THE FOREIGN INVESTMENT REGULATION REVIEW

SEVENTH EDITION

Editors
Calvin S Goldman QC and Michael Koch

THE LAWREVIEWS

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Editors
Calvin S Goldman QC and Michael Koch

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PREFACE

This seventh edition of *The Foreign Investment Regulation Review* provides a comprehensive guide to laws, regulations, policies and practices governing foreign investment in key international jurisdictions. It includes contributions from leading experts around the world from some of the most widely recognised law firms in their respective jurisdictions.

Foreign investment continues to garner a great deal of attention. This trend is expected to continue as the global economy further integrates, the number of cross-border and international transactions keeps increasing, and national governments continue to regulate foreign investment in their jurisdictions to an unprecedented degree. Reviews of cross-border mergers have, in some instances, been characterised recently by a rising tension between normative competition and antitrust considerations on the one hand, and national and public-interest considerations on the other; the latter sometimes weighing heavily against the former. As a result, more large, cross-border mergers are being scrutinised, delayed or thwarted by reviews that are progressively broad in scope.

Many factors are driving these emerging trends – the rise in populist political movements has increased the focus on national interest considerations such as protectionism; there are concerns over the export of jobs and industrial policy; heightened concerns over cybersecurity have led to enhanced national security protection measures; and an increased focus in some jurisdictions on the stream of capital flowing from state-owned enterprises has driven greater scrutiny of proposed investments, particularly those in economic sectors such as information technology and natural resources. Where, historically, national security concerns were limited to businesses involved in manufacturing or supplying military equipment and to infrastructure industries critical to national sovereignty, the scope of transactions reviewed on the basis of national security has broadened significantly. Transactions in sectors such as banking and finance, media, telecommunications, and other facets of the digital economy, as well as transportation industries and even real estate, may be potential focal points for foreign investment review.

Efforts to overhaul the regulatory landscape have been seen in the United States with the expansion of the review authority of the Committee of Foreign Investment in the United States (CFIUS), including a broadening of transactions under CFIUS's scrutiny. In turn, France is trying to generate support to revise the European Union's competition reviews to, among other things, more closely scrutinise mergers in the technology sector. Other major jurisdictions in Europe, including Germany and the United Kingdom, have shown greater interest in increased regulatory authority in regard to foreign investment reviews.

Differences in foreign investment regimes (including in the timing, procedure, thresholds for and substance of reviews) and the mandates of multiple agencies (often overlapping and sometimes conflicting) are contributing to the relatively uncertain and unpredictable

foreign investment environment. This gives rise to greater risk of inconsistent decisions in multi-jurisdictional cases, with the potential for a significant 'chilling' effect on investment decisions and economic activity. Foreign investment regimes may be challenged by the need to strike the right balance between maintaining the flexibility required to reach an appropriate decision in any given case and creating rules that are sufficiently clear and predictable to ensure that the home jurisdiction offers the benefits of an attractive investment climate.

The American Bar Association Antitrust Law Section (ABA ALS) Task Force on National Interest and Competition Law has built on the work of the ABA ALS previous Task Force on Foreign Investment Review. It has looked more closely at the potential implications of national interest considerations and evolving breadth of national security reviews, including, in some cases, as they may relate to, or interface with, normative competition reviews. In so doing, the Task Force has examined a number of cases in selected jurisdictions where these issues have been brought to the forefront. In August 2019, the report of the Task Force was considered and approved by the Council of the ABA ALS.

These emerging trends and the evolving issues in the interface of foreign investment and competition reviews were the subject of panel discussions at the Annual Conference of the International Bar Association in Rome in October 2018 and the ABA ALS Global Seminar Series in Düsseldorf, Germany in May 2018, among others in recent years. The evolving issues have also attracted attention in recent years in international fora of public authorities, such as the International Competition Network and the Organisation for Economic Co-operation and Development's Competition Committee.

In the context of these significant developments, we hope this publication will prove to be a valuable guide for parties considering a transaction that may trigger a foreign investment review, which often occurs in parallel with competition reviews. It provides relevant information on, and insights into, the framework of laws and regulations governing foreign investment in each of the 17 featured jurisdictions, including the timing and mechanics of any required foreign investment approvals, and other jurisdiction-specific practices. The focus is on practical and strategic considerations, including the key steps for foreign investors planning a major acquisition, or otherwise seeking to do business in a particular jurisdiction. The recent trends and emerging issues described above and their implications are also examined in this publication. Parties would be well advised to thoroughly understand these issues and to engage with regulatory counsel early in the planning process so that deal risk can be properly assessed and managed.

We are thankful to each of the chapter authors and their firms for the time and expertise they have contributed to this publication, and also thank Law Business Research for its ongoing support in advancing such an important and relevant initiative.

Please note that the views expressed in this book are those of the authors and not those of their firms, any specific clients or the editors or publisher.

Calvin S Goldman QC and Michael Koch
Goodmans LLP
Toronto
September 2019

Chapter 3

BULGARIA

Nikolay Kolev and Trayan Targov[1]

I INTRODUCTION

After the collapse of the Soviet bloc, Bulgaria underwent substantial socioeconomic restructuring and opened its market to global capital, while integrating into European and worldwide production networks. A critical element of the reform was to build a sound business environment in which companies can start, invest, expand and exit. All this was achieved with the support of the European Union (EU), which Bulgaria joined in 2007.

The attractiveness of Bulgaria as an investment destination lies in the combination of three main factors: the committed and skilled workforce, the low costs for doing business (including labour),[2] and the full openness to trade and investment. The Bulgarian government seeks to attract foreign investors by offering them state financing, favourable tax treatment (including 10 per cent flat tax rate), possibilities for preferential purchase of land and many other types of assistance and advantages. The generally sound economic performance, gradual convergence with the EU common market, political stability, fiscal prudence, and a national currency pegged to the euro have provided stability and enabled Bulgaria to attract leading foreign investors.

Bulgaria has a long, rich tradition in the IT sector and is still known as the Silicon Valley of Southeast Europe.[3] Many world-renowned companies such as SAP, Cisco, Atos, VMware, Johnson Controls, Microsoft, IBM and Oracle have already set up operations here. Bulgaria ranks 17th globally for 2019 and has traditionally been placed among the top 20 destinations for outsourcing in the world by AT Kearney Global Services Location Index.[4] Among the foreign investors attracted by the outsourcing opportunities in Bulgaria are Coca-Cola, Concentrix, Experian, HP and Sutherland. The Bulgarian automotive industry has also received significant attention from foreign investors. It produces components and auto parts for brands such as Lamborghini, Bentley, Porshe, Mercedes-Benz, BMW, Audi and Tesla. Bulgaria can boast that 90 per cent of the airbag sensors in European cars are made

1 Nikolay Kolev is a counsel and Trayan Targov is an associate at Boyanov & Co.

2 The average gross wage in Bulgaria is about €620 according to the National Statistical Institute, Average Monthly Wages and Salaries of the Employees under Labour Contract in 2019, available at: http://www.nsi.bg/en/content/6410/total [accessed on 12 June 2019].

3 US Government materials, Bulgaria Country Commercial Guide, Article: Bulgaria-ICT, available at: https://www.export.gov/article?id=Bulgaria-Information-and-Communications-Technologies [accessed on 20 June 2019].

4 AT Kearney, The 2019 Global Services Location Index Top 20, available at: https://www.atkearney.com/digital-transformation/gsli [accessed on 20 June 2019].

in the country.[5] Other best prospect industry sectors for Bulgaria include: environmental technology (including waste treatment and waste-to-energy technologies); power generation (including biomass, gas and nuclear energy); travel and tourism (plays a critical role in the country's economy); agriculture (including the beverage and food industry, as well as agricultural equipment and machinery); safety and security; pharmaceuticals; and healthcare and medical.[6]

As a rule, Bulgaria affords national treatment to foreign investors and there are no general limits on foreign ownership or control of companies, nor is there screening[7] or restricting of foreign investment in Bulgaria. By way of exception, the 2014 Offshore Companies Act[8] lists 27 activities banned for business by companies registered in tax heavens and the entities under their control but also provides a number of exceptions.[9] There also are specific restrictions on the foreign investments in the gambling industry under the 2012 Gambling Act[10] and in respect of the acquisition of farmland under the 1991 Agricultural Land Ownership and Use Act.[11] However, these restrictions basically apply to countries that are not members of the European Economic Area (EEA), respectively the EU. Regulatory restrictions on business activities such as licensing, registration and permission requirements sometimes imply corporate registration under the laws of Bulgaria or another EU/EEA Member State, but this is not in itself an obstacle to investment because foreign investors are free to incorporate or participate in Bulgarian companies.

II FOREIGN INVESTMENT REGIME

There are no general restrictions upon foreign investors wishing to invest in Bulgaria either by acquiring an existing business or establishing a new business. No prior government approval of the foreign investment is needed. The few exceptions to this rule are addressed below.[12]

i Restrictions on investments by offshore companies and entities under their control

The Law on the Economic and Financial Relations with Companies Registered in Jurisdictions with Preferential Tax Regime, Entities Controlled by Them and Their Beneficial Owners (referred to as the Offshore Companies Act) was enacted in 2014 and amended several times

5 Colliers International, Automotive Industry in Bulgaria, Research 2017, available at: http://colliers.bg/newsletter/e-newsletters/Colliers_Market_reports/H2-2017/Automotive-report_EN.pdf [accessed on 20 June 2019].

6 US Government materials, Bulgaria Country Commercial Guide, Best Prospect Overview, available at: https://www.export.gov/article?id=Bulgaria-Healthcare-and-Medical [accessed on 20 June 2019].

7 On 19 March 2019 the EU adopted Regulation (EU) 2019/452 establishing a framework for the screening of foreign direct investments into the EU to create a system to cooperate and exchange information on investments from non-EU countries that may affect security or public order.

8 See Section II.i.

9 See Section IV.i.

10 See Section II.ii.

11 See Section II.iii.

12 The investment certification regime introduced by the Investments Promotion Act and discussed in Sections II.iv and IV.ii aims only at providing eligible investors with additional benefits and incentives and does not in any way limit the possibilities for investment in the country. Nonetheless, it forms an integral part of the overall foreign investment regime in Bulgaria.

since. It prohibits companies registered in jurisdictions with preferential tax regimes (also called tax heavens) and the entities under their control from directly or indirectly engaging in 27 different types of economic activities in Bulgaria.

Countries considered to be offshore jurisdictions

The scope of the restrictions imposed by the Offshore Companies Act is determined by the legal definition of the term 'jurisdictions with preferential tax regimes' (i.e., offshore jurisdictions). The Corporate Income Tax Act lays down the offshore criteria and entrusts the Minister of Finance with the task of adopting a list of the offshore jurisdictions. The current list approved by the Minister of Finance[13] indicates 26 countries or territories: Antigua and Barbuda; Brunei Darussalam; Virgin Islands (USA); Grenada; Guam Island (USA); Dominican Republic; Guyana; Labuan; Macao; New Caledonia; UAE; Bahamas; Oman; Christmas Island; Cook Islands (New Zealand); Pitcairn; Vanuatu; Liberia; Maldives; Marshall Islands; Palau; Panama; Fiji; Sark; Saint Lucia; Hong Kong (China). Companies and other forms of business, corporate or unincorporated, registered there (referred to as offshore companies) and the entities under their control are subject to the prohibitions against carrying on business in Bulgaria introduced by the Offshore Companies Act. The definition of 'control' includes, in general, holding of more than 50 per cent of the voting rights in the general shareholders' meeting or in the management bodies of the other entity, as well as the right to exercise decisive influence on another legal entity (e.g., on the basis of a contract).

Prohibited activities

The offshore companies and the entities under their control are prohibited from directly or indirectly:

a obtaining a licence for a credit institution or possessing a qualifying holding in it;

b obtaining a licence for an insurance or reinsurance undertaking or possessing a qualifying holding in it;

c obtaining a licence for a supplementary social security company or holding 10 per cent or more in it;

d obtaining a licence to carry out a service or activity under the Law on the Markets in Financial Instruments or possessing a qualifying holding in a licensed company;

e obtaining a licence, permit or registration under the Law on the Activities of Collective Investment Schemes and Other Collective Investment Undertakings or possessing a qualifying holding in such an undertaking;

f obtaining a licence for a payment institution or possessing a qualifying holding in a licenced payment institution;

g participating in a procedure for selection of concessionaire or award of concession for extraction of underground natural resources or for granting an authorisation for prospection and exploration or only for exploration of underground natural resources;

h participating in a public procurement procedure irrespective of the nature or the value of the public procurement;

i participating in privatisation transactions;

j acquiring state or municipal property through sale or exchange;

13 The list is adopted by Order No. ZMF-1303 dated 12 December 2016 of the Minister of Finance, promulgated in State Gazette, issue No. 103 as of 27 December 2016, Unofficial Section.

k obtaining a licence under the Excise Duties and Tax Warehouses Act;
l incorporating or acquiring shareholdings in licenced professional sports clubs where such participation is providing entitlement to 10 per cent or more of the voting rights in the general shareholders' meeting of the club;
m applying for certificates for Class A, B or C investment or priority investment projects under the Investments Promotion Act;
n obtaining a licence under the Energy Act;
o obtaining a licence under the Gambling Act;
p obtaining a licence for trade in dual-use goods;
q obtaining a licence for a provider of public electronic communications networks or services or acquisition of 10 per cent or more of the voting rights in it;
r obtaining contracts awarded for the supply of water or removal of waste water;
s obtaining contracts awarded for waste collection and disposal, waste treatment in waste disposal plants or other facilities, or for cleaning of public spaces;
t incorporating or acquiring 10 per cent or more of the voting rights in the general shareholders' meeting of entities that are applying for or have obtained a licence for a radio and television operator or in companies measuring radio and television ratings;
u incorporating or acquiring 10 per cent or more of the voting rights in the general shareholders' meeting of entities publishing periodicals;
v incorporating or acquiring 10 per cent or more of the voting rights in the general shareholders' meeting of social research agencies or entities conducting general public opinion surveys;
w incorporating or participating in entities engaged in activities under the Independent Financial Audit Act;
x incorporating or participating in entities engaged in activities under the Independent Evaluators Act;
y incorporating or participating in entities engaged in activities under the Energy from Renewable Sources Act;
z participating in commercial companies with state or municipal ownership provided that the state or municipal shareholding in the company is at least 33 per cent; and
aa acquiring ownership of land and forests from the state forests fund.

The Offshore Companies Act provides several exceptions to these prohibitions, which, together with the procedure for their application, are addressed in Section IV.i. From another perspective, the above list provides a brief overview of some of the most heavily regulated sectors of the Bulgarian economy. Investors in these sectors, irrespective of whether they are foreign or domestic, may face specific licencing, registration and permission requirements.

ii Restrictions on foreign investments in the gambling industry

The 2012 Gambling Act stipulates that gambling operations may be performed in Bulgaria only after the issuance of a game-specific licence. In the general case, companies registered under the laws of Bulgaria, another EEA Member State or Switzerland are deemed eligible to apply for such licences.

Pursuant to the Gambling Act, foreign persons (i.e., persons other than companies or individuals registered in or citizens of an EEA Member State or Switzerland) may not have any interest in a locally licensed company unless they have invested at least €10 million in other activities in Bulgaria and have created more than 500 jobs or unless they own a hotel of

four stars or more and operate a casino in it. This provision is controversial as worded to the extent that it may prohibit large European operators with international shareholding bases (particularly listed companies) to apply directly for a local licence because any non-EEA (or Swiss) shareholding in a licensed company is prohibited.

iii Restrictions on foreign investments in farmland

Bulgarian law and in particular the Agricultural Land Ownership and Use Act, enacted in 1991 and substantially amended in 2014, provides for restrictions on foreign ownership of agricultural land. Foreign (non-EEA) nationals and legal entities as well as commercial companies held by them are generally prohibited from acquiring farmland in the country, unless expressly permitted by an international treaty to which Bulgaria is a party. Companies that are directly or indirectly held by offshore companies,[14] joint-stock companies that have issued bearer shares, political organisations and foreign states are also prohibited from acquiring agricultural land in Bulgaria.

Pursuant to the terms of accession of Bulgaria to the EU, from 2014 onward the EU or EEA citizens must enjoy national treatment in respect of the acquisition of agricultural land in Bulgaria. In the face of this commitment (and despite of it), in 2014 Bulgaria modified its national regime by introducing long-term residence requirements for Bulgarian nationals and legal entities wishing to acquire farmland, thus creating acquisition barriers also for the EEA companies and citizens. In particular, the Agricultural Land Ownership and Use Act stipulates that ownership rights over agricultural land may be acquired by individuals or legal entities that have been residing or established in Bulgaria for more than five years. The legal entities that have been registered under the laws of Bulgaria for less than five years are allowed to acquire farmland provided that their shareholders are natural persons who have resided in Bulgaria for more than five years. As a reaction to these restrictions, in 2015 the European Commission opened infringement procedure against Bulgaria.[15] In December 2018, the Bulgarian government opened public consultations on a draft law on the agricultural lands which, among other things, should abolish the restrictions for EEA citizens and companies. As of June 2019, however, this draft law has not yet been submitted to the Parliament.

iv Certification of foreign investments under the Investments Promotion Act

The legal framework for promotion and certification of foreign investments is provided for mainly in the Investments Promotion Act (IPA) enacted in 1997 and the Regulation for the Implementation of the IPA adopted in 2007 (IPA Regulation). The Minister of Economy, with the support of the Invest Bulgaria Agency, is directly responsible for implementing the government policy towards foreign investments. IPA supports the foreign investments by introducing a system of incentives for certified investments in tangible and intangible assets and the creation of new jobs related thereto in accordance with the General Block Exemption Regulation (EU) No. 651/2014 declaring certain categories of aid compatible with the internal market.

Bulgarian law implements an investment certification approach. Depending on the size of the investment, the economic sector and the region of the country in which the investment

14 See Section II.i about the term offshore companies.

15 European Commission, press release: Commission opens infringement procedures against Bulgaria, Hungary, Lithuania and Slovakia on investor restrictions for agricultural land, available at: http://europa.eu/rapid/press-release_IP-15-4673_EN.htm [accessed on 28 June 2019].

is made, the investor may obtain a certificate for class of investment (Class A or Class B)[16] or for priority investment projects. Based on this, the investor may benefit from a wide range of government incentives such as:

a purchase of, or acquisition against consideration of, limited rights *in rem* in immovable private state or municipal property located near the investment site without participating in a public tender procedure;

b state financing for the construction of elements of the technical infrastructure such as roads, drainage networks and facilities;

c state financing for the professional training of employees hired in relation to the investment;

d state financing in the form of partial reimbursement of the statutory social security contributions and health insurance contributions paid by the investor for newly hired employees;

e reimbursement of up to 100 per cent of the paid corporate income tax on taxable profits from manufacturing activities in municipalities with an unemployment rate higher than Bulgaria's average (60 per cent of the municipalities qualify for 2018);

f VAT advantages for large investment projects (simplified reverse-charge mechanism and monthly instead of quarterly VAT refunds); and

g provision of fast-track and individual administrative services.

The certification of the investments under the IPA depends on the fulfilment of a number of requirements discussed in more detail in Section IV.ii.

III TYPICAL TRANSACTIONAL STRUCTURES

Investments in Bulgaria are usually carried out either through establishment of a local subsidiary or branch office, or through entering into a joint venture with a local or another foreign partner. These points are covered in more detail below.

i Establishment of a local subsidiary

Foreign investors may freely set up a local company through which they would be able to conduct business in Bulgaria. Bulgarian law allows for the incorporation of several different types of companies but the most frequently used are the limited liability company (OOD) and the joint-stock company (AD).

A limited liability company may be formed by one or more shareholders who, subject to limited exceptions, are not liable for the company's liabilities. The minimum registered capital of a limited liability company is 2 Bulgarian levs. The capital contributions may be monetary or in-kind. In-kind contributions must be evaluated by three independent experts appointed by the Commercial Register. The company's affairs are administered by its manager or managers and by the general meeting of the shareholders. The managers do not need to be shareholders. There are no restrictions on the participation of foreigners in the management of the company or as shareholders. A transfer of shares in a limited liability company requires a sale and purchase agreement in notarised form. The transfer has to be

16 Certain municipalities such as Sofia and Varna have implemented investment Class C schemes for investment initiatives of municipal importance.

registered in the Commercial Register to become effective with regard to third parties. In case the transferee is a non-shareholder, the transfer has to be approved by at least three-quarters of the shareholders in the company. Because of the existence of potentially serious risks for expulsion by the other shareholders, it is advisable that foreign investors avoid using limited liability companies when they do not hold 100 per cent of their share capital.

Joint-stock companies are generally preferred by foreign investors because of their greater flexibility in management and decision-taking. The company may be formed either by a public offering of its shares in accordance with the Public Offering of Securities Act (very rare in practice) or, alternatively, without such a public offering in accordance with the provisions of the Commerce Act (the usual case). The minimum registered share capital of a joint-stock company is 50,000 levs. Shares of a joint-stock company may be physical (evidenced by transferrable share certificates) or non-physical (book-entry form) shares existing in the form of entries in a registry maintained by the Central Depository, which is the institution responsible for maintaining the share registries of all companies with non-physical shares. The Commerce Act no longer allows for issuance of bearer shares (i.e., shares that do not indicate the name of the shareholder). There are two systems of management: the one-tier system (with board of directors); and the two-tier system (with supervisory board and management board, appointed by the supervisory board). The ultimate managing body for both systems is the general meeting of the shareholders, which approves certain decisions of the utmost importance for the company. In the two-tier system, no person may sit on both boards of the same company. In practice, the two-tier system is preferred for companies with a large number of shareholders and complicated activities. Physical shares are transferred by endorsement on the back of the share certificates, which, to be binding on the company, must be recorded in its shareholders' book. The statutes may provide for other conditions or restrictions for the transfer of shares. Non-physical shares are transferred by way of registration of the transfer with the Central Depository. Joint-stock companies are widely used by foreign investors because of the straightforward process of share transfers, flexible majorities for decision-making, flexibility in management and impossibility for expelling shareholders (which exists in limited liability companies). Joint-stock companies are particularly suitable in case of joint ventures.

ii Setting up a branch office

Foreign companies may open a branch office in Bulgaria. A branch office must be registered with the Commercial Register on the basis of application, indicating the seat and purposes of the branch, the person who manages the branch and the scope of his or her representation powers. The rules applicable to Bulgarian companies would apply accordingly to branches of foreign companies. Branches, including those of foreign companies, are not independent legal entities. All contracts to which a branch is a party are in fact contracts with their principal. Therefore, the decision whether to open a branch office or a company (independent legal entity) is also an element of the risk management policy of the foreign principal.

iii Joint venture with a local or foreign partner

A foreign investor may choose to establish a joint venture with a local or foreign partner or partners to carry on business in Bulgaria and there are no specific statutory requirements in respect of entry into such arrangements. Usually, the joint venture is established and governed

by a joint venture agreement (or a shareholders' agreement, when the joint venture is in the form of a jointly-owned company). This agreement sets out the main terms and conditions for establishment and operation of the partnership.

Joint venture projects are usually implemented through the incorporation of a local company (typically a joint-stock company) in which the joint venture partners hold respective shares. The relations between the parties in respect of the running of the business are normally governed by special agreement (joint venture or shareholders' agreement). Another option is to have the joint venture established in the form of a contractual general partnership (which is not a separate legal entity), which is usually established by general partnership agreement for completion of special projects (e.g., infrastructure construction projects or concession award procedures). In the latter case, the partners are responsible for the obligations of the partnership with regard to third parties.

IV REVIEW PROCEDURE

i Application of exceptions for offshore companies and entities under their control

There are eight groups of exceptions to the prohibitions introduced by the Offshore Companies Act,[17] which could be applied by the offshore companies or the entities under their control to be allowed to carry on the otherwise prohibited activities listed in Section II.i. These exceptions are subject in any case to disclosure of the individuals who are the ultimate beneficial owners (UBOs)[18] of the company. The Offshore Companies Act provides for the following exceptions:

a the shares of the company in which the offshore company participates (directly or indirectly) are admitted to trading on an EU or EEA regulated market or equivalent regulated market;

b the offshore company is part of an economic group the parent company of which is a tax resident of a state with which Bulgaria has concluded a treaty for the avoidance of double taxation or information exchange agreement;

c the offshore company is part of an economic group the parent company of which, or a subsidiary company of which, is a Bulgarian resident entity and its UBOs are announced in the Commercial Register or its shares are admitted to trading on an EU or EEA regulated market;

d the company in which the offshore company directly or indirectly participates is a publisher of periodicals;

e the offshore company is a tax resident of a state party to the Agreement on Government Procurement under the auspices of the World Trade Organization (WTO) or state with which the EU has concluded a bilateral treaty guaranteeing access to the EU's public procurement market (in respect of the activities to which the relevant treaty applies);

f the offshore company is a tax resident of an overseas country or territory under Council Decision 2013/755/EU of 25 November 2013 on the association of the overseas countries and territories with the EU (in respect of the activities to which this decision applies);

17 See Section II.i.

18 The Bulgarian anti-money laundering legislation imposes additional requirements for disclosure of the UBOs of almost all commercial companies established in Bulgaria, irrespective of their ownership, by registration of the UBO at the Commercial Register.

g the offshore company is a tax resident of a state with which Bulgaria has concluded international trade or economic agreement, including obligations under the WTO's General Agreement on Trade in Services; or

h the offshore company is part of an economic group the parent company of which is tax resident of a state with which Bulgaria has concluded international trade or economic agreement, including obligations under the WTO's General Agreement on Trade in Services.

The details about the offshore company that will directly or indirectly participate in some of the 27 restricted activities, the particular exception that is relied upon and the information about its UBOs are subject to registration in the Commercial Register. The entries are to be made in the company file of the Bulgarian company controlled by the offshore company. If the offshore company performs the respective activity directly or through a subsidiary that is not registered in Bulgaria, the application of the respective exception serves as a basis for its registration in the Commercial Register.

The registration of the exception in the Commercial Register normally takes three to five business days and the refusals for registration are subject to judicial appeal. The registration of the exception in the Commercial Register needs to be completed prior to taking part in the procedure for carrying out the respective prohibited activity. The competent authority leading the procedure is responsible for overseeing the fulfilment of the requirements imposed by the Offshore Companies Act.

ii Certification of investments under the IPA

To be eligible for certification under the IPA, the investments should be related to the setting up of a new enterprise, the expansion of an existing enterprise or business activity, the output diversification into new products or a fundamental change in the overall production process of an existing enterprise.

The Class A or Class B certification requires that the investments are pertinent to one or more of the following business activities specified in the IPA Regulation: manufacturing; software publishing; computer programming, consultancy and related activities; information service activities; accounting, bookkeeping and auditing activities or tax consultancy; activities of head offices; architectural and engineering activities, technical testing and analysis; scientific research and development; education; human health activities and residential care activities; warehousing and storage; office administrative and support activities; activities of call centres; business support service activities. These sector qualification requirements apply only to Class A or Class B certification and not to investments certified as priority investment projects that can be implemented in all sectors of the economy.

Among the other certification requirements, the investors have to implement the investment within three years, maintain the investment and the newly-created jobs for an additional three to five years, acquire fixed assets that are new and are purchased from third parties not related to the investor under market conditions, finance at least 40 per cent of the investment with their own or borrowed funds, excluding state aid.

The IPA Regulation establishes minimum thresholds for certification of the investments on the basis of which the investments are classified into Classes A or B. Depending on the economic sector, the Class A certification requires an investment of between 2 million and 10

million levs. The Class B thresholds are half the size of the Class A thresholds. The creation of a significant number of new jobs (100 for Class B and 150 for Class A) may result in a substantial reduction of the minimum threshold values.

The priority investment projects are investment projects that are particularly important for the national or regional economic development of Bulgaria. In the general case, the issuance of a certificate for a priority investment project requires an investment of 100 million levs and the creation of 150 new jobs. The IPA Regulation, however, introduces certain exceptions where reduced requirements apply.[19]

Before starting work on the investment project, the investor wishing to obtain an investment certificate needs to submit an application to the Invest Bulgaria Agency (IBA) accompanied by, among other things, the investment project. The IBA appoints a working group for each applicant and issues a document obliging the Bulgarian administration to provide full cooperation to the investor in the process of obtaining the documents necessary for the investment certification. Based on the opinion of the working group, the IBA prepares a reasoned proposal for a decision on the application and submits it to the Ministry of Economy within 30 calendar days. The Minister of Economy would then have 14 calendar days to issue the Class A or Class B investment certificates or to reject certification. For priority investment projects, within 30 business days the Minister of Economy submits a proposal to the Bulgarian government for approval of a memorandum of understanding between the government and the investor. Based on the government's decision, the Minister issues or refuses to issue the certificate for priority investment project. The certification refusals are subject to judicial appeal.

V FOREIGN INVESTOR PROTECTION

At the international level, Bulgaria is a party to the Incorporation Act of the International Financial Corporation (member of the World Bank Group), the Convention on the Settlement of Investment Disputes between State and Nationals of Other States, the Convention establishing the Multilateral Investment Guarantee Agency and the Agreement establishing the WTO, as well as to more than 130 agreements on mutual encouragement and protection of investments or avoidance of double taxation. Domestically, the principle of protection of foreign investment and economic activity is enshrined in the Constitution of 1991 and forms part of the substantive foundation of fundamental principles underpinning the Bulgarian legal order.

Foreign investors are guaranteed the full and unconditional protection of their rights and interests in Bulgaria. Only where a public need cannot be met by other means, the Bulgarian government, the regional governor or the municipality mayor, as the case may be, may expropriate land provided that the owner is compensated at fair market value and always subject to judicial appeal.

Bulgarian law offers foreign investors protection from unfavourable changes in the national legislation. Pursuant to the IPA, any foreign investment made prior to the adoption

19 For example, in case of development of industrial zones or high-tech parks the minimum threshold value for priority investment projects is reduced to 15 million Bulgarian lev and the number of minimum newly-created jobs to 50 for high-tech parks and 15 for industrial zones.

of legislative changes imposing legal restrictions solely on foreign investments is to be governed by the legal provisions that were effective at the moment of implementation of the investment.

VI OTHER STRATEGIC CONSIDERATIONS

Investors contemplating a foreign investment in Bulgaria may be faced with some challenges, some common to any foreign investment, others peculiar to the country. Regulatory and bureaucratic setbacks are possible. That is why it is important to have good local knowledge to set your business up for success in Bulgaria.

In the 2019 Doing Business Report,[20] the World Bank ranked Bulgaria 59th globally for ease of doing business. This report highlights certain shortcomings in areas such as getting electricity for newly constructed facilities because of the lengthy and complicated procedures for connecting to the network, dealing with construction permits and resolving insolvency. Foreign investors intending to enter into commercial relations with Bulgarian companies should be aware that the resolving of insolvency is a lengthy process that could take more than three years and end up with a low recovery rate.

Bulgarian merger control legislation is basically in line with EU merger control regime and applies equally to foreign and domestic mergers. The Commission for Protection of Competition has general powers to assess notifiable mergers under the Bulgarian merger control regime, but additional regulatory clearance may be required in the strongly regulated sectors such as banking, energy, financial services and insurance.

VII CURRENT DEVELOPMENTS

In February 2018, one of the three major players in the Bulgarian electricity market, the Czech company CEZ, announced its intention to divest from Bulgaria and sell its assets to a rather small Bulgarian energy company with questionable control. The merger, however, was not cleared by the competition regulator. Meanwhile, and despite the lodged appeals, CEZ initiated talks with other prospective buyers.[21] This deal has been widely criticised for its lack of transparency and triggered legislative changes in the Energy Act in May 2018, equipping the energy regulator with a new power to permit any transfer of more than 20 per cent of the capital of companies holding energy transmission licences. This general power is to be exercised with a view to safeguarding the security of supply, protecting the national security and public policy. In June 2019, the publicly listed holding company Eurohold Bulgaria announced an agreement to acquire the assets of CEZ for a total of €335 million.[22] The closing of this deal will, however, be subject to clearance from both the competition regulator and the energy regulator.

20 Doing Business 2019: Training for Reform, Economy Profile Bulgaria, A World Bank Group Flagship report, available at: http://documents.worldbank.org/curated/en/383191541067056942/pdf/131605-WP-DB2019-PUBLIC-Bulgaria.pdf [accessed on 2 July 2019].

21 Annual Report 2018, CEZ Group, available at: https://www.cez.cz/edee/content/file-s/pro-investory/informacni-povinnost-emitenta/2019-04/cez-en-annual-report-2018.pdf [accessed on 2 July 2019].

22 Press release: Eurohold agreed to acquire CEZ Groups assets in Bulgaria, available at: https://www.eurohold.bg/eurohold-agreed-to-acquire-cez-group%E2%80%99s-assets-in-bulgaria-717.html [accessed on 2 July 2019].

Appendix 1

ABOUT THE AUTHORS

NIKOLAY KOLEV

Boyanov & Co

Nikolay Kolev is a counsel in Boyanov & Co specialising in corporate law/M&A, concessions and underground resources, energy, litigation and arbitration. He graduated from the legal faculty of the St Kliment Ohridski University of Sofia (LLM, 2005) and completed his PhD in civil and family law with the State and Law Institute at the Bulgarian Academy of Sciences (PhD, 2011). Mr Kolev is admitted to the Sofia Bar and is an associate professor in civil and family law at the State and Law Institute at the Bulgarian Academy of Sciences, where he chairs the Civil Law Department. He was a team member in a number of M&A transactions, such as the acquisition by Warburg Pincus of more than 20 cable and internet providers, the takeover of Bulgarian Plus business by Lidl, a number of arbitration disputes and administrative and commercial litigations of the Bulgarian companies of Dundee Precious Metals group, EVN group, Montupet, etc.

TRAYAN TARGOV

Boyanov & Co

Trayan Targov is an associate in Boyanov & Co specialising in transport law, information and communications technology law and food law. Other areas of practice include banking and finance, pharmaceuticals, travel and hospitality, corporate and commercial law. He has been advising and assisting on a regular basis some of the world's largest commercial jet aircraft leasing companies and global leaders in aircraft finance in respect of the leasing, financing, delivery and redelivery of aircraft in Bulgaria. Trayan joined Boyanov & Co's legal team in 2012. He graduated from the legal faculty of the St Kliment Ohridski University of Sofia (LLM, 2013) and is a member of the Sofia Bar Association. In 2016, Trayan completed an international secondment in Allen & Overy's Global Projects, Energy and Infrastructure Group in Warsaw, Poland. There, he was involved in various international projects such as international project financing of wind farms in Serbia, gas stations in Ukraine and intermodal terminal facilities in Egypt. As part of Boyanov & Co's Tier 1 transport law practice, Trayan Targov has been outlined in the 2019 edition of *The Legal 500 EMEA* as a 'noteworthy practitioner' and Next Generation Lawyer for Transport (including Shipping).

BOYANOV & CO

82, Patriarch Evtimii Blvd
1463 Sofia
Bulgaria
Tel: +359 2 8 055 055
Fax: +359 2 805 50 00
n.kolev@boyanov.com
t.targov@boyanov.com
www.boyanov.com

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