

FOREIGN INVESTMENT IN BULGARIA: LEGAL ASPECTS

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I. Legislation

1. In general the 1992 Act of Bulgarian Parliament for economic activity of foreigners and the protection of foreign investment expresses modern trends and attitudes in legal regulations concerning foreign investment. Its incorporation into the Bulgarian legal system was presupposed by the Constitution of the previous year. In its article 19 says that economic activity and investment of both Bulgarian and foreign individuals and legal persons is protected by law. Such are the functions of the 1992 Act. In this sense the Act is determined by the Constitution and is therefore of special significance in Bulgarian legislation.

Concerning legal action, the Act provides a general formulation for relations in economic activity of foreigners as well as protection of foreign investment, or in general investment relations. Despite this, however, the Act allows the abrogation of its own stipulations whenever an international or bilateral agreement to which Bulgaria is a party contains more favourable conditions for the economic activity of foreign individuals and companies (article 7). Thus the 1992 Act guarantees the priority of the various bilateral agreements for the encouragement and mutual protection of investment, of bilateral agreements for double tax relief and for the eventual application of the international conventions to which Bulgaria is a party. National regulation of investment relations is linked, therefore, to international regulations where the latter take priority. For example if we come across inconsistencies in the scope of the definition «foreign investment», regime of taxation, etc., will have to be solved in favour of the appropriate bilateral agreement or international convention.

At the same time the adoption of the Act for economic activity of foreigners and the protection of foreign investment demonstrates the trend where the major emphasis is placed in legal regulation, upon national legislation, in the sense that it outlines the rules which apply to the economic activity of all foreigners regardless of their citizenship or nationality. This idea, in fact, is inferred from the Constitution as the expression of a definite legislative policy: national legislation regulates directly and immediately investment relations eliding the rules that effect from the conflict of laws.

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2. As for the object of the 1992 Act, it concerns foreign private investment, i.e., foreign private property invested into economic activity. In other words, not only is the source of investment among fundamentals, but so is its effect. As for the scope of its application, the Act does not pose any other qualifiers. It supplies for the sake of greater accuracy a legal definition of «foreign investment». This means essentially an enumeration which tallies with international standards. The 1992 Act governs, further, both direct and «portfolio» investment; both financial and real ones. In practice the definition offers quite a broad scope. The Act, for example, allows investment in securities, but according to Bulgarian legislation now in force investment contract offered publicly is security. There are some limitations, of course, commonly adopted in practice due to purely pragmatic considerations. For example, only credits for over five years can be regarded as foreign investment.

3. The Act of economic activity of foreigners and the protection of foreign investment attempts to bring together the principles and rules which defines the broadest field of relations bearing upon foreign investment: guarantees against nationalisation and political regime hazard, repatriation of capital and profit transfer, clauses for non-discrimination, labor relations, property, currency regulation. The 1992 Act, however, cannot include everything. The legal regulation of taxes, if we take one example, is beyond its scope.

A possible explanation for this is in the legislator' effort not to allow tax rules to disseminate into various Acts but rather to consolidate them to some extent. Another example - the 1992 Act makes no mention of procedural rules for dispute settlement with regard to foreign investment. These rules are in the Act of international commercial arbitration. Anyhow, the fact that certain issues remain outside the Act of economic activity of foreigners and the protection of foreign investment needn't cause any alarm. I have in mind some deviations which have been an important consideration in practice.

II. Liberalism of legal regime

4. The Act of economic activity of foreigners and protection of foreign investment utters the general spirit of liberalism which has been present in Bulgarian legislation over the past few years. This is so, because the Act itself embodies liberal politics towards foreign investment. Its leading principle is that foreign investment should be entitled to a variety of privileges and freedoms and that the interest of foreign investors should be an important consideration while administration should be reduced to the utmost. On the other hand, various facts can be quoted in support of this statement. The Act endorses above all, rights in economic activity to foreign investors equal to those of Bulgarian citizens and legal persons, unless the law does stipulate otherwise, i.e., they are introduced into national regime. This also accounts for the fact that all companies set up by or with the participation of foreign investors become Bulgarian legal persons with all appropriate conse-

quences. Further, the Act poses no requirements whatsoever, to foreign investors who either wish to set up a company or who are satisfied, whenever their national legislation entitles them to carry out commercial functions, to simply open a trade representation. The only requirement in the Act is that in each case investors register with the Bulgarian Chamber of Commerce and Industry. Next the liberalism also permeates the regulations which provide a guarantee against expropriation of foreign investors' property or the regulation guarding against transformations in legislation, regulations which are in the process of change, and finally liberalism ensures the free transfer of profit and damages.

The outlined trend of liberalism has yet another aspect. National legislation itself, whose involvement is referred to in the Act of economic activity of foreigners and of protection of foreign investment, is also imbued with the spirit of liberalism. Suffice to offer as an example the current exchange regime in Bulgaria at the moment. Besides, according to art. 5 of the Constitution international contracts ratified by Bulgaria and duly promulgated are part of the Bulgarian legislation and have priority over the rules, contradictory to them. Finally this trend towards liberalism will expand with the new suggestions for amendments of the Act of economic activity of foreigners and of protection of foreign investment.

5. As it was also mentioned, the 1992 Act, however, enforces some limitations. Foreign investors may embark upon certain functions on a receipt of a permit. The scope of their functions is envisaged in detail in the Act. This concerns above all areas of state monopoly, such as the prospecting and exploitation of mineral resources, or another limitation, the opening of banks. The Act also defines some mandatory rules in labour relations - clauses in the labour contracts cannot deviate from the formulations of Bulgaria's Labour Code. This is aimed at protecting the status of workers and employees.

III. Property

6. Bulgarian legislation precludes that foreigners and foreign legal persons acquire property of land. But there are no restrictions whatsoever against their getting *jura in re aliena*, including mortgage. They can also be granted concessions. This regime is explicitly mentioned in the Constitution. Moreover, the Bulgarian legal system stipulates to a separation of property of land from property of what was built on it; hence the Act governs foreigners' acquisition of property of building. Clearly, this is regarded as a serious restriction against investment. But it is clearly expressed in the Constitution. Yet, it is hard to tell whether this restriction is the main reason for Bulgaria's shortage of investment.

The above mentioned restriction is a flaw in a liberalism otherwise pursued by the Act of economic activity of foreigners and of protection of foreign investment. We have to take into account that it can be evaluated correctly only within the definite system of rights on things (*rights in rem*) which has been modeled upon

Roman law in Romanistic legal family but has not been adopted in all European countries.

7. In conclusion, the legal regulation of foreign investment in Bulgaria sets out an explicit aim: to form conditions for foreign investment and for penetration into the country of foreign capital, including machinery, equipment and technology, as well as money. This penetration should be discussed in extenso, rather than through isolated components; the former can supply the only foundation for adequate evaluation. Otherwise it savours of conjecture and denotes the lack of stability.