

**LAW ON ECONOMIC ACTIVITY
OF FOREIGN PERSONS
AND ON
PROTECTION OF FOREIGN INVESTMENT**
Translation and Comments

Third Annotated Edition

January 1995

by:

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Central and East European Law Initiative

American Bar Association

and

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Center for the Study of Democracy

CENTER FOR THE STUDY OF DEMOCRACY

Law Reform and Comparative Law Program
and Commercial Law Center

Issue No. 3

March 1992

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This material has been published as part of the "Issues in Bulgarian Law" series prepared by the Law Reform and Comparative Law Program, a project of the Center for the Study of Democracy in Sofia, Bulgaria. Other issues in this series include:

Issue No.1

The Bulgarian Law on Foreign Investment –
Translation and Comments

Issue No.2

The Treatment of Non-Monetary Contributions –
A Problem for Investors in Bulgaria

Issue No.4

The Privatization Process in Bulgaria –
How to Buy an Enterprise without Paying Cash or Borrowing

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Bulgarian Government Structure and Operation – an Overview
Including the Constitution, Legislature, Executive, Judiciary and Local
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PREFACE

Sofia, Bulgaria
March 20, 1992

In November of 1991, the Center for the Study of Democracy published "The Bulgarian Law on Foreign Investment – Translation and Comments" as part of its series *Issues in Bulgarian Law*. At that time, we noted that changes in the foreign investment laws were likely forthcoming. These predictions were borne out by the passage on January 16, 1992 of the Law on Economic Activity of Foreign Persons and on Protection of Foreign Investments.

Under the auspices of the Central and East European Law Initiative sponsored by the American Bar Association, I have taken a one year sabbatical leave from my law practice in Boulder, Colorado to serve as a liaison here in Sofia. Together with Stephan Kyutchukov, my colleague from the CSD's Law Reform and Comparative Law Program, I have been privileged during the past few months to discuss the issues surrounding the earlier Law on Foreign Investment with many of those involved in the process of preparing the new Law. We have had the opportunity to comment on evolving drafts, to observe the Parliamentary debates, and to participate in forging an understanding of the principles upon which the new Law is based.

The result of this process, the Law is an effort by its Bulgarian authors to harmonize economic reform and democratization with the realities of the nation's existing legal and societal framework. Though the Law represents a major step forward in opening the Bulgarian economy, some aspects of the new law may seem puzzling to those in the West unfamiliar with this framework. Any misunderstanding would be unfortunate, since the new Law in fact creates one of the better legal structures for foreign investment to be found in Eastern Europe.

Because of the importance of these issues to the democratization process in Bulgaria, the CSD has published this translation and commentary.

Particular effort has gone into preparing a translation which accurately conveys the meaning of the Bulgarian legal terminology to one more familiar with the Anglo-Saxon system. Equally important, the Comments are intended to provide the background and explanation needed by a Western observer to understand the context in which the Law arises.

Foreign investment legislation is only one of a number of structural reform laws being drafted by the Bulgarian government to move the economy toward compatibility with Western systems. This new legal environment will be another illustration of the commitment of Bulgaria to the ideal of political and economic reform. As this process continues, the opportunities for progress will reflect the full potential of the nation to be a vibrant participant in the exciting times which lay ahead.

William D. Meyer

PREFACE

to the Third Annotated Edition

Sofia, Bulgaria
January 3, 1995

Almost three years have passed since the publication of the first edition of this brochure. In late 1993, the Center for the Study of Democracy released a second, unrevised edition to accommodate the demand for the brochure by foreigners and also Bulgarians. At the same time, the legal environment has changed and if this writing is to serve its original purpose – providing practical information to foreign investors – it needs updating.

The revisions contained in this third edition are restricted to the annotations. No changes have been made to the original text, unless indicated otherwise. In making the decision to restrict the updating to the annotations, I have considered two factors.

The first factor is related to substance. After three years, the comments to the Law still adequately reflect the legislative text and the course of practice. Additionally, there has not been significant practical implementation to substantially affect the meaning of the original text.

The second factor is personal. This book was originally written by a team consisting of William D. Meyer and myself. More than two years have passed since Mr. Meyer returned to his home in Boulder, Colorado, USA. The insignificant changes we might have made to the original text did not justify involving him in a process which I view more as routine than creative.

I view my work of adding the annotations as a duty to my good friend William D. Meyer and a responsibility to preserve the significance of the product of our joint efforts.

I would like to thank CEELI Liaison Jerri H. Stewart for her assistance in reviewing and commenting on the revisions to this third edition.

Stephan Kyutchukov

INTRODUCTION

Two years after the collapse of the Communist systems in Eastern Europe, the effort to redefine and democratize these societies continues to show progress. An integral part of this democratization process is the movement toward economic reform and integration into the Western economic system. Yet social tensions and patterns of thought bred by more than four decades of exposure to Marxist philosophy often have slowed progress while societies struggle for an understanding of the new economic relationships.

Economic reform in Bulgaria reflects the continuing progress being made towards a more mature understanding of the nature of political and economic democracy. One example of such continuing reform is the recent passage of the Law on Economic Activity of Foreign Persons and on Protection of Foreign Investments.

To understand the Law, some background is necessary. During the years of Communist rule, a variety of laws, decrees and ordinances were enacted to tightly control foreign investment. In January of 1989, the Communist regime promulgated the last of these enactments in Decree No. 56 on Economic Activity. A comprehensive set of regulations covering various aspects of economic activity, Decree No. 56 contained a number of provisions intended to liberalize the conditions for foreign investment. In practical terms, this ostensible liberalization simply preserved the mechanisms of state control characteristic of Communist economies.

When change swept across Eastern Europe in the Autumn of 1989, Bulgaria began its journey toward political and economic democracy. Lengthy negotiations between the government and opposition groups led to elections in June of 1990 of a Grand National Assembly, which was to govern on an interim basis while a new constitution was drafted.

The Bulgarian Socialist Party (BSP), successor to the Communist Party, won a majority of the seats in the Grand National Assembly, with a coali-

tion of opposition forces, the Union of Democratic Forces (UDF), finishing a strong second. Despite its Parliamentary majority, the BSP was unable to effectively govern. The impasse was broken in December of 1990 with the appointment of an interim cabinet headed by a politically unaffiliated jurist, Dimitar Popov. While negotiations on a constitution continued, the Grand National Assembly adopted a number of laws designed to begin the transition to a market economy. On successive days in May of 1991, the Law on Commerce and Law on Foreign Investment were passed.

Patterned after the pre-1944 Bulgarian commercial law, the Law on Commerce put in place a legal framework for the organization of commercial economic activity in Bulgaria. Much of this framework roughly parallels the commercial laws of Western Europe. Portions of Decree No. 56 dealing with these issues were repealed.

The Law on Foreign Investment, passed the following day, likewise supplanted many portions of Decree No. 56 dealing with foreign economic activity. State control over foreign investment was reduced, while the rights of foreign investors were expanded. Coupled with the reforms embodied in the Law on Commerce, the Law on Foreign Investment represented a significant step toward increased economic freedom.

During this same time, negotiations on a new constitution were reaching their final phase. Neither the BSP nor the UDF controlled the two-thirds majority in the Grand National Assembly needed to pass a constitution. But discontent with the lack of a constitution and a desire for new elections was increasing the pressure for action. The deadlock was broken when a draft supported by the BSP gained sufficient support for passage from elements of a bitterly divided UDF. On July 12, 1991, the new Bulgarian Constitution was signed by 309 of the 400 members of the Grand National Assembly.

Elections for the National Assembly were held in October of 1991. The UDF won a razor-thin plurality over the BSP, holding 110 seats to 106 for the Socialists. The balance of the seats in the 240 member National

Assembly was won by the predominantly Turkish Movement of Rights and Freedoms, which agreed to support the formation by the UDF of a new government. In November of 1991, a new UDF cabinet headed by Prime Minister Filip Dimitrov was approved.

From the very outset, the Dimitrov government set reform of the foreign investment law as one of its top priorities. Though the Law on Foreign Investment represented substantial progress toward opening Bulgaria to outside investors, numerous analysts felt that flaws and restrictions in the Law diminished its effectiveness. Indeed, implementation of the Law had been so slow that progress was stalled. Change in the Law on Foreign Investment was seen as vital to Bulgaria's economic recovery.

A draft law on foreign investment was submitted to the National Assembly on November 12, 1991. Sponsored by Dr. Ilko Eskenazi, a UDF member of Parliament's Legislative Commission, the draft law sought to repeal the Law on Foreign Investment and replace it with a less restrictive structure. To some extent, however, this movement toward foreign investment liberalization was affected by historical, legal and constitutional factors. The resulting legislation thus was required to meet the particular national circumstances impacting foreign investors.

The Law on Economic Activity of Foreign Persons and on Protection of Foreign Investments was passed by the National Assembly on January 16, 1992 after three days of debate. Much of the debate was perfunctory, though on occasion there were heated exchanges regarding particular passages. In the end, the bill faced little concerted opposition, reflecting the recognition that changes in the foreign investment law were vital.

With the passage of the new Law, the focus must shift to implementation by administrators and utilization by foreign investors. Both processes are intimately tied to a number of other issues — privatization, restitution, reform of the banking system — which are being addressed by the Government as this commentary is written. The success of the new foreign investment law depends in large part upon this continued maturation of

market structures in Bulgaria. When accomplished, these structures coupled with favorable provisions of the new Law should lead to the realization of Bulgaria's untapped economic potential.

LAW ON ECONOMIC ACTIVITY OF FOREIGN PERSONS AND ON PROTECTION OF FOREIGN INVESTMENT

Subject

Art. 1 (1) This law sets forth the conditions and procedures for engaging in economic activity in the country by foreign persons and the protection of foreign investments.

(2) The Council of Ministers may order that the provisions of this law shall be wholly or partially inapplicable to the economic activity and the investments of foreign persons from countries which apply discriminatory measures against Bulgarian firms or citizens.

Comment 1: Though the Law is a pivotal part of the scheme for regulating foreign economic activity, the Bulgarian legal structure includes a number of other major components. Several of these laws are discussed below in the context of particular provisions of the Law. Additional laws covering such matters as patents¹, copyrights², commercial transactions and bankruptcy³ are presently being drafted in expectation of passage by mid-1992. Foreign economic activity can also be significantly affected by bilateral agreements such as the Treaty between the United States and Bulgaria concerning the Encouragement and Reciprocal Protection of Investment approved on November 22, 1991.⁴

Comment 2: Under the civil law system followed by Bulgaria, the statement in paragraph (1) regarding the purpose of the Law may have con-

¹ Law on Patents, promulgated in the Official Gazette, Issue 27, April 2, 1992.

² Law on Copyright and Neighboring Rights, promulgated in the Official Gazette, Issue 56, June 29, 1993; amended, Official Gazette Issue 63, 1994.

³ Law on Commerce, Part Four, promulgated in the Official Gazette, Issue 63, August 5, 1994.

⁴ This Treaty was ratified by the National Assembly of the Republic of Bulgaria April 1, 1993 in the Official Gazette, Issue 30, April 9, 1993. Ratification documents were exchanged on May 3, 1994. The Treaty took effect on June 4, 1994.

siderable significance in construing other provisions. Construction of statutory laws in civil law countries is guided by the stated purpose of the law. In Bulgaria, such a construction in fact is required by Article 46, paragraph (1) of the Law on Normative Acts.

Particularly significant in this instance is the statement in paragraph (1) that the Law governs "the economic activity of foreign persons." As discussed below, the new Law contains specific definitions for the phrases "economic activity" and "foreign persons." The Law accordingly is not intended to govern transactions by foreign persons which do not constitute "economic activity." Similarly, the Law is not intended to regulate economic activity by those who do not qualify as "foreign persons." While these distinctions may appear arcane, they may be important when particular provisions are construed.

Comment 3: The right to retaliate against countries which discriminate against Bulgarian citizens or firms is fundamental. However, the criteria for retaliation are not defined in paragraph (2). Nor is Bulgaria at present a signatory to any international convention which sets parameters on the right of a nation to engage in trade retaliation. Until Bulgaria enters into international agreements or passes additional laws further defining the circumstances under which retaliation may be imposed, exercise of the right of retaliation will continue to be within the discretion of the Council of Ministers.

Foreign Persons

Art. 2 (1) For the purposes of this law a foreign person shall be:

1. a juridical person registered abroad;
2. a firm which is not a juridical person and is registered abroad;
3. a natural person who is a foreign citizen with his permanent residence abroad.

(2) A Bulgarian citizen who holds another citizenship may choose whether to be treated as a Bulgarian or as a foreign citizen under this law.

Comment 1: Many of the Law's rights and restrictions are applicable to a "foreign person," making the definition of that phrase in paragraph (1) central to the regulatory scheme. The primary focus of this definition is to limit the privileges of the Law to truly foreign investors, who otherwise may not invest in Bulgaria. Those who would be expected to invest in Bulgaria in any event are excluded by the definition.

For this reason Article 2 excludes Bulgarian citizens, whether living in the country or abroad, from the operation of the Law. Foreign natural persons residing permanently in Bulgaria, who might be expected to invest in the country in any event, also are not included in the definition of foreign persons. However, those in this latter category do have the right to engage in certain economic activities which are foreclosed to non-resident foreign natural persons. (See Article 3, below)

Comment 2: Because the Law on Commerce adopts the merchant registration system common to Western Europe, the authors of Bulgarian commercial laws often draft definitions or rules in the context of that system. This focus may create anomalies for foreign investors from other systems. One example may be seen in point 1 of paragraph (1) which defines foreign persons in terms of juridical persons "registered abroad." In systems such as found in the United States, partnerships and certain other forms of business organizations are not registered with the government, yet have all the qualities of similar juridical persons under the Bulgarian system. Such unregistered entities will not qualify as "foreign persons" under the Law. Firms of this type must utilize some other vehicle for investing in Bulgaria.⁵

Comment 3: Point 2 of paragraph (1) refers to entities found in some European systems which are not considered juridical persons but nonetheless register to perform commercial activity. These entities are brought within the coverage of the new Law. However, a similar issue to that described in Comment 2 arises for non-juridical, non-registered entities from systems which permit these firms to engage in economic activity. Under

⁵ See footnote 4 above. Under the Treaty discussed therein, non-registered entities such as general partnerships and limited partnerships are recognized as foreign persons.

the language of the Law such entities, common in other European systems, will not qualify as foreign persons in Bulgaria.

Comment 4: *The treatment of Bulgarian citizens by the Law reflects a basic shift in attitude toward the expatriate population. Under the prior Law on Foreign Investment, Bulgarian citizens permanently living abroad were defined as foreign persons and thus were subject to the provisions applicable to foreign investors. The new Law adopts the opposite approach, so that Bulgarian citizens residing abroad are now subject to the same regulations as those living within the country.*

Persons with dual citizenship are given the option to choose their status under the Law. This choice may have significant consequences depending on the circumstances of the dual citizen, since Bulgarian citizens have enhanced rights to own land or participate in certain activities (Article 5) while foreign persons are better able to transfer funds abroad in hard currency (Article 13).

Right to Engage in Economic Activity

Art. 3 (1) A foreign person may engage in economic activity in the country and acquire stock and shares in commercial firms in the same manner as Bulgarian citizens and juridical persons, and shall enjoy equal rights with them, so long as the law does not provide otherwise.

(2) A firm with foreign participation shall enjoy the same rights as a firm without foreign participation, except as otherwise provided by this law.

(3) The extent of the foreign participation in newly formed or existing firms shall not be limited.

(4) A foreign natural person must have permission for permanent residence in the country to:

1. register as a sole proprietor;
2. become a member of a cooperative;
3. become a member of a general partnership;
4. become a member with unlimited liability of a limited partnership or a company limited by shares.

(5) The right to permanent residence of a foreign person envisaged by the foregoing paragraph may be terminated by the Minister of Internal Affairs only in the cases provided for by law. The administrative act which deprives a person of the right to permanent residence may be appealed to the courts under the provisions of the Administrative Procedure Act.

(6) A foreign natural person, or a firm which is not a juridical person under its national law, may register a branch if the person or firm has been registered with the right to engage in economic activity (merchant) under the law of its country of origin.

Comment 1: Article 3 introduces a fundamental concept critical to the structure of the Law: a firm with foreign participation. As discussed below in connection with Article 5, the Law is required to respect a number of restrictions on the economic activities of foreign persons contained in the Bulgarian Constitution. But the Law assumes that these restrictions do not apply to Bulgarian firms, which are creatures of Bulgarian law. The Law accordingly differentiates between foreign persons and Bulgarian firms with foreign participation, placing greater restrictions on the former as mandated by the Constitution and other laws.

Comment 2: One of the fundamental defects in the prior Law on Foreign Investment cited by Mr. Eskenazi in support of the draft Law was the failure of the former to distinguish between economic activity and investment. As its title suggests, the new Law draws this distinction, creating different rules for economic and investment activities.

Comment 3: While Article 3 addresses the "economic activity" of foreign persons, that phrase is not defined in the Law. In all probability, the definition of this phrase will coincide with the definition of merchant or business activity contained in Article 1 of the Law on Commerce. But Article 2 of the latter Law excludes from its definition certain business activities carried on by farmers, artisans, self-employed providers of services and members of the professions. If the definitions of economic and business activities in the two laws are identical, these occupations may fall outside the ambit of the rights guaranteed to foreign persons under paragraph (1).

Comment 4: With these distinctions in mind, the apparently subtle differences in language between paragraphs (1) and (2) take on greater significance. Foreign persons are permitted by paragraph (1) to engage in economic activity on the same basis as Bulgarian citizens and firms, subject to restrictions imposed by law. But no mention is made in paragraph (1) of investments by foreign persons. As seen below, investments by foreign persons are treated differently than the economic activities of such persons.

In contrast, paragraph (2) is not limited to economic activity. Paragraph (2) instead provides that Bulgarian firms with foreign participation shall have the same rights as firms without foreign participation, unless otherwise provided by the Law. This grant of rights is broad in scope, encompassing not only economic activity, but also such matters as investment and property ownership. Moreover, by explicitly stating that the rights of firms with foreign participation are subject only to limitations imposed by "this Law," paragraph (2) emphasizes the intent that restrictions in other laws dealing with foreigners should not be applied to these firms. The impact of these distinctions is particularly important in relation to the restrictions contained in Article 5 and the rights to transfer currency contained in Article 13.

Comment 5: By removing any restrictions on the amount of foreign participation in a Bulgarian firm, paragraph (3) contrasts with Decree No. 56 and the original draft of the new Law, both of which mandated differing treatment for firms dependent upon the percentage of foreign ownership. With the exception of paragraphs (2) and (3) of Article 5, the Law as passed allows foreign investors to form or acquire the entirety of a Bulgarian firm and enjoy a number of rights otherwise denied to foreign persons under the Law.

Comment 6: The restrictions contained in paragraph (4) arise from the philosophy underlying the Bulgarian Law on Commerce. Substantial emphasis in that Law is placed upon providing protection for creditors. This is accomplished by two methods: minimum capitalization requirements for limited liability firms, and the personal liability of firm members where limited liability does not exist.

In the new Law, no restriction is placed upon the right of foreign natural persons to own shares in joint stock or limited liability companies;

paragraph (1) in fact expressly affirms this right. This lack of restriction is deemed permissible because minimum capitalization requirements are imposed on such companies, in theory providing assets for the protection of creditors.

But the Law on Commerce imposes no minimum capitalization requirements on sole proprietorships, cooperatives or partnerships. Reliance is instead placed on the personal assets of members to provide protection for creditors. By requiring that, to become members of such entities, foreign natural persons must be permanent residents of Bulgaria, paragraph (4) seeks to enhance the ability of their creditors to recover debts in the event of default.

No similar restrictions are placed on foreign juridical persons. While under the Law on Commerce, no juridical person may register as a sole proprietor or become a member of a cooperative, foreign juridical persons may form or become members of general or limited partnerships or companies limited by shares. This lack of restriction on foreign juridical persons reflects the recognition that "residence" has far less meaning for an entity than a natural person.

Comment 7: Paragraph (4) is an example of the policy decision to exempt foreign citizens permanently residing in Bulgaria from the rules applicable to foreign persons. While permanent residents are free to engage in activities involving unlimited liability under this Article, they are not foreign persons under Article 2 and do not enjoy the privileges extended to such persons. (See Comment 3 to Article 13.)

Comment 8: Permanent residence for foreigners in Bulgaria has traditionally been governed by the Law on the Residence of Foreigners in the People's Republic of Bulgaria. Under Article 8, paragraph (4)⁶ of this Law, permanent residence is available only to foreigners of Bulgarian descent or married to Bulgarians, their children, and persons adopted by Bulgarian citizens. Foreign persons are not permitted to establish permanent residence simply to engage in economic activity.

The new Law most probably does not alter this scheme. Paragraph (4) indicates that a foreigner must have permission for permanent residence

⁶ Now Article 8a, promulgated in the Official Gazette, Issue 27 1994; the amendment to the law did not affect the substance of the rules in discussion.

before he engages in activities where unlimited liability is imposed, suggesting that he must qualify for permanent residence by meeting the existing criteria.

Admittedly, paragraph (5) clouds this picture, since it seems to suggest that the new Law somehow creates a separate, independent basis for becoming a permanent resident. But paragraph (5) generally restates the procedures contained in the Law on the Residence of Foreigners. The only substantive difference is that, while the Law on the Residence of Foreigners provides that the Minister of Internal Affairs or other state officials authorized by the Minister may deprive a foreign person of permanent residence, the new Law limits this right strictly to the Minister. This difference, though material, is likely insufficient to establish that a separate right to permanent residency had been created. Rather, paragraph (5) likely was intended to explain and restate the existing procedures.

Comment 9: The provisions of paragraph (6) again reflect Bulgaria's adoption of the system of merchant registration prevalent in other European systems. Under those systems, and under the Bulgarian Law on Commerce, individuals and firms which engage in "merchant" activities must register with the State. Chapter Five of the Law on Commerce permits a merchant to open and register a branch outside the community where its head office is located.

To avoid any misunderstanding, paragraph (6) of the new Law confirms that foreign natural persons and non-juridical entities may open branches so long as they are registered under the laws of their home country. As discussed in Comment 2 to Article 2, the registration requirement has the practical effect of excluding persons and entities from countries where merchant registration is neither required or possible. This right is important, since the new Law gives certain advantages to persons or entities which register as a branch.

Commercial Agencies

Art. 4 (1) Foreign persons who are entitled to engage in commercial activity under their national legislation may set up commercial agencies in

the country which must be registered with the Bulgarian Chamber of Commerce and Industry.

(2) The agencies described in the foregoing paragraph shall not be juridical persons and may not engage in economic activity.

(3) Transactions which a foreign person enters into with local persons to meet the needs of an agency registered by him pursuant to paragraph (1) shall be regulated in the manner provided for transactions between local persons.

Comment 1: Article 4 was not contained in the original draft, but was inserted during the deliberations of the Legislative Committee between the first and second readings. The addition of this Article was intended to address concerns voiced by certain foreign firms which strongly preferred to operate using commercial agencies, rather than other forms of organization. Under Decree No. 56, such agencies were expressly permitted, and many were established in Bulgaria. But these provisions were repealed by the Law on Foreign Investments. While the Law on Commerce generally addressed issues regarding commercial organizations, no mention was made of commercial agencies set up by foreign firms. To avoid uncertainty, Article 4 was inserted in the Law to specifically authorize the creation of such agencies.

Comment 2: The phrase "commercial agency" is not defined in the new Law, or elsewhere in Bulgarian law. However, the commonly accepted meaning is that it is an office of a foreign person or firm opened in Bulgaria without creating a separate Bulgarian subsidiary or firm.

The phrase "commercial agency" should not be confused with principal-agent relationships (such as agents, brokers, or sales representatives) where third parties are retained to represent the interests of foreigners. The latter types of relationships are regulated by Chapter Six of the Law on Commerce, and are not discussed in the new Law. A foreign investor may choose to have its commercial agency operated either by such an agent or a direct employee. In either event, the commercial agency is governed by Article 4 of the new Law.

Comment 3: The requirement in paragraph (1) that commercial agencies register with the Bulgarian Chamber of Commerce and Industry is a con-

tinuation of the procedure set up under Decree No. 56. While the general movement of legal reform in Bulgaria has been away from using the BCCI as a quasi-governmental institution, this function was retained.

Comment 4:⁷ *The procedure for registration with the BCCI has been established. To register a commercial agency, a foreign person must submit:*

- a Basic information in Bulgarian on a form supplied by the BCCI*
- b. A certain set of legal documents accompanied by an official Bulgarian translation*
- c. A fee of 4,000 leva.*

The legal documents required for registration of a commercial agency of a registered entity (such as a corporation or a limited liability company) are as follows:

- a A certificate for registration issued by the national (state) registering authority certified by the national agency responsible for foreign affairs and the local Bulgarian Embassy, and accompanied by an official translation from the Bulgarian Embassy;*
- b. A notarized copy of the corporate documents creating the representative powers of the legal representatives of the corporation, certified by the national agency responsible for foreign affairs and the local Bulgarian Embassy, and accompanied by an official translation from the Bulgarian Embassy;*
- c. A notarized power of attorney for the individual (local or foreign) who is authorized to open and/or operate the commercial agency. To avoid the lengthy certification and official translation procedures, the power of attorney may be executed in Bulgarian and the author's signature notarized by a Bulgarian Consular Office or a notary public in Bulgaria.*

⁷ Comment 4 was revised to reflect the current situation with respect to the steps which must be taken in the registration process.

Further information and forms can be obtained from the Bulgarian Chamber of Commerce and Industry, 11A Saborna Street, 1040 Sofia, Bulgaria, tel: (359 2) 87 26 31, fax: (359 2) 87 32 09.

Comment 5: The principal reason for allowing the establishment of commercial agencies was to permit foreign persons and firms to carry on activities in Bulgaria without undergoing the delay, expense and disclosure required by the Law on Commerce for establishing a Bulgarian commercial firm. The latter Law contains extensive requirements for creating partnerships and companies which foreign business persons sought to avoid. But, as discussed below, the new Law grants firms with foreign participation (i.e. Bulgarian firms formed under the Law on Commerce) significant rights beyond those given to foreign firms and natural persons. Foreign investors in the future must weigh the ease and simplicity of establishing a commercial agency against the benefits available to those who establish or acquire a Bulgarian firm.

Comment 6: Since commercial agencies are viewed merely as extensions or local offices of the foreign person, paragraph (2) restates that they do not have separate, independent legal existence. Similarly, the right of a commercial agency to engage in commercial activity is the right, if any, of the foreign person. A commercial agency has no separate right to undertake such activities if the foreign person does not.

Comment 7: Paragraph (3) deals with situations where a commercial agency is performing routine transactions for its own needs. In such instances, it will not be treated as a foreign person. Instead, in such transactions the commercial agency is bound by the general rules applicable to Bulgarian citizens and firms. For example, the commercial agency's right to make payments in hard currency for the needs of the agency are governed by the rules applicable to local rather than foreign persons. This treatment is consistent with the principle that the special rights belong to the foreign person, not the commercial agency.

Restrictions

Art. 5 (1) A foreign person may acquire ownership over buildings and limited ownership rights over real estate. He may acquire a dwelling only by exercising a right to construct a building or by following a procedure established by law.

(2) A foreign person, including a branch or a sole proprietor, may not acquire ownership over land. A firm with foreign participation exceeding 50 per cent may not acquire ownership over agricultural land.

(3) A foreign person, or a firm in which the participation of a foreign person, directly or through other firms with foreign participation, is sufficient to provide them with a majority in decision making or the ability to block decision making, shall apply for permission in the following cases:

1. production and trade in weapons, munitions and military equipment;
2. engaging in banking and insurance activity, and participation in banking and insurance firms;
3. acquisition of real estate in certain geographic regions designated by the Council of Ministers;
4. exploration, development or extraction of natural resources from the territorial sea, continental shelf or exclusive economic zone;
5. acquisition of an interest which provides them with a majority in decision making or the ability to block decision making in a firm which engages in activity or has property described in the previous subparagraphs.

(4) Any transactions executed in violation of this article or by use of a sham shall be declared void by a court decision based upon a claim brought by the Attorney of State or any interested party. In such cases, anything given by a party who has not acted in good faith shall be expropriated for the benefit of the State.

***Comment 1:** Perhaps the most hotly debated provisions in the Law were the portions of Article 5 dealing with foreign ownership of land. Issues*

concerning the control and concentration of land have a long history in Bulgaria and shape the current debate.

Bulgaria traditionally has been a land of small peasant farmers. Land reform and the break-up of large farms owned by absentee landlords was a central tenet of the Agrarian Party which briefly held power in the early 1920's. These policies continued even after their fall. The execution by the Communists in 1947 of Nikola Petkov, the Agrarian leader, was one of the most important blows against democracy in Bulgaria. Small landholdings and peasant farming are thus symbolic of Bulgarian independence and traditional values.

With the fall of Communism, strong nationalist sentiment revived these historic principles. One of the first laws passed by the Grand National Assembly was the Ownership and Use of Farm Land Act adopted in February of 1991. Article 3 of that Act prohibited foreign juridical persons and firms with foreign participation from acquiring property rights in agricultural land. Foreign natural persons and Bulgarians residing permanently abroad could obtain such rights by inheritance, but were required to transfer them within three years.

This sentiment was subsequently reflected in the Constitution adopted in July of 1991. Article 21 states that:

Land, as a chief national asset, shall enjoy particular protection on the part of the State and society.

The prohibition against land ownership by foreign natural and juridical persons was extended to all land by Article 22, though paragraph (2) of that Article does provide that foreign persons "shall be free to acquire limited ownership rights to use property, to construct a building, and other ownership rights on terms established by law." Significantly, however, the Constitution made no mention of firms with foreign participation.

For this reason, absent a constitutional amendment, any law on foreign investment is circumscribed by the prohibitions of the Constitution and the legacy of the past. Yet foreign investors often were demanding the right to purchase the land where their investment was located. The provisions of Article 5 regarding land ownership reflect an attempt to strike a balance between these competing considerations.

Comment 2: One method for expanding the rights of foreign investors is reflected in the distinctions drawn in paragraph (1), which apply the provisions of Article 22, paragraph (2) of the Constitution. Under Bulgarian law, owners of land can alienate distinct rights to their property. These rights include limited ownership rights to use property and the right to construct and own a building.

A limited ownership right to use property owned by another, according to Article 56, paragraph (1) of the Ownership Act, includes the right to use the property according to its purpose and the right to the benefits which can be obtained from the property without causing any essential changes in it. Under the prior Law on Foreign Investment, foreign persons could acquire such limited ownership rights for a period not to exceed 70 years. Paragraph (1) of the new Law expands the opportunities for foreign persons by allowing acquisition of such rights over real estate for an unlimited period.

While these limited ownership rights have significant value, the usefulness of this mechanism by foreign investors has two limitations. First, the Ownership Act specifically provides that limited ownership rights to use property cannot be transferred. An amendment offered on the floor of Parliament during the debate on the new Law to remove this restriction for foreign investors was overwhelming rejected. The net result is that foreign persons can acquire limited ownership rights to use land, but these rights cannot be transferred to a subsequent purchaser. If granted to a natural person, they will terminate at death, while rights granted to legal entities terminate when the entity terminates.

The other limitation is the prohibition against making essential changes to the property. The Ownership Act in fact requires the user to maintain the property and return it in its original state. Though this obligation may be changed by agreement with the owner, these restrictions may limit the right of foreign investors to develop land upon which rights of use are acquired.

Comment 3: The second limited right involving real estate which can be transferred to foreign persons under Article 5, paragraph (1) of the new Law is the right to construct and own a building. This type of right, described in Article 63 of the Ownership Act, allows an owner of real prop-

erty to transfer to another person the right to erect and own a building, while maintaining ownership of the underlying land. The owner of the building is also permitted to use the land to the extent required for the utilization of the building.

While Article 22 of the Constitution authorized foreign investors to obtain such rights "on terms established by law," this right was not discussed in the prior Law on Foreign Investment. By specifically allowing foreign persons to acquire rights of this type, the new Law expands the options open to foreign investors. The usefulness of this provision is enhanced because the right to construct and own a building is transferable, and the owner of the right is free to sell the building to a third-party. Since many foreign investments will involve buildings rather than other uses of land, this transferability may increase the attractiveness of a variety of investments.

Comment 4: The limitation on home purchases contained in the second sentence of paragraph (1) reflects the severe housing shortage in many parts of Bulgaria. The initial draft flatly limited home acquisition to new construction, as both a protection for potential Bulgarian homeowners and an encouragement for new construction. Recognizing that a flat prohibition may be too restrictive, Parliament by amendment during floor debate added the phrase "or by following a system established by law." In this fashion, exceptions could be made where particular circumstances justified allowing direct purchases of homes by foreigners.

Comment 5: The rights of foreign investors are further complicated by Article 29 of the Ownership Act. This provision, adopted in 1990, provides that foreign citizens residing abroad may acquire immovable property in Bulgaria only with the permission of the Minister of Finance. Article 110 of that same Act defines "immovable property" to include land, vegetation, buildings and other premises which either naturally or due to human activity are permanently attached to the land or building. This Act also contains other conditions, applicable to Bulgarians and foreign citizens alike, for the acquisition and transfer of property.

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Ministers. The provisions of the new Law on foreign investment presumably will be sufficient to meet this requirement, and will enable foreign juridical persons to acquire immovable property without additional complication.

Comment 6: The restrictions imposed by the first sentence of paragraph (2) are mandated by the Constitution. But the Constitutional restrictions on land ownership apply only to "foreign persons," a term undefined in that document. No mention is made regarding ownership of land by firms with foreign participation.

This distinction was utilized by the Law's authors to balance the prohibitions contained in the Constitution against the needs of foreign investors. Foreign persons may not own land, but paragraph (1) of Article 3 gives them equal rights with Bulgarian citizens to own Bulgarian firms. Paragraph (2) of the latter Article gives Bulgarian firms with foreign participation the same rights as other Bulgarian firms. Since Bulgarian firms have the right to own land, foreign investors can acquire land by forming or purchasing a Bulgarian firm.

Though this solution is less than perfect, it reflects a commitment to maximize the ability of foreign investors to purchase land, subject to the constraints imposed by the Constitution. Coupled with the options presented in paragraph (1), this alternative provides a reasonable basis for secure investment in non-agricultural real property.

Comment 7: The treatment of the issue of ownership of agricultural land by firms with foreign participation reflects Bulgaria's historical bias toward the small peasant farmer. Paragraph (2) provides that firms with foreign participation in excess of 50% cannot own agricultural land. Though unstated, the implication is that firms with less than 50% foreign participation may own agricultural land. Indeed, this provision was added to the draft during floor debate by a coalition of Socialist and UDF MPs after rejection of an earlier proposal for a total ban on the ownership of agricultural land by firms with any foreign participation.

Comment 8: The provisions of paragraph (2) of the new Law on ownership of agricultural land conflicted with the existing Ownership and Use of Farm Land Act, which specifically prohibited any firm with foreign participation from acquiring property rights in agricultural land. This

conflict apparently has been resolved on March 20, 1992, by the National Assembly's passage of amendments to that Act harmonizing it with the provisions of paragraph (2) of the new Law⁸ However, these amendments

have not been formally promulgated by President Zhelev as of this writing.

Comment 9: The practical impact of the limitations on the ownership of agricultural land by foreign investors is relatively slight. Due to a series of other restrictions in Law on the Ownership and Use of Farm Land, the right to acquire, use and dispose of agricultural land even by Bulgarian citizens is heavily regulated. In addition, paragraph (2) of Article 21 of the Constitution prohibits removing arable land from agricultural uses except "in exceptional circumstances where necessity has been proved." Given these restrictions, foreign investors may find little reason to purchase agricultural land even where permissible.

Comment 10: The permit requirements of paragraph (3) represent a further erosion of the central planning mentality which characterized Bulgarian economic life prior to 1989. Decree No. 56, for example, required foreign persons to receive governmental permission for any economic activity; the prior Law on Foreign Investment limited the permit system to a few, albeit broad, categories of activity. The new Law further reduces the number of activities for which permits are required. Indeed, apart from point 3, the restrictions are generally in line with limitations placed by most countries on areas of particularly sensitive investment.

However, the Law should not be read in isolation. Article 18 of the Constitution, requires the state to establish conditions and procedures for granting concessions to the state monopoly in such areas as radio frequencies, postal and telecommunications networks, nuclear energy, and explosive and toxic substances. Amendments to Article 5 of the new Law presented on the floor of Parliament, seeking to add these categories to the list of activities in paragraph (3), were defeated with the argument that such restrictions would be duplicative of the Constitutional provisions. No laws regulating concessions have yet been passed, but it is logical to anticipate that some further restrictions on foreign investment in these sectors will be adopted.

⁸ This amendment to Article 3, Paragraph 3 of the Law on the Ownership and Use of Farm Land was promulgated in the Official Gazette, Issue 28, 1992.

Comment 11: The requirements of point 2 of paragraph (3) for permission to engage in banking activities or participate in banking firms have been confirmed and expanded in the Law on Banks and Crediting Activity passed by the National Assembly and promulgated by President Zhelev on March 27, 1992. This law establishes a comprehensive legal structure for the reform and regulation of the Bulgarian banking system. Generally speaking, this Law designates the Bulgarian National Bank as the principal regulator of banking activity in Bulgaria. Chapter 3 of this Law provides that a license from the BNB will be required for any person, Bulgarian or foreign, to engage in banking activities.

This Law contains special requirements for activities by foreign banks and investors, in addition to those specified in the new Law regarding foreign investment. However, these requirements are not particularly onerous, and foreign investors generally are subjected to the national regime for licensing applicable to local applicants.

Comment 12: The discretionary power given the Council of Ministers in point 3 of paragraph (3), to require permits for acquiring real estate in certain geographical regions reflects the lingering concern about foreign control of Bulgarian territory. The prior Law on Foreign Investment contained far broader discretionary exceptions, allowing the Council of Ministers to designate both geographical areas and economic sectors where any investment (not solely in real estate) would require governmental permission. These provisions were never implemented because, when the various Ministries were requested to propose such designations, the combined designations covered most of the geography and economy of the country.

The new law sharply reduces the breadth of the Council of Minister's discretion. Nonetheless, point 3 does retain an "escape hatch" to permit the Council of Ministers to regulate foreign real estate purchases in response to the vague fears that certain regions will be purchased and controlled by foreign interests.

Comment 13: As of this writing, no designations have been made under point 3 of paragraph (3). On February 24, 1992, the Council of Ministers authorized the appointment of a commission to, *inter alia*, make proposals regarding implementation of various provisions of the new Law.

Regarding point 3, this commission was directed to present proposals to the Council of Ministers by March 1, 1992.

The members of the commission were appointed the following day, on February 25, 1992. Headed by Prime Minister Filip Dimitrov, the commission consists of representatives of numerous Ministries. No proposals regarding the geographical designations mentioned in point 3 were submitted by the commission on March 1 and, as of this writing, none have been drafted or submitted.

Comment 14: *The penalty provisions of paragraph (4) illustrate the determination of Bulgaria to deter improper foreign investment. While paragraph (1) of Article 16 imposes heavy penalties based on profits from improper economic activities in general, paragraph (4) of this Article expropriates the entire corpus of an improper investment for the State. A foreign investor who invests without the required permit is thus subject to the loss of its entire investment plus a fine equal to twice the profit on that investment.*

Recipients of improper investments, even if they are blameless, also suffer the impact of having invested amounts expropriated. If they are damaged by this loss, their recourse is to seek recovery from the foreign investor. The uncertainty of recovery in these situations should cause added vigilance on the part of foreign investment recipients to avoid the risks inherent in an improper investment.

Issuing Permits

Art. 6 (1) *The permits required by paragraph (3) of the previous article shall be issued by the Council of Ministers or by an agency authorized by it. Permits for banking activity and for participation in banking firms shall be issued by the Managing Board of the Bulgarian National Bank.*

(2) *The Council of Ministers and the Bulgarian National Bank, respectively, shall publish in the Official Gazette the conditions which must be met for the issuance of a permit pursuant to paragraph (3) of the previous article.*

(3) The Council of Ministers shall consider an application within 45 days. The Bulgarian National Bank shall consider an application relating to banking activity within 6 months and one relating to participation in a banking firm within 3 months. A refusal must state the reasons for denial.

Comment 1: In situations where permits are to be issued under Article 6, the discretion of the permitting agency is essentially unrestricted. The Law contains no criteria upon which the decision must be based. The Council of Ministers or, in other instances, the Bulgarian National Bank is free to approve or deny an application based upon whatever criteria it may choose. Both institutions presumably will develop reasonable criteria to govern their decision-making process, but none have yet been announced.

Comment 2: Paragraph (1) allows the Council of Ministers to authorize an agency to issue the permits described in paragraph (3) of Article 5. In its decision of February 24, 1992 (see Comment 13 to Article 5) the Council of Ministers established a commission to carry out this function. Under that decision, this commission is headed by the Prime Minister who will appoint both permanent members and specialized experts. On the following day, February 25, Prime Minister Dimitrov appointed the fourteen member commission. As of this writing, the commission has not yet commenced formal activities.⁹

⁹ At present, the Commission on Foreign Investment ("the Commission") is one of several agencies involved in the permit issuing process. Its structure and powers are defined in the Regulation on the Structure and Activities of the Commission on Foreign Investment issued by the Council of Ministers and promulgated in the Official Gazette, Issue 77, September 23, 1994.

Regulation No. 74 of the Council of Ministers entitled Determining the Terms and the Procedure for Issuing Permits for Foreign Investment (promulgated in the Official Gazette, Issue 42, May 22 1992) divides the permit issuing authority among several agencies. According to this Regulation, the Commission has general authority to issue permits. Unless special legislation provides otherwise, the Commission has exclusive authority to issue permits. The Regulation requires the Commission to act within 45 days from the date a permit is properly registered.

According to Regulation No. 74, permits under Article 5, paragraph (3), point 1 are issued by the Commission only after the applicant has procured a license from the Government Committee for Control on the Trade Regime for

Comment 3: Pursuant to the second sentence of paragraph (1), permits for banking activities will be issued by the Bulgarian National Bank. This requirement must be read in conjunction with the recently passed Law on Banks and Crediting Activity. (See Comment 11 to Article 5) The latter Law contains specific requirements for the issuance of banking permits, and requires the BNB to formulate additional regulations to implement these requirements. Though it is not explicitly stated in either law, presumably only one permit will be required to meet the requirements of both laws. Due to the very recent passage of the banking Law, no action has been taken by the BNB to issue any permits or regulations.

Comment 4: Paragraph (3) prescribes statutory time limits for decisions on requests for permits, and requires that the reasons be stated for any refusal. Less clear are the avenues of recourse open to a foreign investor if an application is refused. Regarding a refusal of permission by the commission appointed by the Council of Ministers (see Comment 2), Article 3 of the present Administrative Procedure Act provides that its appellate procedures do not apply to decisions of the Council of Ministers. Assuming the commission is covered by this exemption, no appeal could be taken from an adverse decision.

But Article 125, paragraph (2) of the Constitution provides that the Supreme Administrative Court — which is not yet in existence — will be empowered to review the legality of acts of the Council of Ministers. Once the necessary enabling legislation has been passed to organize this

Military and Special Products. The Regulation providing for the structure and activity of this Committee was promulgated in the Official Gazette, Issue 11, February 7, 1992. The same issue of the Official Gazette promulgated the Regulation on the Control on the Regime for Trade in Military and Special Products. The regulations apply to both local and foreign entities.

According to Regulation No. 74, to obtain a permit under Article 5, paragraph (3), point 4, the applicant must submit two requests: one to the Commission and one to the Ministry of Environment and the Committee on Geology and Mineral Resources. Permits will be issued by the Commission only after it is furnished with a draft resolution for permission submitted jointly by the Ministry of Environment and the Committee on Geology and Mineral Resources.

Court, some right of appeal will exist, though the scope of discretion given the Council of Ministers will likely make most appeals futile.

Comment 5: *Under Article 60 of the Law on Banks and Crediting Activity, the legality of administrative acts of the Bulgarian National Bank can be appealed to the Supreme Court pursuant to the Administrative Procedure Act. Presumably this right of appeal will cover denials of permits under the new Law regarding foreign investment.*

Priority of International Treaties

Art. 7 If the Republic of Bulgaria is party to an international agreement which provides more favorable conditions for engaging in economic activity by foreign persons, the more favorable conditions shall apply according to the international agreement.

Comment: *Article 7 restates the basic principle embodied in Article 5, paragraph (4) of the Constitution that the provisions of an international treaty will supersede any inconsistent statutory provisions. The precise impact of this principle in the case of Bulgaria is unclear. For example, the Treaty between the United States of America and the Republic of Bulgaria concerning the Encouragement and Reciprocal Protection of Investment, initialed but not yet ratified, includes a much broader definition of "investment" than contained in Article 9 of the Law¹⁰. Since the Treaty requires all investments to be treated "on a nondiscriminatory basis", certain restrictions in the new Law arguably will be superseded if the Treaty is ratified.*

Supervening Changes in the Law

Art. 8 Economic activity which has been legally commenced and investments which have been legally made may not be affected by supervening

¹⁰ See footnote 4 above.

normative restrictions. This rule shall also be applied to activities which have been commenced and rights which have been acquired under normative acts preceding this law.

Comment 1: With this Article, foreign investors are given assurance that the substantive law governing their investments and activities will not be changed and retroactively applied. In keeping with this principle, economic activities and investments made under prior laws are not affected by the new Law.

Comment 2:¹¹ Article 8 applies to "normative" acts. This term covers primary legislation by the National Assembly and secondary and tertiary legislation by the Council of Ministers and individual Ministers.

Foreign Investment

Art. 9 (1) As used in this law, a foreign investment shall mean any investment by a foreign person, including a sole proprietor or a branch, or by a firm with foreign participation exceeding 50%, in:

1. stock and interests in commercial firms;
2. rights of ownership and limited ownership rights over real estate;
3. ownership of an enterprise;
4. deposits in banks;
5. bonds, treasury bonds and other negotiable instruments issued by the State or Bulgarian juridical persons;
6. credit granted for a term exceeding 5 years.

(2) Ownership of real estate by firms with foreign participation in excess of 50% shall also be considered a foreign investment.

(3) Foreign investment also shall include the increase in the value of an investment made under the previous paragraphs.

¹¹ The Comment was changed to reflect more accurately the concept of a "normative act".

Comment 1: Article 9 is a definition provision, setting forth the specific meaning of the phrase "foreign investment" for the purposes of the Law. Because many of the benefits of the Law apply only to foreign investments, the definition of this phrase is pivotal.

Comment 2: "Foreign investments" are defined in two ways: who can make them and what transactions are included. To avoid granting preferential rights to Bulgarian citizens, particularly in the area of currency repatriation, only foreign persons or entities they substantially control are able to make a foreign investment. Bulgarian citizens and firms, or entities controlled by them, i.e. with less than 50% foreign participation, cannot make foreign investments.

Comment 3: The second criterion for defining a foreign investment is the nature of the transaction. Because of serious concerns about foreign debt and currency reserves, the Law limits many of its benefits to foreign investments. Other economic activities by foreign persons, while permitted, do not receive the special currency repatriation benefits reserved for investments. Instead, foreign persons engaging in such activities face the same currency and other restrictions applicable to Bulgarian citizens.

Comment 4: Among the transactions listed in paragraph (1) as qualifying as a foreign investment is ownership of an "enterprise". Nowhere in the Law is this term defined. But because ownership of stock and shares in commercial firms is a separate category, logically ownership of an enterprise should have an independent meaning.

The most obvious source of definition for the term is the Law on Commerce. Article 15, paragraph (1) of that Law states:

An enterprise as a set of rights, obligations and factual relations shall be transferable by a written transaction with the signatures attested by a notary public.

By implication, it appears that an enterprise thus may be "a set of rights, obligations and factual relations" owned by a foreign person. This definition in fact is consistent with the use of the term elsewhere in Bulgarian law.

If this broad definition is adopted by Bulgarian authorities, the range of transactions which can be considered foreign investments would be substantially expanded. In particular, contractual relationships in the nature of a joint venture, where the foreign investor does not acquire any ownership interest in a Bulgarian firm, may be viewed as an enterprise qualifying for treatment as a foreign investment. Articles 275 and 276 of the Law on Commerce in fact recognize the validity of such a "consortium," and subjects it to the general rules for civil associations contained in Articles 357 – 364 of the Law on Obligations and Contracts.

Comment 5: *A careful reading of the new Law discloses that paragraph (2) is superfluous. The investments described in that paragraph are already covered by the general definition of a foreign investment contained in point 2 of paragraph (1). This anomaly arose because in earlier drafts of the Law, paragraph (1) did not cover the ownership of land by firms with foreign participation in excess of 50%. Paragraph (2) was included to cover this situation but, when paragraph (1) was later expanded, the former inadvertently was not deleted.*

Comment 6: *Under the prior Law on Foreign Investment, foreign investors were required to invest a minimum of US \$50,000 cash to qualify as a foreign investment. The new Law abolishes both the minimum amount and the cash requirement. Foreign investments can now be made in any amount, and by means of contributions other than cash.*

In the latter case, however, a foreign investor still must comply with the general requirements of the Law on Commerce regarding non-monetary contributions to firms. Articles 72 and 73 of that Law require a non-monetary contribution to a Bulgarian firm to be valued by three court-appointed experts, who establish the maximum value of the contribution.¹² If this value is not acceptable, the investor may rescind the transaction. The Law on Commerce also provides that a non-monetary contribution may not con-

¹² By amendment to the Law on Commerce promulgated in the Official Gazette, Issue 103, December 7, 1993, the implementation of the court evaluation procedure was limited to limited liability companies, joint stock companies and companies limited by shares. Non-monetary contributions to general partnerships and limited partnerships are now exempt from the evaluation requirement.

sist of future labor or services. While these restrictions do not create insurmountable barriers to non-monetary contributions, they do limit the flexibility of investors in structuring investment transactions.

Protection of Foreign Investments

Art. 10 (1) Property belonging to a foreign person, as that phrase is used in this law, may be expropriated only for especially important State needs which may not be satisfied in another way. Expropriation may not be based on a normative act which does not rise to the level of a law.

(2) The expropriation of property and the compensation to a foreign person shall be effectuated by an order of the Minister of Finance.

(3) The expropriated property and the property provided as compensation shall be appraised at their market price as of the date of expropriation.

(4) The property provided as compensation must be of equivalent value and located near the property expropriated, though if the owner agrees it may be situated in some other location.

(5) Possession of the expropriated property may be taken only after the owner has been duly compensated.

(6) When compensation is made in kind, the difference in value shall be paid by the owner or by the State.

(7) If the foreign person agrees, the compensation may be pecuniary.

(8) An order for expropriation is subject to appeal to the Supreme Court pursuant to the Administrative Procedure Act regarding the grounds for expropriation, the appraisal, the manner of compensation and the other elements of the order.

Comment 1: *In light of the history of the past 45 years, concerns about expropriation are acute among investors, foreign and Bulgarian alike. Yet any government must retain some power to expropriate or exercise eminent domain where the needs of society for particular property are especially strong. Article 17, paragraph (5) of the Bulgarian Constitution now*

strikes a balance on this issue similar to that adopted in most Western systems:

Forcible expropriation of property in the name of the State or for municipal needs shall be effected only by virtue of a law, provided that these needs cannot otherwise be met, and after fair compensation has been ensured in advance.

Comment 2: *The provisions of Article 10 dealing with expropriation were completely revised by the Legislative Committee between the first and second readings of the draft Law. As adopted, the Law follows the general principles established in the Constitution and the prior Law on Foreign Investment, though certain details of the latter have been changed.*

Comment 3: *The new Law provides a number of significant protections for foreign investors on issues relating to expropriation. To understand the protections provided, an understanding of Bulgarian expropriation law is helpful.*

Issues of expropriation under Bulgarian law are generally covered by Articles 101 – 107 of the Ownership Act, which predate the recent changes. Article 101 provides that property may be expropriated only for especially important state needs which could not otherwise be met. Expropriation could be ordered by the Chairman of the Executive Committee of the Provincial People's Council for property within the province, subject to extensive procedures described in the Act.

Expropriation for municipal needs is governed by the Law on Territorial and Municipal Planning. Article 63 of the latter Law authorizes the Chairman of the Executive Committee of the Municipal Council to order expropriation of property within the boundaries of the municipality which is needed for six enumerated municipal purposes. This law also directly refers to the procedures for expropriation set forth in the Ownership Act.

As quoted above, Article 17 of the Constitution adopted in July of 1991 provided for expropriation for both state and municipal needs. But the new Constitution also significantly altered the structure of local government in Bulgaria, requiring new laws to implement these structures.

The primary new law was the Law on the Management and Administration of Municipalities passed in September of 1991 which established new municipal and regional structures. Unfortunately, this Law did not expressly state who would succeed to the powers of the prior organs of local government under existing laws. Logically, it would appear that the powers of the Chairman of the Executive Committee of the Provincial People's Council will now be exercised by the provincial governor. Municipal powers of expropriation in all likelihood will be exercised by municipal mayors.

Comment 4: *The first added protection granted to foreign investors by paragraph (1) of Article 10 of the new Law regarding foreign investment is that expropriation may only occur for important state needs. Expropriation for municipal needs is not mentioned. Though municipalities may be able to convince the Minister of Finance to expropriate property for them in the name of the State, or to obtain special legislation from Parliament, these additional hurdles will decrease the likelihood that foreign investors would be subject to expropriation by municipal fiat.*

Comment 5: *As another protection for foreign investors, paragraph (1) requires that any expropriation be based on a law enacted by Parliament. Under the Bulgarian system of law, various types of decrees, regulations or orders can be promulgated by executive, administrative and municipal agencies. These enactments rank lower on the legal hierarchy, and are subsidiary to the Constitution and laws passed by Parliament. Paragraph (1) ensures that expropriation must be based on a law, and cannot be premised solely on executive, administrative or municipal fiat.*

Comment 6: *A third protection offered to foreign investors in the new Law is the requirement of paragraph (2) that any expropriation of the property of foreign persons be ordered by the Minister of Finance. Since the latter presumably will have a broader view and be more sensitive to foreign investors than a provincial governor, retaliatory or other improperly motivated expropriations should be reduced.*

Comment 7: *One area of uncertainty under the new Law is whether it applies only to the expropriation of real property. The various provisions and procedures are certainly structured for such expropriations, and implicitly suggest that expropriation of other types of property is not covered. If*

the Law does apply only to real property, the question then arises whether expropriation of other types of property is permitted. The answer to this question must await further clarification.

Comment 8: *The provisions of paragraph (5) mirror the requirement of Article 102 of the Ownership Act that possession of expropriated property shall be transferred only after the owner has been "duly compensated." Nothing in the new Law defines due compensation. However, both paragraph (1) of Article 3 and general principles of Bulgarian law provide that foreign investors are subject to the law applicable to Bulgarian citizens, unless the law provides otherwise. This presumably will mean that the issue will be controlled by Article 104 of the Ownership Act which defines due compensation to be:*

- a payment of the value of the expropriated property;*
- b. transfer of other property as in-kind compensation; or*
- c. entry of a final order that the owner will be compensated with a future building, in which case an amount equal to the value of the expropriated property must be deposited in a blocked bank account.*

Comment 9: *In-kind compensation, i.e. the substitution of alternative property for expropriated property, is clearly contemplated by paragraphs (6) and (7). Article 102 of the Ownership Act sets forth detailed rules for compensation in-kind when real property is expropriated. But this Act also prescribes a different procedure for expropriation than the new Law (see Comment 6). Whether the rules set forth in the Ownership Act will be applied despite the differences in procedure must await further clarification.*

Comment 10: *Another benefit given foreign investors under the new Law is the provision in paragraph (8) that expropriation orders are subject to appeal to the Supreme Court. Under the Ownership Act, any appeal of an expropriation order must first be made to the District Court. In bypassing this step, the new Law provides for more expeditious appeals by foreign investors.*

However, the procedure of paragraph (8) will soon require amendment since the Constitution mandates that the Supreme Court be divided into two separate courts, the Supreme Court of Cassation and the Supreme

Administrative Court. Neither court is yet in existence, nor have the necessary laws implementing the new structure, jurisdictions and procedures been passed. Under the Constitution, these courts must be established by July of 1992.

Registration of Foreign Investments

Art. 11 (1) Foreign persons shall register their investments in the country, as well as any changes in them, within 30 days after they have been made. Deposits in banks are not subject to registration.

(2) Foreign investments shall be registered by means of a declaration filed with the Ministry of Finance using a form adopted and published by the Ministry.

Comment 1: Though the new Law eliminates the requirement for government approval of most foreign investments, registration of foreign investments is required. This requirement is imposed primarily to facilitate administration of the special currency repatriation rights provided for foreign investors under Article 13. That is, if foreign investments were not registered, it would be difficult to ascertain whether a particular foreign person or firm was entitled to purchase and transfer abroad foreign currency under this Law. Central registration of such investments with the Ministry of Finance should ease the administrative burdens of this system.

Comment 2: While Article 11 contains the only registration requirements imposed by the new Law, foreign investors may face other registration requirements imposed by other laws on domestic and foreign investors alike. Perhaps principal among these requirements are the registration procedures required by the Law on Commerce. Under the latter law sole proprietors, partnerships and companies, including branch offices, must register with the District Court. Registration involves filing an application with the Court and receiving permission to operate under the proposed form of organization.

Many foreign investors may choose to operate in Bulgaria using other methods. But if the foreign investor chooses to form or acquire a Bulgarian

legal entity to facilitate operations, registration with the Court will be required. This procedure takes on increasing importance under the portions of the new Law which give additional rights to firms with foreign participation. Such firms can only be formed by compliance with the registration procedures of the Law on Commerce.

***Comment 3:** A persistent concern in Eastern Europe has been the need to overcome the central planning mentality of the bureaucracy. For years, state employees reviewed, controlled, and approved business decisions of enterprises. With the advent of market reforms, this legacy on occasion has transformed seemingly ministerial acts into major occasions for the exercise of bureaucratic oversight and discretion.*

In an effort to signal its desire to reduce bureaucratic involvement in most foreign investments, the National Assembly during the floor debate on the new Law added the phrase "by means of a declaration" to paragraph (2). The stated intent of this amendment was to further clarify that registration did not imply a discretionary approval process requiring an

"application." Instead, registration is intended to be a notice process to provide the information needed by the Ministry of Finance for administration of the currency control regime. (see Comment 1) The declaration is simply a statement in the nature of an affidavit intended to meet those needs. Other than insuring that the form is properly completed, the Ministry should have little discretion to "approve" the declaration.

***Comment 4:** To speed the registration process, paragraph (2) requires the Ministry of Finance to adopt and publish a form for registrations. In its decision of February 24, 1992, the Council of Ministers directed the Ministry to approve such a form by March 1, 1992. As of this writing, no form has been adopted or published.¹³*

¹³ A form was approved by the Minister of Finance in Instruction No. 1 on Registration of Foreign Investment as Required by the Law on Economic Activity of Foreign Persons and on Protection of Foreign Investment, promulgated in Official Gazette, Issue 43, May 26, 1992.

Security for a Foreign Person's Claims

Art. 12 The claims of a foreign person in leva or in foreign currency may be secured by pledge or mortgage. The pledge shall be valid even if the item under pledge is left with the debtor and is used by the latter, so long as the pledge has been executed in writing and has an authentic date. The permission of a State agency is not required to record a mortgage.

Comment 1: One goal described by the sponsors of the new Law was to facilitate borrowing for investment by Bulgarian businesses. Toward this goal, Article 12 seeks to eliminate obstacles to such lending.

Comment 2: The basic currency control regime for Bulgaria is contained in the Law on Transactions in Currency Valuables and on Currency Control. Under that Law, permission of the Ministry of Finance was required to mortgage or pledge property to a foreign person. Article 12 of the new Law removes this permission requirement.

Comment 3: The second sentence of Article 12 represents another change in existing Bulgarian law for the benefit of foreign investors. Article 156, paragraph (1) of the Law of Obligations and Contracts requires delivery of collateral under pledge to the creditor or a third party. Since a pledge is the principal means of obtaining a lien or security interest on movable (i.e. personal) property, security interests in property needed by the debtor were difficult to arrange. Article 12 of the new Law removes the requirement of possession when the pledge is given to a foreign investor, making security interests in such property more feasible.

Comment 4: The phrase "authentic date" in Article 12 refers to a principle of Bulgarian law for proving the date of a written document. Generally speaking, the authentic date is one recognized by law as the effective date of the document for various enforcement and priority purposes. The simplest way to establish an authentic date is to have the document notarized.

Transfer of Incomes and Compensation

Art. 13 (1) A foreign person shall have the right to buy foreign currency from Bulgarian banks for the purpose of transferring it abroad in the following cases:

1. the income in leva from an investment;
2. the compensation for the object of an investment expropriated for State needs;
3. the liquidation quota in the event of termination of an investment;
4. the price when the object of an investment is sold;
5. the amount obtained in leva from the execution on a claim in foreign currency secured pursuant to Article 12.

(2) A foreign person may transfer abroad the purchased foreign currency only after presenting a certificate that all required taxes have been paid.

Comment 1: Article 13 contains the new Law's principal incentive for foreign investors: the right to repatriate monies abroad. These rights constitute a significant expansion of rights available under prior legislation.

The basic principle, laid down in the Law on Transactions in Currency Valuables and on Currency Control, is a general prohibition against the purchase and sale of hard currency within Bulgaria. Transfers abroad of foreign currency are subject to the discretion of the Council of Ministers and the Bulgarian National Bank. Decree No. 56 promulgated in January of 1989 put some limits in this discretion by offering certain limited and absolute repatriation rights to foreign investors. These rights were expanded in May of 1991 by the Law on Foreign Investment. The new Law extends these rights to additional categories of investment activity.

Comment 2: A fundamental aspect of the repatriation rights contained in paragraph (1) is that they extend only to monies received from an investment. Leva received from other economic activities are not subject to exchange and repatriation under this provision. Thus, while foreign persons under paragraph (1) of Article 3 are able to engage in general economic

activity, they may exchange leva and repatriate the hard currency only where this economic activity qualifies as an investment under Article 9.

This distinction is consistent with Bulgaria's present philosophy of encouraging investment, but discouraging import related consumption. The nation's economic situation at present does not allow it to spend precious foreign currency to buy unlimited imported consumer items or other non-essential goods and services. Because foreign investment should boost rather than drain the economy, foreign investors are given preferred treatment.

Comment 3: The rights provided by Article 13 extend to "foreign persons" as the phrase is defined by Article 2. The latter definition does not include foreign citizens permanently residing in Bulgaria. Foreign citizens who establish permanent residency in Bulgaria accordingly will lose the right to buy, sell and repatriate leva under the new Law.

Comment 4: The definition of "foreign persons" contained in Article 2 of the new Law is somewhat at variance with the definition of that phrase under Article 5 of the Law on Transactions in Currency Valuables and on Currency Control. The latter provision defines foreign persons to include all natural and legal persons with their permanent residence or registered office abroad regardless of citizenship. Under this definition, Bulgarian citizens permanently residing abroad would be viewed as foreign persons for the purposes of the Law on Currency, but not under the currency provisions of the new Law regarding foreign investment.

Comment 5: The "liquidation quota" mentioned in point 3 of paragraph (1) is more fully described in the Law on Commerce. In essence, a liquidation quota is the amount received by an investor after dissolution of a commercial firm.

Comment 6: Point 5 of paragraph (1) effectuates the right to secure indebtedness granted under Article 12. Because of inflationary pressures in Bulgaria, creditors may prefer to extend credit in more stable hard currencies, secured by property inside the country. Yet, if forced to execute on the security, creditors could not sell the collateral for hard currency, since Article 1 of Regulation No. 15 on Changes in the Currency Regime (see Comment 4 to Article 15) requires all transactions within Bulgaria to be in leva. Even if hard currency sales were permitted, buyers with hard cur-

rency would be scarce. Point 5 now permits a creditor executing on such a claim to sell the security in leva, which should greatly enhance his chances of realizing the value of the collateral, and to repatriate the proceeds in hard currency.

Comment 7: At present, there is no procedure which establishes a) from whom the tax certificates required under paragraph (2) must be obtained and, b) to whom they must be presented. Clarification of these issues should be forthcoming.¹⁴

Labor and Social Security Relations

Art. 14 (1) Labor relations between a foreign person registered as a sole proprietor, a firm with foreign participation exceeding 50%, or a branch or an agency of a foreign person, and workers and employees who are Bulgarian and/or foreign citizens, shall be governed by the provisions of this article.

(2) Labor relations between the persons described in the foregoing paragraph shall be established by a labor contract. The labor contract shall not deviate from the provisions of Bulgarian labor law governing:

1. the written form of the contract;

¹⁴ Now, in theory, there is clarity on these issues. Under Regulation No. 4 of 1993 by the Minister of Finance on Tax Registration, promulgated in the Official Gazette, Issue 75, September 3, 1993, foreign persons engaging in economic or investment activity in Bulgaria must obtain a tax registration. Foreign persons having a registered branch in Bulgaria must register, for tax purposes, in the municipality where the branch is registered. In all other cases, foreign persons must register, for tax purposes, in every municipality in which they have economic activity or a source of revenue.

Tax certificates are issued by the taxing authority where the foreign person is registered. They are presented to the commercial bank which has been requested to effect the money transfer.

Practically, however, is that it is almost impossible for a foreign person to obtain a tax registration. On the other hand, commercial banks, in most cases, ignore the obligation to police tax compliance by foreign persons imposed on them by the law.

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2. the maximum working time, and minimum daily and weekly leisure time and annual paid leave;
 3. the minimum salary established for the country;
 4. the minimum time limit for notice of termination of a labor contract, if such a notice has been agreed upon or is required by law, as well as the minimum indemnification due for termination of a labor contract with or without notice;
 5. the liability of the employer for damages caused by occupational accident or disease;
 6. the rules on occupational hygiene and safety.

(3) Bulgarian citizens employed by employers described in paragraph (1) must be insured at the expense of the employer for all social security coverages required by Bulgarian social security legislation.

(4) Workers and employees who are foreign citizens must be insured for temporary or long term occupational disability at the expense of the employer. The social security premium shall equal 20 percent of the employee's gross monthly salary. Other coverages shall be negotiated in the labor contract.

(5) Foreign citizens working under a labor contract with commercial firms with foreign participation exceeding 50%, with a foreign person registered as a sole proprietor, with a branch, or with an agency of a foreign person, shall have the right to buy foreign currency in an amount not exceeding 70 per cent of their earned wages, as well as any indemnification paid pursuant to a labor contract and personal insurance.

(6) Labor disputes of employers described in paragraph (1) with Bulgarian citizens shall be settled by the Bulgarian courts, and with foreign citizens as negotiated in the labor contract.

(7) All issues connected with the labor and social security relations of an employer described in paragraph (1), which have not been settled in the labor contract, shall be governed by Bulgarian labor and social security legislation.

***Comment 1:** The guiding principle underlying Article 14 is that labor relations involving Bulgarian workers must be governed by Bulgarian law,*

but foreign workers should be able to negotiate many aspects of their employment with foreign persons or firms. In the latter situation, Bulgarian law applies only in the specific instances described in paragraph (4) or if the employment contract is silent.

Comment 2: Paragraph (1) identifies the employers covered by Article 14. Omitted from coverage are (a) foreign firms which have not opened a branch or commercial agency, and (b) firms with foreign participation of less than 50%.

Employers in the former category would not likely hire persons to work on an extended basis in Bulgaria, but would instead send outside employees into the country from time to time. Their employment relations would be governed by the law of the state where they were employed. However, should such foreign firms employ persons in Bulgaria, they will be subject to the normal rules governing Bulgarian employees.

The latter category is omitted because firms with foreign participation under 50% are generally not considered by the Law to be "foreign." These firms do not qualify to make foreign investments under Article 9, and their employment relations will be governed by domestic law.

Comment 3: Bulgarian law on labor issues is contained in the Labor Code of 1986, while social security matters are dealt with in the Labor Code of 1951. Originally enacted under the Communist governments, these laws are presently the subject of intensive review and debate. In all likelihood, substantial amendments will be proposed in upcoming months.

Comment 4: Under paragraph (5) foreign workers are granted the right to repatriate in hard currency up to 70% of their gross income. Another deviation from the regime imposed by Law on Transactions in Currency Valuables and on Currency Control, this provision is intended to facilitate the hiring by foreign investors of foreign nationals with skills required for running their business activities.

However, this right does not extend to all foreign employees. Paragraph (5), like paragraph (1), does not include (a) foreign firms which have not opened a branch or commercial agency, and (b) firms with foreign participation of less than 50%. The latter omission in particular may complicate acquisitions by foreign firms of minority positions in Bulgarian firms, since hiring foreign managers or experts will be more difficult.

Foreign employees likewise must be certain that their employer qualifies under paragraph (5) if they intend to repatriate salary.

Foreign Currency Framework

Art. 15 (1) A foreign person may open accounts, make deposits in foreign currency and in leva in banks and dispose of stocks, bonds and other negotiable instruments.

(2) Transactions by a foreign person executed as a branch or a sole proprietor shall be governed by the rules applicable to local persons.

(3) If local persons have the right to make payments abroad to foreign persons in foreign currency, these payments may be made in the country, including by means of checks, promissory notes and bills of exchange.

***Comment 1:** On its face, Article 15 would appear to be applicable to all foreigners regardless of their activity. But in view of the rules of construction utilized in Bulgaria's civil law system, the purpose of the new Law stated in Article 1 — to govern the economic activity of foreign persons and protect foreign investments — will likely be construed as impliedly limiting the rights described in Article 15 to persons engaging in such activities. (See Comment 2 to Article 1)*

***Comment 2:** The rights granted under paragraph (1) represent a continuing expansion of the economic rights of foreign persons. The Law on Transactions in Currency Valuables and on Currency Control, originally passed in 1966 and frequently amended, created the concept of "currency valuables," which encompassed all of the items described in paragraph (1) of Article 15 of the new Law.*

Under Article 12 of the Law regarding currency, transactions in currency valuables could be conducted by natural persons with the permission of the Minister of Finance, or if some other law or decree so provided. No provision was made for transactions by juridical persons. The provision in paragraph (1) of Article 15 in the new Law regarding foreign investment clearly extends this right to both natural and juridical foreign persons.

Comment 3: *The Law on Transactions in Currency Valuables and on Currency Control also created a complex set of currency regulations based on the distinctions between local and foreign persons. (See Comment 4 to Article 13) That Law and its implementing regulations established a series of "foreign currency frameworks" governing transactions between persons in these classes. Different foreign currency frameworks are applicable depending on whether transactions are between local persons, between foreign persons, or between local and foreign persons.*

Paragraph (2) of Article 15 in the new Law provides that, for the purposes of these foreign currency frameworks, a foreign person operating as a sole proprietor or a branch shall be treated as a local person. With respect to foreign persons operating as sole proprietors, this result is consistent with the philosophy of the new Law. Under the Law on Commerce, only natural persons can be sole proprietors. Article 3, paragraph (4) of the new Law requires a foreign natural person to establish permanent residence in order to register as a sole proprietor. Such persons are not granted the same currency repatriation rights as other foreign investors (see Comment 3 to Article 13), and it is logical to treat them as local persons under the foreign currency frameworks.

The treatment of branches is consistent with the Law on Commerce, which generally subjects branches to the law of Bulgaria. It logically follows that, as required by paragraph (2), these branches should be treated as a local person under the foreign currency framework.

Comment 4: *The provisions of paragraph (3) are intended to clarify the rights of Bulgarians rather than foreign investors. Regulation No. 15 on Changes in the Foreign Currency Regime issued on February 8, 1991, was one of the first acts of the Popov government. It sought to impose controls on foreign currency transactions as part of the general stabilization effort to halt the rampant inflation of early 1991.*

Article 1, paragraph (1) of Regulation No. 15 requires that all payments made on the territory of Bulgaria be made in leva. However, Article 3, paragraph (2) of the same Decree allows banks to sell foreign currency to Bulgarian citizens when they can demonstrate that the hard currency is needed to pay abroad for certain categories of goods and services. Paragraph

(3) of the new Law addresses this anomaly, so that payments which can legally be made abroad can now be made within the country.

Administrative Penal Provisions

Art. 16 (1) A foreign person who engages in economic activity in the country without permission when required, shall be punished by a fine equal to twice the profit made in the country, which shall be established by the taxation authorities, but in any case not less than 50,000 leva.

(2) A foreign person who fails to register his investment pursuant to Art. 11 or submits inaccurate registration data shall be fined up to one tenth of the value of the unregistered investment.

(3) Violations shall be established by the institutions of the Ministry of Finance, and the fines shall be imposed by the Minister of Finance and shall be subject to appeal pursuant to the Administrative Violations and Penalties Act.

Comment 1: The penalty structure contained in paragraph (1) is intended to impose severe sanctions on foreign persons who invest without obtaining a permit as required by Article 5. When coupled with the expropriation of the entirety of an investment under paragraph (4) of that Article, the sanction for failing to obtain permission to invest should deter such activity.

Comment 2: Since registration involves investments which are otherwise valid, the failure to register is viewed as a less serious offense. Nonetheless, if the maximum fine prescribed by paragraph (2) is imposed, the economic consequences could be significant.

Comment 3: The appellate rights provided in paragraph (3) are pursuant to the Administrative Violations and Procedures Act, which requires that appeals be brought before the Regional Court. Unlike paragraph (8) of Article 10 regarding expropriation, no special or accelerated appellate procedure is established. As discussed in Comment 8 to Article 10, changes in the structure of the judiciary may alter the appellate rights provided by paragraph (3).

Concluding Provisions

§ 1 This law repeals the Law on Foreign Investments (published *Official Gazette* issue 47 of 1991; corrected issue 48 of 1991).

Comment: Since the new Law was intended to supplant to prior Law on Foreign Investment, the latter was repealed.

§ 2 The implementation of this law is assigned to the Council of Ministers.

Comment: By assigning implementation of the new Law to the Council of Ministers, the National Assembly has removed it from the control of any single Ministry. This decision reflects the importance attached to foreign investment, and the desire to minimize possible bureaucratic inertia and obstacles.

Further evidence of this commitment can be seen in steps taken by the Council of Ministers to date. The commission set up on February 24, 1992 by the Council of Ministers to implement the new Law is headed by the Prime Minister, Filip Dimitrov, who in speeches has repeatedly emphasized the need for Bulgaria to attract foreign investment. Given this commitment from the highest level of government, foreign investors should expect that the new Law will increase the attractiveness of investment in Bulgaria.

The law was adopted by the 36th National Assembly on January 16, 1992 and has been stamped with the seal of State.