

## MOTIVES

### To the Draft Commercial Register Act

The development of a market economy and the strengthening of the position of a democratic constitutional state in the Republic of Bulgaria requires streamlining the legal entities and property registries. In order for these registries to be established there needs to be a secure and transparent environment for conducting business activity and a stable market place to successfully conclude and execute contracts. The registration system should be able to provide the public and the private sector with reliable and legally valid information about the legal entities and real estate properties.

During the last years, most European Union member states were introduced to registration systems that significantly facilitate the access and dissemination of information. The common trait among these systems is that they allow for the existence of a unified and centralized database that provides a receipt for different forms of information, including through electronic means and the Internet. The tendency of transformation of the registration procedures from court to administrative ones gradually becomes domineering.

The Draft Commercial Register Act is designed on the grounds of Decision № 419/May 10, 2005 of the Council of Ministers in pursuance of the governmental Strategy for the establishment of a Centralized Register of the Legal Entities and Electronic Registration Center of the Republic of Bulgaria<sup>1</sup>. The proposal for the reform in the registration system in Bulgaria adheres to the best European practices, yet at the same time it is complied also with the Bulgarian legal system and the needs of the economic and social life in the country. The reforms in this sphere are supported and were initiated by Non-Governmental Organizations, Business Associations and International Institutions.

The adoption and implementation of the proposed draft law will be an important step towards the construction of a modern and centralized electronic registration system on the grounds of the following principles:

- unification, standardizing and centralization of the registers;
- unique identification number for each person;
- cheap and fast registration;
- simplified and secure procedures;
- electronic data bases publicly accessible via the Internet.

The rearrangement of commercial registration from a judicial to an administrative one will, on the one hand, lead to simplification of the procedures and improvement of the quality

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<sup>1</sup> With Decision № 332/April 30, 2004 of the Council of Ministers was formed an interagency Working Group tasked to design a Strategy for the establishment of a Central Register of the Legal Entities and an Electronic Registration Center of the Republic of Bulgaria. The Strategy was prepared and submitted to the Council of Ministers on November 22, 2004, but was not adopted until May 10, 2005. For the implementation of the first stage of the Strategy, and namely – establishment of a Central Registry of the Legal Entities and more precisely for the preparation of a legal-normative framework for the Commercial Register with Decision № 419 of May 10, 2005 of the Council of Ministers a new expanded interagency Working Group was formed. A wide circle of institutions, non-governmental organizations and competent organizations representing the business sector were represented in this Working Group.

of the service, and on the other hand it will relieve the judicial system of unusual activities, which will benefit the judicial reform.

The proposal for the implementation of the law is to begin on the grounds of already achieved structural facts that will be laid in its foundation directly or as a model. This is the Registration Agency which was assigned the building of the Property Register and of the administrative BULSTAT Register. The territorial structures created and the managerial practices established in the Agency are a favorable factor for the quick and effective implementation of the law.

The proposed draft law regulates the maintenance and operating of the Commercial Register.

The general provisions regarding the maintenance and operating of the Commercial Register are stipulated in **Chapter One**.

The law specifies as subject to entry particulars and as subject to disclosure acts which pertain to the merchants and which a law provides that they are subject to entry, respectively, to disclosure. Under the draft law each merchant must ask to be registered in the Commercial Register by stating the facts subject to entry and disclosing the acts subject to disclosure. There is a term specified for the obligation for entry and disclosing to be performed – 14 days from the occurrence of the fact or the issuance of the act. The circle of persons obliged is determined by law.

Regarding the effect of entry the draft law follows the principle that the fact entered is deemed known to third bona fide persons from the date of entry on. At the same time, third parties are allowed to be able to refer to a fact subject to entry although the entry has not yet taken place except in cases where the law explicitly envisages it to come into effect after its entry.

Regarding the effect of disclosure there has been adopted the rule that its significance is only to make known the disclosed act.

The trust in the Commercial Register is based upon the possibility that each third bona fide party will be able to refer to the entry, even if the fact filed does not exist. At the same time facts not filed are considered inexistent for the third bona fide parties.

The principle of publicity of the Commercial Register provides anyone with the right to review the register and the documents on the grounds of which the entries have been made, as well as to receive copies of them.

A state fee has been envisaged for the entries and disclosures, for inquiries and certifications, copies of the disclosed acts and of the documents on grounds of which the entry has been done. The fee schedule has to be adopted by the Council of Ministers.

**Chapter Two** contains legal definitions and provisions referring to the nature of the Commercial Register, its maintenance and operating. The Commercial Register is defined as an aggregate of data about the facts filed and the acts disclosed which are relevant to the merchants. Main characteristic feature of the Commercial Register is that it is constructed as an information system based upon a unified electronic data base. The following definitions of

the actions regarding the maintenance of the register have been given: *the entry* is defined as a transfer of information for the respective fact to the electronic database; *the deletion* – transfer of information to the electronic database regarding the deletion and related to the information about the fact that is being deleted; *the disclosure* is a transfer of information to the electronic database from the act disclosed.

The law assigns the Registration Agency to maintain the Commercial Register, as well as to do a check about the occurrence and proper documentation of the facts subject to entry and of the acts subject to disclosure. The Agency performs this activity through its territorial units, and the applications and orders can be filed in its territorial units at the premises of the district courts, while inquiries can be made and certifications can be issued in all territorial units.

The draft law provides that the Minister of Justice has to issue secondary legislation describing a comprehensive framework of the maintenance and operating of the Commercial Register.

Provisions define the Unified Identification Number (UIN) as unique and obligatory for the merchants filed in the Commercial Register are included in a separate **Chapter Three**. The UIN is to be determined at the initial entry of the persons in the Commercial Register and remains unchanged until their deletion. The draft law provides that the Rules issued by the Minister of Justice shall regulate the way the UIN remains unchanged, the defining of a new one and the creation of a connection between UIN in case of reorganization of the commercial companies. The draft law provides an obligation for the persons registered in the Commercial Register always to mention their UIN in their correspondence. If this obligation is met, the state bodies and the persons assigned to exercise a public function cannot require proving of facts filed, or the submission of acts disclosed in the Commercial Register. A special provision stipulates that the persons registered in the Commercial Register shall be excluded from the BULSTAT Register.

The registration procedure is stipulated in **Chapter Four**. It requires the entries, deletions and disclosures to be done on the grounds of an application or by a court order. The application and order can be submitted in electronic form as well. Persons authorized to file an application are the sole proprietor, the representative of the commercial legal entity or another empowered person. The draft law stipulates the contents of the application, the appendices to it as well as a declaration for the truthfulness of the facts stated in it. The registration procedure is based on the principle of immediate consideration; a unique registration number is required for each entry, deletion and disclosure application. The obstacles for entry, deletion and disclosure are exhaustively listed as grounds for refusal of the requested entry, deletion and disclosure. The applicant is given the opportunity to eliminate the defects and file a new application. The draft law provides the option to appeal the refusal through an administrative procedure before the Minister of Justice, while his refusal could be appealed before the court pursuant to the Supreme Administrative Court Act. There is provisioned a way to eliminate mistakes and imperfections in the registered data. The cases in which the Registration Agency can be held liable for damages caused by mistakes and imperfections are specified.

The procedures of contestation the entry, as well as the consequences of the contestation, are also stipulated in the draft law.

**Chapter Five** of the draft law regulates the terms under which one can make inquiries and receive certificates from the Commercial Register. According to the principle of publicity of information in the register the draft law provides that each person has the right to review or request issuance of a certificate from the Commercial Register. At the same time, with respect to the security of this information there have been provisioned only two searching criteria – by the business name and/or by the UIN of the merchant. The inquiries in the register can be oral and written and can include only an excerpt from the register or a copy of the disclosed act. Regarding the certificates the draft law explicitly provides that they are official documents. Taking into consideration the wider application field of the new technologies and in particular of the Internet the law obliges the Registration Agency to secure opportunity for distant access to the register, as well as for making inquiries and issuance of certificates in electronic form and their electronic transmission.

**Chapter Six** of the draft law stipulates the booking of a business name. The booking of a business name has an effect for two months and during this period another merchant does not have the right to file in the Commercial Register the same business name. The draft law also provides an opportunity for reserved business name to be conceded and ceded to another person.

The funding of the Commercial Register is stipulated in **Chapter Seven** of the draft law. Primary funding sources for the Commercial Register are the subsidies from the state budget and the revenues from the fees under the law. There is also provisioned an opportunity for the Commercial Register to receive funds from other sources, including funds from national, regional and international programs, projects and agreements.

**Chapter Eight** contains the administrative liability provisions. The possible violations of the law and the sanctions that can be imposed are pointed out. Regarding the administrative liability procedure the draft law refers to the Administrative Violations and Sanctions Act.

**The transitional provisions** regulate the procedure of re-registration of the merchants under the new law. There is a 2-years re-registration term and the procedure is free of charge. The re-registration shall be made on the basis of a current status certificate issued by the registration court ex officio and the submission of the current incorporation act or statute certified by the managing body of the merchant. Through the re-registration the BULSTAT code of the respective merchant becomes its UIN.

The draft law provides a package of amendments to the **Commercial Act** which intend to align the commercial registration framework stipulated in the Commercial Act with the provisions of the Commercial Register Act. Among the most significant changes is the provisioned dropping out of the procedure of publication in the State Gazette of particulars filed in the Commercial Register. This solution is in compliance with the provisioned in art. 3, item 4, paragraph 2 of D 68/151/EEC (First Council Directive on Company Law) which envisage the discretion of the member states to replace this publication with equally effective means. Taking into consideration the rules securing the publicity and the wide access to the new Commercial Register such publication becomes useless.

The further development of the reform provisions the expansion of the Register through inclusion of the registers of the not-for-profit legal entities, the registers of the state enterprises, of the other legal subjects of the private law which are not incorporated by virtue of registration, and of the state institutions, forming in this way the Central Registry of the

Legal Entities. As provided in section 4.1.1 of the Strategy, this will be accomplished through the respective amendments to the Dwelling Construction Cooperatives Act, the Not-For-Profit Legal Entities Act and other laws. Pursuant to i.4 of section 5.1 of the Strategy, this has to be accomplished by the end of 2006.

The fulfillment of the reform and the establishment of an electronic commercial register in Bulgaria as well as its subsequent inclusion into the European system of commercial registers – **European Business Registry**, in which at present are included fourteen European countries, would provide the country with wide opportunities for more adequate and efficient participation in the European commercial turnover. In this way Bulgaria will be ready to meet the requirement of the First Council Directive on Company Law which provides for an obligatory implementation of electronic entry by January 1, 2007.