

The ABA Guide to International Business Negotiations

**A Comparison of Cross-Cultural Issues and
Successful Approaches, 3rd Edition**

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CHAPTER 23

International Business Transactions in Bulgaria

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SOFIA, BULGARIA

1. Introduction

1.1 Broad Demographic Information

Bulgaria is situated in the southeastern part of the Balkan Peninsula in Europe. It borders Greece and Turkey to the south and Macedonia and Serbia to the west. The Danube River to the north is the natural border with Romania. The Black Sea is to the east.

With a population of about 8 million and territory of 110,910 square kilometers (42,822 square miles), Bulgaria is part of South-eastern Europe, a region undergoing dynamic transition. Within a 500-kilometer radius of the capital city of Sofia (a city of approximately 2 million) lives a population of over 90 million in nine countries, most of which have recently embarked on their way to a market economy. This represents a large market with rapidly increasing purchasing power.

A network of international motorways crosses Bulgaria, making vital connections to the countries of Western Europe, Russia, Asia Minor, the Adriatic, the Aegean, and the Black Sea. Both sea and river transport (the Black Sea and the Danube River) facilitate trade within the region.

Bulgaria (the Constitutional name of which is "Republic of Bulgaria") is a parliamentary democracy governed in accordance with the Constitution of the Republic of Bulgaria of 1991 (the Constitution). The supreme body of government is the National Assembly. The Constitution entrusts in the National Assembly the supreme legislative power. It is a permanently acting body consisting of 240 representatives who are directly elected by the people for a term of four years.

The head of state is the President, who represents the state in its international relations. The Council of Ministers is the executive arm of the government implementing both the country's domestic and foreign policies.

1.2 Historical and Cultural Background

The successor of various civilizations, Thracian, Roman, and Byzantine, the Bulgarian state has existed for thirteen centuries on the Balkan Peninsula, which has long been a meeting place and a melting pot of tribes and nations. The Bulgarian state was founded in 681 A.D., when Slavs and Proto-Bulgarians were brought together under the scepter of Khan Asparuh.

The conversion of Bulgarians to Christianity in 865 A.D. joined Bulgaria to the Christian civilization. The invention of the Cyrillic script in the latter half of the ninth century, during which predominantly Latin and Greek were used, gave a powerful impetus to the country's cultural development.

During its long history Bulgaria has lost its independence twice: to the Byzantine Empire (1018–1185) and to the Ottoman Empire (1396–1878). Both historic periods have slowed down Bulgaria's development as a state.

In modern times, the War of Liberation (the Russian-Turkish War of 1877–1878) regained Bulgaria's independence in 1878. In 1879 a Constituent Assembly adopted the first Constitution of Bulgaria, which was considered one of the most democratic Constitutions of the time. The first half of the twentieth century was a time of economic effort and prosperity. Bulgarian goods and Bulgarian currency, the "Golden Lev," acquired high value on the European markets. Trade relations with Austria, Germany, France, and Great Britain strengthened.

For a period of more than forty years after the end of World War II, Bulgaria was part of the Communist bloc. With the end of the Cold War, in 1989 the country embarked again on its journey toward democracy and a market economy. During a period of less than twenty years after it broke with its recent communist past, Bulgaria became a member state to the World Trade Organization (1996), NATO (2004), and the European Union (2007).

1.3 Business Organization and Culture

For the last decade Bulgaria is considered to have had a stable and predictable business and political environment. Specific features of such environment include:

- Free trade with the EU preferential trade partners, including the European Free Trade Association (EFTA), Turkey, Mediterranean countries (Euro-Mediterranean association agreements with Algeria, Tunisia, Morocco, Israel, West Bank and the Gaza Strip, Jordan, Lebanon, Syria), Western Balkan countries (trade preferences to products originating from Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, and Serbia and Montenegro until December 31, 2010 in accordance with

the stabilization and association process), South Africa, Mexico, Chile, and many others;

- 10 percent corporate income tax rate; 10 percent personal income tax; VAT exemption on equipment imports for investment projects over EUR 5 million;
- Annual depreciation rate of 30 percent for machinery and equipment, 50 percent for new equipment used in new investments, and 50 percent for software and hardware;
- Treaties for avoidance of double taxation with sixty-one countries;
- Agreements on mutual protection and promotion of foreign investment with sixty countries;
- Highly skilled, multilingual workforce at Europe's most competitive wages; and
- Acquisition of land and property through a Bulgarian registered company with up to 100 percent foreign ownership.

In its annual 2002 report, the European Commission assessed Bulgaria as a fully functional market economy, with a high degree of macroeconomic stability and working market mechanisms.

The Bulgarian economy functions under a currency board (1 Bulgarian Lev (BGN) = 1.95583 Euro (EUR)), which provides for a stable and predictable macroeconomic environment. Bulgaria is expected to join the Euro zone in 2010–2012. Careful fiscal discipline and strong foreign investment have provided for sustained economic growth. The registered economic growth since 2003 is more than 5 to 6 percent per year. Bulgaria has made sizable progress in turning into a competitive economy, mainly with respect to its relations with the European Union member states. As a member of the European Union, Bulgaria benefits from significant financial support from the EU Structural Funds and the Common Agricultural Policy.

1.4 Legal System

Bulgaria is a civil law country with a legal system having its roots deep in the tradition of some of the major continental European legal systems (German, French). Bulgarian laws are generally harmonized with the EU legal framework. With globalization and the process of harmonization of Bulgarian laws with those of the European Union, typical international and common law concepts become part of the national legal system.

2. Substantive Laws and Regulations Impacting Negotiations

Bulgarian substantive laws apply uniformly over the whole territory of the state. No provincial or local legislation is adopted or applied.

Certain administrative provisions may differ on the local level, since municipalities by law may adopt their own rules for passing certain resolutions on matters of local significance.

Following is a brief overview of certain areas of Bulgarian law that usually have strong impact on international negotiations involving local law, and where the knowledge and expertise of both local and foreign lawyers are of significant importance to a successful negotiation process:

2.1 Corporate Laws

Bulgarian law recognizes the following types of commercial companies: (i) general partnership; (ii) limited partnership; (iii) limited liability company (LLC); (iv) joint stock company (JSC); and (v) company limited by shares. JSCs are the only type of company that may become publicly listed. In addition, business may also be conducted in one of the following organizational forms: (i) sole trader; (ii) holding; (iii) branch; (iv) trade representative office; and (v) cooperative.

The procedure for incorporation of a company in Bulgaria does not differ when local or foreign persons participate in its establishment. There are no restrictions as to the size of the foreign participation in the capital of a Bulgarian company.

As of January 1, 2008, all types of commercial companies and all branches of foreign commercial companies are incorporated by way of registration in a uniform electronic commercial register. This is a one-stop-shop registration and it serves for all commercial, tax, social security, statistical, and other public purposes.

The LLC is the type of business organization most widely used among investors because of the minimum capital requirements and the simplicity of its corporate governance structure. The JSC is also widely used because of the lack of statutory restrictions on the transfer of shares and the absence of personal engagement of the shareholders in the operation of the company.

2.2 Securities Laws

Bulgarian law allows securities to be purchased by local or foreign investors on an equal footing through licensed investment intermediaries or investment companies.

Foreign individuals or legal entities are free to invest in equity of Bulgarian companies. There are no restrictions as to the foreign participation in the capital of a Bulgarian company and no prior authorizations are required for making, transforming, or liquidating an equity investment. Acquisitions by both foreign and local persons of shares in certain types of companies, such as insurance companies, banks, and investment intermediaries, may be subject to prior approval

by notification to the competent regulatory authorities. In addition to equity securities, the market in Bulgaria also offers corporate debt securities and government debt and compensatory instruments of a broad variety.

2.3 Tax Laws

2.3.1 Domestic Law

(a) Taxation of Direct Economic Activity

The profit from direct economic activity of local entities, or foreign entities acting through a Bulgarian branch or a permanent establishment in Bulgaria, is currently taxed at the rate of 10 percent.

(b) Taxation of Income from "Passive" Investment

In general, dividend income is not included in the tax base of an entity for profit tax purposes, and such income is taxed on the level of the payer of the income by withholding 5 percent of the dividend income distributed to shareholders out of taxed profits. In cases where withholding tax is due, double tax treaty relief might be available.

While all other "passive" income of local entities is included in their tax base for profit tax purposes, the law treats foreign persons' income differently. Certain types of income, such as income from (a) interest, (b) franchising and factoring fees, (c) sale of fixed or financial assets (save for capital gains from sale of certain types of stock), (d) royalties from licenses to use intellectual property rights, and (e) compensations under management agreements, are taxed at the rate of 10 percent.

As of January 1, 2007, in implementation of the EU law an exemption from withholding taxation on dividends paid by local companies to residents of EU member states was introduced. Such exemption applies in cases of minimum 15 percent shareholding for a minimum holding period of at least two years.

(c) Value-Added Tax (VAT)

In general, taxable transactions, import of goods, and taxable intra-community acquisitions of goods are subject to 20 percent VAT. Different tax rates (7 percent and 0 percent) are provided for certain specific types of transactions. For example, export transactions out of the EU territory are subject to 0 percent VAT.

All transactions for transfer of title over goods or services are VAT-taxable, except for a limited category of exempt transactions. Certain categories of supplies related to health care, social security and social care, education, sports or physical education, culture, religion, financial and insurance services, gambling, postal services and stamps, and non-profit transactions are tax exempt.

As a general rule, upon transfer of assets against remuneration VAT is due at the rate of 20 percent. A general exception is provided

for transfer of title over land and buildings, and transfer of limited rights *in rem*. Such items are deemed VAT-exempt.

2.3.2 Bilateral Treaties on the Avoidance of Double Taxation of Income and Property to Which Bulgaria Is a Party

Bulgaria has entered into bilateral treaties on the avoidance of double taxation of income and property with more than sixty countries. All treaties provide that the profits from direct economic activity realized through a permanent establishment or a branch in the other country shall be taxable only in the country where the foreign company has its permanent establishment. A comparative analysis of these treaties shows that for income from a number of sources, such treaties introduce rates of withholding tax not higher than 15 percent. Some treaties entitle an investor to a tax credit in its country of origin for taxes paid in Bulgaria on certain types of income.

2.4 Antitrust/Anticompetition Laws

In Bulgaria, all agreements between undertakings, decisions of associations of undertakings, as well as concerted practices of two or more undertakings, that have as their object or effect the prevention, restriction, or distortion of competition on the relevant market, are prohibited. In addition, a *de minimis* rule and certain block exemptions exist.

The law prohibits certain actions by companies with a monopoly or dominant position, insofar as such actions have as their object or effect the prevention, restriction, or distortion of competition and/or impairment of the interests of consumers. A presumption of dominance exists where an undertaking controls 35 percent or more of the relevant market.

Concentrations of commercial activities in Bulgaria are subject to the mandatory prior control of the regulatory authority (the Competition Protection Commission) unless they have a European Community dimension. The regulator has established a single turnover-based jurisdictional threshold, whereas merger control filing is mandatory if the aggregate turnover of the participants in a concentration on the Bulgarian market for the year preceding the concentration exceeds BGN 15 million (about EUR 7,669,100). Foreign-to-foreign mergers are also caught and a local corporate presence is not required. It will suffice if any (even just one) of the undertakings concerned exercises commercial activity in Bulgaria, including by way of direct sales or through agents or independent distributors.

Unfair competition, or any business activity that is inconsistent with fair business practices and harms or may harm the interests of competitors in their internal relations or in their relations with consumers, is also prohibited.

2.5 Labor and Employment Laws

Bulgaria has ratified certain International Labour Organization conventions and the European Social Charter. In recent years, the Bulgarian government has entered into a number of bilateral agreements with other countries with respect to employment relationships, particularly regarding employment of citizens of one country within the other based on the principle of reciprocity.

The Bulgarian labor laws set forth minimum standards for labor protection from which the parties to individual and collective labor contracts may deviate by mutual agreement. Thus, the labor law permits freedom of contract, but still there remain imperative legal norms that are not subject to negotiation by the parties in either individual or collective labor contracts. Examples include provisions on termination of the employment relationship, disciplinary liability of the employee, and financial liability of the employee and the employer.

Bulgarian labor law allows both employment contracts for indefinite duration and employment contracts for a fixed term. The contract for an indefinite duration is the most commonly used type of employment contract. As of the date of Bulgaria's accession to the EU (January 1, 2007), nationals of any EU member state are entitled to work in Bulgaria under the same conditions as Bulgarian citizens.

2.6 Environmental Laws

Bulgaria is a party to major multilateral treaties in the field of environmental protection including, *inter alia*, the United Nations Framework Convention on Climate Change and the Kyoto Protocol, the Convention on Long-range Transboundary Air Pollution, the Convention on Environmental Impact Assessment in a Transboundary Context, the Convention on the Transboundary Effects of Industrial Accidents, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, and the Convention on Biological Diversity. The national laws set forth detailed regulation of a number of environment-related matters, such as waste management, biodiversity, air purity, water and soil protection, etc.

2.7 Intellectual Property Laws

Bulgaria is a member state to a number of international treaties and conventions governing intellectual property, including the Berne Convention for the Protection of Literary and Artistic Works, the Hague Agreement Concerning the International Deposit of Industrial Designs, the Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration, the series of Classification Treaties, the Madrid Agreement Concerning the International

Registration of Marks and the Protocol thereto, as well as other treaties, administered by WIPO, with the exception of the Trademark Law Treaty. After becoming a member of the WTO on December 1, 1996, Bulgaria has become a party to the TRIPS Agreement.

National legislation in the area of intellectual property provides protection to a broad range of intellectual property rights. Trademark protection could be granted by registration of a sign comprising letters or digits, all types of drawings, figures, the shape of the article or its packaging, a combination of colors, and even sound signals, as well as a combination of said elements. Collective and certification marks and geographical indications could also be filed for registration.

Protection of works of literature, including science and technical literature and periodicals, and computer programs, musical works, scenic works, films and other audio-visual works, works of drawing including works of applied art, design, and folklore artistic handicrafts, etc., is also guaranteed by the law.

Bulgaria is a member of the Patent Cooperation Treaty, as well as a party to the European Patent Convention. Objects of protection under the Bulgarian patent laws are inventions and utility models. Industrial designs, new plant varieties, animal breeds, and topographies of integrated circuits are also subject to protection.

As of the date of Bulgaria's accession to the EU (January 1, 2007), all registered Community Trade Marks and Designs are effective on the Bulgarian territory, without any additional registration. In cases of conflict between a Community Trade Mark and a national trade mark registered in good faith and effective before the accession date, the national trade mark shall prevail.

2.8 Privacy and Data Security Laws

Processing of personal data is subject to Bulgarian legal requirements if carried out under the responsibility of (i) a data controller established in Bulgaria or (ii) a data controller that, while established outside the EU/EEA, for purposes of processing personal data makes use of equipment situated on the territory of Bulgaria, unless such equipment is used only for purposes of transit through the territory of Bulgaria. In such cases, the data controller needs to apply for registration with the data protection regulator prior to commencing processing of personal data.

Transfer of personal data abroad is subject to certain limitations. Personal data collected in Bulgaria may be freely transferred from Bulgaria to entities established within the EU/EEA. Subject to certain exceptions, personal data may be transferred to entities established outside the EU/EEA, after the data protection regulator has first ascertained the adequacy of personal data protection in the country in which the data importer is established.

2.9 Regulation of Foreign Investment

The principle of equal treatment and the principle of precedence of international treaties over domestic legislation, set forth in the Constitution, guarantee that foreign investors are treated in a nondiscriminatory way.

Bulgarian law is liberal in defining foreign investment. Equity in commercial companies, ownership over real estate, ownership over securities, loans to local persons under certain conditions, intellectual property rights, and rights under management contracts, among others, qualify as foreign investment. Furthermore, Bulgaria has entered into mutual promotion and protection of investment treaties with more than fifty countries.

Foreign investment is not subject to any special registration requirements, other than national statistics reporting requirements, which would apply to Bulgarian investors as well.

The currency control regime in Bulgaria is fully liberalized. The outflow of investment from Bulgaria abroad is also liberalized. Initial direct investments by domestic persons abroad as well as debt financing between foreign and domestic persons are subject only to a notification before the Bulgarian National Bank for statistical purposes. Thus, Bulgarian companies, including subsidiaries and branches of foreign companies, are able to export capital abroad and invest in other jurisdictions. Payment in foreign currency between companies registered and/or operating in Bulgaria is legally possible. Extraction, processing, and trade in valuables, precious stones, and metals is subject to a registration regime.

2.10 Other Potentially Applicable Laws and Regulations

2.10.1 Real Estate

Bulgarian law allows direct foreign ownership of real estate. Citizens of EU member states legally residing in the territory of Bulgaria and legal entities registered in EU member states may own land and buildings in Bulgaria. In compliance with the EU Accession Treaty of Bulgaria, Bulgaria restricts the acquisition of agricultural land, woods, and woodland by citizens of countries, members of the EU and the EEA, for a period of seven years as of the accession date (January 1, 2007).

Currently, the Constitution precludes foreign natural persons and legal entities who are not citizens of, or respectively registered in, EU or EEA member states, from owning land unless otherwise provided for in an international treaty to which Bulgaria is a party. However, such foreign persons and legal entities may become the owners of buildings without owning the land on which a building is constructed. Foreign persons may also acquire the "right to use" land or buildings, which is similar to a leasehold, for a limited term or as long as the "user" exists as an individual or entity. There is also no prohibition with respect to

a Bulgarian company, the entire capital of which is owned by one or more foreign persons/entities, owning land in Bulgaria.

2.10.2 Lending and Financial Leasing

Lending and leasing to local borrowers on an offshore basis is not prohibited. Financial lending is subject to a notification before the Bulgarian National Bank, whereas commercial lending for import/export and financial leasing are subject to declaring before the customs authorities.

2.10.3 Securitization

Foreign investors enjoy the same access to securitization vehicles as local investors do. Thus, debt may be secured with a mortgage on real estate, or a pledge on movable property, granted by the debtor or a third party. Bulgarian law recognizes three types of pledge: (i) possessory pledge, (ii) commercial possessory pledge, and (iii) registered pledge.

Account receivables, movables (except for ships and aircraft), shares, a floating pool of account receivables or of movable goods, industrial property rights, and commercial enterprise as a going concern, among others, may be subject to a registered pledge. In the event of a registered pledge, the debtor need not transfer possession of the pledged asset to the creditor or to a third party.

Certain categories of creditors, such as banks, investment intermediaries, insurance companies, or other financial institutions, may obtain as collateral (i) cash receivables credited to an account in any currency or (ii) certain financial instruments.

3. Negotiation Practices

3.1 Participants

The participants in a negotiation session would typically include senior officials of the parties with decision-making powers and their lawyers and occasionally financial advisors. Normally, the chief executive officers would not be involved in the day-to-day negotiations, but will be available for internal discussion and making a decision on potential deal-breakers, such as price, retention amount, etc.

Gender, age, class, race, and/or ethnicity would normally not affect who the participants are. The number of individuals involved in a negotiation session would depend on the type of business in question and the parties to the potential transaction, but generally there will be up to four or five individuals on either side. In negotiations on purely private transactions, the government would not participate. However, the government would play a key role as a participant in negotiations on privatization transactions and public-private partnership projects.

3.2 Timing

There is no clear-cut rule as to the timing (time of day, day of the week, and part of the year) of negotiations. In the case of forthcoming bank holidays (such as during Christmas time, Easter holidays, etc.), the parties would try to finalize the negotiations and sign the relevant transaction documents before such long holiday periods.

As a matter of practice, the timing of negotiations would depend on the schedule of the participants. In general, negotiations in which the government acts as a participant tend, for various reasons, to last longer and take the form of several sessions over a certain period of time. In comparison, in purely private negotiations the parties tend to have one to two negotiation sessions (notwithstanding how long these will last), at which they would try to decide on all major issues.

3.3 Negotiation Practices

3.3.1 Exclusivity Agreements

Following initial discussions, and with a preliminary investment decision in place, the parties would normally sign a letter of intent containing an exclusivity clause, or an exclusivity agreement in which the potential vendor undertakes not to hold, for a certain period of time, talks with other interested parties on the subject matter of the potential transaction.

Such an undertaking constitutes a valid obligation on the part of the potential vendor. However, failure to honor this undertaking will only trigger the vendor's contractual liability and will not result in the reversal of any transaction entered into with a third party. In the event of a privatization transaction, the exclusivity granted by the selling authority will be binding in accordance with the terms of the respective formal resolution of that authority.

3.3.2 Non-binding "Heads of Agreement" (Term Sheet)

Heads of agreement (term sheet) would usually serve as the basis for negotiations and outline the principal commercial terms of the transaction. Unless certain facts that affect the financial terms of the potential transaction emerge in the course of the due diligence investigations, the parties will usually continue to use the commercial terms in the final transaction documents.

3.3.3 Confidentiality Agreements

Confidentiality agreements are used to protect the vendor from any unauthorized disclosure of sensitive commercial, financial, or technical information that it delivers to potential buyers in the course of the due diligence investigations. Therefore, a confidentiality agreement would usually be entered into prior to commencement of the due

diligence investigations and the nondisclosure undertakings provided therein would normally apply also to advisers and consultants to the potential buyer.

Occasionally, a confidentiality agreement would not be entered into, but the representatives of the potential buyer (including the legal, financial, or technical advisors involved in the due diligence investigations) would be requested to provide a confidentiality statement.

3.3.4 Due Diligence

Prior to entering into negotiations, the potential buyer would usually conduct due diligence. The due diligence would, as a general rule, include legal due diligence and financial due diligence. Depending on the type of business involved, commercial due diligence and/or technical due diligence may also be conducted. While commercial due diligence might be conducted by senior officers of the potential buyer, legal, financial, and technical due diligence investigations would normally be carried out by external law and/or accounting firms particularly engaged for this purpose.

Due diligence investigations should provide the buyer with sufficient information to enable it to make a decision as to whether to proceed with the transaction, and if so, at what price. The findings from the due diligence investigations would normally affect the deal structure, as well as the contents of the transaction documents, particularly as regards conditions precedent, specific representations and warranties and indemnities, revisions to the existing internal corporate acts of the target, etc.

The documents subject to review are usually provided by the vendor in response to a due diligence questionnaire prepared by the buyer. Depending on the target and the deal structure, the due diligence investigations may be of full scope or limited to particular assets.

In larger-scale transactions, or in the case of a competitive bidding process, the documents would usually be placed in a data room, access to which is governed by data-room rules. Recently, virtual data rooms have become very common. Except with regard to privatization sales, the scope and the manner of disclosure of information and documents to the potential buyers are not determined by statute.

3.3.5 Language and Method of Conducting Negotiations

As a matter of practice, in cases involving a foreign participant, negotiations are commonly conducted in English. Lawyers employed by the established local law and accounting firms as well as by the offices of international law firms and the “big four” accounting firms in Bulgaria are usually fluent in English and other foreign languages. Translators might be involved in negotiations with the government, particularly in cases when representatives of various state and regulatory authorities participate in a negotiation session.

The negotiation process would usually not depend significantly on the type and size of the business involved. Still, the type and size might affect the negotiation process to the extent that the parties may need to discuss regulatory approvals eventually required for the effectuation of the deal, or merger control clearance procedure that may apply, depending on the deal structure and the turnover of the undertakings concerned, as well as other business-specific matters.

Whether the negotiation process would be broken up into stages would depend on the intentions and approach of the parties involved. As a matter of practice, negotiations in which the government acts as a participant may be broken up into several stages over time; as a result, such type of negotiation might progress slowly due to various reasons, such as the lack of clear strategy and objectives on the side of the government or the negotiation team on either side not including decision-makers. The opposite is likely to apply in purely private negotiations: the parties would prefer to close the deal as soon as practically possible, and thus tend to have one to two negotiation sessions (notwithstanding how long these will last), at which they would try to agree upon on all major issues.

In order for a negotiation to be successful, it is of utmost importance that the negotiating parties try to understand each other's interests and positions and do their best, to the extent this is reasonable, to accommodate such interests and positions in the transaction documents. To this end, the professional knowledge and experience, as well as flexibility and creativity, of the participants in the negotiation session turn out to be highly valuable negotiating skills.

3.4 Cultural, Ethical, and Religious Considerations

There do not seem to be any country-specific cultural, ethical, or religious considerations that can make a negotiation process in Bulgaria different from such a process in any other European country. Handshakes would normally be used by the participants to greet each other at the beginning of the negotiation session, as well as to say goodbye at the end of the session. In prolonged negotiations, the sense of humor of the participants would be important to give the parties short breaks from the serious talks.

3.5 Negotiating Online

Online communications technologies, including in particular e-mail and conference calls, are commonly used in international business negotiations involving participants from Bulgaria. Such technologies have turned out to be time and cost efficient, as they allow participants located in different places around the world to easily get in contact with each other.

In particular, in international business transactions drafts of the transaction documents would be exchanged between the negotiating parties by e-mail, and the parties would very often physically sit together only for one or two negotiation sessions to negotiate on the major terms of the transaction. Given the busy schedules and mobility of negotiation participants, the potential for growth of online negotiations seems extremely high in Bulgaria.

4. Contract Formation

4.1 Wording and Style

In general, transaction documents could be drafted either in the Bulgarian language or in a foreign language, depending on the preference of the negotiating parties. Usually, in international business negotiations involving participants from Bulgaria, transaction documents would be initially drafted and discussed in the language of the foreign partner (most often English). Simultaneously, the documents could be drafted also in the Bulgarian language, and finally executed in both the foreign language and the Bulgarian language (in such cases, the respective document would provide for which is the prevailing language). It is particularly advisable that a document is executed in both the Bulgarian language and the respective foreign language when such document is governed by Bulgarian law or the parties have chosen a Bulgarian forum for dispute resolution.

Alternatively, except for a limited number of cases when a special written form is required for the validity of a transaction, the documents may be executed in a foreign language only. Where a transaction, such as sale and purchase of real estate, must be executed in the form of a notary deed, the notary deed could be drafted and signed only in the Bulgarian language. Similarly, in cases when notary certification of the signatures of the parties is required by law for the validity of a transaction, such as transfer of shares from the capital of a local limited liability company, the document (for example, the share transfer agreement) should be drafted and signed in the Bulgarian language, or in a bilingual language version.

As a matter of practice, where the transaction documents have been executed in a foreign language only, all documents, or only excerpts thereof, could be translated in the Bulgarian language, particularly in cases when such documents, or excerpts thereof, need to be filed with Bulgarian regulatory authorities for merger clearance, regulatory approvals, or otherwise, as the case may be.

The typical structure or layout of a sale and purchase agreement would include (i) list of defined terms and general rules on interpretation, (ii) provisions describing the subject matter of the agreement, (iii) consideration and payment terms, (iv) steps to closing and actions pending closing, (v) closing procedures, (vi) representations

and warranties, (vii) indemnification provisions, (viii) termination conditions and remedies, and (ix) miscellaneous provisions, such as provisions on effective date, governing law, dispute resolution, notices, language, etc. Of course, the structure or layout of the agreement may differ, depending on the type of the agreement and the specifics of the transaction at hand.

4.2 Conditions and Defenses

4.2.1 General Comments

Bulgaria is a civil law country where freedom of contract exists and individuals are free to negotiate the terms of their contracts provided that the mandatory rules of Bulgarian law are observed.

4.2.2 Choice of Law

The Bulgarian law allows in principle the parties to an agreement with an international element (an international element would be present, *inter alia*, where one of the parties to the transaction is a foreign person or entity) to determine the law that shall govern their relationship. Consequently, the choice of foreign law as the governing law in respect of an agreement with an international element would be valid and enforceable under Bulgarian law.

Notwithstanding the choice of foreign law, however, pursuant to the general Bulgarian conflict of laws rules, the supermandatory provisions of Bulgarian law shall apply. Further, a provision of foreign applicable law shall not be applied where the consequences arising out of its application are apparently not compatible with the Bulgarian public order, the latter term understood to refer only to the most general, fundamental principles and ideas of the Bulgarian *ordre public*. Also, the parties' choice of foreign applicable law shall not affect the application of the supermandatory provisions of the country with which all elements of the contract are related at the time of the choice of applicable law.

A particular example of supermandatory rules of Bulgarian law can be found in the general rules of Bulgarian contract law governing tort and contractual liability. In particular: (i) Bulgarian contract law does not permit the waiver or exclusion of liability in tort (including negligent tort), and in any event such contractual provision is null and void under Bulgarian laws; and (ii) pursuant to Bulgarian contract law the waiver of liability for damages caused by willful breach of contractual obligations or due to gross negligence is null and void.

4.2.3 Terms or Conditions That Would Render a Contract Void or Voidable

The terms and conditions that would render a contract void or voidable are exhaustively provided for by the law.

Thus, a contract that contravenes or circumvents the law, or harms the good morals, shall be null and void. In addition, a contract with

impossible subject matter, a contract that is not executed in the legally required form for validity, as well as a fictitious contract, among other cases, shall be null and void. No statute of limitations applies to the cases when a contract is null and void.

Among other conditions stipulated for by the law, the following terms and conditions would render a contract voidable: A contract executed by a natural person who does not have full legal capacity is voidable. A mistake in the material characteristics of the subject matter of the contract is also a condition that would render a contract voidable. The right of a party to seek that a contract is voided is subject to a three-year statute of limitations.

In the event that a contract is declared null and void, or it is voided, either party should return to the counterparty everything that the former has received from the latter.

4.2.4 The Special Case of Online Agreements

E-commerce and e-governance are legally recognized in Bulgaria. Transactions, for the validity of which a special written form is required by the law, may not be concluded online. Also, documents, such as securities and bills of lading, the physical possession of which has legal consequences, may not take the form of electronic documents. The identity of the author and the contents of the electronic statement are secured by the electronic signature. Following the adoption of relevant legal framework, online agreements are becoming more and more popular in Bulgaria. E-governance in Bulgaria is still in its infancy stage, but following the entry into force in June 2008 of the relevant legal framework, it could reasonably be expected that it will gain prominence in the near future.

5. Resolving Disputes

The classical mechanisms of dispute resolution, namely litigation and arbitration, are most commonly used in Bulgaria.

5.1 The Judicial Process

Bulgarian courts resolving civil claims are the regional courts, district courts, appellate courts, and the Supreme Court of Cassation. These courts have general competency to adjudicate all cases except for those subjected to the special courts. Civil claims are subject to a three-instance civil process.

If a foreign person would decide to or have to submit its dispute to the jurisdiction of the local courts, such a litigating foreign person will enjoy the same rights and protections in court as a local party would.

In terms of effectiveness of the local civil court system as a mechanism for civil dispute resolution, the civil litigation proceedings have been so far rather long and inefficient. A new Code on Civil Procedure

entered into effect as of March 1, 2008 aims at making the court proceedings quicker and more efficient. This Code on Civil Procedure introduces more stringent requirements and imposes on the judges and the parties to the litigation proceedings short preclusive deadlines. In general, however, the Bulgarian civil court system in its current form is considered by foreign investors to fall behind the standards for effective mechanism for dispute resolution.

Under Bulgarian law the choice of foreign court for dispute resolution is allowed, provided that the subject matter of the dispute (i) does not fall within the exclusive competence of the Bulgarian courts; (ii) concerns pecuniary rights; and (iii) has an international element (for example, one of the litigants has his principal place of residence or business abroad). Within the exclusive competence of Bulgarian courts generally fall disputes related to (i) real estates located at the territory of the Republic of Bulgaria; (ii) intellectual property rights granted or registered in Bulgaria; and (iii) the corporate status of legal entities registered in Bulgaria.

5.2 Alternative Dispute Resolution Processes

Alternative dispute resolution (ADR) processes, and particularly arbitration, have gained much popularity in Bulgaria. Such rising popularity of ADR could be explained by the inefficiency and the big case-load of the civil courts, the perception that ADR imposes lower costs than litigation, the possibility of keeping the case confidential, and the ability to have greater control over the selection of the individual or individuals who will decide the dispute. Further, the civil courts may advise the parties to resort to mediation or ADR of another type before reviewing the case at an open court hearing. In matrimonial disputes, the civil courts are even obliged to advise the parties to conduct ADR of some type, usually mediation.

With respect to arbitration, Bulgarian law recognizes the rights of any two parties to enter into an arbitration agreement, thereby excluding the jurisdiction of Bulgarian state courts and submitting their potential dispute for resolution by an institutional or *ad hoc* court of arbitration. However, the choice of arbitral tribunal for dispute resolution is permitted provided that the subject matter of the dispute (i) is not related to real estate, labor relations, or alimony, and (ii) concerns pecuniary rights.

Any two parties may submit their dispute for resolution to an arbitration court with a place of arbitration in Bulgaria. Where one of the parties has its usual place of residence or seat or place of actual management abroad, the arbitration agreement may provide for arbitration in a place outside Bulgaria.

Mediation as an ADR method is explicitly recognized by the law. In mediation, a third party, the mediator, facilitates the resolution process, but does not impose a resolution on the parties. The

consents and the form of the agreement are determined by the parties themselves. The agreement reached is binding only on the parties and may not be set against third parties that have not participated in the mediation procedure. Only a natural person of full legal capacity, entered into a special registry kept with the Bulgarian Minister of Justice, may act as a mediator. Civil, commercial, labor, matrimonial, and administrative disputes related to consumers' rights, as well as other disputes between natural persons and/or legal entities, may be referred to mediation.

Online dispute resolution (ODR) is not explicitly governed by the law and is still not common in practice.

5.3 Recognition and Enforcement of Foreign Court Judgments and Arbitral Awards

5.3.1 Recognition and Enforcement of a Court Judgment Issued in an EU Member State

Recognition and enforcement in Bulgaria of a judgment issued in a member state is more easily recognized compared to recognition and enforcement of a judgment issued in a non-EU member state. In cases where recognition and enforcement of a judgment issued by a court of an EU member state is sought in Bulgaria, the Bulgarian courts and other authorities would apply the Council Regulation (EC) No. 44/2001 of December 22, 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Pursuant to this regulation, a judgment issued in an EU member state shall be recognized in Bulgaria without any special procedure being required and provided that a number of preconditions set forth in the regulation are complied with.

5.3.2 Recognition and Enforcement of a Judgment Issued in a Non-EU Member State

A judgment obtained from a court of competent jurisdiction in a non-EU member state will be recognized and enforceable in Bulgaria, provided that a number of preconditions set forth by the law are complied with. The recognition of a foreign judgment shall be made by the authority before which it has been submitted.

In a case where a declaration of the enforceability of a foreign judgment issued in a non-EU member state is sought, an application to that effect shall be submitted before the Sofia City Court, being the second-instance court for the capital city of Sofia. In proceedings for declaring the enforceability, the Sofia City Court shall not review the merits of the dispute. Once a foreign court decision is declared enforceable, it shall be subject to enforcement pursuant to the general rules of Bulgarian law. In particular, a writ of execution shall be issued by the court, in case the respondent fails to perform voluntarily.

5.3.3 Recognition and Enforcement of a Foreign Arbitral Award

The recognition and enforcement of foreign arbitral awards in Bulgaria are governed by the international treaties, including bilateral treaties, to which Bulgaria is a party. It is to be noted in particular that Bulgaria is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"). Where recognition and enforcement of a foreign arbitral award is governed by the New York Convention, pursuant to the applicable Bulgarian procedural rules the enforcement of the foreign arbitral award shall require an *exequatur* decision issued by the Sofia City Court. The Sofia City Court is not entitled to engage in review on the merits of the dispute and enforcement may be refused only on any of the grounds provided for in Article V of the New York Convention.

Where a bilateral treaty providing for mutual recognition and enforcement of arbitral awards is not in place between Bulgaria and the respective foreign country, and the respective foreign country is not a party to the New York Convention, recognition and enforcement of the foreign arbitral award shall be governed by the applicable rules of Bulgarian law. The enforcement of the foreign arbitral award shall require an *exequatur* decision of the Sofia City Court. The Sofia City Court shall not engage in discussion on the merits of the dispute and it may refuse enforcement only on the grounds explicitly provided for in the national law.

The court would issue a writ of execution based on the final and binding foreign arbitral award and the final and binding decision on declaring the enforceability of said award.

6. Conclusion

Since Bulgaria joined the European Union on January 1, 2007, Bulgarian law has been generally harmonized with the *acquis communautaire*. The legal framework constantly changes to accommodate new technologies and new types of relationships.

As a matter of practice, international business negotiations involving participants from Bulgaria follow generally established models and are up to the international standards.

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