

THE BULGARIAN COMMERCE ACT AMENDED TO PREVENT FALSIFICATION OF DOCUMENTS

On 2 January 2017, amendments to the Bulgarian Commerce Act (the "**Act**") entered into force in Bulgaria. Amongst the aims of the Act is to prevent falsification of documents by introducing new formal requirements for certain agreements and shareholders' resolutions.

STRICTER FORMAL REQUIREMENTS FOR AGREEMENTS

The Act introduces a new validity form for (i) agreements for transfer of a going concern; and (ii) agreements for transfer of quotas in limited liability companies ("**LLC**") (In Bulgarian "*дружество с ограничена отговорност*"). In addition to the existing requirement for notarization of signatures, the Act requires also notary certification of the content of the agreement, made simultaneously.

In Bulgaria the transfer of a going concern or of quotas in an LLC is subject to registration with the Bulgarian Commercial Register. The new formal requirements may cause hurdles during the registration procedures, if parties wish to sign such agreements before notaries in other countries, where the simultaneous certification of signatures and content does not exist as a procedure under local laws (e.g. Cyprus). In order to meet the new requirements for form and avoid registration complications, if such agreements are signed in countries other than Bulgaria, signing can be done before Bulgarian consuls, who are entitled under Bulgarian law to perform simultaneous certification of content and signatures of documents. Another option for parties, who are located abroad and do not wish to come to Bulgaria for the signing of such agreements, is to appoint a proxy to sign the agreement before a Bulgarian notary public under a power of attorney.

NEW VALIDITY FORM FOR MINUTES OF GENERAL MEETINGS

The Act envisages that the following resolutions adopted at a general meeting of shareholders in a Bulgarian LLC shall be documented by minutes, with notary certified signatures and content, performed simultaneously, unless a simple written form is envisaged in the LLC's articles of association:

- accepting and expelling shareholders, giving consent for transfer of quotas to a new shareholder;
- increase and decrease of registered share capital;
- appointment of managing directors; and
- acquisition or disposal of immovable property or property rights over real estate.

Resolutions which are not documented in accordance with the above requirement will be null and void. Shareholders, who prefer a less formalistic approach, may amend the articles of their companies to allow for execution of minutes in a simple written form (without notary certification). It should be noted, however, that the new requirement for

February 2017

notarized form is introduced to prevent execution and registration of important corporate actions by fraudulent signatures.

COSTS

Despite the stricter formal requirements, the Act does not aim to force higher expenses on investors. It is envisaged that a fixed notary fee shall be collected for certification of documents under the new requirements.

INSOLVENCY AND NEW STABILIZATION PROCEEDINGS

In addition to the above corporate changes, the Act introduces two additional presumptions for insolvency as well as a new stabilization proceeding for companies at immediate risk of insolvency. Pursuant to the Act, a company will be presumed insolvent, if (i) it has not filed in due terms its annual accounts for the last 3 years before an application for opening of insolvency proceedings was filed; or (ii) if, within enforcement proceedings initiated by a creditor, who has requested opening of insolvency proceedings against the company, the creditor's receivable from the company was not paid in full or partially within 6 months upon delivery of notice or invitation for voluntary payment. As regards the new stabilization proceedings, the aim is to allow companies at insolvency risk to reach an agreement with their creditors on repayment of obligations and, as result, to continue their business activities. The provisions, governing the stabilization proceedings, shall enter into effect on 1 July 2017.

EARLIER AMENDMENTS ENTERING INTO FORCE IN 2017

Certain earlier amendments to the Commerce Act (adopted back in 2015) also entered into force in Bulgaria in January. These amendments regulate the exchange of information regarding branches of foreign entities performed through the EU system for interconnection of registers as per Directive 2012/17/EU¹. As of 1 January 2017 the following circumstances and acts regarding foreign companies with branches in Bulgaria can be registered with the Bulgarian Commercial Register *ex officio*, upon notification from the company register in the EU member state where the foreign company is established: termination or continuation of business activity, initiation and completion of liquidation proceedings, insolvency acts registered in the country of origin. If the foreign company is deregistered, its Bulgarian branch will be deregistered as well, which will be done *ex officio* upon a notification from the company register in the EU member state where the foreign company is established, unless a separate deregistration of the branch was already initiated in Bulgaria. Also, as of 1 January 2017 the Bulgarian Registry Agency shall be able to ensure operational compatibility of the Bulgarian Commercial Register with the EU system for interconnection of registers² and to provide information through this system on initiation or termination of liquidation proceedings, insolvency or deregistration of Bulgarian companies.

¹ Directive 2012/17/EU of the European Parliament and of the Council of 13 June 2012 amending Council Directive 89/666/EEC and Directives 2005/56/EC and 2009/101/EC of the European Parliament and of the Council as regards the interconnection of central, commercial and companies registers

² Art. 3, para 4 and Art.3a of the Commercial Register Act, promulgated in State Gazette No. 34 from 2006, as amended from time to time.

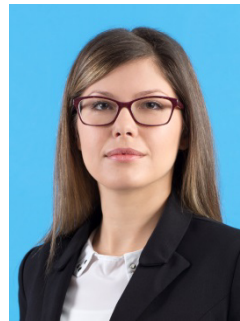
About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna almost 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:



Richard Clegg
Partner
richard.clegg@wolftheiss.com
T: +359 2 8613 700



Nikoleta Ratcheva
Associate
nikoleta.ratcheva@wolftheiss.com
T: +359 2 8613 700

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

Wolf Theiss
Schubertring 6
AT – 1010 Vienna
www.wolftheiss.com