

PERMITS AND LICENSES ACCORDING TO SPECIAL LEGISLATION

XII.

XII.1. Legal Framework

Permits and licenses for performance of specific industrial activities are governed by general legislation applicable to regulatory and controlling activity of regulatory authorities, as well as by special legislation applicable to specific industry areas. The general legal framework of regulatory and controlling activity of regulatory authorities is set forth in the Constitution of the Republic of Bulgaria (promulgated in State Gazette, Issue 56 of 1991, as subsequently amended), the Administrative Procedure Act (promulgated in State Gazette, Issue 90 of 1979, as subsequently amended), the Administrative Breaches and Sanctions Act (promulgated in State Gazette, Issue 92 of 1969, as subsequently amended) and the Restricting Administrative Regulation and Administrative Control over Industrial Activity Act (promulgated in State Gazette, Issue 55 of 2003 as subsequently amended, hereinafter referred to as the “Administrative Regulation Act”). The legal framework of specific industry areas is set forth in special laws and the secondary legislation on their implementation.

XII.2. Legal Definitions

Special legislation often sets forth definitions of particular industrial activities. For example, the Telecommunications Act defines the terms “communications” and “communications service”, etc. Special legislation may further define objectives and principles of regulation, powers of the regulatory authorities, special procedures to be followed by regulatory authorities, such as public hearing or consultation procedures, etc.

XII.3. General Review

The Constitution of Bulgaria proclaims the principle of free economic initiative. The Administrative Regulation Act, effective as of 18 December 2003, aims at facilitating and encouraging economic activity by restricting administrative regulation and control exercised by the state and municipal regulatory authorities. The said law sets forth the general principle that licensing or registration regimes for performing an industrial activity, or permit, certification or notification required for performing a specific transaction or action, may be established only by law. Further, any requirements for starting and performing a particular industrial activity, as well as for executing a particular transaction or action, shall also be set forth by law. The Administrative Regulation Act enlists in an exhaustive way the industry areas, which may be subject to a licensing regime due to posing higher risk for the national security or public order, the environment or the rights of citizens or legal entities. In addition, a licensing regime may only be introduced

for industrial activities related to sites which are exclusive state property or, over which the State exercises sovereign rights pursuant to the Constitution. The rights under a license may not be transferred, or assigned, to third parties. Further, the Administrative Regulation Act introduced the principle of implicit consent, i.e. where an application is submitted for issuance of a permission or, a certificate, for performance of a single transaction or action, and the competent authority has not ruled on such application within a period set forth by the law, the consent of the respective authority shall be deemed given, unless otherwise provided for by law. Under Bulgarian law special permits and licenses are generally granted by way of a decision of the competent regulatory authority. Such decisions of regulatory authorities represent administrative acts, which may be (i) individual administrative acts, granting rights or, assigning obligations, or affecting the rights or obligations of individuals, for example an individual license, or (ii) general administrative acts, granting rights or assigning obligations to an undefined scope of addressees, for example a general license.

As a general rule, decisions of regulatory authorities granting or, refusing to grant, special permits or licenses are subject to appeal before the Supreme Administrative Court under the terms and procedure of the Supreme Administrative Court Act. Herein, we have provided a summary of the regulatory regime of only some of the country’s main industry areas, and in particular banking, insurance, securities trading, energy, telecommunications, audio-visual sector, and tobacco industry.

XII.4. Permits and Licenses According to Special Legislation. Procedure - Competent Authority, Documents Required, Terms, Fees

XII.4.1. Banking

The legal framework of banking is set forth in the Banks Act (promulgated in State Gazette, Issue 52 of 1997, as subsequently amended), the Commerce Act (promulgated in State Gazette, Issue 48 of 1991, as subsequently amended), the Bulgarian National Bank Act (promulgated in State Gazette, Issue 46 of 1997), the Bank Insolvency Act (promulgated in State Gazette, Issue 92 of 2002, as subsequently amended), as well as in the numerous regulations on their implementation. Banking activities may be conducted only by a bank registered in Bulgaria or by a Bulgarian branch of a foreign bank. The law treats local and foreign ownership of banks on an equal footing. Only joint stock companies may register as banks, as the minimum share capital of a bank is set at BGN 10 million. A banking license is granted by the Bulgarian National Bank, pursuant to detailed procedure provided for by the law. The legal regime of banking is further discussed in Section XV.2 of this brochure.

XII.4.2. Insurance

Insurance industry area is governed by the

Insurance Act (promulgated in State Gazette, Issue 86 of 1996, as subsequently amended), the Financial Supervision Commission Act (promulgated in State Gazette, Issue 8 of 2003, as subsequently amended, "FSCA"), and the regulations on their implementation. Insurance activities may be conducted only by an insurance company registered in Bulgaria or by a Bulgarian branch of a foreign insurance company, which have obtained a license for insurance activity. Only joint stock companies may register as insurance companies. The minimum share capital of a local insurance company and the minimum deposit of a branch of a foreign insurance company shall be as follows: (i) for life and accident insurance – BGN 2 million; (ii) for property insurance – BGN 3 million; (iii) for reinsurance – BGN 4 million; and (iv) for insurance and reinsurance – BGN 4 million. Only monetary contributions can be made against shares subscribed from the capital of a local insurance company. The law treats local and foreign ownership of insurance companies on an equal footing. Licenses for insurance activity are granted pursuant to a detailed procedure and upon submission of required documents provided for by the law, by the Financial Supervision Commission (FSC), a specialized state body for regulation and supervision over the activity of investment intermediaries and public companies, insurance companies and additional social security companies. The FSC is to rule on the application within 2 months as of submission of a proposal by its Deputy-Chairman, head of Insurance Supervision Department. The fees for issuance of licenses are provided for in a tariff, representing an appendix to Art. 27(2) of the FSCA, and vary according to the type of the insurance activity.

XII.4.3. Securities Trading

Securities trading is governed by the Public Offering of Securities Act (promulgated in State Gazette, Issue 114 of 1999, as subsequently amended, "POSA"), the FSCA and numerous regulations on their implementation. Securities trading as a dealer or a broker may be carried out only by licensed investment intermediaries. Investment intermediary capacity may be acquired by a Bulgarian joint stock company or a limited liability company, or a branch of a foreign legal entity authorized to perform securities trading under its national law and provided that the respective national securities market controlling authority exercises control over it on a consolidated basis. The share capital of an investment intermediary must at any time equal at least BGN 250,000 (two hundred and fifty thousand). The law treats local and foreign ownership of investment intermediaries on an equal footing. A license for investment intermediary activities is granted by the FSC pursuant to a procedure and upon submission of required documents, provided for by the POSA. The FSC shall rule on the application within 3 months as of its receipt, and if additional information is requested - within 1 month as of its receipt. The fees for issuance of licenses are provided for in a tariff, representing an appendix to Art. 27(2) of

the FSCA, and differ for activity only in the country and abroad.

Investment intermediary activities may also be carried out by Bulgarian banks or, Bulgarian branches of foreign banks, if the banking license issued by the Bulgarian National Bank provides for securities trading. The legal regime of securities trading is further discussed in Section XV of this brochure.

XII.4.4. Energy

The energy sector is governed by the Energy Act (promulgated in State Gazette, Issue 107 of 2003, as subsequently amended), the Energy Efficiency Act (promulgated in State Gazette, Issue 18 of 2004, as subsequently amended) and the regulations on their implementation. Pursuant to the Energy Act, the activities subject to licensing regime are: (i) production of electricity and/or thermal energy; (ii) transmission of electricity or thermal energy or natural gas, as only one license for the territory of the country shall be issued for transmission of electricity or natural gas, and one license for one detached area - for transmission of thermal energy; (iii) distribution of electricity or natural gas - as only one license shall be issued for one detached area; (iv) storage of natural gas; (v) trade in electricity; (vi) organizing a regulated electricity market - only one license for the territory of the country; (vii) public procurement of electricity or natural gas - only one license for the territory of the country; (viii) public supply of electricity or natural gas - only one license shall be issued for one detached area; and (ix) transit transmission of natural gas. Licenses are issued by the State Commission on Energy Regulation ("SCER"), being the independent specialized state regulatory body in the energy sector, pursuant to a detailed procedure and upon submission of required documents provided for by the law. Only legal entities registered under the Bulgarian Commerce Act may apply for a license. Licenses are issued for a term of up to 35 years with a possibility of extension for another up to 35-year period. The SCER shall issue or, refuse to issue, a license within 3 months as of submission of the application. Licensed entities shall pay (i) initial license fee - for issuance or, amendment, of a license; and (ii) annual license fees - for the regulatory activity of the SCER. The amounts of licensee fees are to be set forth in a tariff which pursuant to the Energy Act is to be approved by the Council of Ministers upon proposal of the SCER.

XII.4.5. Telecommunications

The telecommunications sector is governed by the Telecommunications Act (promulgated in State Gazette, Issue 88 of 2003, "TA") and the secondary legislation on its implementation. Pursuant to the TA public telecoms activities may be provided: (i) freely, i.e. without any licensing or registration (such services are listed in the TA and include *inter alia* access to Internet); (ii) based on registration under a general license (such services are listed in the TA and include *inter alia* services provided (a) via telecoms network or radio equipment using radio frequency spectrum for

common use; or (b) via a public telecoms network without using a scarce resource, whereas the latter is legally defined to include numbers from the National Numbering Plan, the radio frequency spectrum and the positions of geo-stationary orbit, allocated for Bulgaria by virtue of international treaties); and (iii) based on an individual license (such services are listed in the TA and include (a) telecoms services provided by using individually allocated scarce resource; (b) fixed voice telephone services and/or universal telecoms service; or (c) providing leased lines, including international leased lines).

Licenses are issued, and registrations under a general license are performed, by the Communications Regulation Commission ("CRC"), being the independent specialized state regulatory body in the telecommunications sector, pursuant to procedures and upon submission of required documents, set forth in the TA. Where a scarce resource is used, individual licenses are granted after holding of an auction or a tender, except for cases enumerated in the TA. The CRC shall rule on an application for an individual license within 6 weeks as of its submission, as the term may be prolonged in cases of needed international co-ordination. Individual licenses are granted for up to 20 years with a possibility for extension. The CRC shall register eligible applicants under a general license within 30 days as of the application. As a general rule, fees payable by undertakings providing telecoms registrations are of unlimited time. The TA provides for license fees and registration services, as well as for fees for using scarce resources (radio frequencies and numbering capacity). The amount and the terms and methods of payment of the fees are further specified in the Tariff for the Fees Collected by the CRC under the TA.

XII.4.6. Audio-visual Sector

The audio-visual sector is governed separately from the telecoms sector. The legal framework is set forth in the Radio and Television Act (promulgated in State Gazette, Issue 138 of 1998, as subsequently amended, "RTA") and the secondary legislation on its implementation. Depending on the means used for broadcasting, radio and/or television activity may be carried out based on a license or a registration. Radio and/or television activity using available and/or building, maintaining and using new terrestrial telecoms networks is carried out on grounds of a license for radio and/or television activity, issued by the Council for Electronic Media ("CEM"), being the independent specialized state body for regulation of audio-visual activity and supervision over the broadcasters, and an individual license for telecoms activity, issued by the CRC (see Section XII.4.5 above). Broadcasting through cable and satellite is carried out on grounds of a registration. Only sole traders and legal entities, registered under Bulgarian law, may apply for a license for radio and television activity. Licenses are granted by the CEM after holding an auction, as the overall procedure may take

5 to 8 months. Licenses are issued for a term of up to 15 years with a possibility for extension, but in total not longer than 25 years. The CEM shall register eligible applicants within 14 days as of the application, as registrations are of unlimited term. The RTA provides for license and registration fees, as the amounts and the manner of imposition of such fees are further specified in the Tariff on the Fees for Radio and Television Activity.

XII.4.7. Tobacco Industry

Tobacco industry is governed by the Tobacco and Tobacco Products Act (promulgated in State Gazette, Issue 101 of 1993, as subsequently amended, "TTPA"), and the secondary legislation on its implementation. The TTPA governs a large scope of activities, related to tobacco industry, including growing, qualifying, purchase, industrial processing and trading in tobacco, as well as production and trading in tobacco products. Most of these activities could only be performed on the grounds of a license or a special registration. Thus, tobacco growers may only be persons entered into a public registry kept with the respective municipality and who have been allocated a tobacco growing quota. Purchase of raw tobacco may only be carried out by entities registered under the Commerce Act (i.e. a Bulgarian sole trader or a commercial company) or under the Co-operatives Act (i.e. a co-operative), holding a permission granted by the Council of Ministers to carry out industrial processing of tobacco. Industrial processing of tobacco and trade in processed tobacco at the local market may only be carried out by persons who have received a permission for industrial processing of tobacco as explained in the preceding sentence. Tobacco products, legally defined as cigarettes, cigars, papyruses, cigarillos, tobacco for pipe, chewing and sniffing tobacco, may only be produced by entities registered under the Commerce Act (i.e. a Bulgarian sole trader or a commercial company) or under the Co-operatives Act (i.e. a co-operative), which have received permission for production of tobacco products granted by the Council of Ministers. Trade at the local market in tobacco products, whether locally produced or imported, may be carried out by merchants who have received a permission for sale of tobacco products issued under terms and following a procedure determined by the Council of Ministers. Permits for retail trade in tobacco products are granted by the mayor of the respective municipality where the commercial premises are located.

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List of the Industry Areas that May be Subject to a Licensing Regime¹⁵

1. Banking activities;
2. Insurance activity and activity as an insurance broker;
3. Activity as an organized securities market, an or a managing company, as well as a special purpose company limited by shares;
4. Carrying out of supplementary voluntary and mandatory pension insurance and carrying out of activity as an actuary to pension insurance companies;
5. Carrying out of activities related to voluntary unemployment and/or professional qualification social security;
6. Carrying out of activities related to health security;
7. Carrying out of activity as a stock exchange;
8. Carrying out of activity as a customs agent;
9. Carrying out of duty-free trade;
10. Carrying out of gambling activity;
11. Production, transportation, trade and export of weapons and explosives, as well as of certain goods and technologies of possible dual use;
12. Carrying out of private bodyguard activities;
13. Design, production, import, trade, repair, installation and maintenance of anti-fire equipment, and performing fire precautions activities;
14. Production of compact disks (optical disks) and/or matrix therefor;
15. Carrying out of activity as a health institution for hospital care or a social care institution;
16. Conducting clinical tests, production, trade or import of medicines and medical products;
17. Production, processing, transportation, trade, import, export and storage of drugs for medicinal and veterinary purposes;
18. Industrial processing of tobacco and production of tobacco products;
19. Carrying out of technical supervision over risky facilities and checks over measurement devices;
20. Production of spirits;
21. Production and preparation of seeds from agricultural plants, testing different sorts of agricultural plants designated for production of seeds, distribution and trade in seeds which deviate from the minimum quality requirements;
22. Carrying out activity as a public warehouse for grain;
23. Extraction, processing and storage of sperm and ova, transplantation of embryos in institutions for artificial insemination and carrying out an activity as a breeding association for selection of production within the system of veterinary medicine;
24. Production of veterinary medicine products and active ingredients therefor, wholesale and retail trade in veterinary products;
25. Fishing for industrial purposes;
26. Carrying out trade in scraps from ferrous and non-ferrous metals;
27. Activities in the field of energy;
28. Carrying out of activities related to use of

- nuclear facilities and nuclear material and other sources of ionizing radiation;
 29. Exercising construction supervision in construction activities;
 30. Carrying out railway transportation of passengers and/or cargo and checking the technical condition of the vehicles and the professional qualification of the respective personnel;
 31. Carrying out public transportation, including international transportation, of passengers and cargo by cars;
 32. Carrying out checks of the technical condition of vehicles, repair and technical service of such vehicles;
 33. Carrying out universal post service or part of it on the territory of Bulgaria;
 34. Carrying out of an activity as an airport enterprise, terrestrial service operator or aircraft carrier;
 35. Technical service and repair of aircraft equipment;
 36. Production, import and/or distribution of radio transmission devices for civil needs;
 37. Radio and television activity;
 38. Telecommunications activities.
1. The major rate applies if the recipient holds directly at least US\$40,000 (or equivalent in the respective national currency) of the capital of the company paying the dividend.
 2. This rate applies to all royalties except those paid for the use of or right to use industrial, commercial and scientific equipment, for which the rate is 7%.
 3. The withholding tax rate on royalties is 10%. However, under the provisions of the treaty, 10% rate would not apply on royalties paid to Cypriot resident/company by Bulgarian resident/company in case at least 25% of Cypriot resident/company assets are possessed (directly or indirectly) by Bulgarian resident/company. Hence, such royalties would be subject to 15% withholding tax.

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