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DISCLAIMER

While we hope the information at this website is useful please be aware it is provided as a general guide and for informational purposes only. This information is not intended to address the specific circumstances of any particular individual and neither can it be regarded as legal advice. We strongly recommend that you should not act, or refrain from acting, based upon any information available herein. Definitive information should be obtained from the Bulgarian authorities or by consulting a suitably qualified professional. The opinions expressed on this web are the opinions of the individual lawyer or law office and do not reflect the opinions of the British Embassy in Sofia. The British Embassy in Sofia bears no responsibility for the accuracy or the quality of the information provided here or at external websites referred to and cannot guarantee that it is comprehensive and up to date. Additionally the British Embassy in Sofia does not warrant or represent that the information is free from errors, omissions, or that it is exhaustive.

PROPERTY LAW

Q1: What are the most suitable legal measures I can take against a developer who does not comply with the preliminary agreement/contract or has disappeared without finishing the development?

Braykov's Legal Office, Sofia

The most suitable legal measures could be considered after review of the terms and conditions laid in the signed preliminary contract, check on mortgages or other encumbrances on the property and examination of the current legal and financial status of the developer. There is a public registrar where the ownership and the encumbrances on properties can be checked.

Some of the possible options are as follows:

1) **TO RESCIND THE PRELIMINARY CONTRACT, CLAIM REFUND AND INDEMNIFICATION**

The grounds for rescission of the contract are listed in both contract and law. In order to rescind your contract, you will need to send written notice addressed to the other party which shall specify the grounds for it, reasonable term for performance of contract and claim refund and indemnification. It is advisable the statement to be sent through a Bulgarian notary in the form of Notary Invitation/Notification.

If the party does not perform its obligations arising from the contract in the given time-period, the contract is deemed to be rescinded. If the demanded refund is not paid voluntarily by the developer, you can initiate court proceedings. In that case preliminary injunction could be requested by the court to ensure effective enforcement of a future favourable judgement.

2) **TO REQUEST THE COURT TO DECLARE THE PRELIMINARY CONTRACT AS A FINAL CONTRACT**

The preliminary contract can be declared as final one for which you may file a claim. The court will declare the contract as final only provided that you are non-defaulting party. The court judgement is considered as Title Deed for ownership of the property.

3) **TO RECOVER THE INVESTED AMOUNTS THROUGH INSOLVENCY PROCEEDINGS**

You can either file a petition to the court to declare the development as insolvent or to join on-going insolvency proceedings started against the developer. Please note that the State as a creditor and creditors with registered encumbrances over property in their favour will have priority in satisfaction of their claims.

It is strongly advisable for you to retain an attorney to consult you on the possible options, and their respective feasibility.

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Bulgaria Legal, Varna

GET A LEGAL REPORT TO CHECK THE developer's ASSETS!

The solicitor who handles your case should first and above all check the financial situation of the counter party at the Companies Register and the Land Registry, or if it is a natural person should make the necessary enquiries for his possible jointly owned with the spouse properties, employer details for salary received, restituted properties and agricultural land.

The reasons why it is important to have the assets checked are two:

1. That gives you options for settlement solutions and
2. To put a security-injunction over his assets before court proceedings

For each option that might be suitable for your dispute, you should ask for the costs involved. You can then decide what action you would like to take to resolve your dispute.

Depending on the developer's financial situation it is much simpler and cost effective to try and negotiate a settlement first. During that time your solicitor should learn two major things:

- Are there any other assets protected by the other party under another legal entity and are you interested in your solicitor's pushing the negotiations into that direction and

- What is the typical counter party behavior - chances for settlement?

The civil court case itself can last long, usually 1,5- 2 years, however some take longer.

Court fees which have to be paid up front are 4% on the amount claimed, hence if your claim is for substantial amount of money, initiate a partial claim. That benefits you in three ways:

1. The amount for court fees will be less
2. You still have the right to claim the rest of your lost investment and subsequent rights.
3. If you are unsuccessful you would lose less.

Injunction or the so called "security" is the most important step of the court case. It is decided by the court unilaterally in a closed hearing and its amount, on the grounds that the claim is reasonably sensible, the assets are not exceeding the claim. The court has the right to adjudicate that a bank guarantee is required by the claimant before such injunction is allowed in his favour.

Once the court case is finished completely, you are, if successful, rewarded with the right to issue an execution order over the particulars as described in the injunction order. As soon as you obtain the execution order you should find an "execution judge" (the meaning and function of it are similar to the "bailiff" in the Anglo-Saxon's legal system).

The execution and public sale could be on various objects, such as property, bank deposits, company share, movable property, etc, it is not restrained to the specific asset you have injunction on already.

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C&I Legal Partners, Sofia and Bourgas

If a party under any agreement breaches it, the counter party having fulfilled its obligations – i.e. the purchaser, can terminate the agreement and claim reimbursement of all paid amounts as well as damages. This usually has to be done trough a civil court case, as if the developer refuses to fulfil his obligations to transfer property or complete the construction voluntary, it is even less likely that he would return money to the purchaser in a good faith.

In case the developer is still operational, but experiences financial difficulties probably the best course of action is to reach a quick settlement with him to receive another finished/completed or better property in lieu of the one that has been delayed. The reason for that being the fact that typically there is a queue of unsatisfied purchasers who can "freeze" or ban all or certain assets of the developer's company.

If the developer has finished the constructions but for unknown reasons refuses to transfer the ownership of the property to the buyer and the buyer still wants to obtain the property, it is highly recommendable to initiate a special litigation procedure asking the court to proclaim the preliminary agreement as a final one.

When the developer has disappeared without finishing the development it would be a good idea to make a research if this developer has any assets like real estate, shares in other companies, hidden cash in deposit boxes, offshore bank accounts etc., and to initiate civil case against him, as his presence is not compulsory and the court can still issue a judgment ordering the developer to pay the due amounts to the plaintiff. On the base of this judgment the purchaser can then initiate a forcible execution upon the developer assets and to get his money back. If the developer has disappeared and he doesn't have any assets then it is very unlikely for the purchaser to receive back his investment. Regardless of that, it is recommendable to signal the prosecution and police authorities who will initiate criminal actions for malicious bankruptcy against the management body of the developer.

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Damyanov Law Firm, Plovdiv

It is common situation where the Developer has concluded a preliminary agreement with a Buyer but fails to fulfil his obligations within the stipulated terms or fails to fulfil them at all. With regard to this, there are certain legal steps which could be undertaken against the Developer:

On first place you could officially invite the developer to perform his obligations accordingly and also to give him an appropriate term to do this followed by a warning that in case he does not fulfil his obligations the contract will be terminated from your side due to developer's breach.

The first and most important aspect that should be considered is that the fact that the developer is in delay and/or in breach of a preliminary contract doesn`t mean that the contract is no longer valid. Even the contrary, you need to undertake certain legal actions if you want *to rescind a preliminary contract.*

The termination of a preliminary contract should be done in such a way that to give you the opportunity to officially prove on a later stage that the contract has been properly terminated. For this purpose you could use the so called *Notarial invitation* which is an official written notification delivered through a local

Notary public who will certify the date of delivery, the fact of delivery and also the content of the invitation. It could be used as evidence on a later stage in court, if this is necessary.

To rescind the contract you need to be sure that the preconditions for this are in place in accordance with the requirements of the Bulgarian law and therefore and independent legal advice is strongly recommendable in case of a breach of preliminary contract.

If the contract is rescinded the developer will be legally obliged to recover everything received/paid by you due to lack of legal ground on which to keep it. There are provisions in the Bulgarian law to this effect obliging the party, once the contract is terminated, to return all money received under that contract.

In case where the contract is rescinded and the developer refuses to return the payments a court proceeding must be initiated. The Buyer could secure his position by following an additional legal procedure for *securitisation of a future claim*. The court may allow protective measures to be imposed over developer's assets (properties, bank accounts) which to guarantee the receivables of the Buyer so the developer will not be allowed to sell certain properties or use respective funds that will be blocked in favour of the claimant. In some cases the court may (at its own discretion) determine an amount of guarantee deposit to be paid by the claimant as a precondition to grant the securitisation and impose an injunction.

After this the Buyer could lodge a court claim, depending on the provisions of the preliminary contract:

- *For payment of default (penalty)*
- *For missed profits due to the breach*
- *For recovery of the money paid under the rescinded contract*
- *Claim for interest*

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Duncan Wallace Solicitors, Sofia

The law does not differ when the seller is developer, and the applicable law is to be found in the Law for Contracts and Obligations. However, a developer is subject to certain obligations, such as guarantee for the building works.

Certain matters must be verified first. Is the developer justified in his breach? Many purchasers pay their installments to legal persons or individuals who are in no way referred to in the contract. The seller then says he has never received them. Perhaps the purchaser was asked to do so over the telephone or by email (sometimes inadmissible in a Bulgarian court). We even had a case where this was done by a local Estate Agent in a pub- and the payment details written on a beer mat.

Has the purchaser signed a document saying that he gives an extension of time in exchange for a discount? Has the municipality (local council) ordered work on all buildings to stop because of bad weather? If so, the developer should have notified the purchaser, giving rise to an extension of time. Claims under penalties need to be lodged within 3 years from the date the right to penalty arises. When the construction has been finished, if the seller does not give notice for an appointment for transfer of the property by deed before a notary, then an application may be made to the court to have the preliminary contract made final, which has the same legal effect.

Again, the legal measures do not differ according as to whether the developer has "disappeared" or not. Companies, at any rate, cannot disappear. In Bulgaria, the usual procedure is to transfer the assets out of the company that the developer used to make the contract into another company. There is no law here that allows following the assets. Before commencing any action, a check should be made in the Registry Agency to see if the company is already in insolvency. Checks can also be made in the courts for outstanding claims and judgments. Filed accounts are usually out of date.

The claim procedure requires a notary "invitation" to the address given in the Registry Agency as the current registered office (or to the person registered as the representative of a foreign company in Bulgaria), setting out the grounds of claim and asking for it to be remedied. If not successful, a claim must be started, preceded by the payment of 4% of the value of the claim to the court as its fee. Before issuing the writ (here called a *molba*), the lawyer should search to see if the developer has any other property, preferably without a charge on it. If he has, then the court may be asked to put a "freezing order" on it; but then a writ must be issued within a set time limit.

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Home Point BG, Sofia

Many of you, who have clicked at this article, probably share similar feelings and experience from your affairs in Bulgaria and have been incited to pop up here searching for exit from the present situation.

Regardless the reason why the development you are buying has not been finished, you have rights the protection of which is being realised pursuant to Bulgarian legislation.

If you cannot wait any more for your developer to finalise his project or the latter has been abandoned and you have no contact with the seller, you could move your relations to another stage and claim your legitimate interests via court.

Being a state institution, the court works according to strictly regulated procedures. In order to initiate a trial process, you would firstly need to observe several prerequisites.

You have to collect all the documents you dispose with, and then an attorney-at-law has to review them and advise which of the documents would be valid proof before the court. (Please, mind that many of these papers have been either improperly signed, or incorrectly drafted! Thus, such verification is absolutely mandatory.)

Once your attorney-at-law has collected the documentation that would serve as the basis, on which you will claim your rights, you could move to the second stage of the contract termination.
Observing Bulgarian legislation, and particularly – Contracts and Obligations Act, and on the grounds of the documents supplied, your attorney-at-law will prepare a notary invitation, in which all facts and demands, along with the terms provided, will be posed. This notary invitation will be certified in accordance to the established in the law procedure. Then, the notary invitation would be sent to the plighted recipient via notary public. Sending this 'claim' through the latter in all circumstances guarantees its receipt.

From now on, there are two hypotheses:

– the recipient accepts the notary invitation: again two hypotheses: the first one (very rarely seen): your contracting party to fulfil its obligations to you voluntary and after that to close the matter. The second hypothesis: your contracting party does not demonstrate any willingness to comply with your demands – you would need to wait for the term provided in the notary invitation to expire and if still no answer from the other party has been received, you could consider starting a trial process;

- the recipient does not accept the notary invitation (not on the address): then the notary public puts a formal notification on a visible place on the building, stating that the documents could be taken from the notary public and that from the day of sticking the notification, there is a fourteen-days term, after the expiry of which, the documents will be considered as duly handed in. The latter produces the same consequences (possibilities) as those due to the expiry of the notary invitation.

In all cases, it is very important to refer to the limitation period, with the expiry of which all collections are considered as extinguished. The limitation period is five years, except if the law provides another term.

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Iliev & Partners, Sofia

First of all, it is highly recommended that you send to the developer a notarial invitation pointing the non-performance of the developer and giving him a reasonable term to fulfill his obligations. After the specified term is overdue and in case the developer fails to fulfill partially or wholly his obligations undertaken by the agreement you shall have the right to terminate the agreement and claim back all the amount of the payments you've effected plus contractual penalties or interests. In case the developer fails to perform his obligation to conclude the final contract in the legal form of a notary deed within the term laid down in the preliminary agreement, you shall have the right to terminate the agreement and claim the amount of the effected payments plus contractual penalties or interests or start court proceedings and file a claim pursuant to Article 19, Paragraph 3 of Obligations and Contracts Act in order to obtain a court ruling replacing the final contract.

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Perusanovi Law Office, Sofia

First, you have to be familiar with the contractual conditions specified in the preliminary agreement.

You must be a reliable party of this agreement and have paid your obligations within the specified terms.

You have to check if there are deadlines for implementation or protection mechanisms against potential infringement on behalf of the developer, i.e. the preliminary contract must protect your rights in the best legal way from the moment of concluding the contract, during its execution till putting into operation of the object of agreement with a usage certificate.

The preliminary agreement should include termination clauses. If there are reasons for termination, i.e. breach of contract, a notary invitation should be sent to the developer in order to fulfill his/her obligations by giving him/her sufficient time to do so. If the developer does not fulfil his/her obligations

after this period, the contracting authority may claim for termination of the agreement. Only after observing that procedure, you can claim for the return of what you've given through an agreement or by legal proceedings.

In those proceedings, the address of the defendant is his/her registered office in accordance with the Companies Register.

You have to perform the following checks:

1. Whether the company exists;
2. Whether there are bankruptcy proceedings;
3. Whether are brought other law suits against that company with the same subject matter;

If no agreement (certified by a notary) is reached for amicable settlement of the controversial points, liquid collateral on the property of the guilty party should be submitted in accordance with the respective procedure.

If the case reveals evidence of a committed crime, the file should be sent to the prosecutor's office through a complaint.

In order to find the addresses of the defendants in civil claim proceedings, you can receive a court certificate when referring to physical persons and you can check in the public register for legal entities.

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Solicitor Bulgaria, Sofia

The hypothesis of developer non execution as per the signed preliminary contract is an often occurring one and in general the options are highly dependent on the framework of terms laid in the preliminary contract itself and the current legal and financial status of the developer company.

The recommendable approach ahead when facing such a situation would be as follows:

1. **Legal circumstances Investigation and Advice** – The first task in situations where the developer has breached his contractual obligations or has disappeared without finishing the development would be to contact a solicitor and to ask him to investigate the matter and provide you with advice as per your particular circumstances and documentation.

The solicitors usually could establish the general legal status of the developer, the construction status of the units, your legal standing the possible legal options.

2. **Property or a Refund** – After the sufficient initial information is gathered you should ask yourself what you will be after. If you are performing as per the contract and the other party is the only one breaching it you will have to decide on a goal.

The law will provide you with two general options:

A) **Option A** would be to exercise your right as purchasers not breaching the contract and ask the court to **declare your Preliminary Contract into a final such** – a Title Deed for ownership of the purchased unit.

This option would be viable if you haven't breached the contract and if the unit is still owned and unburdened by the developer. If for example a mortgage is pending on the unit when acquiring the unit through court in that manner it will come with the burden which often makes it pointless.

B) **Option B** would be to **Cancel the Preliminary Contract and thus demand refund**.

If the demanded after the contract cancellation refund is not paid voluntarily then you can enforce it through court. This option would be dependable on the ability to secure preliminary injunctions over assets of the developer before taking the matter to court. As court cases could take years having injunctions on assets of the developer is the preferable approach to secure takings when out of court with a favorable court decision.

It must be noted that possible contract cancellation grounds are listed in both the contracts and the law. Choosing the most favorable grounds is a task of your solicitor. Note that usually a simple written or email cancellation is not enough from point of view of later proving and as the cancellation is crucial to the approach it must be handled professionally by solicitors for later security.

3. **The Insolvency approach** - If none of the above options are possible due to the financial status of the developer (no properties or all mortgaged) the only possibility open in front of you to try to recover the funds invested would be to file a petition to declare the developer insolvent or join to an already ongoing such insolvency.

The grounds of such a claim are rather complex but nonpayment of due refund is one of the often claimed grounds as well as the fact that the company debt exceeds the company takings. This approach is the last legal resort but it allows revocations of deals damaging you as creditor of the company and thus recovering even assets that already reside with third parties. If criminal negligence is proven in the process the matter could also develop criminal implications for the company management.

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Svetlana Bogdanova, Sofia

Under the Bulgarian law, the buyer could file a claim on the grounds of art.19 par.3 of the Obligations and Contracts Law before the Bulgarian court in order to announce the preliminary contract as final and a title deed to be issued on the basis of the court decision and to become the rightful owner of the development. The claimant should prove before the court that the buyer is the rightful party by presenting evidence- such as invoices for amounts paid in full under the contract, that the developer has been informed for his delay or bad performance and that the claimant wants the title deed to be transferred in his/hers name. The court decision substitutes the notary title deed and the buyer becomes the rightful owner. In the same trial, the claimant could also demand for any penalties for delay or bad performance that have been included in the preliminary contract. The buyer could also, on the grounds of art. 82 of the Obligations and Contracts Law, ask for any direct and indirect damages that have occurred due to the bad performance of the developer. If the developer has disappeared without finishing the development, a court decision can also oblige the developer to finish the building work and the owners to

step in as investors of the development, creditors of the developer respectively and to be able to claim penalties and damages against him.

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Trifonov Law Offices, Plovdiv, Sofia & Bansko

The first recommended step is to try to establish contact with the developer and initiate negotiations. If there is no success in finding and speaking to the developer, then an official letter (via registered post or via notary public) should be sent. This is a very important step as the successful delivery and acceptance of such letter produces certain legal effect that may differ depending on the content of the letter, but in all cases the official letter is a solid piece of proof that the relevant legal actions have been taken (e.g. cancel contract etc.).

If negotiations fail, the best option would be to cancel/terminate the preliminary contract and claim refund of all amounts paid. This option is applicable when the claimant can show proof of all payments made to the developer (bank transfer confirmations). Presently Bulgarian legislation requires the purchase price for properties over 15 000 BGN to be paid only via bank transfer – but this is highly recommended even if the price is lower because this is a solid proof that money has been paid to the seller. Cash payments are far more difficult to be proved.

In some specific cases (impending bankruptcy, the development is almost completely finished etc.) instead of claiming refund it is better to initiate court proceedings for the conclusion of the final contract. In this case the claimant becomes owner of the property by virtue of the court's judgment which has the power of and replaces the property's title deed.

In case the developer has disappeared there are some special court procedures which make it possible for the claimant to be awarded refund and obtain a writ of execution only within a couple of months. While a normal court case usually takes around a year per court instance – and there are three court instances in Bulgaria.

In all cases it is highly recommended to undertake a thorough legal research of all assets in the name of the developer at the very beginning and to request an injunction. This is one of the most important moments when it comes to taking a decision of how to proceed with the developer and the preliminary contract. Otherwise the client may end up with an official writ of execution but no assets in the name of the developer to collect his takings from.

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Vankova & Partners, Sofia

The first step is to terminate the preliminary contract. This is an out-of-court action and is done via a notification which must be sent to the developer's registered address. It is recommended that the notification is sent via a Notary as according to Bulgarian law this is the only way to prove the contents of a sent notice. The Notary Notification should alert the developer for the breach of the preliminary contract and give them a suitable, last term for execution – Art. 87 of the Law of Obligations and Contracts. Should the developer fail to deliver the agreed in the contract in the given in the Notary

notification term, the buyer can terminate the preliminary contract. The statement that in case the given term is not observed by the developer, the preliminary contract will be considered terminated by the buyer, can be made in one and the same Notary notification, in order to cut costs. Once the notification is sent and provided that the developer has not fulfilled their obligations in the additionally given term, the preliminary contract is considered terminated and the buyer can seek compensation via court on the grounds of Art. 88 of the Law of Obligations and Contracts. Our firm's fee for preparation and submission of a Notary notification is 219 GBP and includes the Notary fee. The fee for court representation depends on the cost of the claim. There is a Tariff for the minimal amounts of lawyers' remunerations, which you can download from our website: http://www.realandintellectualproperty.com/useful-info/state-fees/

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VIP Consult, Varna & Bansko

There are no general, standard legal measures that can be advised and each case should be reviewed separately, based on the signed contractual terms and conditions. Notwithstanding, If we have to provide wider legal advice, an official letter –request (preferably served by Notary public invitation) must be sent to the developer to comply with the contract or to rescind from it and request full refund of all sums paid.

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Q2: I have discovered that the developer took a mortgage out on my property and is now claiming bankruptcy. The bank is going to sell the property but I have paid for it in full. What options do I have in order to keep my property?

C&I Legal Partners, Sofia and Bourgas

The fact that the developer is claiming bankruptcy and has mortgage on the purchased property would generally mean that he is in non-fulfilment of the purchase agreement. In this case the agreement should be terminated with a written notification delivered to the developer. After the agreement has been terminated, the purchaser shall be entitled to receive back the amounts he paid, so he will become a creditor of the developer. Then the purchaser – now creditor, will have to instruct his legal team to act on his behalf in order to include him into the creditor's list upon the insolvency proceedings. The other option /if financially stable/ is for the purchaser to get a deal with the bank and pay the debt that equals to purchaser's property value and to subrogate partially into the bank's right at the procedure of selling the property. That would allow the purchaser to use the privileged rights that the bank usually has and to go against the other assets of the developer providing there are any.

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Damyanov Law Firm, Plovdiv

When a foreign citizen owns a property in Bulgaria it is normal not to be able to supervise the property during the entire calendar year. Very often (in cases in which the property is in a closed residential complex) there is a Maintenance & Management company which is assigned with the rights to take care of the property while the owner is absent. In such cases it is important to check the provisions of the

agreement that the owner has with the Maintenance company in order to identify the rights and obligations of the parties. If the property is rented without the knowledge and consent of the owner there are several legal steps which to be performed in order to protect the interest of the owner.

First and most important is to officially notify the irregular party which is renting the property that you are aware of the situation and you have never agreed with this, informing the other party on the consequences and the possible claims that you may have in this regard. As such actions towards someone else's' property represents breach of the law you could seek an out-of-court settlement. Usually there should be payment of compensation to the owner plus repair of any damages and wears caused by the renting of the property. For this purpose you could deliver an official invitation to the breaching party Our advice is to use the so called *Notary invitation* with which you will provide the party with term in which they could reach to an out-of-court settlement and pay the respective compensation. In case that they fail to fulfil this obligation in the provided term for this – the owner could initiate court proceeding and his/her claim will depend on the exact specifics of the respective case.

An important aspect that should be noted is that a rental agreement signed with someone who is not a legal owner of the property is legally valid according to the Bulgarian law and the existing court practice.

In case that there are problems with tenants and they do not wish to release the property – the owner could file a claim to the court *for the return of the possession over the property*. This claim must be submitted to the court where the real estate is situated. With this claim the court will be asked to sentence the third party to deliver back the possession over the property and the owner could also claim damages or missed profits resulting from the usage of the property.

Once there is a court decision in favour of the legal owner of the property – the tenant could be legally removed from the property even with the assistance of an enforcement agent and the police.

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Iliev & Partners, Sofia

Commonly, the ownership over property is transferred in two main stages – preliminary agreement and final agreement (notary deed). The right of ownership over the property is deemed transferred after concluding the notary deed. Therefore, the legal actions you can undertake depends on which stage are you in. If you have signed only preliminary agreement you legally still do not own the property. The developer is still the owner. If the developer claims bankruptcy and you have signed preliminary agreement, you shall become one of his creditors – for the amount of money paid under the clauses of the preliminary agreement, penalties, etc. The aim of the insolvency proceedings is to gather and then share out all developer's assets between the creditors according to their rank and privileges.

If you have signed the notary deed you are already the legal owner of the property. In this case the clauses of the final agreement (the notary deed) are very important. If it states that you acquire the right of ownership free of any encumbrances, mortgages and rights of third parties (and if this is true) nothing jeopardizes your ownership over the property. If not, the above mentioned procedure of public sale is applicable if initiated by the bank in its capacity of a creditor.

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Kreston Bulmar, Sofia, Plovdiv, Bourgas, Sliven, Dobrich, Pernik, Haskovo, Veliko Tarnovo, Vtarsa, Kyustendil, Montana, Kardzhali, Silistra, Targovishte, Razgrad

According to the Bulgarian Commercial Law bankruptcy may be instituted in two forms – insolvency or over indebtedness. The bankruptcy procedure may be initiated by the debtor or by some of his creditors, who shall file a claim to the court. The procedure has three stages. At the first /preliminary/ stage the court reviews whether the debtor is insolvent or over indebted, appointing an expertise. After that, at the second stage, the court by its ruling institutes bankruptcy proceedings, appoints a temporary official receiver, allows for provision of security. The third stage starts with a court's ruling, declaring the debtor's bankruptcy and initiating conversion of the debtor's estate into cash.

If the bank has already started enforcement proceedings against the debtor's property, all proceedings will be stopped and will be continued by the official receiver in bankruptcy, appointed by the court, who will sell the estate at a public tender. The proceedings will not be stopped if the mortgage has been established upon a real estate which is not property of the debtor, but serves as a security for the bank:. In this case the property should be sold at a public tender by the enforcement agent who has initiated proceedings against it before the court has instituted bankruptcy proceeding. In the current case you have three options. The first one is related with negotiations with the bank and the developer. If the developer agrees to pay the bank: all the money you have already paid for the property, the bank: should lift the mortgage and continue with the proceedings against another developer's property. If the developer refuses, you may negotiate with the bank: directly to pay a certain sum in order to lift the mortgage. But in that case you should pay additional sum to the bank.

The other option includes proceedings against the developer. You may claim remedies against the developer if he has declared in the title deed, transferring property from the developer to you, that the property is free of mortgages and other securities and attachments. The problem in this case is that mortgages are filed in the public property register at the Registry Agency and the law presumes that you are informed about the mortgage.

If you prove your claim for damages, you may join the other creditors in the bankruptcy or enforcement proceedings and even take part in the public tender. Another issue arising here is that the bank: is a privileged creditor and it shall obtain money from the public tender before you, because its taking is secured by the mortgage, while yours is not. This means you will receive your money only if the bank is completely satisfied after selling the property or if the official receiver sells another debtor's property without securities.

The third option is to check whether the mortgage can be revoked in the part concerning your property. That means to claim the mortgage invalid, but in most cases this is hard to prove, depending on the mortgage clauses.

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Svetlana Bogdanova, Sofia

Under the Bulgarian law the mortgage follows the property, no matter who the owner is. Even though the buyer is not the mortgager, the buyer is the owner of the property that serves as equitable charge. If it comes to enforceable execution against the developer, the property, even though with new owner, could be put on public sale. If the developer has entered into the procedure of bankruptcy by his own demand, that shows that he does not have the financial means to fulfil his obligations under contracts signed with his clients. By the Bulgarian law, the bank is a preferential creditor and will be satisfied before any the other creditors after putting the development and any other assets of the developer on public auction by declaring the contracts between the buyer and the developer partially void. The other creditors, including the buyer will be satisfied after the bank. The buyer could make a demand before the court to be made a creditor of the developer and the best is to rescind the contract signed with the developer and to ask for indemnity by the amounts paid together with any penalties, if included in the contract, but these amounts will be paid to the buyer after the bank is satisfied. Otherwise if the title deed is transferred to the buyer with the mortgage, the buyer will have to continue to attend to the mortgage in respect of the bank and by such, paying a second time for the same property.

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VIP Consult, Varna & Bansko

There are 3 solutions in this case:

1. If the public sale of properties has already started at the request of the bank and the developer has no other assets, it is advisable to participate in the public sale and officially buy your apartment. You have to also sue the developer for refund of the amounts you paid. This option is recommended only in case you learned too late about the enforcement proceedings initiated by the bank and you have no time to first sue the builder.

2. In the event that the court has already commenced insolvency proceedings and the developer was declared insolvent, then you should lodge your claims in the bankruptcy court case and ask the court to declare you creditor of the developer. Therefore, you have to participate in liquidation of the developer's assets. The bank has privileges over all other creditors.

3. If bankruptcy proceedings have not started and the bank has not initiated enforcement proceedings against the builder, you should immediately prosecute the builder to obtain court decision for refund of your money. If you quickly conduct such proceedings and obtain a writ of execution and in the meantime the bank initiated enforcement actions, you can join the enforcement actions.

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Q3: My lawyer is telling me that I cannot get the title deeds from my apartment because there is a problem with the developer's tax return and the NRA (National Revenues Agency) has a hold on the properties in my complex. What does this mean? What should I do?

C&I Legal Partners, Sofia and Bourgas

That would mean that the NRA has discovered a large amount of public debts of the developer towards the governmental budget and as a result the NRA has initiated /or is going to initiate a special procedure for collecting the public debts. As a result the government shall appear as a privileged creditor for the amount of public debt proved by a tax inspection /revision report. Generally if NRA has a hold on properties/complex that sequences in a public auction for sale of properties at very distressed prices, meaning that the value that the creditors get back is considerably low in comparison to the market price.

Court immediate action is recommended, aiming to obtain an execution document from the court and afterwards a procedure for collecting the debt has to be initiated. The main goal here would be to include the purchaser as a creditor along with the NRA and thus to be able to receive the funds paid to the developer on the grounds of the preliminary contract.

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If the developer has a debt for tax return, the NRA (National Revenue Agency) may initiate executive proceedings against the developer's property, including attachment on its real estate. Since the developer has not transferred the property to you yet, the NRA may sell his whole property, including "your" apartment. Hence, you should first check whether an attachment on your apartment is registered in the public property register at the Registry Agency.

Even if the NRA hasn't started such proceedings, the developer wouldn't be able to transfer you the property of the apartment, because he is obliged to declare whether he has debts to the State or not and if he has, the notary should refuse to conduct the deal. This guarantees that the developer would not infringe the State's interests by selling his property to a third party.

In this case probably you have a preliminary contract with the developer with a clause in it concerning developer's insolvency. You have two options - you may claim remedies against the developer and terminate the contract or you may ask the court to recognize the preliminary contract as final.

In the second option the court's judgment will replace the title deed and will certify your property rights. However, the court should first check whether you have paid the whole price for it and whether you have paid the municipal taxes for the property (which are different from the taxes to the NRA).

The problem in that case is that if the NRA has already established an attachment on your apartment before your claim; it can sell it at a public tender anyway, collecting the developer's debt. In that case you may claim remedies against the developer, again.

If you decide to seek compensation from the developer, you should be aware of the fact that even if the court recognizes damages in your favour, in a future enforcement proceedings against the developer the State is privileged and all the money collected by the enforcement agent will be paid first to the NRA (excluding the expenses for the enforcement procedure, which you'll receive first).

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Q4: I've discovered that my property is being rented out to other people for their holidays without my knowledge. What should I do?

C&I Legal Partners, Sofia and Bourgas

You should make a notification to the person who is renting your property without authorization, to stop it immediately and to invite him to pay you the amounts he receives from the tenants. If the person who lends your property doesn't claim that he is entitled to do so the case will end up with the notification. However if the person lends your property in his name as he is the owner, the situation requires immediate actions in the court. That is, because lending a property in someone's name when this person is not an owner, creates a factual situation of "possession" upon the property. If this possession goes on for more than 10 years the person who is attending to the property can obtain the property by prescription.

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Coeler Legal, Sofia

If you have signed a contract for letting of the property out to third parties, your agreement will presumably not be requested for each individual rental. In such agreement most of the essential issues should be resolved. In case you have no agreement with a managing company that would be or would not be entitled to rent out your property, you have several possibilities to react. First of all you must contact the managing company and clearly state your position in writing, give a term and state that after expiry of such term you will take all legal measures applicable to your case and demand the relevant part of the rentals to be paid by the management company to you as you own the property. Should this not work, you as owner are entitled to submit claims to the court for payment of the rentals, for reimbursement and for termination of any rental relations with third persons. Be aware that there is a state fee and further costs for translation and legalization of documents, as well as fees for legal representation and advice will arise. Such costs will be borne by the other party if your claims are successful. For a successful outcome you should demand all documents and data that you could obtain from the management company, third parties, neighbours, authorities (about paid tax for example), provide any correspondence that might be helpful and inform your lawyer about the availability (or non-availability) of a contract with the management company or about any other information that might be compromising.

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Dobrev & Partners, Plovdiv

You can chose among several options, depending on the arrangements you obviously have with the person who is renting out your property.
a) If you have a written contract with him (a maintenance or/and managing the property contract) you have to check if he has neglected his duties and, respectfully what is his liability according to the contract.
b) If you have just a verbal agreement with him, maybe you should inform the people, who are enjoying your property, of your ownership, and demand that they will pay the rent directly to you. You have also to inquire the financial terms on which they are renting the property, in order to use them as witnesses in a future trial, if such a necessity arises. Of course, you shall demand from the person that is renting your property immediately to return back the key from your property,. You can also seek compensation for all the damages suffered by your property (if there are any), and another compensation for the lost profits. It is better before proceeding against him, to send him a notary invitation voluntary to recover your losses.

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Iliev & Partners, Sofia

There are different solutions if you have bought the property clear of lease contracts or not. If when acquiring the property there already is a lease contract, it shall remain valid with respect to the transferee if it has been registered in the Property register. If it has a verified date, the lease contract shall be binding upon the transferee for the term stated therein, but not longer than one year from the date of transfer. If it does not contain a verified date and the lessee is in possession of the property the contract shall be binding upon the transferee as a lease contract for an indefinite term and in this case you may terminate it by sending a one month written notice to the lessee.

If you discover that the property has been rented out after you've become the owner you have the right to send a notarial invitation to the lessee to leave the property. If the lessee does not leave the property, you can start court proceedings. In any case, the lessee should pay the rental price and all the damages and expenses that you have suffered due to his illegal behaviour. The other possible solution is that if you want, you can sign a lease agreement with the lessee and legalise your relations.

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New Balkans Law Office, Sofia, Rousse & London

The approach you can take would likely depend on whether there is a letting and management contract in place between you (as the owner of the property) and the developer (or a party related to the developer, etc - for short we refer below to all such as the developer). In some such cases, the developer has the right to rent the property out.

If there were such a contract, and it entitles the developer to act as a lettings agent, then you should look to the contract to claim the rental income back from the developer: as an owner you would generally be entitled to it by default. If you would like letting without your prior consent to stop, then you need to request and negotiate an amendment of the contract in this sense.

Where a developer, etc, has no contractual right to let your property or the occupants have not been let in by such a letting agent acting on your authority, you should give notice to the occupants to vacate the property and we can advise further on the mechanism involved. In case any occupiers fail to comply, you may apply to a court to evict them and claim compensation from them via the court for the unlawful use of your property.

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Q5: How is the management of a complex regulated? What do I need to be aware of? [Condominium Act etc]

Bulgaria Legal, Varna

The management of the complexes is regulated by the Condominium Act, with which the legislator has tried to regulate the important matters concerning the maintenance and the existence of the condominium.

The main principal is the possibility the building and the complex as a whole to be maintained in accordance with the common will of the owners, i.e. by the majority of the votes of the owners at the condominium. That is why every owner has the right to participate at the voting of the important decisions related with the condominium and every owner's vote is equal to the possessed by him/her common parts of the complex.

This creates also one of the biggest problems– the way of calculation what is the exact part from the common parts owned by every owner. Very often this information can be found out in the Title Deed but when it is not written in it, the calculation becomes a big problem.

Speaking of owners the legislator acknowledges as an owner not only the person written in the Title Deed, but the spouse as well, which means that during a voting the presence of the spouse is required or they have to be represented by a proxy.

Every owner has the right not only to vote but to be voted as well at the governing bodies of the condominium. The Condominium Law explicitly stipulates the way of the management, as well as the rights and the obligations of the governing bodies.

Regarding the order and the calling of the regular and irregular General meetings /at which have to be taken all the important decisions concerning the condominium/, we consider that the procedure is clearly stated/written and it coincides with the procedures in the most EU countries but namely: invitations with the agenda have to be sent, date and place of the meeting to be determined, registration of the presented quorum to be done at the general meeting and when there is the needed quorum the meeting can be held as per the advanced announced agenda. One of the major problems during the holding of a general meeting is the possibility owners to be prevented from being represented by a proxy, as one proxy can represent legally not more than 3 owners.

The legislator is quite liberal in regards with assigning of a big part of the maintaining functions to third parties. That is the ground according to which most of the maintenance companies are working. There are many professional maintenance companies offering quality services but at the same time the majority of the complexes are put in a dependant position in regards with the maintenance. The most common

model is the developer/investor when selling the properties, as a condition of the sale to require every buyer to sign at the day of the deal an individual maintenance and management contract with a company pointed by the developer/investor. This dependence is so vast that at a later stage when the owners are trying with a general meeting to change the maintenance company, their attempt is doomed to be unsuccessful and purposeless.
Another main issue is that most of the owners in the complexes possess only their apartment but not a respective part of the land, swimming pool, SPA area, restaurant and etc, which are owned by the developer/investor and as a consequence of this, the owners again are put in a dependent position and in practice are deprived of the opportunity to have their own choice.

If you are an owner and you think that you are paying too much for maintenance or the maintenance company does not fulfill its obligations, you should look to get an independent legal opinion, as in the majority of the cases, the solicitor can help you a lot with proper representation at the General meeting.

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Damyanov Law Firm, Plovdiv

The management of the complex is regulated by the Bulgarian Condominium Ownership Management Act. The law provides two options for management of the condominium ownership depending on the type of complex and also the desire/decision of the General Assembly of the owners. One is to assign the management and maintenance to the developer in which case respective agreements with the owners must be signed (before notary public) which should be registered in the property register. The other option is to manage the complex by electing a Manager of the Condominium and Control body.

All decisions regarding the Condominium must be adopted by the General Assembly of the Condominium Ownership with the required majority of votes. At the General Assembly the owners shall have the right to vote in proportion with the shares of the common parts that they own in the condominium.

General Assembly of the Condominium Ownership of the complex can be convened by the Manager of the Condominium or upon request of the owners who have at least 20% shares in the common areas of the building. Another important aspect of the procedure of convening the General Assembly is that there shall be an official invitation for the Assembly signed by the persons who are convening the Meeting. This official invitation shall be placed at an accurate place in the building in order all the parties who are going to participate in the Meeting (all legal owners in the complex) to be aware of it. This official invitation must be posted at least 7-days prior to the date of the Meeting and it must contain information for the date, place and the full agenda of the meeting. In case that there is no proper notification for the General Assembly it will not be legal and it cannot adopt valid decisions.

With regard to the convening of the General Assembly, another important aspect applies to owners who are absent for more than 30 days from the building. They have to inform the Manager of the complex and provide e-mail and permanent address in order to receive the official notifications regarding their property in the Condominium. In case such owners fail to supply the Manager with this information – they shall be considered duly informed. If an owner is unable to attend the General Assembly – he has the legal opportunity to authorise a legal representative to represent him on the Meeting. In case that the representative is not a lawyer – the Power of Attorney shall be additionally certified by Notary public.

There are number of important requirements for the owners of buildings in Condominium Ownership which should be observed because of the risk for penalties. Such as to register the Condominium with the

Municipality, to represent the technical passport of the building, to elect Management and Control Bodies of the condominium, to prepare and provide a Book of owners, etc.

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New Balkans Law Office, Sofia, Rousse & London

The Bulgarian Condominium Management Act ("CMA") is a statute which regulates relations between owners in a development. The owners may have also approved a governing document which further fleshes out the way in which the running of the development is organised.

By law, the owners of units in a property development can use the common areas of the development and share in their management. Each owner has a right to enjoy his property without interference from the others.

According to art. 6 CMA, owners must also:

- not cause damage to other properties within the development and common areas;
- avoid causing more than minimal inconvenience to other owners or occupants;
- not tamper with any part of the development (whether buildings, shared areas, etc.) intended for general use;
- comply with the resolutions of the governing bodies of the development;
- cover the cost of repairs, reconstruction and renovation of the common parts, its facilities and equipment, and contribute to a fund for the "repair and improvement" of the development, in proportion to their share of the commonhold;
- bear the cost of the management and maintenance of common parts;
- comply with health and safety regulations and standards of hygiene;
- provide access to their own property or parts thereof, if necessary for the investigation of, design and planning of, or conduct of repairs, renovations etc, as above.

Typically, the General Assembly of Commonhold Owners chooses a Manager (which in larger developments may be a maintenance company co-owned by all unit owners or set up as a business), such Manager running the day-to-day affairs of the development.

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Solicitor Bulgaria, Sofia

Since 2009 the management in residential buildings and complexes is regulated by the Bulgarian Condominium Ownership Management Act (COMA), which had undergone several changes through the past years – the last one active from the end of 2012. The idea of the law is to ensure democracy in taking of all important decisions (including the amount of the annual M&M fee) in connection to the operation and maintenance of any building through an Annual General Meeting of all owners (referred to as "AGM").

The management of the complex includes the procedures and control over the use and maintenance of the common areas and implementation of the rules for internal order and control on fulfilment of the obligations of all owners, users and occupants. If the building has up to 3 separate premises, owned by

different people, the relations between the owners are regulated by the Ownership Act and not by COMA.Where a building has more than one entrance, the management might be implemented separately in each entrance.

By law an AGM should be called at least once per year by:

- the building Manager;
- the Controller;
- written request from owners with 20% of the shares in the common areas of the building
- an individual owner or user only in urgent cases or in case more than one year have passed since the last general assembly was held.

The AGM should take place either in the building or in a close proximity next to it and should be called, chaired and announced in a particular legalistic approach so its decisions could be legally valid and compulsory to all owners.

There are particular notification terms that should be observed also. The invitation of the calling of the AGM should include the date, time, place and the agenda of the AGM to be held and should be sealed on visible place on the entrance doors of each separate building not later than 7 days before the date of the AGM. Any owner or user, who would not use his individual unit for more than a month, should notify in writing the manager and leave an e-mail or a postal address and a telephone number for forwarding invitations for calling AGMs.

Usually, the party that calls the AGM makes sure, that it is also properly protocolled (detailed minutes are drafted) and chaired. All owners (or users) have the right to be present personally or being represented by a third party to attend an AGM. Also as the law allows each representative to represent up to 3 owners.

The Bulgarian COMA requires a specific quorum for the AGM to be held legally and different majorities for voting on particular subjects. The rule is that most decisions are taken with more than 50% vote of the present owners. Still for some specific decisions are required different majorities for example: 67% - is needed for signing electricity and water supply contracts and for major repairs of the building; 75% - to expel another owner form the building; 100% - for construction of an additional storey or an extension to the building and for changing the purpose of the common areas, etc.

Still the votes are calculated as per the size of the ideal shares from the common parts for each apartment. The tricky part of the AGMs is that only the votes of the owners present on them would count. So the majority decision will be formed by the owners who either personally attend the meeting or who have granted powers of attorney to a person to represent them.

A significant issue that every owner has to be aware of is that according to Art. 51, para 2 from COMA, children under 6 years of age and any owners, users and occupants, who inhabit the condominium for less than 30 days for a calendar year, are not obliged pay the costs for maintenance and management for that year. Thus any actions against such owners by the manager for collecting the annual M&M fee are without legal grounds.

Other important change in COMA is removing of the ban for holding of AGM during the summer season, so the majority of the holiday property buyers might organize to request an AGM to be held in a convenient time for them, when being on vacation and staying in their apartments.

The huge benefit of legally valid AGM decisions is that they could be legally enforced if necessary. For example, it is quite common to have the maintenance provider, being an owner in the same building, to refuse payment of M&M fees, as he never did pay into his own account. If an AGM decision is taken and a new maintenance company is elected by the majority of owners, the previous maintenance provider after a refusal from his side might be forced to pay through court and bailiff.

On the other hand non-complying with the COMA regulations will lead to illegal AGM decisions. Consequently, any owner will be able to appeal the AGM decisions within one month period after the minutes from the AGM are ready and request from court refund for any fees, illegally collected from the manager.

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Q6: Flats in my complex do not have individual meters for water and electricity and I am not sure whether I am billed correctly. What should I do and how do I go about securing individual metering?

Home Point BG, Sofia

Dear Owners,

As conscientious householders of apartments in Bulgaria, probably you wish to turn your second homes into beautiful, cosy and maintained places – like your homes abroad.

Conditions improvement and comfort creation in your own home are being achieved not only by ensuring all necessary things, maintaining their good-look, preserving these objects, but also by complying with all requirements of the condominium, observing the order and the law with relation to your right of ownership.

If half of the above could be planned by you, the rest would be achieved despite your will. Thus, the entirely subjective matters would not be a topic of the paragraphs following. Below we would try to acquaint you with some basic information on your duties to your water and electricity suppliers. And to provide some tips regarding your rights, of course.

Most probably, it has become known to all owners that when building the plighted complex, the respective contractors have opened batches for the building itself. Then, an obligation to each owner is to take care of opening such batch (the account you have been registered with at the data base of the respective supplier) in his name for his own property. Thus, please mind:

When dealing with your water supplier:

Firstly, you need to visit the closest office of the company, having with you all the relevant documents (notary deed, proving your right of ownership, passport, etc.). Then you would need to fill in a few blanks. After the completion of the submission procedure, you should be provided with the code of your batch.

Then, you would need to secure a metre for water – separately bought or sold by your water supplier. Then, the contractor would install/reinstall and seal your individual metre for water. By using the services the supplier provides, you would benefit exact measurements of the water consumed and a guarantee for the successful installation (and with some water-suppliers – an insurance Third Party Liability). Once

installed, the metres for water would be regularly checked by officers of the contractor, who will record the consumption of water (cubic metres of water).

When dealing with your electricity supplier:

You should have with you the same certification documents and apply for surveying the conditions for accession of a unit to the electricity. After the approval of the contractor, you would need to conclude an Accession contract and after that – a Contract for sale of electricity. As a result of the completion of all procedures, you will receive a unique code, identifying your batch.
Then, representatives of your electricity supplier will visit your property and will install a metre for electricity. By installing these devices, you will have continuous measurement, monitoring and backup of the consumption of electricity (kilowatt/hour).

Once the above steps have been completed, you could be certain that you would be correctly billed.

A real relief for all foreign owners would be the fact that every action and procedure, mentioned above could be performed by an appointed by you attorney!

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Ivo Baev, Bourgas

Every flat should have a separate meter. Developer has to arrange this or if there are no pending relations with developer, then management company should assist. Otherwise owners' assembly may ask assistance from the water/electricity supplying company.

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Q7: A family member died in Bulgaria and I am aware they had a property (and a company registered there). How do I go about acquiring it?

Bulgaria Legal, Varna

The problem with deceased foreigners is the discrepancy between the Bulgarian and UK legislation, as according to the Bulgarian Succession law the property and the company/shares are to be inherited by the inheritors of the deceased, who cannot prove their capacity as ONLY and LEGAL heirs because the heir- British citizen cannot issue the certificate required as per the BG legislation, namely: Certificate of Inheritors. This certificate is proving the connections between the heirs with the deceased and it states who the rightful heirs are as per the BG law. As there is no such document in the UK and Ireland the problem with the inherited properties is more than complicated but still there is always a solution for every case. Despite of the fact that one of the most important documents is impossible to be obtained, there are other legal documents that can be used in regards with inheriting a property, doing changes in a company after a death occurred of a manager and/or shareholder.

If it concerns a property WITHOUT a company, then the property is transferred either to the inheritor/s but presenting sufficient legal documents and evidences that the deceased has left heirs and who exactly they are.

If the problem concerns a company that is possessing a property, than the first thing to be done is to register the respective changes of the company, i.e. occurred death and the shares of the deceased to be transferred to the inheritors. There are different approaches as every case is different and requires specific circumstances to be considered.

In some cases a Grant of Probate or Grant of Administration issued by the UK High Court are required, in some of the cases UK HANDWRITTEN Wills are applicable and recognised, finally cases exist where there are none of these documents and there other legal ways of proving who are the heirs of the deceased.

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Dobrev & Partners, Plovdiv

First you have to address the Property Registry Agency and inquire what properties had been registered under the name of the deceased. You can receive a certified copy of all the titles of deeds on his name, found at The Registry. However, the Bulgarian law is not applicable for the inheritance issues and the heirs of the deceased, since he was not a Bulgarian citizen.

You also have to address The Companies Register in order to find out what and how many companies the deceased had registered in Bulgaria. The practice shows that usually foreign citizens set up a single member limited liability company in order to acquire some property (including land) in Bulgaria. In such a case all the heirs of the deceased become shareholders of the company, if there is not a will from the deceased, stating something different. So the shareholders now constitute the general assembly of the company and they have to decide how to manage the company in future, including the property.

If the deceased was a shareholder of a limited liability company, his heirs can receive the value of the company shares the deceased possessed. In order to become shareholders they have to submit an application to the general assembly of the company, stating that they want to become shareholders and accept the company's contract.

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LM Legal Services, Sofia

First, your lawyer should check the company's particulars, as well as he should carry out a search in the Land Register to find out if the Company owns a property and if the property is free of encumbrances or debts. Next, you should get a Certificate which proves that you are the rightful heir of the deceased. This should be issued by the authorities of either the country of which the deceased was a national or in the country where he/she was residing. Then with the help of this document your lawyer should prepare the right forms and register you as the new owner of the Company. If you do not want to have a company in Bulgaria, you can liquidate it voluntarily and own the property as an individual.

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MH Legal, Varna

In order to acquire your family member's property, you should obtain an official document from UK, evidencing that you have the right to get the ownership over this property. Depending on the way how you have inherited your family member, the procedures will vary.

- **If your family member hasn't left a will**

  In this case, the inheritance procedure will follow the UK probate statutory regulations. You should apply to the UK Probate Court for a certificate, showing that you have the right to get the Bulgarian assets of your deceased family member. After the Probate Court certificate is issued, you have to apply for legalisation at the Foreign and Commonwealth Office (apostille procedure)

- **If your family member has left a will**

You should check whether the will is certified by a UK notary public or by a solicitor. If the will is certified by a notary public, you can apply to the Foreign and Commonwealth Office for legalisation of the will (apostille procedure). Solicitors in UK have special rights for certification, but you should double check if in your case you can get an apostille for a solicitor certified will. If not, you have to apply to the Probate Court (see point 1 above).

In both of the above cases, the Bulgarian authorities will require the death certificate of the deceased person, again legalised at the FCO.

Having collected the above documents, you should appoint a Bulgarian solicitor who will prepare the transaction of the shares of the Bulgarian company. Once you have the shares on your name, the property owned by the company will be also your ownership (through the holding company).

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New Balkans Law Office, Sofia, Rousse & London

Where a person dies without leaving a valid will, Bulgarian law has rules about dividing the deceased's estate between certain of his family members. Where the deceased has left a will, Bulgarian law would still set aside certain shares of the deceased's estate (or at least such estate as is in Bulgaria) for certain close family members. These are known as 'reserved shares' and there are relatively simple rules determining whether they apply.

If your family member's Bulgarian company owns the property of your deceased relative, and the company was itself solely owned by your deceased relative, you and any other heirs would need to declare before the Bulgarian Company Registry that you wish the company to continue trading. You and any other heirs would also have to apply to register as shareholders of the inherited company shares with the Company Registry. To do this, you need to present evidence of the death of your relative, as well as of your capacity as his or her heir(s).

If the family member was not the sole owner of the shares of the property-holding company, and there are other shareholders, you need to check if you can become a shareholder. This would usually depend on the provisions of the company's Articles of Association and on the consent of the remaining

shareholders. In case such shareholders refuse to let you (or other heirs) become shareholders, you will still be entitled to receive compensation. This would be equal to such part of the company's net assets which is proportionate to your relative's share in the capital of the company at the time of distribution.

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Vankova & Partners, Sofia

If your family member has left a will, it will be accepted by the Bulgarian authorities. A UK will is also valid and recognised in Bulgaria - Art. 90 (2), point 1 of the Code for International Private Law says that the will is valid if it faces the requirements of the law of the country, in which it is prepared. If your relative has passed away without leaving a will, you have to ask a UK solicitor to prepare a document called "Affidavit Of Law". This document is a declaration, showing the lawful inheritors of a person who has passed away without a will. It is made by a UK solicitor who swears in front of a UK Notary that has researched the case and confirms the lawful inheritors. The Affidavit Of Law must be provided with apostille and translated in Bulgarian. If you don't have any documents for the real estate of your family member, this is not a problem as there is an online register http://www.icadastre.bg/ where you can search information via the owner's name. Acquiring the shares of the Bulgarian company of your family member again requires a will or the above mentioned Affidavit Of Law and you also have to sign 7 company documents and witness in front of a Notary a consent to be a Manager of the Bulgarian company. If you visit a Notary in the UK the witnessed consent must be provided with apostille and translated in Bulgarian. Once you have all the above documents in place, you can file an application in the Companies Register for acquiring the shares of the Bulgarian company, and you also have to submit a proof for paid state fee of 30 BGN (14 GBP) or 15 BGN (7 GBP) if the application is submitted online.

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Q8: As a foreign national, do I need to be present in person at court hearings in Bulgaria?

Braykov's Legal Office, Sofia

Your situation may differ from the type of proceedings you are involved in.

Generally, it is advisable for you to retain an attorney for a legal representation in the country.

You are obliged to appoint a representative from the court region or an attorney if you are party to a civil case and you leave the country for over a month.

In civil litigation and administrative litigation cases (including cases on tax matters) if you have appointed a Bulgarian attorney you do not need to be present in person at court hearings in Bulgaria. The Power of attorney must be made in writing and it can be withdrawn at any time.

In a civil litigation you must specify contact address and any changes to it. Consequently, you will be considered notified of any court actions in the specified address.

Personal presence is required in divorce cases where the marriage is terminated upon mutual consent – the former must be personally confirmed before the judge.

Under the Penal Procedure Code the presence of the defendant is demanded in relation to some charges and actions. The other participants in the criminal trial, including the victim, the private prosecutor, the private plaintiff etc., can either participate in person or appoint an attorney.

If you are subpoenaed as a witness in civil or criminal proceedings your personal presence is mandatory. Failure to appear in proceedings when called as a witness may result in imposition of fines and ruling by the court or other competent authority for forcible bringing.

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Ivo Baev, Bourgas

It depends what is your part in the court theatre.

If you are a party (claimant/defendant) in a civil claim procedure, you supply your lawyer with Power of Attorney and your presence is not needed.

If you are asked/summoned to act like a witness in a civil case, your presence is obligatory.

If you are a witness or accused in criminal case procedure your presence is required unless Court orders are different.

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Mandjukova & Petkov Law Offices, Sofia & Vidin

It is not necessary in a civil case, especially if you have authorized a lawyer to represent you. However, if you are charged with a crime it is better if you are present at court hearings and sometimes, for some charges, your presence is mandatory.

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Solicitor Bulgaria, Sofia

If you have initiated a court case against a libellee in Bulgaria and if you have appointed a solicitor to represent you and act on your behalf then it is not necessary for you to be present at court hearings along with your solicitor. If you wish to be present during court hearings it is possible the judge to appoint a translator or you to bring a translator so he can translate to you during the hearing.

If the judge decides (and such request is made by the other party) that it is necessary for clear determination of the circumstances on the case you as party in the case (claimant or libellee) could be obliged to appear before the court and provide explanations on the stated matter. This could be done in a court hearing in Bulgaria or a procedure under EU legislation (Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters) could be executed.

If you are a resident of another country or if you leave Bulgaria for more than a month and you are a party in a court case, then you need to point out a person in the area of the court who is examining your case to whom the court notifications should be delivered. Should you not point out such address and person then all court papers should be considered for duly delivered and accepted by you. The court should warn you/your solicitor for that possibility.

Any party, who is absent for more than one month from the address which the said party has communicated under the case or whereat a communication has been served thereon once, shall be obligated to notify the court of the new address thereof. The same obligation shall furthermore apply to the legal representative, the curator and the attorney-in-fact of any such party. Upon failure to comply with this obligation all communications shall be filed with the case records and shall be presumed served. The said persons must be warned of these consequences by the court upon service of the first communication.

If a case is being conducted against a person who does not have a registered permanent or present address in the country, by request of the plaintiff the court notification for a conducted against him case shall be conducted through publication in the Unofficial Section of the State Gazette. The court shall authorize the effecting of service according to this procedure after the plaintiff certifies by a statement of search of records that the libellee does not have a residence registration and the plaintiff confirms by a declaration that the said plaintiff is not aware of the address of the respondent abroad. If, despite the publication, the libellee fails to appear in court, in order to receive duplicate copies of the statement of action and the attachments, the court shall appoint an ad hoc representative of the said respondent at the expense of the plaintiff.

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Q9: Some important legal considerations that have to do with property purchase Preliminary Contracts

Solicitor Bulgaria, Sofia

When it comes to Preliminary Contracts for Property Purchases a few clear clarifications must be made that are often wrongly understood by the purchasers and thus usually cause confusion:

1. **The Preliminary Contract in its essence has no ownership transferring effect by itself even if one of the parties has fully executed their obligations (for example the purchaser has paid in full).**

In reality such Preliminary Contracts usually have the simple legal meaning of a promise between two parties where usually one of them (developer) promises to build building/unit and later transfer it while the other party promises to fulfill certain payment obligations in return.

The ownership transferring effect is achieved through the means of witnessed by a Notary Public Title Deed transfer. As usually most Preliminary Contracts would list two obligations for the developer to build and transfer a real estate. the non execution of any of those two obligations will be a direct breach of the contract.

2. **The Preliminary Contract aiming later ownership transfer must be concluded in written form to be valid.**

Any verbal only contracts would be invalid as per non-compliance with the relevant obligatory legislation in this relation.

3. **The delay for execution of obligations of one of the parties usually relieves the other party from their later delay consequences.**

Rather often in real life both parties are late with one or more of their obligations. It must be noted that in general the law favors the party that falls in delay last and only after the other party has already delayed. A non-delayed party is given the right by law to cancel a contract that is being breached by the other party. This cancellation authorization is by law regardless if it is listed in the contract and could be executed after a non-resultful invitation to the other party to perform their obligations (build/transfer ownership etc.).

4. **Proving facts rather differs from simply knowing them** – It must be emphasized that court proceedings have to do all with the ability to prove facts rather than just to pint them. In majority of the cases in order a party to be successful in court actions, it is equally important to have solid legal grounds and also to be able to prove its claims beyond reasonable doubt.

That is particularly true in contractual disputes where usually the purchaser takes the subject to court with refund claims being obliged to prove himself: contract existence, his obligations execution, payments, contract cancellation and notifications delivery etc. In the light of the above keeping all of the relevant paperwork and communication trails is essential.

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FAMILY LAW

Q1: Is a UK will valid and recognised in Bulgaria? If I am resident in Bulgaria do I need to/can I make my will with a local notary public? If a British Citizen has died in Bulgaria and had been resident there, which inheritance laws apply – UK or Bulgarian?

Bulgaria Legal, Varna

The principle of the International Private Law in the European Community legislation state that the law of the country where the real estate is located is to be applied. The testator may chose by a will, if having legal matters in more than one country, as per which law of which country is to be dissolved his/her estate, that is not however, to contradict with this imperative principle. The Bulgarian Succession law will be applied in any case of possessing a real estate in Bulgaria.

If the UK will is holographic and happens to be prepared as per the requirements of the Bulgarian law for handwritten wills, it will be accepted and opened in Bulgaria, with no other further requirements. If the UK will however is typed, or does not meet the requirements of the Bulgarian law but the requirements of the UK law, then you would need to apply for a Grant of Probate from your local UK High court, Family Division, Probate Registry. You may experience problems if you are not resident of the UK and if you do not possess real estate in the UK. Once the grant is issued, it must be sent for apostil at the Foreign and Commonwealth Office. If in the will it is clearly stated that you are the only heir(s), then you can either present that document before the notary public in Bulgaria for the preparation of a declarative notary deed to declare that you are the new owner, or you can transfer the inherited property directly to a new buyer, if so you desire.

In some cases the notary public may require that you sign a declaration as per the Penalty Code that you state that you are the only heir(s) and you are not aware of any other existing heirs.

These are however rare cases and the best option is an English will to be used in conjunction with a Bulgarian will as the safest and most efficient combination, as it will avoid any ambiguity.
If you are a resident of the UK and have a property in Bulgaria you can state in your UK will that the law of the UK is to be applied to the real estate properties in Bulgaria. That process is made easier with the Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession), which was adopted on 4 July 2012 with some of its new rules applicable to successions as of 17 August 2015.

If the deceased was resident and died in Bulgaria intestate then Bulgarian succession law will apply to the inheritance in Bulgaria. It is always recommendable however to make a Bulgarian will as well to overcome any problems with the acquiring of the properties.
When making a will, please keep in mind that the UK wills include common revocation clause of all previous wills, so ensure that the previous will is not revoked by mistake.

The Bulgarian Succession Law requires the will to be prepared in a specific legal form and it does not depend on the citizenship or residency of the testator. According to it the Wills can be two types: Notary Will and Handwritten Will

- The notary will is prepared and typed by a Notary Public in the presence of two witnesses. The testator announces his verbal testament and the Notary writes it down verbatim. The Notary reads the will aloud and after that the testator, the witnesses and the Notary Public sign the document.
- The other type of will is entirely handwritten (holographic), dated and with the signature of the testator below at the end. That type is preferred by non-Bulgarians because it can be written in their own language, as long as the form is observed, and it is generally cheaper.

If you are a resident in Bulgaria and would like to make a will here, you do not need to make it before a notary public. Write it in your own handwriting and language, that is sufficient as long as you observe the form. What is recommended however is to submit the will for safe keeping with the notary public (it does not matter where). That way the will is registered at the Land Registry and cannot be lost.

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Home Point BG, Sofia

Planning and organizing any matter in advance, honestly, are aims of all of us. That is why a person tries to foresee and control any issue that may arise – in the every-day life, as well as in the future.

Small things could be sorted out in a minute or two, but more significant project require more spare time to collect your thoughts.

Sufficiently different from doing the shopping, making a decision whether to go out or not, whether to call someone or not, is determining the future of your property and disposing with it. Of course, you are not allowed to do the latter without observing the law.

Disposing with your assets could be inter vivos or mortis causa.

Actually, while we are alive, it is only up to us what to do with every thing from our property. We could get rid of any possessions through sale-purchase, donation, rent out, etc. But what happens with our belongings after our death?

The law has taken care of the above. The legislator has provided a particular order for succession. However, if the testator wants to derogate these provisions, he could achieve this by executing a will (a unilateral act which contains volition of only one party – the testator) – a handwritten will (wherever written, handed in to a local notary public in Bulgaria for safe-keeping) or a notary will (executed before a local notary public in the presence of two witnesses).

The applicable law is determined in compliance to the ordinary residence of the dead up to the moment of his death (if in Bulgaria – the Bulgarian legislation shall be applicable). Important to highlight is that inheriting immovable property has to be obeyed to the law in force for the state, where the real estates are located.

The testator may choose the succession of his property as a whole to be regulated by the law of the state, whose citizen he has been at the time of his death.
Once chosen the applicable law, the latter regulates the conditions for the validity of the choice and its revocation. By making such choice, the testator must not affect the reserved part of the successors.

The validity of a will is being regulated by the law of the state: in which it is made, or whose citizen the testator has been at the time of the execution of the will or up to the moment of his death, or in which the immovable property, subject of the will, is located.

The law applicable to the succession provides the time and the place of opening the succession; the number and the order of the successors; the inheritance shares; the ability to inherit; taking the obligations of the testator and their distribution among the successors; the acceptance and the denial of inheritance; the terms for accepting the succession; the disposable portion; the conditions for the validity of the will.

Last, but not least, is the absolute condition: the volition to the testator to be validly expressed.

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Vankova & Partners, Sofia

The Code for International Private Law gives solutions to cases in which there is a collision of two or more laws. There are methods to determine the applicable law like the so called “the principle for the closest relation”, so even if for your case there is not a specific regulation in the law, this method serves to provide a solution. Yes, a UK will is valid and recognised in Bulgaria - Art. 90 (2), point 1 of the Code for International Private Law says that the will is valid if it faces the requirements of the law of the country, in which it is prepared. You are not obliged to make your will with a Bulgarian Notary but this would make the things easier for your inheritors as Bulgarian authorities deal faster with documents issued in Bulgaria. If a British Citizen has died in Bulgaria and had been resident in Bulgaria, the applicable law depends on the kind of assets. For movable property the Bulgarian law applies – Art. 89 (1) of the Code for International Private Law. For real estate the applicable law is the law of the country in which the real estate is located - Art. 89 (2) of the Code for International Private Law. However, according to Art. 89 (3) and (4) of the Code for International Private Law, for all assets would be applicable the UK law if the testator is a British Citizen and has chosen the UK law to be applicable and has written this in their will.

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Q2: Bulgarian authorities are asking for a “Certificate of Family circumstance” or a “Certificate of Heirs” – what is that and how do I go about it?

Dobrev & Partners, Plovdiv

According to the Bulgarian Heritage Act when a person passes away, he is inherited by the so called inheritors by law (if there is no will). Usually these are persons among his closest relatives.

Every municipality keeps and updates registers for the civil status of the population, which includes data, which defines the identity of a person and also data for the parents, children, matrimonial status etc. So, the practice is when somebody dies, some of his closest relatives goes to the municipality and gets a ccertificate of Heirs of the deceased. This certificate is a legal instrument that certifies who the heirs of the deceased person are according the provisions of the Heritage Act.

For example, if a person has acquired some property during his lifetime on his name, after his death his inheritors by law automatically receive the ownership over this property. And what is most important, they don't need to take titles of deed on their name – they prove their property rights just with the title of deeds of their predecessor and the ccertificate of Heirs. In this way they can save considerable expenses.

The ccertificate of Family circumstance is also a legal instrument that is issued by the municipal authorities upon a request which certifies to the public if the applicant is single, married or widower (widow). According the Bulgarian law, there are some occasions when it is necessary to certify one's family status, i.e. to receive a social assistance.

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Duncan Wallace Solicitors, Sofia

When a person is a resident in Bulgaria – whether or not she/he is a citizen of this country – he has to register with the Town Hall (municipality) tax department. He should register there what property, apartments and cars etc. he owns. She/he should also register the members of his family that are to inherit on his death, whether or not they are resident in Bulgaria. The Town Hall staff should ensure that he gives the full names and address of the relative, though we have a case at present where only the first name was given of a daughter by a first marriage and no address. Although we protested that this person should not be included as an heir, the official would not give way. In that circumstance, the court must be petitioned and order advertisement for this person.
It does happen also, especially in the case of second or third marriages, that the person decides not to register the children from an earlier union. This is not legal, as the Bulgarian inheritance system does not allow you to exclude family members such as children. Whether or not the deceased leaves a Will, they are entitled to their statutory share. In fact, the Town Hall official is obliged to rectify the certificate of heirs in such a case to include the "forgotten" heirs. For the official to do this, she/he will require you to either go in person (to be avoided if you do not speak Bulgarian) or for your Bulgarian Advocate or your English Solicitor to have a power of attorney which clearly states your right to do this, and which has been signed in front of a notary (a Solicitor will not do) and then be sent to the British Foreign and Commonwealth Office for an Apostille (a requirement of the Hague Convention) and the whole then translated by a sworn translator here and then legalized here. To avoid all this, it is better to sign at the Bulgarian Embassy if you can get there. Also subject to the same procedure, you will need to present to the Town Hall the birth certificate of the child (for example) and the marriage certificate of the spouses. It should be noted that only the children of marriages will be regarded as heirs.

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Q3: I am married to a Bulgarian national and we have a child. Can the patronymic name be skipped on the birth certificate – I do not want it to appear on my child's British Passport.

Dobrev & Partners, Plovdiv

If your child is a Bulgarian citizen, the Bulgarian Civil Registration Act will be the relevant law in your case. The Bulgarian municipal authorities shall issue a birth certificate. According article 9, the name of the Bulgarian citizen consists of the first name, patronymic and the last name.

These three parts of the name are obligatory and are recorded in the birth certificate.

According article 19, you can apply to the court for a change of the patronymic name, based on the provisions stated: if it is ridiculous, disgraceful, socially unacceptable, or important circumstances require the change if this part of the name.

In case your child is not a Bulgarian citizen, but the child is born in Bulgaria, its name will be recorded as it is declared by the both parents – article 9 (3).

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CRIMINAL LAW

Q1: I have been sentenced and imprisoned in Bulgaria. How can I apply for a prison transfer to the UK? What do I need to know before applying?

Ivo Baev, Bourgas

Transfer of sentenced person is ruled according art.453-462 of the Penal Code. This is decided by the Attorney General of Bulgaria in agreement with the competent authority of the other state and written consent from the sentenced person. A transfer without the consent of the sentenced is possible in particular cases. Bulgarian Penal Code is applied as far as there is no different regulation in an international treaty signed by Bulgaria.

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Ralchevi, Stanev & Dzhambazova Law Company, Varna

The national legal regulations, regarding the transfer of sentenced persons to a foreign state can be found in Chapter 36 "PROCEEDINGS IN RELATION TO INTERNATIONAL COOPERATION IN CRIMINAL MATTERS", Section I „Transfer to Sentenced Persons", art. 453 – 462 from the Criminal Procedure Code of Republic of Bulgaria. The provisions of this Section are applicable unless otherwise agreed in an international agreement to which the Republic of Bulgaria is a party.

The transfer of individuals sentenced by a court of the Republic of Bulgaria to the purpose of serving their punishment in the state of which they are the nationals is in the competency of the Prosecutor-General of Republic of Bulgaria. The Prosecutor – General concludes an agreement with the competent body of the other state, if consent of the sentenced individual in writing is available. A decision on the transfer of a sentenced individual may also be taken after service of his/her punishment has begun.

The consent of a foreign national convicted by a Bulgarian court is not required in the following cases:

1. the sentence or a subsequent administrative decision of the sentencing state includes an expulsion (deportation) order or another act, by virtue of which the individual, following his/her release from an institution for deprivation of liberty, may not stay within the territory of the sentencing state;
2. before serving his/her sentence the sentenced individual has escaped from the sentencing state to the territory of the state whose national he or she is.

In the indicated cases under point 1 and 2, before issuing a decision for transfer, the opinion of the sentenced person must also be taken into account.

The place, time and procedure for delivery and admission of the convicted person are determined by the agreement between the Prosecutor - General and the competent body of the other state.

The applicable international legal regulations, regarding the transfer of sentenced persons between Republic of Bulgaria and United Kingdom can be found in "CONVENTION ON THE TRANSFER OF SENTENCED PERSONS of the Council of Europe » /Strasbourg, 21.III.1983/. The convention was ratified by Republic of Bulgaria on the 17.06.1994 /entry in force for the State on the 01.10.1994/ and by United Kingdom on the 30.04.1985 /entry in force for the UK on the 01.08.1985/.

A sentenced person may be transferred under this Convention only on the following conditions:

1) if that person is a national of the administering State
2) if the judgment is final
3) if, at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or if the sentence is indeterminate
4) if the transfer is consented to by the sentenced person or, where in view of his age or his physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative

5) if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory
6) if the sentencing and administering States agree to the transfer

Any sentenced person to whom the Convention may apply is to be informed by the sentencing State of its substance. If the sentenced person has expressed an interest to the sentencing State in being transferred under the Convention, that State must inform the administering State as soon as practicable after the judgment becomes final. The information must include: the name, date and place of birth of the sentenced person; his address, if any, in the administering State; a statement of the facts upon which the sentence was based; the nature, duration and date of commencement of the sentence.

If the sentenced person has expressed his interest to the administering State, the sentencing State must, on request, communicates to the State the information referred to in the paragraph above. The sentenced person must be informed, in writing, of any action taken by the sentencing State or by the administering State on the execution of the transfer, as well as of any decision taken by either State on a request for transfer.

The transfer under the regulations of the Convention is made after a request from the administering State to the sentencing State in writing. Requests must be addressed by the Ministry of Justice of the requesting state to the Ministry of justice of the requested state. Replies must be communicated by the same channels.

The following supporting documents must be enclosed to the request and/or the reply:

a/ by the administering State: a document or statement indicating that the sentenced person is a national of that State; a copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory; a statement containing the information mentioned in Article 9.2 of the Convention;

b/ by the sentencing State: a certified copy of the judgment and the law on which it is based; a statement indicating how much of the sentence has already been served, including information on any pre - trial detention, remission, and any other factor relevant to the enforcement of the sentence; a declaration containing the consent to the transfer; whenever appropriate, any medical or social reports on

the sentenced person, information about his treatment in the sentencing State, and any recommendation for his further treatment in the administering State.

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Q2: What are the different stages of appeal against a sentence and how long can each stage take at the relevant instance?

Ivo Baev, Bourgas

Two stages – appellation and cassation. Timing depends on too many details and for every case might be different.

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Q3: How long can someone be kept in detention for without charges being pressed against them?

Dokovska, Atanasov and Partners, Sofia

According to the Bulgarian legislation, no one can be detained by anybody but the police authorities. No one can be detained for more than 24 hours if no charges are pressed against them.

According to art 30, Para. 2 of the Bulgarian Constitution "No one shall be detained… except under terms and according to a procedure established by statute". Such statute is the Ministry of interior act (MIA) which empowers the police authorities to detain a person under certain terms without pressing charges against him/her. Those terms are listed in Para 1 of Art. 63 of the MIA and include, for example, the presence of data that the person has committed a crime or the impossibility for the police authorities to establish the person's identity or the deviation of the person from serving his/her term of punishment or in other cases provided by law.

After 24 hours of detention charges may be pressed against the detained person or he/she must be released.
If charges are pressed, the detention can be extended for up to 72 hours (the first 24 hours included) in order to bring the accused person before court where it shall be decided how to proceed with his/her further detention.

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Ivo Baev, Bourgas

Not later than 24hrs investigator is obliged to inform the relevant prosecutor. Decision for detention/arrest is taken by the Court not later than 72hrs from time of initial arrest. Before the Court hearing for the arrest charges are pressed.

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Vladimirov Law Office, Sofia & Varna

The Police shall keep you in detention not more than 24 hours without any charges. Some of the reasons for this detention could be riot, or actions that put someone in danger or you do not have your ID with you or maybe there is a suspicion that you have committed a crime.

The Police cannot keep you more than 24 hours unless the Prosecution issues a decree for your detention. The Prosecutor could keep in detention another 72 hours. To be detained more than this, a court decree/decision has to be declared.

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Q4: I've been detained. What are my rights with regards to access to legal representation, interpretation and consular support from my Embassy? Should I sign any statements or declarations before having spoken to a legal representative?

Maria Nikolova – Anderson, Rousse

If you are detained in the context of criminal proceedings and you do not speak Bulgarian to a degree that allows you to understand the technical language of a legal document, you have the right to ask for an interpreter and you are not obliged to give testimony or sign any document until an interpreter, or a written translation of the relevant documents, is provided by the authorities. The use of an interpreter or translator is formulated in the law as a right of the detainee rather than as an obligation for the authorities, and therefore, make sure to use your initiative to exercise your rights. In practice, during interview with a detainee, it is likely that the investigating authorities will summarise your testimony and will dictate the summary to a clerk who will write it down into what is called a 'protocol'. This protocol will be read to you (with the help of an interpreter, if one is appointed) after it is completed and you will be asked to sign it. Feel free to comment on the wording of the protocol and remember that you do not have to sign any document relating to your own testimony if you are not satisfied with the contents of that document.

If you are detained, it is always best to have the assistance of a lawyer, since the stress of facing possible criminal charges in a foreign country may render you unable to follow and understand what is happening to you and to protect your own interests to the full extent. You have the right to ask for a lawyer, and an interpreter to help you communicate with your lawyer, in case your lawyer does not speak your language. You are not obliged to sign any documents or make any statements before you consult a lawyer. The presumption of innocence is guaranteed under Bulgarian criminal legislation and the burden of proof rests with the investigating authorities to support potential charges against you or anyone else. This means that the investigating police officer and the prosecutor bear the responsibility to build a sound case against you as a potential defendant – even without any contribution from you.

The authorities who detained you are obliged by the law to inform of your arrest a person of your choice. This could be the Consular section of your Embassy, if you prefer. When a foreigner is detained, the authorities are also obliged to inform of the arrest the Ministry of Foreign Affairs.

On the whole, it is important that you stay calm: do not feel pressured to say or sign anything, and give yourself the time to understand what is going on. Remember to ask for an interpreter and a lawyer.

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New Balkans Law Office, Sofia, Rousse & London

In general, police officers acting on reasonable suspicion of an offence (or on one of a number of other grounds) may lawfully detain you. After your detention, you must be taken immediately to a police station. Such initial detention may be for up to 24 hours.

Immediately upon your detention, you must be informed of the reasons for your detention in a language understandable to you. While police are increasingly well-trained in English, communicating to you in an English that you can understand is regrettably not always achieved. Interpreters appointed by the police must be selected from a police list of pre-approved interpreters. If you believe the interpretation is inaccurate, you may ask for a new interpreter.

In addition to the right to an interpreter, as a detainee, you have rights to: (i) legal representation and (ii) consular support. Once in custody, you should be given such access, but you can request it if it has not automatically been offered.

An interpreter must be provided before you are questioned. If you have requested a lawyer and are questioned in his absence, police would generally be unable to use the evidence obtained. The same is likely true of interpreters but may not be true of consular assistance.

You may choose to refuse representation, the help of an interpreter or consular assistance. If you did, the police must evidence your refusal through a formal written declaration. You may change your decision to refuse.
If you are a foreign national, police must immediately inform the Bulgarian Ministry of Foreign Affairs which will in turn notify your Consulate. You can request a meeting with a consular official. Whether and on what terms your Consular Official may be able to attend will depend on the procedure your Consulate follows.

The initial 24-hour detention (and the subsequent detention of up to a further 48 hours) require a Detention Order. The Order contains:

1) the name, position and address of the issuing official;
2) the grounds for your detention;
3) your details;
4) the date and time of your arrest;
5) The document also lists your rights:

    a. to appeal to a court to review the lawfulness of your detention;
    b. to receive legal advice;
    c. to receive medical care;
    d. to make a phone call to notify someone of your detention;
    e. to contact the consular authorities of your country in or responsible for Bulgaria;
    f. to use an interpreter (if you do not understand the Bulgarian language).

If you do not wish to hire a lawyer at your own cost, a public defender will be appointed.

We would not recommend you sign any declarations and/or forms without legal advice or at least before having had help from an interpreter. The risk of misunderstanding anything you are told or given to sign is significant, and you should not feel any pressure to cooperate even if you believe that your detention is brief, or that any misunderstanding will be cleared if you cooperated.

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Ralchevi, Stanev & Dzhambazova Law Company, Varna

The legal grounds a person to be detained in Republic of Bulgaria are listed in article 63, paragraph 1, items 1 – 8 from the Ministry of Interior Act. These grounds are as follows:

1. if there are data that the person has committed a crime.
2. who, following due warning, consciously deters the police organ from meeting organ's obligation on duty.
3. who shows serious psychic deviations and by his/her behaviour violates the public order or puts to obvious danger his/her life or the life of other persons.
4. a juvenile breaker who has left his/her home, guardian, trustee or specialized institution, in which such minor has been accommodated.
5. if it is impossible to establish the person's identity in the cases and manners established in art. 61, paragraph 2 from the Ministry of Interior Act.
6. who deviated from serving his/her term of punishment "detention under custody" or in places, where the person has been detained as an accused, in compliance with a police or judicial organ's institution.
7. the person is declared for international search on the request of another state in connection with person's extradition or in compliance with European order of arrest.
8. in other cases provided by law.

Practically someone can be kept in detention without charges being pressed against him/her in the cases, listed in items 1 – 5, because usually in the cases indicated in items 6 and 7, the particular individual already has charges pressed against him/her.

The maximum period of time someone can be kept in detention without charges being pressed against him/her is indicated in article 64 of the Ministry of Interior Act - a person detained under the conditions of art. 63, par. 1, items 1 – 5, shall not be deprived of other rights except for the right of free movement. The term of detention in these cases shall not exceed 24 hours.

In order to take a detainee to a place of detention, the police organs must issue written order. The police organs are obliged to immediately set free a person, if the reasons for the detention dropped off.

In the cases under points 1 to 8, the person may be accommodated in special premises and against such person measures for personal security may be taken, if the person's behaviour and the purpose of detention require so. If the detained person has no command of Bulgarian language, he/she shall be directly informed about the reasons of his/her detention in a language understandable for him/her. The detained person may appeal to the court the legality of the detention. The court is obligated to deliver judgment to such appeal immediately. Since the moment of detention the detained person has the right

to an attorney. In case of detention the relevant organ is obliged to immediately notify a person, indicated by the detainee. If for example a certain individual is a citizen of UK and is detained in Republic of Bulgaria, this person may indicate a clerk or an officer from the British Embassy.

In case of detention, a detainee, who is a foreign citizen, should not sign statements or declarations he/she does not understand or documents, which are written in foreign language.

The direct answer to the upper questions is as follows: *the term of detention without charges being pressed against the detained person should not exceed 24 hours. Foreign citizen should never sign declarations or statements before having spoken to an attorney, especially if these documents are written in a foreign language.*

However, Bulgarian authorities quite often elude the rule of 24 hour detention. This is achieved as the police and prosecution authorities base their actions on article 64, paragraph 2 of the Criminal Procedure code. This regulation provides that the prosecutor shall immediately ensure for the accused party to appear before court and, if needed, he/she may rule the detention of the accused party for up to 72 hours until the latter is brought before court. This regulation regards the case, in which charges have already been pressed, but the measure of remand in custody in pre – trial proceedings has not been taken yet. Nevertheless, in fact detention up to 72 hours is applied before there are any charges pressed, in order the prosecution to prepare these charges in a manner well sustained for court. If Court denies the request of the prosecutor for taking measure of remand in custody in pre – trial proceedings, then the practical result is that detention may last up to 72 hours.

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COMPANY LAW

Q1: I had a company set up in Bulgaria but I failed to re-register it. What can I do now and what will be the consequences?

Braykov's Legal Office, Sofia

Companies that failed to re-register by 31 December 2011 cannot perform business activities. This means that your company still exists, but it cannot file claims, initiate enforcement proceedings or make transactions with its property. Any transactions for disposal with company's property performed after 31 December 2011 are considered null and void, except for those performed with the purpose of payment of amounts due to employees.

The activities of the company cannot be restored. What you have to do is to file an application for liquidation of your company with the Registry Agency by 31 January 2015. In the application you shall state the liquidator (you can designate yourself as liquidator) and the term of the liquidation.

The costs for the liquidation shall be borne by the company. In the event that the company does not have enough funds, the person who has filed the application for liquidation shall provide the necessary funds for the liquidation. The liquidation shall be completed within one year. The time limit may be extended upon a motivated proposal by the liquidator.

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Bulgaria Legal, Varna

The companies which failed to re-register within the legal term are officially announced into liquidation as per the Companies Register Law and the Commercial Law. What a company owner can do is to either start voluntary the liquidation by submitting a set of documents at the Companies Register OR to participate in a started liquidation by the officials.
The consequences are that your company shall be liquidated and erased from the Companies Register, that is why it is important to start the liquidation voluntarily and if there are bank accounts and/or properties, the money to be withdrawn and the properties sold/transferred to the physical persons /shareholders of the company/.

If the company was announced into liquidation by the government/officials and there is a property registered under company name the property will not be "lost" but can be transferred by the principal of the universal succession to the personal name of the owner of the company. Even if the deadline is missed but the company has money in a bank account and/or a property, this matter can be resolved by withdrawing the money and/or selling the property.

However, if the government officially has started the liquidation because **for example:** unpaid taxes and other liabilities due to the government, then the property can be secured with injunction put by the interested party and this may harm the ownership right of the owner.

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Dimitrov, Ivanov & Partners, Sofia

31 December 2011 was the deadline for re-registration of companies. If you failed to proceed with the re-registration until that date, you are no longer allowed to carry out commercial activities.

In that case, if your company is solvent, you can apply for its liquidation until 31 January 2015 or later if a dispute between you and the company is still pending before the court as of expiry of the said deadline. In the liquidation process the company's assets will be sold and its liabilities will be settled. Any positive balance after the liquidation will be paid back to you (the shareholders in the company). If your company is insolvent, you should apply for bankruptcy.

For the purposes of the liquidation/insolvency proceedings the company would be automatically re-registered and after the relevant proceeding's end it would be finally deleted from the Bulgarian Companies Register (i.e. it would cease to exist).

If you choose to do nothing, the company will be deemed deleted from the relevant court register (i.e. it would cease to exist) as of 1 February 2017.

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Dimova, Severinov & Trifonov Law Office, Rousse

The Companies Register Act regulates the matter related to the trade companies and the foreign branches which are not re-registered in term up to 31.12.2011. According to Art.5, par.1 from the transitional and final provisions of the Companies Register Act branches of foreign companies in respect whereof no re-registration has been requested in term up to 31.12.2011 or have effective refusal for re-registration shall be considered terminated from 01.01.2012 and the relevant court of registration shall archive their company files. According to Art.5, par.2 from the transitional and final provisions of the Companies Register Act the companies in respect whereof no re-registration has been requested in term up to 31.12.2011 or have effective refusal for re-registration shall be terminated from 01.01.2012. In order to minimize the negative effects of the termination of these companies from the economic life their creditors should also be given a chance to collect their takings therefore a regulation is provided that these "companies with terminated activity" shall not be automatically terminated on 01.01.2012. They shall be terminated after 31.01.2017 only if there is no request for re-registration and a request for liquidation.

Possible outcome of the situation is to request simultaneously re-registration and liquidation. The request can be submitted by any interested person /shareholder, partner, member of managing board, party of ongoing litigation, creditor, governmental or local authorities etc./. up to 31.01.2015. In this way after the company is in a process of liquidation and a liquidator is elected the activity of the company can continue for a period of no more than one year from the start of the liquidation process. In this period the problem with the real estates, ownership of the company can be resolved as well as the takings of the

company can be collected. If the term of one year is not enough it can be prolonged on the grounds of valid proposal by the liquidator or by a request from an interested person submitted in the Registry Agency.

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Dokovska, Atanasov and Partners, Sofia

The consequences of not re-registering a company which is set up in Bulgaria are governed by the Companies Register Act.

Should this be the case, an application for liquidation of the company has to be submitted to the Companies Register not later than January 31, 2015. The application shall state the liquidator and liquidation time limit.

The application may be submitted by a person who is a partner, a shareholder, a member of a cooperative or their heir, a member of a management body of a non-reregistered trader, a trader in which a partner is a non-reregistered company or cooperative, a creditor of a non-reregistered trader, a creditor of a partner in a non-reregistered company, a public authority or a local self-governance authority. The capacity of a shareholder or a member of a cooperative shall be established by a written declaration, and the capacity of a creditor shall be proved by an effective act of established public receivable, issued by a competent body, by an act under Article 404 and Items 1 - 8 of Article 417 of the Civil Procedure Code or by a certificate of an enforcement agent of initiation of enforcement proceedings. A person may furthermore submit an application after January 31, 2015, if at 31 January 2015 no uncompleted court proceedings or arbitration proceedings between said person and the non-reregistered trader exist. The liquidation shall be completed within one year. Wound up companies and cooperatives which are not reregistered by January 31, 2017, shall be deregistered.

Where a property is found in respect of the company, the persons authorized to submit the application for liquidation may furthermore do so after said time limit, but not later than December 31, 2022.

Should the legal representatives of the company fail to re-register it, any activities of the company shall be wound up on January 1, 2012. Companies which have not been re-registered within the time limit specified in § 4, Paragraph (1) of the Commercial Register Act, i.e. December 21, 2011 or have effective refusal of re-registration shall not have the right to pursue business activities, lodge claims or submit requests to initiate enforcement proceedings, except for an application for initiation of bankruptcy proceedings, perform disposal transactions with their property, except for transactions to pay the amounts due to employees, and to transfer amounts to extinguish public liabilities. Any disposal transactions performed after 31 December 2011 with respect to any property of companies and cooperatives whose operations have been wound up shall be null and void. In this case, the legal representatives of the company are only entitled to receive declarations of intention addressed to the relevant traders, and may submit requests for declaring them bankrupt.

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Home Point BG, Sofia

If you are a shareholder, a partner in a legal entity or a sole owner of the capital of a company, and if the obligations provided in Bulgarian law, which concern the re-registration of each company, have not been duly fulfilled, you should pay attention to the following basic issues.

According to the provisions of the Companies Register Act all legal entities have had to be re-registered by 31.12.2011. Those who have not complied with the above have been considered as ceased as from 01.01.2012. The latter means that the capability of these companies is strongly restricted – these

companies still exist, but they have no rights to realise trade activity, to submit claims and to submit for initiating enforcement proceedings, to dispose with their property. All property transactions after 31.12.2011 are void. The legal representatives of these ceased companies have only passive representative power, to pay the sums due to the staff, to perform transactions for repayment of state obligations, to claim their announcement into insolvency.

The right to claim the announcement into liquidation of these legal entities have a wide range of people compared to the legitimated to claim the insolvency of the companies. The deadline for submitting the application for liquidation is 31.01.2015. The latter could be done by a partner, a shareholder, a member-cooperative or their successor, a member of a managing body of a non-re-registered company, a company, in which a partner is a non-re-registered company, a creditor of a non-re-registered company, a creditor of a partner in a non-re-registered company, a state body and a body of the self government. The deadline is prolonged if between the applicant and the non-re-registered company there are pending legal or arbitration proceedings.

The liquidator of the legal entity is its legal representative. In case the latter is impossible, a liquidator will be the person, indicated by the applicant (who is also required to present a specimen of the future liquidator). If the applicant has not appointed someone for a liquidator, the same is being determined by the official registration.

Once started, the liquidation process should be completed in a year (except when the liquidator or the applicant has asked for prolonging the term specified.

In case an application for starting enforcement proceedings has been submitted and the one party a non-re-registered company, the bailiff supplies the creditor with a certificate for the started enforcement proceedings and indicates to him to submit an application for liquidation.

On the other hand, insolvency could be opened for a non-re-registered company. In these hypotheses the court of the insolvency announces the performance of an ex officio re-registration.

Everyone has the right to review the documents of the non-re-registered companies at the trade register at the respective court.

The companies which are closed and which have not been re-registered up to 31.01.2017 will be considered as stricken off.

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LM Legal Services, Sofia

According to the Law for the Companies Register Act, you would have to voluntary wind up your company through a process, known as „voluntary liquidation“. You will need to appoint a person to be the liquidator of the company (you may yourself be the liquidator, or your solicitor, or you can employ someone else). After that you will have to sign some legal papers, apply to various State and Municipal authorities, obtain a certificate for the lack of debts to the National Revenue Agency and the like, then the company’s accountant should make a balance sheet for the company’s debts and assets, after which your solicitor will submit all the documents into the Companies Register. The procedure is rather lengthy, it will take up to six to eight months for it to be completed and the final result will be that you will become a

direct owner of the company's assets, whereas the debts of the company will be limited to the measure of its share-capital.

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MH Legal, Varna

All companies registered before 2007 had to re-register by the end of 2012. If you have failed to re-register, your company is now subject to compulsory liquidation. The reason for this requirement was the introduction of new online centralised Companies Register. Failure to re-register will cause the government to appoint a liquidator, sell company assets (including real estate properties) and de-register the company. All expenses will be accounted on the name of the company shareholders.

If you want to prevent the above from happening, you should take control of the compulsory liquidation, by appointing your own liquidator. Your solicitor should outline the procedure and prepare all necessary documents for you. If your company has company assets, such as real estate property, the latter can be transferred to your own name by the liquidator, after repaying all outstanding company debts, including outstanding taxes and fines. There are few ways this transfer can happen and normally you don't need to make a fictive sale, but just use the statutory regulations of the liquidation procedure itself.

The minimum statutory liquidation term is 6 months, but in reality the procedure takes about 7-8 months, because of the various documents which need to be obtained from government authorities.

As a result of the liquidation, your company will be deregistered and you will not need to file annual accounts and tax declarations. If your property is transferred to your personal name, you have to declare it in the local municipality so that the tax payment notices are sent to your name. Additionally you have to register yourself in the Bulstat Register, as a foreigner owning real estate property in your personal name.

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Ralchevi, Stanev & Dzhambazova Law Company, Varna

As per paragraph 4 from the "Transitional and final provisions" of the Companies Register Act, the merchants and the branches of foreign merchants, entered in Companies Register and Registry of Co – operations at the County courts, are obliged to re - register themselves in term up to 31st of December 2011. The procedure of re-registration is regulated in details in the above mentioned provision. The consequences of not observing this regulation are provisioned in paragraph 5 from the "Transitional and final provisions" of the Companies Register Act, regarding the branches of foreign merchants. As per this provision, if re-registration was not requested before 31st of December 2011 or if the re-registration has been refused, these merchants are considered erased/obliterated after 1st of January 2012.

In line 2 of paragraph 5 of the "Transitional and final provisions" of the Companies Register Act is provisioned that the companies, of which a request of re-registration was not made in time as per paragraph 4 or of where the re-registration has been refused, seize their commercial activity after 1st of January 2012. This means that these companies shall not have the right to carry out commercial activity; bring actions before court; submit petition of initiation of enforcement proceedings, except from applications of instituting bankruptcy proceedings; perform deals with their property, except from paying due sums to their employees or transferring sums to liquidate obligations to the State. All deals

performed after 31st of December 2011 and having as their subject property of the commercial company shall be considered null and void.

The legal representatives of the commercial companies, whose commercial activity has been seized after 1st of January 2012, can only accept statements addressed to these companies and to submit applications of instituting bankruptcy proceedings.

In respect of the commercial companies, which have not been re – registered in the established legal terms, a procedure of liquidation is carried out. An application of liquidation of a commercial company, which commercial activity was seized as per paragraph 5 of the "Transitional and final provisions" of the Companies Register Act, can be submitted to the Commercial Registry in term up to 31st of January 2015. In the application must be indicated a liquidator and a term for liquidation. In case that up to the 31st of January 2015, there are unresolved court or arbitration proceedings, the application of liquidation may be submitted even after 31st of January 2015.

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Solicitor Bulgaria, Sofia

The official legal term for re-registration of companies incorporated before 2008 was 31.12.2011.

According to § 5, para. 2 of the Transitional and final provisions of the Companies Register Act the operations of companies and cooperatives in respect whereof no re-registration request has been filed by 31.12.2011 or have effective refusal of re-registration shall be terminated on 1 January 2012.

Companies and cooperatives which have not re-registered by 31.12.2011 or have effective refusal of re-registration shall not have the right to pursue business activities, lodge claims or submit requests to initiate enforcement proceedings, except for an application for initiation of bankruptcy proceedings, perform disposal transactions with their property, except for transactions to pay the amounts due to employees, and to transfer amounts to extinguish public liabilities. Any disposal transactions performed after 31 December 2011 with respect to any property of companies and cooperatives whose operations have been wound up shall be null and void.

Legal representatives of companies and cooperatives whose operations have been wound up as of 1 January 2012 may only receive declarations of intention addressed to the relevant traders, and may submit requests for declaring them insolvent.

By 1 June 2012 the Registry Agency drafted a list of the applicants which have submitted applications within the time limit (31.12.2011) but have been refused re-registration. If the refusal is revoked, the Registry Agency shall ex officio re-register the relevant trader, which shall immediately be reflected in the list.

An application for liquidation of a trader may be submitted to the Companies Register not later than 31 January 2015. The application shall state the liquidator and liquidation time limit. Such application may be submitted by a partner, a shareholder, a member of a cooperative or their heir, a member of a management body of a non-reregistered trader, a trader in which a partner is a non-reregistered company or cooperative, a creditor of a non-reregistered trader, a creditor of a partner in a non-reregistered company, a public authority or a local self-governance authority. The capacity of a shareholder or a member of a cooperative shall be established by a written declaration, and the capacity

of a creditor shall be proved by an effective act of established public receivable, issued by a competent body, by an act under Article 404 and Items 1 - 8 of Article 417 of the Civil Procedure Code or by a certificate of an enforcement agent of initiation of enforcement proceedings. The above person may furthermore submit an application after 31.01.2015 if till 31 January 2015 between him and the non-reregistered trader there is pending and not completed court or arbitration proceeding.

The above persons may apply to the Companies Register for entry of circumstances on the liquidation of a non-reregistered company and cooperative which are in liquidation at 31 December 2011. If more than one application for liquidation is submitted, they shall be joined for single examination.

Based on the application the Registry Agency shall require from the court of registration of the non-reregistered trader a certificate of current legal status, containing data of the latest entered circumstances, as well as transcripts of the articles of incorporation, memorandum of incorporation or statute effective at 31 December 2011. The court of registration shall send to the Registry Agency electronic copies of the relevant documents, signed by electronic signature, under the terms and procedure of the Electronic Document and Electronic Signature Act and shall provide immediate access to the agency for scanning the entire numbered company file of the trader.

The circumstances on the liquidation shall be entered in the Companies Register after the re-registration of the trader who shall be entered with its existing company name. Upon re-registration traders shall be excluded from BULSTAT Register and the BULSTAT code shall become the UIC of the trader.

As a liquidator of a non-reregistered trader shall be appointed a person or persons who have the right to represent it according to the entry made in the court of registration. The liquidators shall be deemed notified of the appointment through their entry in the Companies Register. No notary certified consent with signature specimen shall be required in these cases.

The costs for the liquidation shall be borne by the trader. Where the trader does not have the funds, the person who has submitted the application for liquidation shall provide the funds for the liquidation, including the liquidator's remuneration. If more than one application is submitted, the funds shall be split equally among the applicants. Where the funds for the liquidation have been provided for by a person who has submitted an application for liquidation, such person shall be fully reimbursed therefore immediately after the property is cashed down, before settlement of the other creditors' claims. The remuneration of the liquidator shall be paid after termination of the performance of his/her functions and in the amount and under the procedure laid down in Article 31 herein. The liquidation shall be completed within one year. The time limit for the liquidation may be extended on the basis of a substantiated proposal by the liquidator or at the request of a person who may file the application for liquidation as stated above. The person who submitted an application for liquidation of the trader may present before the registration official a request to change the liquidator appointed in case he/she fails to discharge his/her duties or, by his/her actions, endangers the interests of the trader or the creditors. A request for a change of an appointed liquidator may be furthermore presented by another person under the terms of Article 266 (4) of the Commerce Act.

The liquidator shall be financially liable for the transactions and acts performed by him/her where they prejudice the trader or the creditors thereof.

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Trifonov Law Offices, Plovdiv, Sofia & Bansko

According to the rules of Bulgarian Companies Register Act Bulgarian companies had to re-register by the end of 2011. Those who failed to re-register within the specified deadline are now considered "frozen". In fact that means they are not deleted but cannot trade or perform their commercial activities. This is very unpleasant for all those who registered companies to buy real properties into the name of those companies. Legally they can neither resell, nor rent the property unless the company is liquidated and the real property is transferred into the name of a physical person (the shareholder/s) or into the name of another company.

Restoration of such companies is impossible, liquidation procedure is inevitable. Owners of un-re-registered companies are given the opportunity to apply voluntarily for liquidation by 31 January 2015.

The liquidation procedure starts by informing the National Revenue Agency (NRA) that the company will start a liquidation procedure. The NRA checks the status of the company from taxation point of view and issues a certificate that has to be filed with Bulgarian Companies Register together with an application form for liquidation. The application form is accompanied by a number of legal documents such as: Minutes of the General Meeting of the Shareholders (GMS) in the company confirming that the GMS has adopted a decision for liquidation of the company, some declarations, specimen of the signature, etc.

Any of the shareholders, their heirs (in case of death of a shareholder), and members of the management body of the company or a creditor can apply for liquidation. The procedure itself lasts approximately one year. In most cases the manager of the company is appointed as liquidator. In case this is not possible for some reason (for example if the manager has passed away in the meantime), the person who applies for liquidation is usually appointed as liquidator. Generally the whole process can be arranged from a distance via a Power of Attorney.

The process of liquidation involves both legal and accounting work. Upon application for liquidation the company presents financial statements and balance sheets. It is strongly recommended to have both a trustworthy solicitor and an accountant to work in collaboration in the process.

One of the specifics of the company liquidation procedure in Bulgaria is that the company in liquidation is obliged to invite officially (through the Companies Register) all creditors to claim their takings (if any) from the company within 6 months from publishing of the invitation. Only after the expiry of this 6 months period and on the condition that no third parties have made any claims, the shareholders can transfer company assets into their name as physical persons.

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Q2: Do I have to register a company in Bulgaria in order to take part in public tenders? If I have a local partner, do I have to set up a joint venture in Bulgaria in order to take part in public tenders?

C&I Legal Partners, Sofia and Bourgas

It is not compulsory to register a BG legal entity in order to participate in public tenders. In fact the foreign company is completely eligible to act on its own. It has to be mentioned that a branch of a company cannot be eligible to participate in public tender procedures according to our current legislation.

For cases related to local partnerships usually the forms of a consortium or non – personified entities are chosen. Depending on the relationship with the local partner these contracts for consortiums or non – personified entities can be ad-hoc /just for once/ or for a set period of time /for certain volume of work, etc. Usually very detailed contracts are prepared as all the rights and obligations and rules and mechanisms for the consortium or non – personified entities needs to be explicitly agreed in writing.

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Dimitrov, Ivanov & Partners, Sofia

Both Bulgarian and foreign nationals are eligible candidates in public tenders and you can directly take part in one (i.e. without setting up a Bulgarian entity or partnering with a local partner).

Please note, however, that public tenders often have minimum requirements for candidates in terms of their economic and financial standing, qualification, technical capabilities, relevant experience, etc. If you or your foreign company meets any such minimum requirements that a specific public tender may have, you can take part in such a tender alone. Otherwise, you need to set up a joint venture with a local or foreign partner, so that you meet the minimum requirements with your combined resources.

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LM Legal Services, Sofia

Each public tender is different and sets up different criteria, which the companies have to meet, so yes – you may have to register a company, or yes – you may have to set up a joint venture, or finally – you may be allowed to participate with your European enterprise.

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New Balkans Law Office, Sofia, Rousse & London

As a matter of first principles, any individual or organization can take part in a public procurement process in Bulgaria, irrespective of whether they are Bulgarian or foreign resident or registered.

Consortia and associations of such persons enjoy this right likewise.

However, the awarding authority would typically issue tender documentation containing precise requirements regarding the legal form, legal, financial and technical capabilities expected of participants in the tender.

It is a common for organizations to form joint ventures with local partners in order to more easily meet the requirements set by the awarding authority. Local partners may have good know-how and this may be one of the reasons why you wish to work with them, but you and they do not have to form a joint venture. A joint venture can be structured as either a new organization separate from those of the two joint venture partners or as a contractual arrangement negotiated with a local partner.

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Q3: How do I set up a company in Bulgaria? How long does it take?

Braykov's Legal Office, Sofia

The companies in Bulgaria and any changes to them are registered in the Companies Register which is public. A company is considered created as from the date of its registration. Only the data registered with the Commercial Registrar is considered as relevant for a company.

Certain documents must be prepared and filed to the Commercial Registrar. They differ depending on the type of company. Basically, in all companies there must be resolution for their establishment, adoption of Articles of Association and choice of management bolides.

There are different types of companies which can be created in Bulgaria. The choice of companies depends on the business activities which you plan to carry out in the country. The most commonly used in practise are joint stock companies and limited liability companies. Both can be established by a single shareholder. Such could be a foreign legal entity or a foreign individual. In case, a foreign entity is a shareholder certain specific documents are required such as certificate of incorporation, issued by the corresponding companies registrar, certificate of good standing, Articles of Association, resolution of the respective company body to establish or participate in a company in Bulgaria, etc. Some of these documents require special certification by a notary and apostil.

In any type of companies, appointed directors with signatory power must verify their signature before a notary.

In order to create a company you must choose the name of the company, scope of business activities, registered seat and address, the amount of share capital and management bodies.

It is advisable as a first step to preserve the name of your company for which a special application is made to the Commercial Registrar.

Generally the registration of a company takes the following steps:

a) Choice of appropriate form of company and identification of data about the company;
b) Preservation of the name;
c) Preparation and signing/certification of necessary documents;
d) Opening of a bank account in a Bulgarian servicing bank;
e) Payment of the share capital and obtaining of a bank certificate for that;
f) Submission of documents with the Commercial Registrar.

The Commercial Registrar shall register the company within 3-5 days as from the date of filling of all necessary documents and provided that they are properly prepared.

The company may operate immediately after the registration. The company file number is also the number for tax purposes.

In case the company shall hire personnel, it must register with the Personal data Protection Commission.

For some companies that shall carry out specific regulated business activities a permit from a state body must be obtained in addition to the registration with the Commercial Registrar. For instance, special

registration is required for banks, insurance companies, hospitals, etc. Various requirements apply and supporting documents are necessary for obtaining of these registrations.

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Coeler Legal, Sofia

The process of registration of a company includes drafting and adopting of all necessary decisions, as well as preparing further documents necessary to evidence the willingness and the suitability of the persons appointed as managers and the current situation of the shareholders in the new company. In the very simple case you may obtain all documents (excluding a certificate for good standing of an English company that will participate as shareholder in the new company in Bulgaria, that usually takes between one and three weeks with regard to the necessity to supply the document with an apostille) within one day. Where a translation of document or a legalization of an apostil is required this may take one, two or more days. Upon submission of the documents into the Companies Register it will take three more days until the company is validly entered. The shortest period may so far be calculated to approximately one week. If you would like to found a company with more than one shareholder and have not agreed on essential matters such as capital, capital distribution, decision making majorities, seat and address of management, limitation of the representative power of the managers etc the foundation may take much longer up to several months depending on the process of negotiation.

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Damyanov Law Firm, Plovdiv

According to Bulgarian commerce legislation there are number of documents that should be prepared, signed/certified and submitted to the Companies Register in order to open a limited liability company in Bulgaria. When we are setting up companies for English speaking clients we prepare all of the legal documentation in both Bulgarian and English language so the client will be aware of the content of each document that he has to sign for the process.

In general the documents that need to be represented are:

- ✓ Article of Association;
- ✓ Resolution for incorporation;
- ✓ Specimen of the signature of the Manager;
- ✓ Document showing the initial capital, document for the state fee due;
- ✓ Declaration, required by the Bulgarian law;
- ✓ Power of Attorney (Notary certified or certified in the respective Bulgarian Embassy with an Apostille);

A bank account in the name of the new company should be opened and the minimum capital must be deposited there. The law requires minimum capital of 2 BGN. Then a Certificate must be obtained from

the Bank showing that the initial capital is registered and paid. After the registration of the company this account will be closed and a new operational account could be opened in the name of the company.
In order to set up a Bulgarian LLC company, the owner of the company should provide the following information:

- ✓ Desired name of the company (in order to see if the name is free in the register);
- ✓ The personal details of the Manager(s) of the company (full names, passport details and permanent address)
- ✓ What will be the registered address of the company in Bulgaria (if necessary we could provide register address for the company for an annual fee);
- ✓ Scope of activity of the company (it could be a general description - commerce - import and export, etc.);
- ✓ Any other specifications required in relation to the new company.

It is possible to register a company in Bulgaria without being here in person. For the purpose you will need to provide a power of attorney with proper authorisation which should be signed and certified together with some of the other company documents. Once these documents are certified, the registration could be completed without the owner/manager is present in Bulgaria.

The time-scale for setting up a Bulgarian company depends on the time which is necessary for the certification of the respective documents and it`s delivery to the law office. Once this aspect is fulfilled and all documents are duly signed – it should take about a week to register the company in the respective Companies Register and obtain a certificate for registration.

Once the company is active, the owner should know that there are number of legal and accountancy requirements each year that are applicable to all existing companies in Bulgaria. These could be performed either personally by the owners of the company or by a law firm against an annual fee.

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Dimova, Severinov & Trifonov Law Office, Rousse

In order to register a company the respective person or persons should first choose the type of company they want. The most common and most commonly used companies for developing a commercial activity are “limited liability company” and a “joint stock company”. The foreigners come to Bulgaria mostly with the purpose of purchasing a real estate or developing a small business. The best type of company for that is the limited liability company. The capital of the company is divided into quotas. The basic characteristics of that type of company are: name, headquarters and address of management, subject of activity, capital /amount of the capital/, names of the partners, names of the manager/managers. This information must be available at the time of preparation of the documents. The set of documents is as follows:

1. Minutes for incorporation into which a resolution for registration of the company must be adopted. An Articles of Association must be adopted / in case there is more than one partner/ or Constitutive deed /in case there is only one partner – sole proprietor of the capital/ and finally

there should be election of a manager and adopting a resolution for empowering a person to conclude management assignment contracts with the manager.

2. Articles of Association or Constitutive deed, indicating all the basic characteristics of the company – name, headquarters and address of management, subject of activity, capital /amount of the capital/, names of the partners.

3. Declarations under Art.142 and Art. 141, par. 8 of the Commercial Code and a declaration under Art. 13, par. 4 of the Companies Register Act.

3. Signature specimen of the manager of the company. That document must be certified by a notary.

4. 5. In case the documentation shall be submitted by a lawyer he shall need a power of attorney in order to submit all the documents in the Companies Register. The registration of such type of company is a process that takes about 5 to 10 working days /for preparation of the necessary documents and for submitting them in the Companies Register/.

The Joint Stock Company is a company of the larger capital as it is used for developing much bigger enterprises and projects, where big investments are needed. There are certain activities that can be developed in Bulgaria only by a Joint stock company – banking, insurance and reinsurance. The capital is divided into shares. The registration process for the joint stock company is a bit slower that the LTD, because a greater set of documents is needed and the persons participating in the incorporation are more. Joint stock company has two forms of management exists in two forms of management – one-tire /Board of directors/ and two-tire /Managing board and Supervisory board/. The choice for the type of management depends on the persons participating in the project as well as from the subject of activity.

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Duncan Wallace Solicitors, Sofia

There are different kinds of companies in Bulgaria, of which by far the most common are single proprietor companies and those with a manager and so-called part-holders (shareholders is our nearest equivalent), on whose number there is no legal limit. There is no board of directors as in UK. This article only deals with these two forms. Both take between four and eight weeks to form once the papers are lodged at the Registry Agency, provided that there are no questions or rejections (*otkas*). How long the rest of the procedure takes depends on the client, as there are a number of forms, documents and declarations. The lawyer, unless the client is very brave and wants to do it himself, will need the inevitable power of attorney, which sets out his right to present the documents. In fact a separate power of attorney, in a special form that differs for every bank, needs to be made to open the special “frozen” account into which the capital for the company must be paid. These POAs along with other documents requiring legalization are most conveniently signed at the Bulgarian Embassy, though signature before a notary, then apostille, then sworn translation (if the documents have not been prepared in the two languages) and legalization here is a possible, though time consuming and somewhat expensive, alternative.
Steps for registering an EOOD or OOD in Bulgaria

The starting capital for the creation of the OOD must be decided. The total amount to be paid for the registration (including all taxes) amounts to 200-250 levs. But this varies from time to time. Documents to be filled in (all except the A4 and D1 can be drawn up in English and Bulgarian to avoid subsequent sworn

translation) concern reservation of company name; for "inscription of circumstances" which include the name of the Manager and his personal data, address of the registered office (known here as a "seat"), the purposes of the company (best to keep it short) and the capital; non-participation by the manager in other companies with similar activities; that the Manager is not bankrupt or was Manager of a company declared insolvent, if there remain unsatisfied creditors; the authenticity of the circumstances; that the Manager t agrees to act as such and giving his specimen signature. Other documents to be lodged are the company Articles of Association, signed by the part-holders; Protocol (Minutes) of the Inaugural General Assembly (IGA); and the Manager's contract. A blocked account must be opened and the capital paid in. When the certificate has been obtained from the bank, the documents must be introduced at the Registry Agency. Refusals are received in the post and successful registrations can be found on the electronic register.

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Home Point BG, Sofia

If you have plans, funds and will to develop business in Bulgaria, you could do it by establishing a legal entity and canalizing all your present and future activities through your company.
As an investor in our country, you should be aware about the following preconditions concerning the establishment of a company.

According to Bulgarian legislation trading companies are numerous clauses and they are:

- general partnership (GP)
- limited partnership (LP)
- limited liability company (LLC)
- joint-stock company (JSC)
- partnership limited by shares (PLS)

The constitutors could be individuals, as well as legal entities. The minimum required for the establishment of such company is two persons (with two exclusions: one person when establishing a single member limited liability and a single member joint-stock company and four persons when establishing a partnership limited by shares).

Despite there are similar requirement for the constitution of the companies, the processes are specific depending on the company type.

In order to set up your company, you would need firstly to choose a name. Then you could check it at the Companies Register whether it is unique and whether it is reserved. If it is still free and not booked, you could apply and keep it for you for six months.

Then you should think of the registered office and the headquarters of the company.
You should be careful when choosing the subject of activity. The latter should not contradict the laws and morals, and should not require special authorization/permission from the plighted institutions.

The next step regards the capital (minimum for LLC – BGN 2 and for JSC – BGN 50 000). This is the sum which you need to deposit in advance in a special escrow bank account.

You should take care of assigning the management of the company. Once you have appointed the manager and the representative of the legal entity, he will collect all the relevant documents in relation to the above steps and will deposit them at the Registry Agency or will publish them online.

Now you have to wait for the respective authority to enter your company. Important to remember is that actions of the founders, made on behalf of the constituting company before and until the day of entry, produce rights and obligations for the individuals who have committed them. When accomplishing transactions, it is obligatory to indicate that the company is in process of establishment. The individuals, who have concluded the contracts, are jointly liable for the obligations.

When the transaction is carried out by the founders or by their attorneys the rights and the obligations pass directly to the newly entered company.

Once registered the company, you could open a current account, through which you could organize payments. If you successfully manage your business and the turnover of the company exceeds BGN 50 000, you would need to register the legal entity under the VAT legislation. The turnover is being based on the annual accountancy reports you are obliged to have. The accountancy along with the tax return has to be prepared each year by 31 March for the previous year, and then the reports have to be published at the Companies Register by 30 June.

Important to highlight is that every of the companies has to be registered at the Trade Register to the Registry Agency and the registration takes a few weeks.

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Iliev & Partners, Sofia

The conditions and legal requirements for the procedure are set out in the Bulgarian Commercial Law. Foreign citizens most commonly register two types of companies – limited liability companies (LLC) and joint stock companies (JSC). In both cases, before registering there are some steps and procedures that have to be made. First, the company must have a unique name. After that, the shareholders have to sign the articles of association. Regarding JSC – the shareholders have to hold a constitutive meeting to elect the managing bodies and sign the Articles of association. The minimum required capital that has to be paid is 2 leva for LLC and 50 000 leva for JSC – a bank document of the capital deposited is also needed. The Managing director of the company must sign a notarized copy of the certified statement of consent and signature specimen.

Next step is the commercial registration in the Central Companies Register kept by the Registry Agency of the Ministry of Justice. All the above documents have to be submitted by specific registration forms (Applications) and a power of attorney must also be attached.

After the submission of the Application and all the necessary documents the Registry Agency is obliged to register the new company within one day but the real situation is that it takes at least 7 days until the registration is successfully completed. The new company is considered established after its registration in the Companies Register.

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Ralchevi, Stanev & Dzhambazova Law Company, Varna

The legal regulations which define the conditions and the procedure of the registration a company in Republic of Bulgaria are determined in the Commercial Act and the Commercial Register Act. The conditions differ depending on the type of company, which is to be established. Founders of a company can be Bulgarian or foreign natural or legal entities having the necessary capacity /article 65, paragraph 1 of the Commercial Law/. It is necessary a decision for establishment to be taken and Memorandum/Articles of Association or a Statute to be accepted by the founders. The content and the form of the memorandum/statute differ depending on the different types of commercial companies and are explicitly defined in article 72 and the following of the Commercial Law; article 102 and the following of the Commercial Law; article 115 and the following of the Commercial Law; article 165 and the following of the Commercial Law. Another requirement is that the minimal amount of capital depending on the type of company to be imported and the management organs of the company to be chosen.

Each company is entered in Companies Register under the conditions of Companies Register Act. Since the moment /date/ of its registration in the Commercial Registry, the company is considered established.

As per article 19 of the Companies Register Act, the applications for entry are considered by a registration official in the order of their reception. The registration official should come out with a pronouncement on the application for entry until the end of the third work day following acceptance at the latest, unless another time limit for pronouncement is stipulated by law. In practice the registration of a company in the Commercial Registry is made within a working week.

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Solicitor Bulgaria, Sofia

The Bulgarian Commercial Act recognizes several types of commercial companies, among which the most popular are:

- Sole Proprietorship (ET)
- Unlimited (General) Partnership (SD)
- Limited Partnership (KD)
- Limited Liability Company (OOD)
- Joint-stock company (AD)

The sole proprietor is not obliged to have start-up capital in order to be registered, but bears unlimited liability for his/her debts and is subject to personal income tax. The second and third forms represent legal entities, separate from the partners, but all (in SD) or some of the partners (in KD) bear unlimited liability for the debts of the partnership. The Joint-stock company is suitable for big traders with big investment capacity.

With regard to registration of a company on the territory of the Republic of Bulgaria, the private limited liability company (OOD) is usually preferred as the best form. The private limited liability company may have natural or legal persons as shareholders. The overall share capital must be at least BGN 2 (EUR 1). Note that a partner's share cannot be less than 1 BGN. All members are personally liable for the debts of the company up to the amount of their contribution. However, members are not held liable for the unpaid portions of the others contributions. By default, shares in a private limited company may be

transferred only with the approval of the other members (i.e. by at least 75% of the votes and 75% of the total capital represented), but the articles of association are perfectly malleable.
The company is governed by the General Meeting of Shareholders and managed by a Manager/Director.

Steps for establishing a Limited Liability Company (OOD):

1. Choose name, seat and address of management of the company, amount of the capital and the individual shares of the partners, main scope of activities, a manager / Director;

2. File an application form for reservation of company name in the Companies Register at the Registry Agency. The fee is 50 BGN. This step is optional. You can check online in the web-site of the Registry Agency, if the chosen company name is available, and decide to reserve it or to skip this step;

3. Summon a Constituent Assembly of the shareholders to adopt decisions for establishment of the company, its main parameters, activities, management bodies and procedure for taking decisions and managing of the company. Minutes from the constituent assembly must be kept and signed by all the shareholders;

4. Signing of the Articles of Associations of the company. The contract should contain all the main characteristics about the company and should be adopted on the Constituent assembly and signed by all partners.

5. Signing of a Management Contract between the company and the elected manager;

6. Signing of a declaration of consent and a sample of the signature by the manager, which should be notarized (if signed in Bulgaria) and notarized and certified with an apostille (if signed in a different country).

7. Signing of a Declaration under art. 142 from the Commercial Act by the manager, declaring that he would not carry out commercial activities or participate in other companies, engaged in activities similar to the newly established one.

8. Signing of a Declaration under art. 141, para. 8 from the Commercial Act by the manager, declaring that he or a managed previously by him company hadn't been declared insolvent and there were unsatisfied creditors.

10. Signing of a Declaration of art. 13, para. 4 of the Companies Register Act.

(*Please, note, that all the above documents should be drafted or translated in Bulgarian language.)*

11. Filling in an application form (A4) for registration of a limited liability company.

12. Opening of fund-raising account and payment of the capital.

After drafting and signing all above documents, a fund-raising bank account on the name of the company should be opened and the capital entered. The bank will issue Certificate for opened fund-raising account and paid-in capital. The opening of the account and the certificate could cost between 20 and 50 Euro, depending on the terms of the chosen bank.

With all the above documents and the bank certificate you should go to the Registry Agency or file the application A4 online with electronic signature on their web-site. The registration fee is 160 BGN (in the first option) or 110 BGN – (in the second).

After submitting of the documents in the Registry Agency, there is a term of several days up to a couple of weeks for processing of the application and the official registration of the company, depending on the occupancy of the Registry Agency.

When the company is successfully registered, the fund-raising account can be closed and the capital - transferred into an operating bank account.

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Trifonov Law Offices, Plovdiv, Sofia & Bansko

Company setup in Bulgaria is relatively quick and straightforward process. Incorporation can be arranged within a week, in case the founding members are physically in Bulgaria and approximately within 2-3 weeks if the process is arranged by distance (if founding members do not come to Bulgaria but authorise proxy instead).

Step 1: Specifying the characteristics of the future company:

- Type of company – limited liability company, joint stock company, branch, etc.
- Shareholders – they can be either physical persons or companies.
- Name of the company – one must check whether the name is available.
- Address of registration – any company registered in Bulgaria must have seat and registered address in Bulgaria.
- Foundation capital: the minimum required capital is 2 BGN (approximately 1 EUR). Incorporation of a € 1 company, however, is not always recommended. This option can be used for companies offering consulting services, software development, etc. but it is not quite appropriate for companies dealing with trade, production or any activity that needs initial purchase of commodities, equipment, machinery, etc.
- Main activity of the company – some activities are subject of registration or license regimes, so one must check whether the activities of the company fall under any of these regimes.
- Management body – any foreigner can be director/manager, in most cases this is one of the shareholders. It is possible all shareholders to be managers together or severally but pros and cons of the various options should be consulted with a specialist.

Step 2: Drafting of incorporation documents.

Incorporation set must be prepared by a qualified person (usually a solicitor) in accordance with Bulgarian legislation. The founding members need to provide a copy of their passports and information about their permanent address, no need of Bank Letter of Reference, Bank Statement, etc.

Step 3: Certification and legalisation of documents

In order to be accepted in Bulgaria some of the incorporation documents should be certified. That means documents should be signed at any Bulgarian Embassy around the world or signatures on documents should be notarised by a notary public, then get an Apostille by Foreign and Commonwealth Office, then get translated in Bulgarian by a certified translator and the signature of the translator is additionally legalised by Bulgarian Ministry of Foreign Affairs.

Step 4: Opening a bank account with a Bulgarian Bank and depositing the foundation capital.

Step 5: Payment of state fee:

The fee is payable to Bulgarian Companies Register. Fees vary depending on the type of company. It is amounting to 160 BGN for a LLC (80 BGN if the application is filed online).

Step 6: Filing an application with Bulgarian Companies Register:

Registration is generally made in three working days from the date of application but it could take a bit more if the Register is overloaded with applications. A registration certificate (Certificate of Good Standing) is available both in electronic format and as a hard paper certificate.

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Vankova & Partners, Sofia

Most investors choose to register a limited liability company. In order to establish such, you have to sign around 7 documents and witness in front of a Notary a consent to be a Manager of the Bulgarian company. If you are not in Bulgaria, then you also have to sign in front of a Notary a Power of Attorney for your lawyer to open a bank account of the company and to receive a Certificate from the bank, stating that the bank account is opened and the company capital – deposited in it. The minimal required capital is 2 BGN (0.87 GBP). The bank usually collects around 40 BGN (18 GBP) to issue the Certificate. If you visit a Notary in the UK, the witnessed documents must be provided with apostille and translated in Bulgarian. Once you have all the above documents in place, the application for registration of the company must be filed in the Companies Register, together with a proof for paid state fee of 160 BGN (71 GBP) or 80 BGN (36 GBP) if the application is submitted online. The company should be registered in 3-4 days from submission of the application if all documents are correctly prepared. If not, the Companies Register issues instructions, stating what other documents should be provided or what should be corrected in the existing documents. Once you fulfill the given instructions, the company should be registered in 3-4 days from submission of the application for correction. Warning: it is important the documents for company incorporation to be prepared by a lawyer as there are hypotheses in law, under which a company can be declared void if certain requirements are not met, even if it is registered successfully in the Companies Register – Art. 70 of the Trade Law. In Bulgaria there is practice accountants, real estate agents, etc. to offer company formation services, however this could lead to negative consequences for you in case the people you appoint to register your company do not take into account all requirements of the law.

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Vasilev & Radev Legal Consulting, Rousse

According to the Commercial act there are five types of commercial companies in Bulgaria (a) general partnership; (b) limited partnership; (c) limited liability company; (d) joint stock company; and (e) partnership limited by shares.

The most common type of commercial company is the limited liability company (or single person limited liability company).

The procedure for registration of the company, requires the following preliminary information:

- Company name (it has to be checked in the Companies Register at the Registry Agency whether it is available to be registered);
- How many partners will be in the company (if the company is limited liability company);
- Passport details of the sole proprietor of the capital (of the partners);
- Manager of the company (you might chose to operate with more than one manager; if the manager/s is different from the partners we will need his/her/their passport details);
- Main subject of activity of the company (according to the Bulgarian legislation the subject of activity of the company is not limited – it shall not be prohibited by the law and in case that any licenses and/or permits are required for the activities they shall be granted prior starting of the activity);
- Capital of the company (according to the Bulgarian legislation the minimum capital is BGN 2, as there is no upper limit);
- Way of dividing of the capital of the company (percentage of the capital for each partner);

The capital shall be deposited in accumulation account for the capital of the company, which shall be available to be withdrawn after the company is registered;

Number of documents (in accordance with the Commercial act, Companies Register law, etc.) shall be drafted, as the most important is the Articles of association (Constitutive deed). Part of the documents shall be certified by Public notary;

The procedure for the registration of limited liability company (single person limited liability company) takes up to 5 days from submitting the documents before the Companies Register at the Registry Agency.

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Vladimirov Law Office, Sofia & Varna

Setting a limited liability company in Bulgaria requires some preliminary information to be gathered – name of the company, scope of activity, data about the partners, who the manager will be, the address of the office, the amount of the capital. Then a Statute has to be prepared as well a Protocol of the General Meeting and some other. There is a sample of the signature of the manager that has to be notary verified. The notary verification could be done by any Bulgarian consul abroad, too.
The required capital of LLC is minimum - 2 BGN /Bulgarian Levs/.

The legal address depends on your decision. You need to decide where you would like to start your business. The registration of the company could be done at any town in Bulgaria regardless where exactly in Bulgaria the company will be situated.

There is no limit for the number of the partners.

The state fee for registration is 210 BGN.

The procedure could take not more than 2 weeks together with the preparation of the documents. The set could be submitted electronically by electronic signature of an attorney at law.

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Q4: What forms of employment contract are there in Bulgaria? What are the conditions for terminating employment (i.e. how easy is it to hire and fire staff)?

Braykov's Legal Office, Sofia

Types of contracts

Employment contracts in Bulgaria are concluded, amended and terminated only in writing. Prior to the commencement of employment the employer must notify the National Revenue Agency for the conclusion of a new employment contract.

The employment contracts must include certain **mandatory terms and conditions** stipulated in the Labour Code such as place of work, job position, date of signing and date of commencement of employment, term of the contract, the agreed remuneration and any additional payments to it, annual and other leaves, working hours and notices of termination for both parties.

The most commonly used form of contract is **contract for indefinite period of time**. It cannot be transformed into a contract for a definite term, unless upon an explicit wish of the employee, expressed in writing.

The possible trial period provided by law for employment contracts is up to six months.

The following other forms of employment contracts are available under Bulgarian law:

- **Contract for a fixed term** – generally such contract can be entered into only for temporary or seasonal positions. In exceptional cases, such contracts can be concluded for completion of assigned task/job/project or for a term not less than one year. The employment contract for a fixed term shall be transformed into a contract for an indefinite period if the employee continues working for 5 or more working days after the expiry of the agreed term without the written objection of the employer and the position is vacant.

- **Employment contract for additional work –**with the same or another employer;

- **Employment contract for fixed number of workdays per month.**

There are special conditions which have to be met for employment of foreigners of non-EU countries.

Termination of contracts

The procedure for termination of employment contracts is very formal and should be strictly observed by the employer. All documents must be prepared carefully since any incorrectness may result in numerous adverse consequences - obligations for payment of damages and other attendant expenses, reinstatement at work of dismissed employee, etc.

The procedures of termination defer depending on the ground. Generally, the employer must serve to the employee either a proposal or order for termination of the employment contract.

The grounds for termination of employment are comprehensively listed in the law and any of them should be supported with certain specific documents.

Generally the law provides for the following ways for termination:

- Termination by mutual consent on initiative of either party and without a compensation;
- Termination at the employer's initiative against a minimum compensation of four gross salaries;
- Unilateral termination by the employer upon a notice of termination – under explicitly listed grounds such as reduction of personnel, full or partial closing of the enterprise, lack of qualities of the employee for efficient work performance, etc.
- Unilateral termination by the employee upon a notice of termination;
- Unilateral termination in certain specific cases without a notice of a party such as in case of disciplinary dismissal.

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Coeler Legal, Sofia

There are several types of employment contracts in Bulgaria depending on the purpose and terms of employment. The employment contracts may be concluded for limited or for unlimited period of time, for employees working from home, for posting of workers into another EU member state etc. All such contracts may only be taken into consideration when certain conditions are given. In general, hiring of employees is very easy as soon as you have found the right candidate. There is a certain set of documents to be presented by the employee to the employer and by the employer to the state authorities to evidence the employment. Not that easy and uncomplicated is the matter of employment termination. Among such methods as mutual agreement or unilateral termination by using a termination period there are also other grounds for contract termination in the Bulgarian employment law that are limited, i.e. the grounds for termination are *numerus clausus*. Except for the grounds listed in the Labour code neither the employer nor the employee may terminate the employment contract.

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Damyanov Law Firm, Plovdiv

According to the requirements of the Bulgarian Labour Code, there are no restrictions for the number of employees which can be hired in a company – it depends on the desire and the needs of the employer and the type of his business activity.

The employer has the ability to conclude labour contract for fixed-term – it could be for a maximum period of 3 years or until the completion of a specific work. After the term of this contract expires or the work is completed – the labour contract is automatically terminated and the employee - released. After the expiration of the term the employer is not allowed to sign another labour contract limited with term with the same employee for the same work. The new contract with the same employee should not be limited with term.

Another opportunity in front of the employer is to conclude a contract with a trial period. This is the most frequently applicable option as this gives a chance for the employer to test the ability of the employee for the job. The maximum period of the trial period is 6 months and in this period the employer has the opportunity to release the employee without a notification or any compensation due. Once the trial period expires – the contract is considered as finally concluded and not limited with term. It is not possible to sign second trial period with the same employee for the same position.

When it comes to employees who are not on a trial period but has to be released, the employer has several options listed in the Labour Code. Firstly, there should be existing legal ground for the release of an employee. There are several hypothesis provided in the Labour Code - upon closure of the company or part of it, upon reduction of the volume of work, upon idling of the company for more than 15 working days, etc.

The employer has the right to select which employees are working better than the other and from this comes the requirement for the employer to make a selection from all his employees and to release those which results are lower. Additional requirement for the employer is to provide the employee with a written notice before the release (at least one month) and in case the employer fails to provide such notice – he shall pay to the employee compensation in the amount of one gross salary. There are also strict requirements with regard to the number of released employees which should be observed because of the specific requirements when it is a *collective dismissal.*

In conclusion it should be noted that hiring staff is easy but when it comes to releasing employees the Bulgarian legislation puts various requirements and is generally strict, observing and securing the rights of the employees.

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Dimitrov, Ivanov & Partners, Sofia

Generally, there are two types of employment contracts – permanent and temporary.

A permanent contract is the default type of employment contract. It would be concluded for an indefinite period of time and can be terminated by the employer only on the grounds specified in the Bulgarian Labour Code (these include, but are not limited to, incompetence, disciplinary violations, downsizing, moving or closing down of the company, etc.). When laying-off employees due to downsizing, an

employer is required to evaluate employees with similar functions and keep with the company those who are more experienced and with higher qualification.

Temporary employment contracts can only be concluded when an employee is needed for specific purposes, such as, but not limited to, seasonal work, carrying out a specific job, replacement of absent employee(s), etc. Temporary employment contracts are terminated with the expiration of the term for which they were concluded.

Termination of employment (both permanent and temporary) is manageable, however it is recommendable that employers take the time and effort to prepare and execute appropriate termination documentation.

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Vankova & Partners, Sofia

You can appoint a person on a full day employment contract – 8 hours per day or a half day employment contract – 4 days per day. Terminating employment is easy if you have prepared and asked the employee to sign a good labour contract together with other important documents. You have to prepare an official profile of the employee. Another necessary document is a declaration that the employee is aware of the Rules for Internal Labour Discipline and the Internal Rules for Labour Salary. You also have to ask the employee to sign a declaration that they agree their personal data to be processed and used by your company. Also, you have to give the employee a copy of the confirmation from the National Revenue Agency that their labour contract is registered. All the above documents must contain a statement that the employee has received copies of them, the date on which this has happened and the employee's signature below this statement. Art. 328 of the Labour Code provides the employer with many options to terminate a labour contract – when the volume of work in the company has decreased, when the employee's qualities/ professional qualification/ education are not good enough for their position, etc. You also have the right to fire an employee disciplinary. In such case you are entitled to receive from the employee a compensation in the amount of 1 salary or in the amount of the caused damages - Art. 221 (2) of the Labour Code. However, should the employee disputes the dismissal via court and wins the case, your company would be obliged to pay them a compensation in the amount of 6 salaries.

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Vasilev&Radev Legal Consulting, Rousse

There are five types of employment contract in Bulgaria:

(a) for an indefinite period;

(b) for a fixed term;

(c) for additional work;

(d) for fixed number of workdays per month; and

(e) apprenticeship contract.

Employment contract for a trial period – this contract is not separate type of employment contract it can be concluded only in connection with the above five types of employment contract. Such a contract may be concluded in case that the work requires the ability of the employee who will perform it to be tried, his final appointment may be preceded by a contract providing for a trial period of up to 6 months, this contract indicate in whose favour the test term has been agreed upon. For the employer it is always better to be agreed upon in his favour, which means that prior to the expiration of the trial period the employee can terminate the contract without notice.

Appointment of staff – an employment contract shall be concluded in writing between the employee and the employer before the start of the work, upon its conclusion the employer shall introduce the employee to the labour obligations ensuing from the position occupied or the nature of the work performed. The employer shall be obliged to concede to the employee before the start of the work a copy of concluded employment contract, signed by both of the parties and a copy of the notification about the conclusion sent to the National Revenue Agency.

Termination of an employment contract:

(a) with or

(b) without notice;

(c) by the employer or

(d) by the employee;

(e) with or

(f) without indemnification.

The grounds for termination of a contract of employment are included in chapter sixteen of the Labour code. Depending on the grounds for termination different procedure has to be fulfilled.

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Q5: Is there a double taxation treaty in place between the UK and Bulgaria?

Dimova, Severinov & Trifonov Law Office, Rousse

The Republic of Bulgaria is a party in a multitude of Agreements of Evasion of double taxation treaties over the income and the profits generated from transfer of property. The Republic of Bulgaria and the United Kingdom of Great Britain and Northern Ireland signed such agreement in 1987. "Agreement between the government of People`s Republic of Bulgaria and the government of United Kingdom of Great Britain and Northern Ireland for evasion of the double taxation of the income and profits from transfer of property" is ratified with a Decree № 3419 of the State Council of Peoples Republic of Bulgaria from 16.12.1987 – State Gazette, issue 98 from 1987. In power for People`s Republic of Bulgaria from

01.01.1988. Issued from the ministry of economics and planning. Promulgated in State Gazette, issue 8 from 29.01.1988, amendment issue 12 from 12.02.1988.

What is the evasion of double taxation?! Double taxation is when one and the same tax subject in two or more countries is taxed with the same tax for the same income or property in the same tax period. As a whole subject of agreements for evasion of the double taxation are:

1. Bulgarian trade companies and organizations with non-economic purpose which realize profit or income from sources abroad. They possess and manage estates and property abroad;
2. Bulgarian citizens which receive income from abroad – remunerations, income from shares and participations, dividends, loans etc.;
3. Foreign juridical and physical persons which realize income from economic activity no matter if the activity is executed solely or jointly with the participation of Bulgarian juridical and/or physical persons;
4. Foreign persons /juridical and/or physical/ which receive income from sources in Bulgaria no matter of their place of residence or abode /Bulgaria or abroad/. At the present moment Bulgaria has concluded more than 70 agreements for evasion of the double taxation (AEDT).

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Dobrev & Partners, Plovdiv

There is a UK/BULGARIA DOUBLE TAXATION CONVENTION, signed 16 September 1987, effective in the United Kingdom from 1 April 1988 for corporation tax and from 6 April 1988 for income tax and capital gains tax, effective in Bulgaria from 1 January 1988.

There are some general rules that one should keep in mind:

a) Pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

b) Royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

c) As a whole, interest, arising in a Contracting State which is derived and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

d) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein.

e) Income, derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State, may be taxed in that other State.
Gains, derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State, may be taxed in that other State.

So, in order to eliminate double taxation for national of the UK, Bulgarian tax, payable under the laws of Bulgaria and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Bulgaria, shall be allowed as a credit against any United Kingdom

tax, computed by reference to the same profits, income or chargeable gains by reference to which the Bulgarian tax is computed.

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Dokovska, Atanasov and Partners, Sofia

Yes, there is a double taxation treaty in place between the UK and Bulgaria. It is called "Convention between the Government of The People's Republic of Bulgaria and the Government of The United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital Gains".

The Convention was ratified by Decree No. 3419/16.12.1987 of the State Council of the People's Republic of Bulgaria – State Gazette, No. 98/1987. It is effective for the Peoples' Republic of Bulgaria since 1.01.1988. It was issued by the Ministry of Economy and Planning and promulgated with State Gazette No. 8/29.01.1988, corrected with State Gazette No. 12/12.02.1988.

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OTHER

Q1: How long can I drive on a UK driving license in Bulgaria, how long can I have a UK registered car here without taxing it in the UK.

Kreston Bulmar, Sofia, Plovdiv, Bourgas, Sliven, Dobrich, Pernik, Haskovo, Veliko Tarnovo, Vtarsa, Kyustendil, Montana, Kardzhali, Silistra, Targovishte, Razgrad

Persons having a valid driving license issued by a Member State of the EU (such as UK) in compliance with the minimum age for relevant vehicle category (which is 18 years for driving in categories A, B, B + E, C1 and C under the Bulgarian law) can use it as defined in national legislation of Bulgaria. In Bulgaria, the driving license is accompanied by the so called slip of the car (blue slip). This allows drivers to use a foreign driving license in Bulgaria until they violate traffic rules or suffer accidents. Such events require the issuance of Bulgarian driving license and Bulgarian driving ticket for the purpose of imposition of penalties for the breach.

Moving to another EU country for more than 6 months together with the person's vehicle, imposes the need of registration and payment of any relevant taxes in the new country. This should be done within 6 months. Before leaving his/her own country, the person should check with the Bulgarian authorities what the starting moment of this period is: the moment of departure from the UK or the moment of arriving in Bulgaria. He/she should also ask what documents will be requested as evidence.

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