

VIP CONSULT NEWSLETTER- 2012/FEBRUARY

In this issue:

- I. Recent In-house news
- II. Why invest in Bulgaria
- III. Advantages in investing in agricultural land in Bulgaria
- IV. Formation of a company in Bulgaria
- V. Buy a business in Bulgaria
- VI. Litigation process and the court structure in Bulgaria
- VII. FAQ on Management and Maintenance on Complexes

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I.Recent In-house news

1. Listing on the German and The Norwegian Embassies sites in Bulgaria

We are proud to announce our listing on the websites of the German and Norwegian Embassies in Bulgaria. We have established successful cooperation with many other Embassies of foreign counties in Bulgaria and we commit to provide high class legal and consultancy services to all foreigners- individuals and companies investing in Bulgaria.

For further information you can visit the following links:

http://www.norvegia.bg/News_and_events/business/Consulting-and-legal-services-in-Bulgaria/

<http://www.sofia.diplo.de/contentblob/3257900/Daten/1872529/Anwaltsliste.pdf>

2. VIP Consult Business Visit to Moscow, Russia

At the end of January, representatives of our company visited Moscow to meet our present and potential clients and partners. We also took the opportunity to visit the Exhibition on Tourism held on 26th of January. We had also the pleasure to meet with Mr.Iliyan Tzonev- The Head of the Office of Commerce and Economic Affairs of The Embassy of Bulgaria in Moscow. We are glad to inform you that our business trip was very successful. We established contacts with individuals interested in investments in Bulgaria, well known Russian Law offices and companies with various scope of activity.

We are constantly looking to expand our cooperation with clients and partners and our experience shows that “face-to face” communication is more persuasive and more effective than emails and phone calls.

II. Why invest in Bulgaria

In the last few years Bulgaria has been in the focus of the investors’ interest. The political stability and predictability due to the NATO membership and to the EU accession were only some of the elements attracting the investors’ interest. External investors have been attracted by rapidly developing national industry, highly skilled workforce and significant new market. In the conditions of the world financial and economic crises, the macroeconomic framework of Bulgaria remains favorable for entry of investments. The Bulgarian government has taken considerable steps and has elaborated measures to meet the challenges of the global economic crises to maintain Bulgaria’s financial and macroeconomic stability and to improve the business climate.

- Stable political environment & low country risk
- NATO membership
- EU membership
- Developing infrastructure
- Budget surplus for the previous 5 years (-3.9% for 2010)
- flat tax rate of 10% for corporate profits and personal income tax
- 0% corporate tax rate in high-unemployment areas;
- tax depreciation for 2 years of computers and new manufacturing equipment;
- 5% withholding tax on dividends and liquidation quotas (0% for EU tax residents).
- Highly skilled, multilingual work force;
- Europe’s most competitive salary levels;
- 45,000 Bulgarian students in Europe
- Free movement of capital, goods and people

- No restrictions on after-tax repatriation of profits
- Up to 1 year minimum salary and reimbursement of social/health care security for employing young people and disadvantaged people through the Employment Agency
- Government financial support for priority investment projects
- Strategic geographic position as a bridge between Europe and Asia
- Excellent climate, natural scenery, food and hospitality

III. Advantages in investing in agricultural land in Bulgaria

Within the last three to four years there has been a surge in interest in agricultural land investing in Bulgaria. Our Lawyers and consultants have assisting foreign investors in implementing their business plans in Bulgaria and have outlined the advantages in agricultural land in Bulgaria.

1. According to Eurostat data for the period 2007-2009 prices of agricultural land in Bulgaria rank third among the lowest in the EU.

1. There is no annual tax on arable land.
2. Prices and demand of this type of property are expected to increase in the next few years.
3. Owners can rent out their arable land to local farmers and receive rent without having to make any other investments in the land.
4. There are no limitations for agricultural land resale –there is no tax for physical persons selling land which they have owned for more than 5 years; legal entities are obliged to pay just 10 % tax on the profit .

IV. Formation of a company in Bulgaria

Bulgarian law recognizes the following types of commercial companies exhaustively listed in the Commerce Act:

- general partnership;
- limited partnership;
- limited liability company (“LLC”) or one-person-owned limited liability company;
- joint stock company (“JSC”) or one-person-owned joint stock company;
- company limited by shares.

The procedure for incorporation of a company does not take much time and money. It also does not differ when local or foreign persons participate in its establishment. Under Bulgarian law there are no restrictions as to the size of the foreign participation in the capital of a Bulgarian company and, therefore, up to 100% of the registered capital of a local company can be held by foreign persons.

As of 01 January 2008 all types of commercial companies and all branches of foreign commercial companies are incorporated in the Commercial Register administered by the Registry Agency to the Ministry of Justice. This is a one-stop shop registration upon which the registered company obtains a unified identification code (“UIC”) which serves for all commercial, tax, social security, statistics and other public purposes. The company is identified by the UIC throughout its entire existence. No other secondary registration is required from newly incorporated companies and branches to start effectively performing their business activity.

The requirements for the registration of commercial companies or branches are set forth in the Commercial Act. The registration procedure itself and the documents required for such registration are set forth in the Commercial Register Act.

V. Buy a business in Bulgaria

Despite the economic downturn worldwide, some investors are putting a lot of money to buy operating companies. Economists say that in times of crisis it is best to make such investments as the price of transactions is lower. It is assumed that over time these investments will have great return.

In recent years in Bulgaria are offered for sale hotels, projects for construction of complexes and land for other types of constructions, and lately there are a lot of offers for sale of businesses such as restaurants and bars and offers from light industry - furniture factories, textile factories, factories in the food business and more. Experience shows that investors prefer to buy operating business because the supply base is already built and it has the appropriate permits, i.e. with the statue, which will be used. This is a huge plus, because in this way the new owner saves time and funds.

Buyers can be divided into two groups - those who bought the entire company and those who purchase only a share of it. The legal framework for transactions with companies and shares of them are contained in The Commercial Act.

In the first case the company is purchased as a set of rights, obligations and factual relations. The deal should be executed in writing with notarized signatures.

In such transactions, if no other agreement with creditors is at presence, the transferor / seller / is severally liable for the obligations of the transferee / buyer / to the amount of the obtained rights.

The company transferring is entered in the Commercial register on both seller and buyer lot.

When with the contract is transferred a property or real right over such property, the contract is entered in the appropriate Registry Office

The purchase of a share shall also be executed with notarized signatures of the contract and registered in the Commercial register. Each partner is entitled to participate in the management of company, its profit-sharing, to be informed about the progress of the company business, to inspect the papers of the company and is entitled to a liquidation share.

VII.Litigation process and the court structure in Bulgaria

Many of us have had to consider the option for legal actions, but a few know the steps involved. We will try to give more clarity on this issue, especially on the structure of the Bulgarian courts.

Under the Constitution and the Judiciary Act of Bulgaria the types of courts are: regional court, district court, administrative court, court of appeal, military court, special court, punitive court, The Supreme Cassation Court, The Supreme Administrative Court. In its initial filing, any case is heard by the first instance court. The regional court is the primary court of first instance in Bulgaria. If a decision of the regional court is appealed, the proceedings must be instituted on the second instance court, which is the district court or the court of appeal. In case of further appeal any case is heard by The Supreme Cassation Court which is the third instance. Only few cases come to the third instance and normally the cases are closed by the district court or by the court of appeal.

It is important to distinguish that winning the case is not equivalent to a refund of your money. The stage of bringing up of enforcement action/ an executive case/ comes. The guilty party is given two weeks period for voluntary execution. In case of a lack of voluntary execution by the debtor within the given two week's period, the judge- executor proceeds with enforcement actions.

VIII. FAQ on Management and Maintenance of Complexes

In the last few months many of our clients ask questions on the management and maintenance of complexes. We will review the most FAQ in this issue of our newsletter.

What services should be (or are normally) funded from complex maintenance fees?

The main services funded from the complex maintenance fees are:

- organizing of the internal order of the building and the common facilities in the complex;
- maintenance of the common installations, equipments and other common areas of the building, as well as the facilities for common use in the complex – green areas, yard, garden, pools and etc.;
- organizing of the complex security;
- organizing of the complex and the common parts cleaning;
- organizing and managing of payments connected with the common areas of the complex

What are the common areas, how are they calculated?

According to Art.38 of the Ownership Act “common parts” includes:

- the land on which the building is constructed;
- the yard, the foundations, the external walls, internal dividing walls between the different parts;
- the inner bearing walls, the columns, the beams, slabs, cross-beams, stairs, landings, roofs, walls between the attic and basement rooms of the individual owners, chimneys; external doors of the building and doors to the common attic and basement area;
- all installations, elevators, gutters;
- the premise of the door keeper and everything else that serves for common use

The percentage of the common parts distributed to each unit in the building is specified in the area formation papers which is part of the construction papers and is prepared by a civil engineer.

What is the restoration/renovation fund, what does it cover? - is this part of maintenance fees?

It is important to know that repair, renovation, rehabilitation and reconstruction of the common areas is carried out after a decision of the general meeting of owners. The expenses for these activities are distributed between the owners in proportion to their share in the common areas.

The funds collected for the restoration/renovation fund is determined by a vote of the general meeting. The funds are collected by the following two methods: allocation of a percentage from the maintenance fee or determining of an individual installment. In most cases the General Meeting votes a certain amount per apartment, which is transferred per year, together with the maintenance fee.

How are the costs of providing services distributed amongst owners/occupants/developer?

This issue is regulated by the Law for management of the floor ownership (the condominium). In virtue of its regulations the expenses on management and maintenance of the common areas are distributed equally according to the number of owners, users and occupants. However, this regulation is not observed and the practice shows otherwise.

The fee is determined per square meter total area (apartment built-up area+ common parts). The reason for this inconformity is that gated complexes in Bulgaria appeared before few years and the law has not reflected this category of residential buildings.

Should the developer be paying maintenance fees for apartments that are in use/rented?

If the Developer is still owner of a part of the apartments, regardless if he uses them or rents them out, he is obliged to pay a maintenance fee for these apartment

For apartments that are unsold presumably no maintenance fees are collected - so that as more apartments are sold, and more owners are contributing to paying maintenance fees presumably the cost to owners of maintenance will go down?

No, it is not correct. Each owner, including the Developer should participate in the expenses on the maintenance.

Who should pay maintenance fees for 'on-site facilities', such as: shops, games rooms, reception areas, bars, cafes, indoor swimming pools, outdoor swimming pools?

When the object is for common use (for example – the reception, the swimming pool), all owners shall pay; these objects are part of the common areas of the building, and the maintenance costs are shared between all owners. For other units such as shops, bars, restaurants – their owner shall pay.

What rights do owners have with regard to obtaining audited reports that show the expenditure on maintenance services against maintenance income - to justify the maintenance fees?

The managing board (the manager) shall prepare an annual budget for the management, the maintenance and the common parts usage of the floor ownership and annual plan for repairs, reconstructions and other activities in the building, as well as reports on their execution.

The managing board (the manager) shall report back his activity by a written report in front of the General meeting at the end of his mandate.

For complexes that operate as hotels (and have a number of apartments in regular use/rental) is it possible for owners who are absent most of the year (and not renting/using their apartments), and not 'benefitting' from expenditure on complex maintenance, to pay a reduced amount of maintenance fees?

The General Meeting with a majority of more than 50 percent of the ideal parts of the common areas may decide an owner, user or occupant who is absent more than 30 days within a calendar year to pay for the period of his/her absence, 50 per cent of management and maintenance fee. He/ she shall notify the Chairman of the Board (the manager) on his/her absence.

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