

LEGALINK

INVESTMENT AND BUSINESS START UP IN BULGARIA¹

(A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

Bulgaria`s legal system is the civil law;

2. What are the major law courts in your country?

The Constitution Court; the Supreme Court of Cassation, The Supreme Administrative Court;

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

The sources of law include constitution, statutory law as well as the case law of the supreme courts;

4. What is/are the official language(s) in your country?

The official language is Bulgarian.

(B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry? –

There are no restrictions for foreign individuals and companies willing to invest in Bulgaria, except where they intend to acquire ownership or limited property rights on land. In these cases they can only do it via establishment of a company which on its turn is allowed to possess land and limited property right on land; these restriction shall not be valid for EU nationals in 2014.

6. Are there any exchange control or currency regulations in your country?

The main legal framework is provided by the Currency Act² where: i) cross border transfers and payments shall have a legal ground; ii) for transfers to third countries (non EU) of amounts equal or exceeding BGN 30 000.00 leva³ the bank processing the transfer requires declaration for the origin of the financial means transferred as well as

¹ Legislation overview as at April 3rd 2013;

² Currency Act published in State Gazette No 83/ 1999;

³ According to the Currency Board fixing € 1.00 euro = BGN 1.95583 leva

a statistical form for the payment balance, a contract, an invoice, a customs declaration etc. as the case may be; iii) for statistical purposes the banks keep record of any cross border transfer/payment equal to or exceeding BGN 100 000.00 leva; iv) local juridical persons report to Bulgarian National Bank their receivables and obligations towards foreign persons as well as the direct investments abroad made; v) local natural persons report their receivables and obligations towards foreign persons where the total sum of the receivables and the obligations exceeds BGN 50 000.00 leva up to December 31 st of the previous year; vi) when crossing the Bulgarian border to or from an EU member-state individuals shall declare any cash exceeding € 10 000.00 euro only upon request by the customs officials; meanwhile when crossing the Bulgarian border to or from a third country the individuals shall declare any cash equal to or exceeding € 10 000.00 euro and where the cash exceeds BGN 30 000.00 the individuals going to a third country shall present a certificate from the National Revenue Agency stating they have no pending obligations towards the state. As of February 2011 Bulgaria has also reduced the cash payment and the threshold is set at BGN 15 000.00 leva.⁴ The threshold is even lower when the payment refers to acquisition of real estate or of real right over it – BGN 10 000.00 leva⁵

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

The subject matter is regulated by Investments Encouragement Act ⁶ and in general the available incentives and support for the investors include: i) shortened terms for providing administrative services or providing of an individual service tailored to the needs of the investor; ii) the investors may purchase real estates – private state or private municipal property without tender procedures, at prices equal to the market ones or lower; iii) financial support for construction of elements of the technical infrastructure; iv) financial support for educational course and professional specialization of employees; v) tax exemptions; vi) partial compensation of the social contributions paid by the investor for the employees hired to work on the respective investment project in Bulgaria etc.

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country? – the limited liability company (LLCo) has proved to be the most common business vehicle for the investors so far.

Please provide details on:

- i. Registration formalities

As a legal person- merchant the LLCo is subject to registration into the Commercial Register of the Registry Agency; the application form accompanied with the respective documentation can be filed on-line

⁴ Limitation of Cash Payments Act – Official Gazette No 16/2011;

⁵ Notaries and Notary Activity Act – Official Gazette No 104/ 1996;

⁶ Investments Encouragement Act – Official Gazette No 97/ 1997;

which reduces significantly the state fees and usually the new company is registered within three working days;

ii. Minimum (and maximum) share capital

As of 2009 the minimum share capital of the LLCo is set at BGN 2.00 leva; there are no limits provided by the law for the maximum amount of the share capital;

iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities)

The LLCo partners can contribute to the capital of the company with non-cash considerations⁷; such non-cash considerations shall be evaluated by three independent experts nominated by the Registry Agency. The expert evaluation is attached to the company registration documentation and filed with the Commercial Register. In case the non-cash consideration represents a real estate or limited property rights over real estate, the contribution of the consideration shall be described in detail in the By-laws of the company (Articles of Association) and accompanied by notarized consent of the contributor-owner. The non-cash contributions cannot represent services or exercise of future work;

iv. Any restrictions on foreign shareholders

No restrictions provided;

v. Management structure and any restrictions on foreign managers

The LLCo is usually managed by one or two managers acting jointly and separately; even where the managers are two or more they do not form a board of directors; there are no restrictions on foreign managers, however, if they are not EU citizens or do not dispose of a Schengen visa, they have to apply to obtain a short term visa for business purposes from the Bulgarian authorities⁸. This visa is valid for up to five years and allows its holder to stay in Bulgaria for a period of up to 90 days every six months with multiple entry option.

vi. Directors' liability

i) the LLCo managers are liable for damages caused to the company as provided in the Commercial Act; additional liabilities can be provided for in the management contract; ii) the Penal Code⁹ also provides criminal liability for managers who have led the company to deliberate or imprudent bankruptcy or have failed to file with the court a report for insolvency within 30 days as of ceasing the payments to creditors;

⁷ Art.72, Commercial Act – Official Gazette No 48/ 1991;

⁸ Foreigners in Republic of Bulgaria Act – State Gazette No 153/1998;

⁹ Penal Code – State Gazette No 26/1968;

vii. Parent company liability

Parent companies are only liable up to the amount of the share hold in the capital of the LLCo;

viii. Reporting requirements (including filing of accounts)

The companies are obliged to file annual financial statements into the Commercial Register¹⁰ – for merchants natural persons – up to May 31st; for LLCo – up to June 30th; for JSCo – up to July 31st; The financial reports of the JSCo are subject to mandatory independent audit, meanwhile those of the LLCo shall not be subject to audit in case the company meets at least two of the following three criteria – i) assets value as per the balance sheet up to December 31st of the previous year– up to BGN 1,5 million; ii) net income from sales for the respective year – up to BGN 2,5 million; iii) average number of the staff for the respective year – 50 persons;

(D) Employment

9. What are the main laws regulating employment relationships in your country?

The Labour Code¹¹, the Healthy and Safe Working Conditions Act¹², Employment Encouragement Act¹³ and the respective subsidiary legislation;

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

The relationship employer-employee is governed by a written employment contract as a legal requirement; the employment contract shall define: the place of work; the type of the job; stipulation date and the start of performing the duties by the employee; term of the contract; paid leaves – annual and additional; remuneration – basic and additional and terms of its payment; duration of the working day or week; other conditions as the case may be;

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

Foreign employees require both work permits and residence permits, if they are not EU or EEA citizens. The work permit is issued for jobs where: i) the Bulgarian citizenship is not a pre-requisition; ii) the total number of foreign employees working for the local employer does not exceed 10% of the average number of Bulgarians, EU and EEA citizens hired by the employer in the course of the previous 12 months; iii) the working conditions and the remuneration are not less favourable than those offered to

¹⁰ Art.40 Accountancy Act – No 98/2001;

¹¹ Labour Code – State Gazette No 26/1986;

¹² Healthy and Safe Working Conditions Act – State Gazette No124/1997;

¹³ Employment Encouragement Act – State Gazette No 112/2001;

Bulgarian citizens for the same type of work and iv) the remuneration offered provides the minimum subsistence amount for Bulgaria. The cost of the work permit is BGN 600.00 leva and its duration is set at 1 year. An EU Blue Card for work in Bulgaria can be issued to highly qualified foreigners - holders of a Bulgarian long term stay visa (valid up to 6 months). The cost of the EU Blue Card is set at BGN 400.00 leva. The respective costs for the issuance of residence permits are: for a continuous stay up to six months – BGN 500.00 leva, for a continuous stay up to one year – BGN 200.00 leva. It takes about two to three months to obtain the respective permits.

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

As provided in the Commercial Act in cases where the number of the employees of a JSCo exceeds 50, they are entitled to have a representative with a consultative voice in the sessions of the General Assembly of the JSCo; the Labour Code provides that the employer shall obligatorily inform and consult the trade union and the representatives of the employees in case of i) mass layoffs, ii) transfer or reorganization of the enterprise (merger, distribution of the company activity between two enterprises, etc.); iii) change of the activity of the enterprise or of its economic state. The employer shall provide details about the reasons for the respective change, about its effects on the economic development of the company and on the number of the employees; in cases of mass layoffs the employer shall also inform the employees about the exact number of employees to be dismissed and the selection criteria to be applied, as well as about the compensations due for the dismissal.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?

There exist legal provisions which determine both a minimum monthly wage and maximum working hours: the minimum monthly wage is determined annually by the Council of Ministers and for 2013 is set at BGN 310.00 leva; the rules on the working hours are provided in the Labour Code and detailed in the subsidiary legislation – the working week has five days with a normal duration of the working time – 40 hours and of one working day – 8 hours; overtime working is prohibited, with limited number of exceptions to the rule – in cases of natural disasters, emergency reconstructions of the gas, electricity and water supply systems etc.; in any case the overtime working for an employee cannot exceed 150 hours per year;

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details

Bulgaria has an obligatory pension system provided in the Social Security Code¹⁴ - i) retirement pension can be obtained under two conditions – age of 63 years for men and 60 years for women and at least 37 years of payment of social security contributions for men and 34 years for women; as of December 31st 2011 the retirement age increases with four months per year until it reaches a limit of 65 years for men and 62 years for women; the same is valid for the periods of payment of social

¹⁴ Social Security Code, state Gazette No 110/1999;

security contributions, which shall increase respectively to 40 years for men and 37 years for women; ii) disablement pension - for persons who have lost their ability to work entirely or partially due to general or occupational disease or industrial accident; both permanent and temporary loss of ability to work are considered; iii) hereditary pension – most personal pensions can be transformed into hereditary pensions and the persons entitled to receive them are the children, the outlived spouse and the parents of the deceased person; The funds for pensions are accumulated via social security payments made by employers, employees and self-employed persons; sums transferred from the state budget; interests and dividends etc.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

The employment relationship can be terminated under limited number of grounds provided in the Labour Code, namely: i) general conditions include - mutual consent of the parties; expiration of the term set in the employment contract; impossibility of the employee to perform its duties due to disease which has led to decrease of his/her ability to work, etc. ii) both the employee and the employer can unilaterally terminate the labour contract with or without preliminary notice on explicitly listed in the Labour Code grounds; iii) the employer may also propose to the employee to terminate the labour contract upon compensation, which shall be at least the fourfold amount of the employee`s last gross monthly remuneration. Any dismissals which do not meet the limited number of grounds provided in the Labour Code shall be unlawful and the employee shall be entitled to contest the legality of the dismissal before the employer and the court and to request: pronouncement of the dismissal as unlawful and its revocation; reinstatement to the previous job; compensation for the period of unemployment due to the unlawful dismissal. The court proceedings under labour cases are free of any charges for the employees;

16. Are redundancies and mass layoffs regulated in your country? If so, please give details

the Labour Code has special provisions for protection of the employees in cases of dismissal: i) the employer is obliged to start consultations with the trade unions and the representatives of the employees at least 45 days before the intended mass layoff in order to reach an agreement with them aimed at restricting the number of the employees affected and at mitigating the consequences of the mass layoff; ii) before the consultations begin the employer shall provide the trade unions and the employees with an information about the reasons for the layoff, the number of the employees to be dismissed, the period of time during which the mass layoff will take place; the respective compensations to be paid to the dismissed employees; iii) certain categories of employees are granted special protection in cases of dismissals – the employer is obliged to obtain the permission of the Labour Inspection in order to dismiss an employee who is – e.g. a mother of a child up to 3 years of age; an employee who is in a period of leave; an employee who has been diagnosed with an occupational disease, cardiac disease, diabetes, etc. or has been transferred to a more appropriate job for health reasons, etc.;

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Local natural persons are subject of taxation in Bulgaria for their universal income – derived in Bulgaria and worldwide (tax residency principle); foreign natural persons are subject of taxation in Bulgaria for their incomes derived from a source in Bulgaria (territorial source principle); the term “local person” is defined in the Natural Persons Income Taxation Act¹⁵ to comprise persons who, regardless of their citizenship, have permanent address in Bulgaria; stay in Bulgaria more than 183 days during every 12 months period; whose center of vital interests is in Bulgaria. On the other hand, a person who has an address in Bulgaria, but his/her vital interests are not on the territory of Bulgaria, is not considered a local person. Bulgaria is also a party to numerous treaties for avoidance of the double taxation, which provide tax exemption methods.

18. Under what circumstances are employees subject to taxation in your country?

The main condition for taxation is an income derived by the employee in Bulgaria, regardless of whether the employee is a local or foreign person;

19. What income tax or social security contributions must be paid by:

- i. Employees?

Employees pay 10% income tax and 40% of the total amount of the due social security contributions; the social security contributions are calculated on the base of the gross monthly remuneration and include: 8% for health insurance; between 12,8% and 20,8% for pension contributions depending on the year of birth and the category of work of the employee; 3,5% for general disease and maternity contributions; 1% - for “Unemployment” Fund; between 0,45 % and 1,1% for “Industrial Accidents and Occupational Diseases ” Fund;

- ii. Employers, in relation to their employees?

60% of the total amount of the social security contributions as listed above;

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

Territorial source – subject to taxation are local and foreign juridical persons deriving income from Bulgaria from any kind of source, including through permanent establishment or by selling property of such permanent establishment¹⁶;

21. Under what circumstances are incorporations subject to taxation in your country?

Income derived from the territory of Bulgaria;

¹⁵ Natural Persons Taxation Income – State Gazette No 95/2006;

¹⁶ Corporate Income Taxation Act – State Gazette No 105/2006;

22. What are the main taxes that are potentially applicable to a corporation and what are their tax rates?

10% income tax; 20% VAT; 10 % tax on certain expenses (entertainment allowances, social expenses in kind provided to employees, expenses for the maintenance of the company vehicles used by the management);

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

5 % withholding tax; the tax rate is 0 % where the dividend is derived by a foreign company through a permanent establishment in Bulgaria, or the foreign corporate shareholder - owner of the dividend is a tax resident of an EU/EEA member – state, save the cases of hidden distribution of profit;

ii. Dividends received from foreign companies?

10 % corporate tax; foreign tax credit available under double taxation avoidance treaties;

iii. Interest paid to foreign corporate shareholders?

5 % tax where two conditions have to be jointly met: i) the owner of the income is a foreign company – an EU member-state tax resident and ii) the payer of the income is a local tax resident in Bulgaria and a related person to the foreign company – owner of the income; in case these conditions are not met the tax rate is 10 %;

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

See indent iii) above

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details

The thin capitalization rules are provided in the Corporate Income Taxation Act and refer to companies which have attracted capital exceeding their own capital by three times and more; the term “own capital of the company” shall comprise the registered capital, the reserves and the undistributed profit from previous years, meanwhile the term “attracted capital” shall include all the loans obtained by the company (from both foreign and local affiliates) save the loans from financial institutions. The law provides a thin capitalization formula according to which the interests on loans from affiliates to be paid by the company shall not exceed the sum of the incomes from interests received by the company plus 75% of the company` s gross income prior to calculation of the incomes and the expenses from interests. Only under that condition the interests on loans from affiliates can be deducted from company` s gross income, otherwise the interest in surplus shall be deducted from the company` s profit during the next five years until their final depletion.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details

The foreign subsidiary profits shall not be imputed to the Bulgarian parent company.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details

The Corporate Incomes Taxation Act provides for transfer pricing rules - aimed to prevent the avoidance of taxation; these provisions consist generally in methods used by tax authorities to determine the taxable basis of a deal, which would generally result in avoidance of taxation, taking into consideration not the conditions of such deal, but the taxable basis which would result of a regular deal of the same type, having a market price and aimed at achieving the same economic result; such methods include, among others – comparable uncontrolled prices method; market prices method; increased value method; distributed profit method, etc.

27. How are imports and exports taxed in your country?

As a member–state of the EU Bulgaria is part of the *customs union* and no custom duties are applied to export or import to or from the other EU member-states; the VAT rates for import from EU countries is 20% and the export – 0%; the import from third countries is subject to import duties and VAT of 20%, meanwhile the export to third countries is generally not subject to custom duties except in rare cases of export to certain countries, for limited number of goods and for a determined period of time; the VAT rate is also 0%.

28. Is there a wide network of double tax treaties in your country? If so, please give details

Bulgaria has signed treaties for avoidance of the double taxation with nearly 70 countries, among them – most of the EU member-states, Russia, some of the ex-Soviet Union republics, USA, Canada, Japan, UAE, Turkey, Egypt, Israel, North and South Korea, South Africa, China, Singapore, Taiwan, India, Indonesia, etc. In general the treaties for avoidance of the double taxation signed by Bulgaria follow the OECD model treaties.

(F) Competition

29. Is there any competition law in your country? If so, please give details

Bulgaria has enacted a Competition Protection Act¹⁷ in order to ensure the free commercial initiative and the enhancement of the competition. The law regulates the mergers and the acquisitions and provides protection against concerted practices and agreements, abuse of a dominant position as well as other acts or actions which may cause prevention, restriction or distortion of the competition in Bulgaria or affect the trade between the EU member-states. The law applies in all cases where the competition can be distorted by: i) enterprises operating in Bulgaria or abroad in case

¹⁷ Competition Protection Act – State Gazette No 102/2008 – revoking and substituting the previous Competition Protection Act enacted in 1998;

where the latter may cause distortion of the competition in Bulgaria; ii) state authorities and iii) enterprises performing services of public interest upon mandate by the state or the municipalities; iv) natural persons; the respective liability under the CPA is administrative or civil and the penalties and fines imposed can reach up to 10% of the total annual turnover of the enterprise or between BGN 500.00 and BGN 50 000.00 for natural persons;

30. Are restrictive agreements and practices regulated by competition law in your country?

Restrictive agreements and practices are regulated by the CPA; the general prohibition of such agreements and practices does not apply to cases with insignificant effect on the competition; the law also provides for exceptions from the prohibition as well as for a block exemption in line with the respective EU legislation

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

The CPA provides definitions for both the notion “dominant position” and “monopoly position” and prohibits the misuse of such positions. Generally the enterprise with a monopoly position has been granted the exclusive right to perform certain economic activity by law, meanwhile a dominant enterprise is the one which is independent of its suppliers, competitors and clients and can distort the competition on the relevant market due to its market share, financial resources, access to the market, technology level, and economic relation with other enterprises;

32. Are mergers and acquisitions subject to merger control in your country?

The Competition Protection Commission shall be preliminarily notified in all cases of mergers, acquisitions and concentrations in general, where the total sum of the annual turnover in Bulgaria of the merging companies exceeds BGN 25 million for the previous financial year and either i) the turnover for the previous financial year of each of at least two participating companies exceeds BGN 3 million or ii) the turnover for the previous financial year of the enterprise – subject of the concentration exceeds BGN 3 million; The Commission authorizes the concentration in case it does not lead to establishment or strengthening of a dominant position which would distort the competition on the relevant market; the concentration can also be authorized even where it could lead to establishment or strengthening of a dominant position, but is aimed at modernizing the respective commercial activity, improvement of the market structures, provides benefits to the final consumers and in general its positive effect on the competition on the relevant market outweighs the negative one. The notion “concentration between undertakings” used by the CPA represents a permanent change of the control in cases where: i) merger or acquisition between two independent undertakings takes place; ii) one or more undertakings already exercising control over at least one other undertaking obtain/s direct or indirect control over another undertakings or parts thereof by way of acquiring securities, stocks or property, by way of an agreement or otherwise; iii) the establishment of a joint undertaking which permanently performs all the functions of an independent economic subject is also considered a “concentration”. The control itself is manifested in acquisition of rights, conclusion of contracts or other ways which jointly or

separately, in view of existing circumstances and applicable law, provide an opportunity for exercising a decisive influence over a certain undertaking.

(G) Intellectual property

33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:

- i. What is the nature of the right?
- ii. How is it protected?
- iii. How is it enforced?
- iv. How long is it protected?

Trade mark – an exclusive right to use a sign, which can be represented graphically and is capable of distinguishing the goods or services offered of one undertaking from those of other undertakings¹⁸. The right is obtained by registration into the Patent Office and in case the application is granted a registration, the right is effective as of the date of filing the application. The protection is obtained through registration into the state registry of the marks administered by the Patent Office. The duration of the protection is 10 years as of the date of filing the application for registration. The registration can be renewed for unlimited consecutive periods of ten years. The enforcement of the right – i) civil protection by the court through filing claim for: establishment of the fact of infringement; stop the infringement; compensation for damages; seizure and destruction of the goods – object of the infringement; ii) border control measures – the trade mark owner or the exclusive licensee of a trade mark can require from the custom authorities to seize goods crossing the state border, which according to the right owner/licensee, infringe their rights; iii) administrative liability for trade mark infringers – penalties spanning from BGN 500.00 leva up to BGN 5 000.00 leva; iv) criminal liability – for unauthorized use of the trade mark in a commercial activity is punished with imprisonment of up to 5 years and a penalty of up to BGN 5000.00 leva

Patent – an exclusive right of the inventor over his invention, which shall be patentable in case it is new, has an inventive step and is applicable for industry use¹⁹. The right is obtained by registration of a patent into the Patent Office. The duration of the protection is 20 years as of the date of filing the application for registration. The enforcement of the right – similar to the trade mark enforcement; criminal liability is only provided for persons who, abusing their official duties, have registered themselves as co-inventors without having participated into the creation of the invention – imprisonment of up to two years and penalty of up to BGN 300.00 leva;

Industrial design – an exclusive right of the inventor over the appearance of a product resulting from the features of the lines, colours, shape of the product or its ornamentation²⁰. In order to be registered and protected the design shall also be new and original. The right is obtained via registration of the design with the Patent Office. The duration of the protection is 10 years as of the date of filing the application for registration and can be renewed for three

¹⁸ Marks and Geographic Denominations Act – State Gazette No 81/1999;

¹⁹ Patents and Utility Models Registration Act – State Gazette No 27/1993;

²⁰ Industrial Designs Act – State Gazette No 81/1999;

consecutive periods of 5 years each, so that the maximum period of protection duration is limited to 25 years. The enforcement of the right – see enforcement of trade mark rights above; there is also criminal liability provided in the Penal Code²¹ for illegitimate use of a registered design in a commercial activity – imprisonment of up to 5 years and a penalty of up to BGN 5 000.00 leva;

Unregistered design – introduced into the Bulgarian legislation following the accession to the EU in 2007 – the Industrial Designs Act refers to the provisions of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community Designs²² as to protection, duration of protection and enforcement of the right;

Utility model – the utility model shall be new, have an inventive step and industrial applicability. The right is obtained via registration of the utility model with the Patent Office. The duration of the protection is 4 years as of the date of filing the application for registration and can be renewed for two consecutive periods of 3 years each, so that the maximum period of protection duration is limited to 10 years. The enforcement of the right – the Patents and Utility Models Registration Act refers entirely to the enforcement of patent rights;

Copyright – object of copyright protection are the works of literature, art and science, which result from a creative activity and are objectified in any form (works of literature, including scientific and technical literature, works of music, theatre, cinema, painting, architecture, photography, translations etc.) The Copyright and the Neighboring Rights Act²³ considers an author to be the natural person who has produced a work as a result of creative activity; unless otherwise proved the person whose name or other identifying mark is indicated on the original of the work, its copies or packaging, is considered the author of such work. The copyright exists as of the moment of creation of the respective work and does not have to be registered. The duration of protection spans the lifetime of the author and a period of seventy years afterwards. The enforcement of the copyright is aimed to protect the author or the exclusive licensee of the copyright and includes: i) civil protection by filing a lawsuit to claim a compensation for all direct and indirect damages caused by the copyright infringement; a claim to establish the fact of the infringement; to stop the illegitimate use; to seize and destruct the illegally produced copies as well as the materials and the devices intended to serve for copying the works; ii) border control measures - the author or the exclusive licensee of a copyright can require from the custom authorities to seize goods crossing the state border, which according to the author/licensee, infringe their rights; iii) administrative liability for the infringers – penalties amounting from BGN 2 000.00 leva up to BGN 30 000.00 leva; iv) criminal liability – imprisonment up to 5 years and penalty up to BGN 5 000.00 leva;

Neighboring rights – also protected by the Copyright and the Neighboring Rights Act are: i) the rights of actors – performers on their performances – for a period of 50 years starting to expire as of the year following the year of the performance; ii) the rights of the audio producers on their sound recordings – the rights are protected for 50 years following the year the sound recording was realized; iii) the rights of the film producers – the protection spans 50 years following the year the audiovisual work was created; iv) the rights of the radio and television organizations on their programs – protected for 50 years following the year the

²¹ Penal Code – State Gazette No 26/1968;

²² Copyright and Neighboring Rights Act – State Gazette No 56/1993

program was first screened or broadcasted; v) the rights of data base manufacturers – covered for 15 years starting to expire as of January 1st of the year following the year when the data base was completed; The neighboring rights are enforced as provided for the copyright enforcement.

(H) Marketing agreements

34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

- i. Agency – the Commercial Act defines the agent as a person who independently and within his professional competence assists the merchant in latter`s commercial activity; the merchant may authorize the agent to conclude deals on merchant`s behalf or on agent`s behalf but at merchant`s expense; therefore the agency agreement as a rule is stipulated in writing; The agent is entitled to receive a commission for all transactions i) concluded by him or ii) with his assistance or iii) concluded with clients he has attracted while acting as merchant`s agent; Where the agent is authorized to operate on a specific territory or with a specific clientele, he is entitled to receive commission also for deals stipulated with clients from this territory or from such clientele, even in cases the agent has not provided assistance for the conclusion of the respective deal; Upon termination of the agency agreement and in case the merchant benefits from the clients attracted by the agent, the latter is entitled to a compensation amounting to the annual agent commission calculated as an average rate for the entire period of the agency agreement, but limited to the last five years of the agency;
- ii. Distribution – there is no legal regulation of such agreements; therefore the general requirement of the Obligations and Contracts Act shall apply – namely – the distribution agreement shall not contradict the imperative law provisions and be contrary to the moral; the concept of these agreements has been interpreted by the Commission for Protection of Competition and the case law;
- iii. Franchising – there is no legal regulation of franchising agreements;

(I) E-commerce

35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details

The relatively quick development of the e-commerce and the e-government in Bulgaria has brought the necessity of regulation of the respective relationships between providers and clients i) the Electronic Commerce Act ²⁴ regulates the relationships established in view of electronic commerce, which is defined as a provision of services to information society. These are services offered by electronic means, at a distance and at individual request of a recipient of services or the

²⁴ Electronic Commerce Act – State Gazette No 51/2006;

provision of conditional access to the above services considered as a service in its own right ²⁵; ii) the Electronic Document and the Electronic Signature Act ²⁶ regulates the provision of certified services and the activity of the service providers as well as their liabilities; out of its scope of application remain the transactions which require written form as validity condition; iii) the rules for consumer protection in distant selling provided in the Consumers Protection Act ²⁷ apply respectively to the e-commerce;

(J) Data protection

36. Are there any data protection laws in your country? If so, please give brief details

The protection of the personal data of natural persons is regulated by the Personal Data Protection Act ²⁸. “Personal Data” is considered any information referring to the natural person, who is identified or may be identified directly or indirectly through an identification number or by one or more specific features/signs; The law regulates as well the obligations of the personal data administrators, who are defined as natural or legal persons, including state and municipal authorities, who independently or jointly with other persons determine the scopes and the means for processing of personal data; the personal data administrators shall be registered with the commission for Personal Data Protection; Separate chapters of the law are dedicated to the protection of the personal data, to the rights of access of the natural persons to data referring to them, to the provision of personal data to third parties; the administrative liability for personal data administrators for infringements of the legal provisions vary between BGN 10 000.00 leva and BGN 100 000.00 leva;

(K) Product liability

37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details

The rules for protection of the consumer`s right to acquire safe products as well as the rules for product liability are provided in the Consumers Protection Act. The law identifies the manufacturer, the distributor and the merchant as liable for damages caused to the consumers by product defects, and details their responsibilities and the control competence of the respective official authorities. The law provides for payment of compensation for damages caused by death or physical injury, damage or destruction of valuable personal property where the value shall not be less than BGN 1 000.00 leva. The manufacturer shall be liable for the damages caused to the consumer by a defect product regardless of whether the manufacturer caused the defect. The injured person shall bear the burden of proving the damage caused, the defect of the product and the causal nexus between them. The compensation for damages caused can be claimed within three years as of the date on which the claimant has found out the damage, the defect and has identified the manufacturer.

²⁵ § 1, point 75 of the Additional Provisions of Electronic Messages Act (State Gazette No 41/2007) in relation to the definition of “information society services” as provided in Art.2 of the European Convention on the Legal Protection of Services based on or consisting of, Conditional Access (State Gazette No 62/2003);

²⁶ Electronic Document and Electronic Signature Act – State Gazette No 34/2001;

²⁷ Consumers Protection Act – State Gazette No 99/2005;

²⁸ Personal Data Protection Act – State Gazette No 1/2002;



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