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Real Estate Acquisition in Bulgaria

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Buying procedures for the acquisition of ownership rights over real estate in Bulgaria

This brochure is designed to help investors understand the legal requirements, regulations and procedures for acquiring real estate in Bulgaria. In addition, the brochure outlines information on land development and taxation.

Rafael Developments is pleased to offer further guidance and advice at any time on all aspects of investment in Bulgaria.

Buying procedures for the acquisition of ownership rights over real estate in Bulgaria

Legislative framework

The legislative framework related to the acquisition of ownership rights over real estate in Bulgaria consists of The Constitution of the Republic of Bulgaria, The Commerce Act, The Spatial Development Act, The Ownership Act, The Foreign Nationals Act, The Succession Act, etc.

General characteristics of the acquisition of ownership rights over real estate by foreign physical persons and foreign companies

In accordance with Bulgarian Civil law, a foreign physical person or a foreign company can posses ownership of a building and limited rights over land in Bulgaria, but can not acquire ownership of land. In the case where a foreigner or a foreign company inherits land as legacy, in conformity with the Bulgarian Succession Act, the foreign physical person has to transfer the ownership of the land to a Bulgarian citizen no later than 3 years after inheriting the legacy.

Therefore, the easiest way for a foreigner to be in possession of land in Bulgaria is to establish a company in accordance with the provision of the Bulgarian Commerce Act. A Bulgarian company can own any kind of land.

Incorporation of a company in Bulgaria

In Bulgaria, foreign companies can directly acquire a building, premises within a building and limited property rights (e.g. a construction right, right of use). Indirectly, foreign companies can acquire any type of real estate, including land, by registering a Bulgarian company to act as acquirer. It is possible for such a company to be 100% owned by the foreign investor.

The types of commercial companies are exhaustively provided in the Commerce Act and the investor may only choose from this list. In particular, the types of commercial companies are:

- General partnership (SD)
- Limited partnership (KD)
- Partnership limited by shares (KDA)
- Limited liability company (OOD) or sole-owner limited liability company (EOOD)
- Joint-stock company (AD) or sole-owner joint stock company (EAD)

Under Bulgarian law, commercial companies are incorporated by way of registration into the Commercial Register with the respective district court according to the place where the company's seat is to be located. The registration procedure normally takes 1 (one) to 2 (two) weeks following the date of submitting the required documents.

The Limited Liability Company (OOD) is the most common legal form of operation for small or medium-sized businesses in Bulgaria.

The type of company organization most widely used by investors is the Limited Liability Company (OOD) because of the minimal capital requirements, the simplicity of the corporate governance system and the minimised administrative procedures of its operation. However, there are statutory required qualified majorities or unanimity for transfer of shares, acceptance of new shareholders and capital increase or decrease, which may limit the flexibility of the company's operation.

i. Shareholders in a Limited Liability Company (OOD)

Two or more shareholders, or only one in the case of a sole owner limited liability company (EOOD), may establish a limited liability company, or sole owner limited liability company respectively.
Shareholders in an OOD may be Bulgarian or foreign individuals or legal entities. The minimum content of the Articles of Association is provided for in the Commerce Act.

ii. Share capital of a Limited Liability Company (OOD)

The minimum required capital for a limited liability company is BGN 5,000 (EURO 2,564). It must be divided into shares of value not less than BGN 10, as any higher value must be divisible by 10. Shares are not materialized and are not tradable instruments. They may be transferred and succeeded. The transfer between shareholders is free. The transfer of shares to third parties requires a Resolution of the General Meeting of the Shareholders. In order to be registered in the Court at least 70% of the company capital must have been paid up. The payment of the remaining part may be deferred in time, but no longer than 2 (two) years as of the date of registration of the company.

iii. Management of a Limited Liability Company (OOD)

The bodies of corporate governance in an OOD are:

The General Meeting of the Shareholders

Note: In the case of an EOOD, the sole owner of the capital exercises the powers of the General Meeting of the Shareholders and manages and represents the company before third parties, unless a manager is subsequently appointed.

The General Meeting takes decisions about:

1) Altering or adding to the Articles of Association
2) Admission or expulsion of a shareholder
3) Increasing or decreasing the registered capital
4) Appointing a manager
5) Opening branches and participation in other companies
6) Filing a claim against the manager
7) Providing financial support to the company

The Manager(s)

The Manager is empowered by law to manage and represent the Company before third parties. The Manager is appointed by the General Meeting of the Shareholders to represent the Company. If more than one Manager is appointed, the Managers shall manage and represent the company individually, unless the Articles of Association provide otherwise.

Acquisition of real estate in Bulgaria – buying procedure

i. Confirmation of the ownership status of the real estate (Real estate legal due diligence)

Before purchasing real estate, it is recommended that the buyer verify the ownership status of the targeted real estate, including that there is clean, valid and marketable ownership title held by the seller.
The buyer should be fully aware as to whether there are any registered liens and/or encumbrances over the targeted real estate, e.g. mortgages.
If there are registered rental or lease agreements over the targeted real estate, then the buyer shall be bound by them until expiration of their term. No court or restitution claims should be available.

ii. Concluding of Notary Deed for purchase and sale of real estate

The general rule under Bulgarian law is that transactions involving real estate – purchase, exchange, etc., should be executed by a Notary Deed performed before a registered notary in the region where the real estate is located. After execution of the deed, the notary is obliged by law to register the transaction in the Real Estate Registry in order to make the ownership title of the acquirer defendable against third parties.

iii. Expenses related to the transfer of real estate with Notary Deed for purchase and sale:

- 2% Purchase Tax calculated under the price of the property stated into the Notary Deed (local tax under the Local Taxes and Fees Act)
- 0,1% Fee for registration in the Real Estate Register calculated under the purchasing price
- Notary Fee – according to the Notary Fees Tariff, but not exceeding BGN 3000. Please see the table below:

Certified value of the deed	Notary Tax		
	Base Tax BGN	Plus Perc Tax	An Excess over
Up to BGN 100	15		
BGN 100 to 1 000	15	1.5%	100
BGN 1 000 to 10 000	28.5	1%	1 000
BGN 10 000 to 50 000	118.5	0.5%	10 000
BGN 50 000 to 100 000	318.5	0.2%	50 000
Over 100 000	418	0.1%	100 000

The above taxes are calculated on the value of the real estate shown in the Notary Deed, but not less than the tax assessment of the real estate.

Procedure for approval of the project design and for issuance of Construction Permit in Bulgaria

i. Preliminary research on the project

Prior to commencing any works, the investor may require that preliminary research and investigation be made in order to determine the most appropriate location and to estimate the legal admissibility and the expedience of the project. Though not a mandatory phase of the process, it is often necessary and useful for the investor to obtain, in advance, data on the site specifics, e.g. geological, seismic, hydrological, climatic and other conditions; existing structures and networks in and around the site; specific technical and zoning requirements affecting the project, etc. The scope of such preliminary research and the persons to whom it is assigned will vary depending- on the type of project and the investor ´s requirements.

ii. Obtaining a Permission for design

The developer must, before commencing the design of the project, obtain from the detailed respective administrative body an excerpt from the detailed zoning plan covering the plot and the surrounding properties (Visa, also available as PUP), which marks the existing structures, the permitted boundaries, height, density, intensity and any other requirements to construction on the plot. The Permission for design (Visa) should be issued within 7-14 days of being requested.

iii. Project Design

Project design can be prepared in three stages, each with a different level of detail:

- Conceptual (Ideal) Project - the draft plans are deposited together with the Application of Regulation (to convert a piece of a plot to residential land = PUP) in order to get the Building Permit which allows a company or individual to sell off-plan properties. This is the most important stage and after receiving this permit a developer can start preparation works and digging only
- Technical Project – after receiving the Ideal Project, draft plans are finalised and submitted to receive the last revisions in order to receive the Technical Project. It usually takes 2-6 months to finalise the architectural plans; the revisions are usually interior details
- Execution (Working) Project - upon finalising the Technical Project, the Developer, in this phase, can start coordinating all works within the project; construction, electrics, carpentry, plumbing, common area and landscaping, etc.

iv. Approval of the designs and issuance of a Construction Permit

For the purpose of acquiring approval of the designs and issuance of a Construction Permit, the investor must present to the competent authorities the following documents:

- The design itself
- The compliance evaluation report
- An approval by the fire safety authorities
- Preliminary agreements with the utility companies for connecting to the technical infrastructure networks

The prescribed term of approval is 7 (seven) days after submission of all required documents - or 1 (one) month, in the event that the compliance evaluation was not made by a consultant. The approved project designs serve as grounds for the issuance of a Construction Permit, for which the investor may apply simultaneously with the submission of the design for approval.

Construction works can only be carried out after a Construction Permit has been issued for them. Construction Permits are issued to the investor on the basis of approved project designs in all their phases (except for projects for which no such approval is required). A Construction Permit can be issued on the basis of an approved conceptual design only, provided that a preliminary compliance evaluation thereof has been made by a consultant. In such an event, the detailed designs of the works (technical and/or execution) must be approved in the course of their execution. The approved project design is an integral part of the Construction Permit. This permit is issued for the works in their entirety, or for parts thereof (including separate floors of buildings), provided that they can be executed and used separately. Changes in the project design after the issuance of the Construction Permit are allowed only if they are not substantial and are reflected in the "as made " documentation.

v. Completion of the construction process and issuance of Permit for use

The completion of construction is certified by executing a protocol (the so called "Act 15 "), which is signed by the investor, the designer, the contractor and the supervisor. Act 15 is the document evidencing the delivery and acceptance of the completed works between the contractor and the investor. It certifies that the construction works have been executed in compliance with the approved design, the "as made drawings" and the terms of the construction contract. Based on Act 15, the supervisor prepares a final report on the execution of the works. Upon inspection of the completed works and the relevant documents, the committee issues Protocol 16 for accepting or rejecting the works (the so called "Act 16 "). Based on this the competent authorities issue the Permit for use.

Taxation in Bulgaria

The taxation of a local entity or a foreign entity, which constitutes a permanent establishment is as follows:

i. Rental income

The basis of the taxable income of a company investing in Bulgarian real estate is the gross income derived from the property less tax-deductible, property-related expenses and depreciation. Such expenses include repairs, maintenance, renovation and similar costs, and interest on loans used for the acquisition of the property.

ii. Depreciation

Land itself is not depreciable, although any immovable property affixed thereto is, provided that it is used for the business activities of the company and is booked as a fixed asset.

Depreciation for tax purposes is at a rate of 4% per annum, and is usually calculated using the straight-line method. Real estate acquired for the purpose of re-selling is considered as "investment property ". As such, it is non-depreciable and is subject to annual revaluation to the market value. In practice, it is often unclear in which situations a property should be treated as an "investment property" rather than as a fixed asset.

iii. Loss carry-forward

Tax losses can be carried forward for a five-year period. Losses cannot be offset against profits from previous years.

iv. Capital gains

Capital gains are treated as ordinary income subject to corporate income tax. The capital gains corporate tax rate is 10%.

v. Taxes related to transfer of ownership rights

Apart from corporate tax on the profit, no other direct taxes are levied on the transfer of real estate property. The transfer is, however, subject to notary and municipal fees. The notary fees are paid on the higher of the market price or the book value of the property at varying rates, with the maximum being BGN 3,000. In addition, 2% of the value shown in the Notary Deed of the property is paid to the municipality in which the actual property is situated.

vi. Local taxes and rates

The owner of a building or a plot is obliged to pay a real estate tax. Where a building is built on a state or municipal plot, the value of the plot will also be included in the tax base. The tax is equal to 0.15 % of the book value of the property. Arable land is exempt from local taxes. In addition to the real estate tax, owners also pay waste-collection fees.

vii. Value Added Tax

Land transactions and lease of property for residential purposes are exempt from Value Added Tax (VAT). All other real estate transactions are subject to VAT at the uniform rate of 20%. The buyer is entitled to a VAT refund, provided that the buyer is registered for VAT purposes.

viii. Registration under VAT

Any person who has a taxable turnover of at least BGN 50,000 during the preceding twelve months is obliged to register for VAT purposes by filing a standard registration form within 14 (fourteen) days after the end of the calendar month in which the above threshold is reached. Under the VAT Act, non-registered persons are subject to mandatory VAT registration. Voluntary registration is possible for persons with taxable turnover in excess of BGN 50,000 for a period no longer than the last 12 (twelve) months before the current one. Group or divisional registration is not allowed.

ix. VAT reporting

For every tax period, the registered person shall submit a VAT return, prepared on the basis of the ledgers of account - purchases day books and sales day books.

x. Tax declarations

Companies must prepare and submit annual tax declarations as well as keep accountancy books.

xi. Tax on dividends

According to the provisions of the Corporate Income Tax Act, Bulgarian resident corporations that distribute dividends have to withhold dividend withholding tax of 7% from the distributions to non-resident legal entities. The tax shall be withheld by the Bulgarian company - payer of the income - and remitted to the state not later than the last day of the month following the month when the decision for the distribution of dividends is taken.

xii. Withholding tax

According to the provisions of Corporate Income Tax Act, if a legal entity receives income from interest from a source within Bulgaria, the income shall be subject to taxation by withholding tax, which is a final tax. The tax obligation in the form of a withholding tax is at the rate of 10 % for 2007.

xiii. Transfer of shares

The transfer of shares from a Bulgarian company to a foreign legal entity or foreign physical person will incur a tax obligation, in the form of a withholding tax, at the rate of 10 % for 2007. A more favourable tax regime is provided for EU member countries, namely dividends payable to an EU member country would be tax exempt (tax rate 0%). The law provides certain conditions to be simultaneously met in order to qualify for tax exemption.

xiv. Avoidance of double taxation

Bulgaria has concluded Treaties for avoidance of double taxation with 53 (fifty three) countries.

Costs /expenses for a dormant company

Every company, including dormant companies, is obliged to prepare an annual tax report for its business activities and submit it to the local tax offices. These companies are still subject to control and inspection by the local tax officers. The expenses for a dormant company amount to approximately EURO 550 per annum.

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