

INVESTMENT LEGISLATION

III

III.1. Legal Framework

state, the municipalities or other Bulgarian corporate entities, with time remaining to due date not less than 6 months; . credits, including in the form of financial leasing for a period not shorter than 12 months; . intellectual property – subject to copyright and its related rights, patentable inventions, utility models, trademarks, service marks and industrial design; . rights under concession contracts and contracts for commissioning of management. Bilateral treaties on promotion and mutual protection of foreign investment to which Bulgaria is a party may provide for a wider definition of foreign investment.

III.1.1. Laws and Regulations . Encouragement of Investments Act (promulgated in State Gazette, issue 37 of 2004); . Rules on the Enforcement of the Encouragement of Investments Act (promulgated in State Gazette, issue 74 of 2004);

III.1.2. International Treaties (bilateral and multilateral) . Convention for the establishment of Multilateral Investment Guarantee Agency; .
- Convention for the establishment of International Center for Settlement of Investment Disputes;
- Convention for the establishment of the World trade organization;
- Bilateral investment promotion and protection treaties;
- Double tax treaties.

III.2. Legal definitions

III.2.1. Foreign Investors

Under the Encouragement of Investments Act, foreign investors are:
- legal persons which are not registered in Bulgaria;
- partnerships which are not legal persons and are registered abroad;
- foreigners with permanent residence abroad.

III.2.2. Definitions and Forms of Investment

Foreign investment is any investment or increase of investment of foreign persons or their branches in:
- stock or shares of trade companies;
- title to buildings and limited property rights over real estates;
- title and limited property rights over goods and chattels, having the nature of non-current tangible assets;
- title to unbundled parts of commercial companies with more than 50 per cent state or municipal interest

in their capital within the meaning of the Privatization and Post-Privatization Control Act;
- securities, including bonds and treasury bills, as well as instruments derivative there from, issued by the

III.3. General Preview

III.3.1. Legal and International Guarantees for Foreign Investment

a) National Treatment

The Bulgarian Constitution and the Encouragement of Investment Act provide national treatment to foreign investors which means that foreign investors are entitled to perform economic activity in the country under the same provisions applicable to Bulgarian investors except where otherwise is provided by law. In particular this principle covers the whole range of economic and legal forms of activities for accomplishing entrepreneurial businesses. The national treatment to foreign investors includes the participation in the process of Privatization and acquisition of shares, debentures, treasury bonds and other kinds of securities.

b) Most Favored Nation Status

Bulgaria is signatory to a system of bilateral treaties on promotion and mutual protection of foreign investment which provide, further to the national treatment regime, for the most favored nation status of the investment made by entities and individuals from one of the contracting countries on the territory of the other contracting country.

c) Priority of International Treaties

When international treaties to which Bulgaria is a party provide for more favorable terms and conditions for foreign investment, these terms have precedence over the local rules. This guiding principle finds expression in the treaties for protection of foreign investments and especially in the agreements for abstaining of double taxation regulations. The international treaties on mutual protection of foreign investment always include an extended concept of a foreign direct investment, and the application of this concept shall be prior to the Bulgarian legislation. In banks, non-banking financial institutions, insurance companies, investment companies and companies with special investment purposes, managing companies, pension funds, health insurance companies, gambling companies and investments made under privatization agreements. The measures are differentiated according to the class of investments, as the latter are grouped in three classes, depending on the investment project value. The value thresholds are set forth in the Rules on the Enforcement of the Encouragement of Investments Act as follows:

1. first class - investments over BGN 70 million (about 36 million Euro)
2. second class - investments from BGN 40 to 70 million (from 20 to 36 million Euro)
3. third class - investments from BGN 10 to 40 million (from 5 to 20 million Euro)

Generic preference applied to all classes of investments is shortening the time limits for provision of administrative services to certified investors for

realization of their investment plans. On presentation of a certificate for investment class, central and territorial executive authorities, and local self-government authorities shall provide administrative services within **time limits by one third shorter** than the ones provided for in the legislation.

For **3rd-class** investments Properties Guide Ltd. will provide **information services** to investors as follows:

- **pre-developed information materials**; information about **potential partners** in the country;
- information about **all administrative procedures** concerning the implementation of the investment project.

For **2nd-class** investments Properties-Guide Agency will provide investors with:

- **information services** as mentioned above;
- **individual administrative servicing** with respect to all central and regional bodies of the Executive. Investors will have the opportunity to **authorize officials of the Agency** to obtain from the corresponding competent bodies on investors' behalf and for investors' account any documents necessary for implementation of the particular investment project as may be required under the existing legislation.

For **1st-class** investments, the Properties Guide Ltd. will assist investors as follows:

- individual informational and administrative services
- **assistance with real estate "titling" issues infrastructure building assistance**

d) Legal Guarantees Against Adverse Changes in the Law

The Law on Foreign Investments stipulates the principle that foreign investment made prior to the adoption of amendments in law imposing statutory restrictions only with regards to foreign investments, shall not be affected by these restrictions.

The sense of the law provides for that foreign investments shall be guaranteed against subsequent legislative changes.

e) Protection against expropriation

The Bulgarian Constitution allows forcible expropriation of property in the name of the state or for municipal needs only if effected by virtue of a law provided that these needs cannot otherwise be met, and after a fair compensation has been ensured in advance.

Expropriation under Bulgarian Law is governed by the Law on State Property and Law on Municipal Property.

III.3.2. Investment incentives under the Encouraging of Investments Act

The new Encouraging of Investments Act regulates the terms and procedures of investing in Bulgaria. The law **equally applies to Bulgarian and foreign investors**.

According to the new law, the Minister of economy is the leading executive authority that shall perform the

state policy in the investment sphere. In the implementation of this activity the Ministry of economy prepares a strategy for encouraging investment in cooperation with other authorities of the executive power. In compliance with this strategy and the regional development strategies regional Governors shall develop investment encouragement programs for the respective region and coordinate their implementation.

The Encouragement of Investments Act sets forth preferential treatment measures for investments meeting certain criteria specified in the said law as follows:

- the investment to be in fixed assets acquisition with the purpose of creating new or enlarging or modernizing existing production of goods and/or services;
- new jobs to be created;
- the investment project to be implemented within 3 years;

The measures, however, do not apply to investments On the request of the 1st-category investor the Agency may propose to the corresponding authorities to transfer ownership rights or establish a limited ownership right over real estate (private - state or municipal property) without a tender, free of charge or on preferential prices.

Where the technical infrastructure networks and facilities of the transport, water-supply, sewerage, communication, and other systems are public property, their construction will be financed from the state budget, or by the corresponding municipality on a decision by the Municipal Council; in all other cases they shall be for account of the managing operation company.

III.3.3. Terms and procedure for certification.

The preferential treatment measures under the new law are applied only to certificated investors. The certifying procedure and the requirements to the investment plan are set forth in the Rules on the Enforcement of the Act. According to the latter rules certificates for the respective class of investment are issued by the Executive Director of the Properties Guide Ltd. or thereby authorized official as based on investor Request. The following **documents** must come **enclosed with the Request**:

1. investment plan;
2. certificate of incorporation or registration (if the Requester is a corporate entity, a sole-trader or a branch of a foreign person) or a copy of identification document (if the Requester is a natural person);
3. annual financial reports for the past three years, auditor verified, with auditor reports thereon. A branch must additionally enclose the annual financial reports for the past three years of the foreign person, auditor verified in compliance with its national legislation, with auditor reports thereon. This requirement is not applied if the Requester is a natural person;
4. investment projects carried out so far, if any;
5. documents to certify capacity for project financing;
6. declaration for the origin of the financial resources

in the form set by the Executive Director;
7. document to certify absence of liquid and due tax liabilities and mandatory security contributions as at the moment of filing the Request in compliance with the respective national legislation.

The Rules on the Enforcement of the Encouraging of Investments Act also set forth some binding requirements in respect to the **contents of the investment plan**, which must include the following requisites:

- identification data of the investor presented pursuant to its national legislation. If the Requester is a branch of a foreign person, the identification data for the branch and the foreign person must be indicated.

If the Requester is a natural person, its personal data must be specified;

- purpose of investment pursuant to Art. 12 of the Encouragement of Investment Act i.e. if the investment is for the purpose of the creation of new or expanding or modernizing already existing enterprise;

- cash amounts to be invested in long-term fixed assets acquisition;

- itemization of expected profits and losses;

- expected cash flow breakdown;

- sources of financing;

- expected staff number, as well as its expected increase in the process of its performance, the requirements for personnel's professional qualification, and expected spending on staff qualification training and re-training programs;

- determining the place where the enterprise will be built or production equipment localized;

- type of equipment and facilities, as well as size in square meters of the area where they will be built: manufacturing facility, store houses, administrative buildings, etc.;

- information regarding the planned construction of new buildings, leasing, or buying existing ones;

- stages in the performance of the investment plan and the cash resources to be allocated for each stage.

An investor Request filed, the Executive Director, or thereby authorized official appoints the Agency staff to examine the investment plan and thereto enclosed documents. In virtue of the examination the authorized persons prepare an opinion on the investment conformity with the terms and conditions of

the Encouragement of Investment Act and of The Rules on the Enforcement of the act. In virtue of the opinion thus prepared, the Executive Director, or thereby authorized official, issues a certificate for investment class within one month of the filing of the Request.

The Executive Director, or thereby authorized official, **refuses to issue a certificate** in case:

1. All required documents have not been enclosed with the Request or presented later on after giving notice to the Requester by the Agency staff ;

2. The investment does not meet the criteria specified in the law (Art.12 of EIA) or the investment value is under the minimum threshold set forth in the Rules on the Enforcement of the law (Art. 2 of the REEIA).

III.4. Bulgarian Foreign Investment Agency

The Encouragement of Investment Act transforms the Bulgarian Foreign Investment Agency into executive agency under the power of the Ministry of the economy. The basic function of the Agency after the transformation shall be to support the Minister of the economy in the implementation of the investment encouraging state policy. In this connection the Agency shall:

- provide information and individual administrative services to the investors after the issuance of a certificate for investment category by the director of the Agency or by a state servant authorized by him;

- carry out marketing and other studies for the account of the investors;

- carry out investment marketing by presenting and advertising abroad the investment opportunities in the country;

- prepare an annual report on the investments in the country and on the conditions for their encouragement, which report shall be submitted to the Council of Ministers via the Minister of Economy.

A key function of the Agency is to assist companies in the investment process. It provides to prospective investors up-dated information on the investment process in the country, legal advice, searching for suitable Bulgarian partners and co-ordination of the investment policy with other institutions.

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