of the employee. Upon beginning work, the employee must present the labour book to the employer. The labour book is held by the employee, who must present it to the employer upon request and for the entry of new facts therein.

Labour relationships between an employer and an individual employee are based on employment agreements. As a rule, an employment contract must be in writing and must stipulate the rights and obligations of the parties to it. As a material condition, an employment agreement must include information about the employee and the employer, the place of work (structure of the company), the position, the date of its conclusion and the starting date of its performance, its duration, the amount of basic and extended paid annual leave and of additional paid annual leaves, the basic and supplementary labour remuneration of a permanent nature, as well as the frequency of their payment, the duration of the working day or week and the length of the period of notice to be observed by both parties upon termination.

Employment agreements may be concluded for:

- an indefinite term;
- a definite term (cannot be longer than three years).

The employment agreement shall be considered to have an indefinite duration unless expressly agreed otherwise. An employment agreement with an indefinite duration may not be transformed into a definite term agreement, except where the employee expressly states their wish to do so in writing. If an employee continues to work 5 or more days, despite the expiration of an employment agreement concluded for a definite term and neither party requests termination of the employment agreement and the position is vacant, then the employment contract is deemed to be converted into a contract for an indefinite term.

4.6 Termination of an Employment Contract

4.6.1 Termination of a contract for an indefinite term

From an employer's perspective, termination of a contract for an indefinite term is difficult. The employer needs to have a valid reason to terminate such contract, such as:

- disciplinary violations that lead to dismissal (*e.g.* systematic delays or failures to come to work, abuse of employer's trust, breach of confidentiality duties, etc.) (without prior notice);
- imprisonment of the employee (without prior notice);
- dissolution of the employer (with prior notice);
- dissolution of the department where the employee works or downsizing of personnel (with prior notice);
- reduction in the volume of work (with prior notice);
- inefficient performance by the employee (with prior notice);
- retirement of the employee (with prior notice), etc.

In comparison, from an employee's perspective, termination of such contract is relatively easy. The employee can always terminate a contract for indefinite term by 30 days written notice. In addition, an employee can terminate such contract without notice when:

- the employee becomes disabled and can no longer perform the work under the contract;
- the employer delays the payment of the salary;
- the employee continues his or her education, etc.

4.6.2 Termination of a contract for a definite term

Generally, an employment contract for a definite term is terminated upon expiration of the stipulated term. If, however, any of the reasons for termination of a contract for an indefinite term (*see* 4.6.1 above) is in place, the respective party can use it to terminate the contract for a definite term prior to the expiration of such term.

In addition, the Labour Code provides the employee with an additional option to terminate such contract by giving the employer a notice of three months but no longer than the time remaining until the expiration of the stipulated term.

Generally, an employee is entitled to severance pay when the employer terminates the employment agreement. Whether such pay is due and in what amount depends on the legal grounds for termination (*e.g.* reduction of the volume of work *vs.* disciplinary dismissal). The severance pay usually amounts to one to two months of the employee's salary.

5. INTELLECTUAL PROPERTY

The regulation of intellectual property rights in Bulgaria is governed by the Law on Copyright and Related Rights, the Law on Marks and Geographical Indications, the Law on Patents and Utility Models Registration and the Law on Industrial Designs.

Bulgarian legislation provides for several different types of intellectual property. These are divided into four groups:

- copyright and related rights;
- right to marks and geographical indications;
- right to inventions and utility models protection;
- right to industrial designs.

5.1 Copyright and Related Rights

Bulgarian copyright legislation provides legal protection for authorship rights and author's economic rights with respect to literary, artistic and scientific work resulting from a creative endeavour and expressed by any mode and in any objective form (copyright subject matters) as well as legal protection for the rights of performers over their performances, producers of phonograms over their recordings, producers of the initial recording of a film or other audio-visual work over the original copy, as well as over the copies produced as a result of this recording and radio and television organisations over their programmes (related rights subject matters).

The copyright proprietor, as well as a person who has been granted the exclusive right to use a protected work, may place the Latin letter "C" surrounded by a circle (*i.e.* ©) at a suitable place on the copies of the work in front of their names or titles, or the year it is made available to the public. A person indicated as the author on the original or on a copy of the work is deemed to be its author in the absence of proof to the contrary (copyright holder presumption).

Authorship rights, the right to name attribution and the right to protection of an author's reputation are protected in perpetuity. Economic rights are generally effective for the entire lifetime of an author and for 70 years after his or her death.

5.2 Right to Marks and Geographical Indications

5.2.1 Marks

A mark is a sign that is capable of distinguishing the goods or services of one person from those of other persons and can be represented graphically. Such signs may be words, including the names of persons, or letters, numerals, drawings, figures, the shape of the article or the packaging thereof, a combination of colours, sound signals, or any combination of such elements. A mark may be:

- trademark,
- a service mark,
- a collective mark, or

- a certification mark.

The right to a mark is acquired by registration, calculated from the date of filing of the application. The first to file has the right to register. The duration of registration is ten years, calculated from the date of filing of the application. A registration may be renewed for an unlimited number of further ten-year periods. When using the mark, its proprietor may indicate the registration of the said mark by placing the Latin letter "R" in a circle (*i.e.* ®) in a suitable location near the mark.

The State Register of Marks is kept by the Patent Office *(Патентно ведомство)* and contains data on all registered marks and on all subsequent recordings in relation to such marks. The Patent Office keeps a Register in which data concerning all marks defined as well-known or having a reputation in the territory of the Republic of Bulgaria are recorded.

Bulgarian citizens or legal entities, as well as individuals domiciled or legal entities actually pursuing business activities in Bulgaria, can also file for registration of an International Trade Mark. The registration of an International Trade Mark with the World Intellectual Property Organisation ("**WIPO**") in which Bulgaria is a designated state provides the same level of protection as the direct registration of a trade mark with the Patent Office in Bulgaria. The application for registration of an International Trade Mark should be filed to the International Bureau of WIPO through the Patent Office in Bulgaria.

In addition, Bulgarian law provides for registration of a Community Trade Mark ("**CTM**"). A CTM is a mark that is valid across the EU, registered with the Office for Harmonisation in the Internal Market (Trade Marks and Designs) under the relevant EU Regulations. The CTM grants its owner an exclusive right in the 27 member-states of the EU. It is not possible to limit the geographic scope of protection to certain member-states. A CTM is valid for ten years and can be renewed indefinitely for periods of ten years.

The application for registration of a CTM can be filed either directly to the Office for Harmonisation in the Internal Market or through the Patent Office in Bulgaria. The direct application to the Office for Harmonisation in the Internal Market can also be done electronically which is faster and cheaper.

5.2.2 Geographical Indications

Geographical indications mean an appellation of origin (the name of a country, or of a region or a specific locality within that country which serves to designate the goods that originate therefrom and whose quality or characteristics are due essentially or exclusively to the geographical environment, including natural and human factors) or an indication of source (the name of a country, or of a region or a specific locality within that country, serving to designate goods that originate therefrom and whose quality, reputation or other characteristics are attributable to the place of origin).

The State Register of Geographical Indications is kept by the Patent Office and contains data on all registered geographical indications, scheduled users and all subsequent changes in relation to such indications and users. An application for the registration of geographical indications must be filed with the Patent Office.

A registered geographical indication may be used only by the person registered as the user thereof. The scheduled user may use the geographical indication only in respect of the goods for which it is registered. The said user may affix any such indication to the goods or to the packaging thereof, or use it in advertising material, on business papers concerning the goods, or on other documents. The legal protection of a registered geographical indication terminates when the relationship between the properties or peculiarities of the goods and the geographical environment ceases to exist.

5.3 Right to Inventions and Utility Models Protection

A person who has created an invention or utility model is considered its inventor. The inventor of an invention or utility model is entitled to be identified in the application, in the issued patent or in the certificate of utility model registration, as well as in publications regarding the invention or utility model. This right only applies to the person in question and is not transferable. The Patent Office is responsible *ex officio* for the identification of the inventor, respectively co-inventors in the application, the patent issued or the certificate of registration.

5.3.1 Inventions

Inventions shall be patentable in all areas of technology if they are:

- new (shall be considered to be new if the invention is not a part of the state of the art);
- involve an inventive step, i.e. it is not obvious to a person skilled in the art as of the date of filing or, respectively, the priority date; and/or
- which are susceptible to industrial application (if the invention can be produced or repeatedly used in any industry, including agriculture).

The legal protection of a patentable invention is granted by means of a patent. The patent certifies the exclusive rights of the proprietor of the patent over the invention. The patent is considered active regarding third parties as soon as a publication stating that it has been issued appears in the official journal of the Patent Office. The term of the patent is twenty years as of the date of filing of the application.

A patentable invention can also be granted legal protection under the European Patent Convention (ratified by Bulgaria in 2002). An application for a European patent can be filed either through the Patent Office in Bulgaria or directly to the European Patent Office in Munich or its branch office in the Hague.

A European patent in which Bulgaria is a designated state grants the patent holder the same legal protection as a national patent as of the date of its publication in the European Patent Bulletin. It is important to note that within three months after such publication the European patent holder needs to file with the Bulgarian Patent Office a translation in the Bulgarian language of the description and claims under the patent. If such translation is not filed, the European patent will not grant its holder protection in the territory of Bulgaria.

5.3.2 Utility Models

Utility models that are new, susceptible to industrial application and have an inventive step must be registered. Legal protection of a utility model is provided through registration at the Patent Office. The registration is valid in relation to third persons from the date of its publication in the Official Journal of the Patent Office.

The same requirements as mentioned above regarding novelty, inventive step and susceptibility to industrial application are also applicable for utility models.

The term of validity of utility model registration is four years from the date of filing of the application. That term may be extended for two consecutive periods of three years each. The total term of protection may not exceed ten years from the date of filing of the application.

5.4 Industrial Designs

Industrial design is the visible appearance of the whole or part of a product resulting from the characteristic features of the shape, lines, contours, ornamentation, colours, or a combination thereof. The creator of a design has the right of authorship. This authorship right is unlimited in time and is not transferable.

The right to a design is acquired by registering the design with the Patent Office. Registration is valid as of the filing date. The holder of the right to a design may permit its use through a licensing agreement. The right to a design is transferable and can serve as collateral for establishing security interest.

To be eligible for registration, a design must be:

- new (if no identical design was known to have been made available to the public by means of publication, use, registration or disclosure in any other manner whatsoever, anywhere in the world, before the filing date of the application or the priority date, as the case may be); and
- original (if the overall impression it has on the informed user differs from the overall impression produced by a design that has been made available to the public before the filing date of the application for registration or, where priority is claimed, before the priority date).

Registration of a design is effective for a term of ten years as of the filing date. Registration may be renewed for three additional successive terms of five years each.

In addition, Bulgarian law provides for registration of a Community design. A registered Community design is an industrial design that is valid across the EU, registered with the Office for Harmonisation in the Internal Market (Trade Marks and Designs) under the relevant EU Regulations. The registered Community design grants its owner an exclusive right in the 27 member-states of the EU. It is not possible to limit the geographic scope of protection to certain member-states. A registered Community design initially has a life of five years from the date of filing and can be renewed in periods of five years up to a maximum of twenty-five years.

The application for registration of a Community design can be filed either directly to the Office for Harmonisation in the Internal Market or through the Patent Office in Bulgaria. The direct application to the Office for Harmonisation in the Internal Market can also be done electronically which is faster and cheaper.

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