

Bulgaria

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Development in the public law framework of doing business in Bulgaria

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Sofia

Businesses operating in Bulgaria have faced another period of constant legislative changes: 2006 was crucial for the accession of Bulgaria into the EU and 2007 will be crucial for the successful end of its monitoring of the national legal system. Accordingly, the state has continued with its efforts to move the legal system towards the requirements of a single, efficient free market and to create the conditions for such an economy. In this concern, the state tried to adjust the functioning of the entire national legal system with a focus on the court and administration procedures, so that it will be entirely compatible with those of the EU and its member states. Consequently, 2007 and 2008 will be a massive challenge to business and to legal practice, which will both experience the parallel impact of the changes and of EU law. Businesses must prepare for a number of controversial responses to demands – by the executive and the judiciary – concerning the application of the new law, which requires time to be shaped by daily legal and administrative practice.

Constitutional and criminal law changes

The shake-up started with constitutional changes aiming to make the reform of criminal law possible. As a result, the Parliament adopted a new criminal procedure code and changes to the criminal code. Along with their direct effects, these changes are expected to minimize the possibility of foreign investors facing undue commercial practices, and also to prevent corruption. Another expected effect of the new code is to prevent unfair influence on civil proceedings. A further significant change is the overruling of the prohi-

bition of foreign individuals and legal entities from acquiring estate rights.

Changes to the public procurement and concession laws

There is also a new Law on Public Procurements and a new Law on Concessions. Along with the clear legislative approach that the procedure for negotiating the public procurement or the concession is purely a business matter, where the possibility of the state applying coercive powers is minimized or even banned, these Laws aim to prevent other state organs from attempting to reconsider and dismiss a contract once it has been concluded. There is also little possibility left for other civil law persons to appeal against the authorities' decision to enter into the contract.

New rules for international civil litigation and conflict of laws

The state adopted a new Code on International Private Law, which is the first codification of the matter in Bulgaria. The name is confusing because the code does not comprise substantive law rules. It provides for detailed rules concerning the competence of the state courts in international civil and commercial disputes, based on the habitual residence or seat. These rules finally make it possible to determine when the court shall accept the dispute for resolution on its substance and when it shall reject it. The code also provides for comprehensive rules on conflict of laws; a set of specific adjectival rules; the power of granting a writ of execution upon foreign public and private acts, if the latter are executable abroad. The recognition and enforcement of foreign judgments was also developed and modernized. The grounds for recognition are in absolute compliance with international standards.

New rules for civil litigation

The new Civil Procedure Code will come into force at the beginning of 2007. The draft has

been approved by the government and is the subject of public discussions. Its cornerstones are i) a reform in the way of serving of summons – through the deposition of the documents; ii) preclusion from presenting new evidence after the first hearing, unless it is newly discovered or found with the party acting within the standards of good faith; and iii) the second instance shall be a regular instance of appeal and the Supreme Court of Cassation shall have the capacity of a third non-regular instance.

Expectations

The changes to public business in Bulgaria are welcomed and were to some extent initiated by the business society. They are expected to produce political stability and to increase the intensity of the rule of law in the course of doing business in Bulgaria. In particular, the new Civil Procedure Code is expected to establish, together with the promotion of the Code on International Civil Procedure and the entry into force of the EU Brussels-Lugano regime and the well functioning Court of Arbitration at the Bulgarian Chamber of Commerce and Industry, a modern and effective tool for resolving national and international private law disputes, which will be another major contribution to the attractiveness of Bulgaria to foreign investors.

Financial and corporate

Recommended firms

Tier 1

Borislav Boyanov & Co
Djingov Gouginski Kyutchukov & Velichkov

Tier 2

CMS Cameron McKenna
Georgiev Todorov & Co
Kambourov & Partners
Spasov & Bratanov
Tsvetkova Bebov & Partners (Landwell)

Tier 3

Antov & Partners
Dimitrov Petrov & Co
Eurolex Bulgaria
Gugushev & Partners
Novel Consult
Penkov Markov & Partners

Tier 4

Boteva & Kantutis
PI Partners
Studio Legale Sutti

Much of the talk in the Bulgarian market this year has centred on the battle between the local and international firms. Following complaints from local firms, the Bulgarian Bar Association declared that international law firms such as CMS Cameron McKenna, DLA Piper and Schoenherr are breaking the law because they are not adhering to local Bar rules, which allegedly gives international practices an advantage.

On the other hand, foreign firms argue the rules are not applicable as they are not advising on Bulgarian law. This argument has confused Bulgarian partners: "If they are not providing their services in Bulgaria, then what are they doing? It's all very strange," says one.

Despite a climate of veiled hostility towards international firms in the market, Austrian firm Wolf Theiss took the plunge and opened a local office this year. Richard Clegg is running the new office, having joined Wolf Theiss from Bulgarian Telecommunications Company where he was general counsel and investment director.

The past year has been a particularly busy period for law firms, especially for financial regulatory work. Bulgaria has plenty of distance to go before it meets various EU regulatory requirements, particularly for financial institutions, which translates into mandates for law firms. "The financial services supervision commission has brought a positive impact in Bulgaria - it's good for business," says one partner.

The rise of renewable energy in the south eastern European (SEE) region has brought

new clients seeking to finance projects such as wind farms. This goes hand in hand with the surge in infrastructure construction in the wider SEE region, which is fuelled by a flood of demand and - in Bulgaria's case - newly accessible EU funds.

Bulgaria's real-estate bubble is yet to burst, with the sector still providing good mandates for law firms. The €500 million Sofiski Akropolis development has provided a string of instructions for firms, while Raiffeisen Zentralbank Österreich has been involved in a number of substantial real-estate deals this year.

Borislav Boyanov & Co

"I highly recommended this firm; they are renowned for being one of the best in the Bulgarian legal market," says one client. The firm has consolidated its position in the top tier after securing a number of mandates across all sectors.

Damian Simeonov is regarded as a highly competent lawyer in the market. One of his standout roles saw him advise Credit Suisse on a €30 million financing facility to a local steel manufacturing and metal recycling company in March 2008.

In other banking work, the firm acted for RBS and a syndicate of banks financing AIG's €1.4 billion acquisition of the Bulgarian Telecommunications Company in August 2007. The firm has also taken on a €4 billion deal advising banks financing European companies investing in construction and real estate.

Borislav Boyanov & Co is cashing-in on the property activity in Bulgaria. In February 2008, Raiffeisen Zentralbank Österreich mandated the firm on the financing of Tishman and GE Real Estate's joint venture to develop a large business and logistics centre in Sofia.

The firm has also been active in the capital markets, advising UniCredit Markets & Investment Banking on the issue of exchangeable bonds of a local company. The firm also acted for EnerSys on a tender offer and the delisting procedures as part of a closing mechanism for the acquisition of 95% of Energia, while the firm also advised AFI Europe on an IPO on the London Stock Exchange.

The M&A department, headed by Yordan Naydenov, represented Allied Irish Bank in its acquisition of a 49.9 % stake in Bulgarian American Credit Bank. The department is also advising Warburg Pincus on the acquisition of 13 cable television operators, internet and fixed telephone providers. In other high-light M&A work, the firm is advising welding company ESAB on its acquisition of 95% of Electrodi.

Leading lawyers

Borislav Boyanov
Raina Dimitrova
Yordan Naydenov
Damian Simeonov

Djingov Gouginski Kyutchukov & Velichkov

Djingov Gouginski Kyutchukov & Velichkov has solidified its top-tier position, challenging competitors for roles on a number of deals in the market.

The banking team, led by Marius Velichkov, Nikolai Gouginski and Vessela Stancheva, had a strong year, with one notable role acting on Bulgaria's Economic and Investment Bank (EI Bank) on a subordinated term facility agreement.

In the past year the firm has also acted for European Bank for Reconstruction and Development (EBRD) on its financing of the refurbishment of the Maritsa East II power plant.

Capital markets are also providing fruitful transactions for the firm. Dresdner Bank mandated the firm to advise on First Investment Finance's issuance of guaranteed perpetual subordinated bonds.

Energy work has been keeping the firm busy. The firm won a role advising on the expansion of the Blue Stream Gas Pipeline, and the construction of the Southeast Gas Line.

In other project finance work, the firm advised developer Sofiski Akropolis on a real-estate development in Sofia, as well as Karsch Venture Capital in the acquisition of commercial property and subsequent development of a shopping complex near Sofia.

Leading lawyers

Assen Djingov
Nikolai Gouginski
Stephan Kyutchukov
Vessela Stancheva

CMS Cameron McKenna

CMS Cameron McKenna is a dominant force in Bulgaria, heading off competition from other international firms in the market and acting on some of the most notable transactions. Reneta Petkova, previously a senior associate at Hayhurst Robinson before the two firms merged in January 2006, leads the local banking practice in Sofia.

Petkova has been active in the banking sector, acting on behalf of Anglo Irish Bank in a €1.4 million lending transaction to an off-shore hotel group. The banking team also advised Credit Suisse on the secured financing of a residential development near Samokov.

In the M&A market, the firm advised on the sale of Landmark's property portfolio in Bulgaria, Croatia and Turkey. The €210 million deal is said to be the biggest real-estate transaction to date in Bulgaria.

In other cross-border M&A work, CMS Cameron McKenna advised a ceramics manufacturer in its €100 million sale of shares to Advent International in December 2007. The transaction required CMS to coordinate lawyers in Cyprus, the Netherlands, the UK, the Czech Republic, Austria and the British Virgin Islands.

Project finance is another buoyant area for CMS. The firm is advising EuroHypo on the financing for the acquisition and construction of a shopping mall and an office building, and also acted for Tishman International on a €250 million real-estate project.

One client says: "I have been working with the firm for four years. They are by far the best firm on the market - they look at the big picture and see the potential challenges."

Leading lawyers

David Butts
Reneta Petkova

Georgiev Todorov & Co

In the past year, Georgiev Todorov & Co has won some notable telecoms and privatisation deals. On one transaction the firm advised ITT Corporation on a €300 million project to modernise the Bulgarian army's communications network.

On the privatisation side, the firm advised on the sale of a 70% stake in Bulgarian Maritime Fleet. The transaction was one of the biggest deals in Bulgaria in 2007.

Georgiev Todorov & Co also has extensive experience in advising on syndicated loan transactions. Over the past year the firm has advised Raiffeisenbank Austria on syndicated loans to International Asset Bank and the Bulgarian American Credit Bank.

The firm, established in 1991, prides itself on its capacity to handle international transactions; it also boast a long-standing working relationship with UK firm Eversheds.

Other clients of the firm include Microsoft, ABN Amro, Bank Austria Credit Anstalt Leasing, Commerzbank, the EBRD and Motorola.

Leading lawyers

Valentin Georgiev
Ivan Todorov

Kambourov & Partners

Kambourov this year recruited Yonko Hristov, a former senior associate at Penev & Partners

Law Office, to advise on capital markets work – an area which has provided some fruitful mandates for the firm over the past year.

Hristov joins a capital markets team which was one of the busiest in the market this year. One of the firm's highlights was advising Bulgarian mining company Kaolin on its €5 million IPO on the Bulgarian Stock Exchange. The firm also assisted EI Bank on its listing and subsequent sale of shares on the Bulgarian Stock Exchange.

In March 2008, the firm advised Maxima in its attempted acquisition of a Bulgarian food-store chain. The firm also acted in the €135 million sale of the European Trade Center in Sofia.

In the project financing market, the firm assisted a Russian contractor selected by the National Electricity Company to design, construct and launch the €4.9 billion Belene nuclear power plant. Kambourov, together with Dewey & LeBoeuf, advised on insurance, corporate and subcontracting issues.

Vladimir Rangeloff also won plaudits for his work acting on behalf of QVT Financial in its €500 million financing of the Super Borovetz project in Bulgaria in March 2008. "Rangeloff is professional and approaches matters with a business-oriented, professional manner," says one peer.

In other notable transactions, WindMill International mandated the firm to advise it on the restructuring of its capital in February 2008.

Leading lawyers

Yavor Kambourov
Mitko Karushkov
Kiro Kirov
Vladimir Rangeloff

Spasov & Bratanov

"The firm provides good-quality service and it has good-quality people," says one competitor. While the firm may lack critical mass compared to its competitors, Spasov & Bratanov's deal list this year shows that the firm doesn't have difficulty landing big transactions.

The firm demonstrated its quality when it advised Credit Suisse Securities and ABN Amro on First Investment Finance's €500 million guaranteed EMTN programme in December 2007.

In March 2008, the firm advised Doverie-Brico in an €18 million listing of corporate debentures on the Bulgarian Stock Exchange.

In the project finance market, the firm advised Electrabel on its €4 billion acquisition of a 49% stake in the Belene nuclear power plant. The firm also advised a consortium of banks on the €145 million financing of the

Orchid Mall Varna and the Lagera Tulip residential complex.

On the regulatory side, the firm has acted for global investment banks including Barclays Bank, Merrill Lynch and Citigroup Global Trust on multiple securities and financial regulation issues.

Leading lawyers

Boyko Bratanov
Jana Djambazova
Vassil Hadjov
Georgi Spasov

Tsvetkova Bebov & Partners (Landwell)

Tsvetkova Bebov & Partners (Landwell) has had an eventful year, working on a large range of transactions.

Maria Urmanova leads the banking practice and has this year advised Toplofikacia Pleven as lender on a loan agreement with UBS. The firm's regulatory advice includes counsel to HSBC France on the enforceability of Isda Master Agreements in Macedonia.

Urmanova also acted as local counsel on a loan agreement between FirstRand (as lender) and AS Finance Consult (as borrower). The loan will finance the company's attempt to acquire real estate in Bulgaria.

Capital markets work is also keeping the firm on its toes. In the past year the team advised Pioneer Investments Austria on its public offering of nine Austrian mutual funds. In November 2007, the firm also acted for Eurobank on Mifid compliance.

On the M&A side, the firm represented Cola Dairy Products and performed due diligence in its acquisition of a controlling stake in Bulgarian dairy products company MyDay. The firm also acted for Balkancar Zarya in its acquisition of a multinational group of companies in the automotive sector.

Leading lawyers

Nikolay Bebov
Galina Bunkova
Irina Tsvetkova
Maria Urmanova

Dimitrov Petrov & Co

Dimitrov Petrov & Co focuses particularly on M&A work, boasting a dedicated corporate team comprising Bogdan Petrov and Miroslav Ognyanov and a team of associates.

One notable mandate saw the corporate team act for the buyer in the purchase of a Serbian media company by an investment fund set up in Bulgaria. The team assisted the buyer in the structuring of the transaction, negotiation of the conditions, and full coordi-

nation of the work together with a Serbian partner law firm.

In other M&A work, the firm represented the seller of one of the four licensed Bulgarian wireless data operators. The firm also advised the buyer in the acquisition of V Box, an online-video company. Another prominent deal saw a company in the renewable-energy sector instructed by Dimitrov Petrov & Co in the acquisition and development of wind farms.

The real-estate law and foreign investments practice, headed by Alexander Todorov, handled the 80% acquisition of apartments in the Alpen holiday complex. The firm acted on behalf of private Irish investors in a deal worth €4 million.

On the bank lending side, the firm acted for Zabar Group in the €4 million financing for the acquisition of properties in the centre of Sofia.

Clients are impressed with the firm's quality of work: "They're very good, particularly the guy we dealt with, [Bogdan] Petrov," says one. "They're very *au fait* with all aspects of Bulgarian law, particularly with respect to foreign purchases _ they're on top of all the subtle nuances [the country's legislators] have brought in."

Leading lawyers

George Dimitrov
Miroslav Ognyanov
Bogdan Petrov

Eurolex Bulgaria

Eurolex has received some distinguished deals in M&A, with a particular focus in the real-estate sector. One highlight this year was advising Orchid Development Group on its provision of an €80 million facility for the construction of the Grand Mall in Varna.

The firm was also active in real-estate acquisitions. One notable transaction saw the firm act on Gazit Globe Development's land acquisition in Plovdiv and Sofia, and on Neocity Group's acquisition of land on the Black Sea Coast.

In other standout work, the firm advised copper factory Asarel-Medet on the privatisation of the Tramcar and Orbita's resort complex, and acted on the privatisation of construction company Nova Orlitsa Prim. [??]

Leading lawyers

Stoyan Barzakov
Andrey Delchev

Gugushev & Partners

"Step by step Gugushev & Partners has become one of the top law firms in Bulgaria,"

says one local in-house lawyer. The firm may be smaller in comparison to other firms in the market, but it hasn't affected the firm's relationship with clients. "The lawyers that work in the firm came from top law companies in Bulgaria and have outstanding experience and professional knowledge," says a client, while another adds: "The law firm is recognised by huge corporations and international investors handling deals for millions of euros."

In the past year, named partner Stefan Gugushev has been providing due diligence in a €12 million loan agreement between Allianz Bank and MacAnthony Realty International Construction. Gugushev also advised OTP Bank on the restructuring of €5 million of loans. Other bank lending transactions include advising the United Bulgarian Bank on a €4.5 million loan agreement to finance a hotel on the Black Sea.

The capital markets department was also active on some impressive deals. In one high-light deal, the firm has been advising Esplanade Ventures USA on equity capital markets issues worth \$20 million.

Managing partner Stefan Gugushev led the M&A team in advising Construction Management Group on its acquisitions of real-estate companies. In other M&A transactions, the firm advised on the 100% acquisition of shares in Katarino Partnership.

Other notable transactions include advising MacAnthony Realty International Construction on its €70.5 million acquisition of land in Razlog, and also advised on the plans for an apartment complex on the site.

Gugushev & Partners has also been involved in the renewable-energy sector, performing due diligence on the construction of wind power plants in Gabrovo, Bulgaria since 2004.

"We have always received outstanding and very professional legal service in different areas," says a client of the firm.

Leading lawyers

Petko Angelov
Stefan Gugushev
Dimitrinka Metodieva

Penkov Markov & Partners

Penkov Markov & Partners recorded another solid year, particularly in M&A. The highlight was acting for NEF Telecom Bulgaria in its acquisition of the Bulgarian Telecommunications Company. Valued at €1.8 billion, the transaction is the largest-ever M&A deal in Bulgaria, and the largest in eastern Europe for 2007.

The firm, which is the Bulgarian member of the legal network Lex Mundi, has maintained good connections with the govern-

ment, which has translated into a role advising the government on the €610 million privatisation of Bulgarian Maritime Fleet.

The firm also won roles on the €15 million acquisition of Autoservice Iztok in April 2007 and acting for Immoeast on the €50 million acquisition of Stokov Bazar Iliyanci.

On the finance side, Vladimir Penkov led the banking team when the firm represented Drujba Glassworks in a €8.6 million loan agreement with the International Finance Corporation in April 2008.

Other notable transactions include acting as legal counsel to Carrefour Marinopoulos on the €70 million sale of a shopping mall in Bulgaria.

Leading lawyers

Svetlin Adrianov
Ivan Markov
Vladimir Penkov

Other notable firms

Boteva & Kantutis, which was established in 1994, represents a host of domestic and international businesses including British Airways, Shell, Anglo-American and Rio Tinto. Since 1996 the firm has been working in association with Hungarian law firm Nadas Law Office.

Boteva & Kantutis advises on issues related to banking and finance, corporate law, real estate and insurance.

Greek firm is renowned for its M&A work in Bulgaria. This year, the firm advised Mitsubishi Heavy Industries on its €330,000 acquisition of Bulgarian wind farms. The firm also acted for Martinsa Fadesa Bulgaria in the €23 million financing of a residential development project.

Studio Legale Sutti has been operating in Bulgaria for more than a decade and receives consistent mandates from Italian, international and domestic clients.