

SET UP OF COMPANIES

II

II.1. Legal Framework

The basic law regulating the types, corporate structure and operations of companies and the procedure of incorporation is the Commerce Act (promulgated in State Gazette No. 48 of 1991, as subsequently amended). Other laws related to specific corporate matters include the Corporate Income Tax Act 1997, VAT Act 1998, Statistics Act 1999, Social Security Code 1999, Protection of Personal Data Act 2002, etc.

II.2. General Review

The types of commercial companies are exhaustively provided for in the Commerce Act and an investor may only choose among the list. In particular, the types of commercial companies are:

- general partnership (SD);
- limited partnership (KD);
- partnership limited by shares (KDA);
- limited liability company (OOD) or sole-owner limited liability company (EOOD);
- joint-stock company (AD) or sole-owner joint stock company (EAD).

In addition to the 5 types of commercial companies under the Commerce Act as enumerated above, other forms of business organizations recognized under Bulgarian law are:

- sole trader (ET);
- joint-venture (may be in the form of any type of commercial company under the Commerce Act);
- holding;
- branch;
- trade representative office;
- public company; and
- co-operative.

Under Bulgarian law, the sole trader is not a legal entity separate from its owner, who is fully liable to the creditors of the sole trader with all his/her personal assets. The general partnership is a legal entity separate from its owners, but the latter have unlimited liability and are exposed to the creditors of the company with all of their personal assets. The limited liability company and the joint stock company are legal entities separate from their shareholders, and the liability exposure is limited to the company's assets, not extending to the assets owned by the shareholders. The shareholders may be held liable only to the amount of their contribution to the company's capital. In the third place, the limited partnership and the partnership limited by shares comprise of general partners, to which unlimited liability applies, and limited partners, to which the separation of company's and personal liability applies. The regime for establishing a business organization is one and the same for local and foreign investors

and foreign investors do not have to register with any governmental authority prior to establishment of a company. There are no restrictions as to the percentage of foreign capital in a company.

II .3. Registration Procedures

Under Bulgarian law commercial companies are incorporated by way of registration into the commercial register with the respective district court according to the place where the company's seat is to be located.

The registration procedure takes normally one to two weeks following the date of filing of the required documents.

As a general rule, the subject matter of activity of a company is registered with the court, but a company may conduct all types of business activities not prohibited by law and as long as the company has acquired any licenses, permits or registrations, which may be required for a particular type of business activity under special laws and regulations. For example, such activities include *inter alia* banking, insurance, gambling, brokerage, hospital services, trade in medicines, production and trade in tobacco etc.

A branch is incorporated also by way of registration into the commercial register with the respective district court according to the place where its seat is to be located. A trade representative office is incorporated by way of registration into the commercial register with the BCCI.

Following registration in court or, in the BCCI respectively, commercial companies, as well as branches and trade representative offices, shall be registered with the National Statistics Institute, BULSTAT Register (within 3 days), the National Social Security Institute (within 7 days) and the local tax authorities (within 14 days).

II.4. Most Commonly Used Forms of Business Organizations

The most commonly used forms of business organizations for establishing foreign corporate presence in Bulgaria are the limited liability company, the joint stock company, the branch and the trade representative office.

II.4.1. Limited Liability Company (OOD)

This type of company organization is the most widely used among investors because of the minimum capital requirements, the simplicity of the corporate governance system and the less administrative procedures for its operation. However, there are statutory required qualified majorities or unanimity for transfer of shares, acceptance of new shareholders and capital increase or decrease, which may decrease the flexibility of the company's operations.

Two or more shareholders, or only one in the case of sole owner limited liability company (EOOD), may establish a limited liability company, or a sole owner limited liability company respectively. Shareholders in an OOD may be Bulgarian or foreign individuals or

legal entities. The minimum content of the articles of association is provided for in the Commerce Act. The bodies of corporate governance in an OOD are the general meeting of the shareholders and the manager(s). The manager is empowered by law to manage and represent the company before third parties, as if more than one manager is appointed, the managers shall manage and represent the company individually, unless the articles of association provide otherwise. In an EOOD, the sole owner of the capital exercises the powers of the general meeting of the shareholders and it manages and represents the company before third parties, unless a manager is appointed by him. The minimum required capital for a limited liability company is BGN 5,000 (five thousand). It must be divided into shares of value not less than BGN 10 (ten), as any higher value must be divisible by 100. Shares are not materialized and are not tradable instruments. They may be transferred and succeeded, as transfer between shareholders is free, while transfer of shares to third parties requires a resolution of the general meeting of the shareholders. As a condition precedent to court registration, the company shall have adopted its articles of association, the manager shall have been appointed and at least 70% (seventy percent) of the capital shall have been paid in. The payment of the remaining part may be deferred in time, but not longer than two years as of the registration of the company. The state fees for registering of an OOD, or an EOOD respectively, amount approximately to BGN 300 (three hundred).

II.4.2. Joint Stock Company (AD)

The joint-stock company is another widely used type of business organization. It is preferred 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. However, the corporate governance system is more complicated than the one of the OOD and the statutory procedures for convening and holding of the general meeting of the shareholders are more onerous. In addition, the Commerce Act sets forth mandatory requirements to be complied with by an AD, or an EAD respectively, concerning forming of a reserve fund, distribution of profit and minority shareholders rights.

Under Bulgarian law a joint stock company is established pursuant to a decision of a founding meeting of all persons who are to subscribe shares in the company, or pursuant to a resolution of the sole shareholder in the case of sole owner joint stock company (EAD). The minimum contents of the by-laws is provided for in the Commerce Act. A joint stock company may have either one-tier or, two-tier, system of corporate governance. The corporate governance structure consists of a general meeting of the shareholders, and a board of directors (in the case of one-tier governance system), or a supervisory board and a management board (in the case of a two-tier governance system). In both systems, both the board of directors, and the management board with the

approval of the supervisory board respectively, may authorize an executive member to represent the company before third parties.

The registered capital of a joint stock company cannot be less than BGN 50,000 (fifty thousand) and it must be divided into shares of a face value not less than BGN 1(one). A higher minimum capital is required

for establishing companies in the form of an AD, or an EAD respectively, where special commercial activities are to be performed, such as banks and insurance companies. All shares shall have equal face value and are tradable instruments. The types of shares that a joint stock company may issue are:

(i) registered or bearer shares;
(ii) common or privileged shares, as well as
(iii) materialized or non-materialized shares. In general, restrictions to the transfer of any type of shares may be provided for in the by-laws of the company. As a condition precedent to court registration, the by-laws shall have been adopted, the whole capital shall be subscribed and at least 25 % of it shall be paid in, the supervisory and the management board, respectively the board of directors, shall have been appointed and all other statutory requirements shall have been complied with. Share capital contributions may be made in cash or in kind. The state fees for registering of an AD, or an EAD respectively, amount to approximately BGN 600 (six hundred).

Only joint stock companies may register as public companies. The Public Offering of Securities Act sets forth the requirements, under which a company may or, shall, register as public.

II.4.3. Branch

Any merchant, i.e. including foreign legal entities registered as merchants under their national law, as well as foreign natural persons and entities, which are not legal entities, if registered as having a right to perform commercial activity under their national law, may register a branch as a form of business establishment under the Commerce Act. A branch is not a legal entity, separate from its parent company, and its assets and liabilities are deemed to be of the parent company, and as a result of this, unlike a local company, a branch may not acquire title over real estate. Nevertheless, a branch may engage in business activities and it shall keep commercial books as an independent business entity and have a balance sheet. From tax point of view, a branch of a foreign investor is considered a "permanent establishment", and therefore, it triggers tax liability for the foreign investor's home office. A branch is incorporated by way of registration into the commercial register with the district court where the seat of the branch will be located. There are no capital requirements set forth for a branch. The branch has to have a manager. The state fees for registering of a branch depend on the type of the parent company, and by way of example amount to approximately BGN 250 (two hundred and fifty) if the parent company is a

limited liability company, or approximately BGN 500 (five hundred), if the parent company is a joint stock company.

II.4.4. Trade Representative Office (TRO)

Any foreign person who has the right to carry out commercial activities under its national law may register a trade representative office in Bulgaria under the Encouragement of Investments Act. A TRO is not a separate legal entity and it may not carry out business activities. Thus, a TRO is meant to carry out nonproprietary activities for the purposes of performing promotions, exhibitions, demonstrations, training or advertising of products or services etc. Consequently, in general a TRO does not generate income and is not subject to corporate income taxation in Bulgaria. If, nevertheless, a TRO engages in business activities in the country, it would qualify as a “permanent establishment” for tax purposes, and the foreign commercial entity will be liable in Bulgaria for corporate income tax on the profit made by business activity through such TRO.

A TRO is subject to registration into the commercial register with the BCCI. The fee charged by the BCCI for the registration of a TRO amounts to EUR 100 (one hundred).

**FOR MORE INFORMATION CONTACT
US AT:**

Accountancy department:

accountancy@properties-guide.com

Legal department:

legal@properties-guide.com

Information department:

reports@properties-guide.com

Or visit our website at:

<http://www.properties-guide.com/>