



AMERICAN CHAMBER OF COMMERCE IN BULGARIA



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ATTORNEYS AT LAW

Proposals for amendments of the Commercial Register Act

Round table “Legislative proposals for improvement of
the work of the Commercial Register”

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Beginnings of the e-register

- Before the establishment of the e-register, business criticized:
 - Unequal criteria, lack of uniform register
 - Lack of transparency, difficult to make inquiries
 - Unpredictability and slow resolution
- This led to a negative assessment of the investment climate
- Therefore: decision to take the register out of the court and into a special Registry agency
- A uniform e-register, working with e-documents and e-signatures was established
 - Equal criteria, predictability of the resolution
 - Swift pronouncement of resolution, immediate inquiries
 - Transparency and general access



Preparation of the proposals

- Initial difficulties were overcome
- Nevertheless, there are still some inconsistencies with the good European practices
- AmCham's analysis and survey among business of the policies and practices showed:
- Four groups of problems: gaps, bad regulation, contradictory practices and inadequate implementation
- The held round tables in Sofia, Varna and Stara Zagora identified the most pressing problems



Proposals for legislative amendments

- Outlining of the principles of the Law
 - Uniformity of the Commercial register;
 - General access and publicity;
 - Encouraging the use of e-document and e-signature;
 - Enforcement of equal criteria;
 - Swiftness and procedural economy of registration activity



Proposals for legislative amendments

- Deadline for removing omissions before rejection
 - Economy of administrative time
 - Additional payment instead of new fee
 - Without new registration procedure
- Removing errors in the old register in the court
 - Errors are not transferred
 - Administrative economy of re-registration
 - Avoid unnecessary procedures
- Representation before the register
 - Procurator as legal representative
 - Proxy with notarized Power of attorney



Proposals for legislative amendments

- Lack of effective regulation for protection of company names
 - Rights of third person over the firm name
 - “identity” of the firm
 - No definition of “identity” and “rights”
- Lack of uniform register before the establishment of the Commercial register
 - Multitude of regional court registers
 - Complete concurrence of firms
 - Differences in the legal form and added digits, characters and signs



Examples in the practice

Misleading similarity

Балкан АД, ID Nr. 111005252
Балкан АД, ID Nr. 820194079
Балкан ООД, ID Nr. 825082326

Банкя – 21 АД, ID Nr. 130350203
Банкя – 21 АД, ID Nr. 831901050
Банкя 28 ООД, ID Nr. 201133870

Фейс ООД, ID Nr. 121076842
Фейс ЕООД, ID Nr. 817076811
Фейс – 2005 ЕООД, ID Nr.
200636267
Фейс 2006 ООД, ID Nr.
175090137

Сони ЕООД, ID Nr. 120598232
Сони – 03 ЕООД, ID Nr. 113560365
Сони – 09 ЕООД, ID Nr. 200551475
Сони – М ЕООД, ID Nr. 148065140

Encountered international trademarks in dozens of company names
Microsoft, Canon, Armani, Sony, Audi, Citroen and many more



Proposals for legislative amendments

- Protection methods
- Criterion for misleading similarity
 - Identical pronunciation
 - At least two different characters or signs
 - Differences only in digits, characters and signs
- Informing interested parties
- Legal action for protection against similar names applied for in bad faith
- Legal action in case of protected trademark



Proposals for legislative amendments

- Stimulating e-application
- Special procedure for publication of Annual Financial Statements (AFS)
 - Other entries not to be hindered
 - Separate application
 - Prolonging the deadline for publication of AFS
 - Immediate visibility after scanning



Proposals for legislative amendments

- Announcing the reorganization
 - Assessing the term before entry
 - Protection of creditors' interests
 - Always announcing when the law foresees a term of postponement of the entry
- Repeal of rejection
 - Ex officio sending of relevant documentation to the register
 - Ensuring the execution judgment



Proposals for legislative amendments

Liquidation of non-reregistered companies

NOW:

- Complicated court liquidation
- Necessity to scan and re-register
- Long term for “in-house” liquidator
- Slow, inefficient, expensive
- Final juridical deadline for re-registration – 31.12.2010



Proposals for legislative amendments

Proposal:

- Without scanning and transferring of company files
- Without re-registration for liquidation
- Ex officio sending only of a list of companies
- Postponement of liquidation for 5-year period
- Possibility to reopen economic activities by re-registration
- Protection the interests of creditors and the company
- Expenses for the company or the creditors
- Ex-officio deletion where no claims have been filed in 5-year period



Proposals for legislative amendments

Protected personal data

- Consent does not mean waiver of protection
- Registration and access through special procedure
- The provided data is not being erased, but...
- ...controlled access – only certain individuals
- Judicial authority, Notaries public, Attorneys-at-law, Ministry of Internal Affairs, etc.



Proposals for legislative amendments

Protected personal data

- Access only through individual code
- Ensures abidance by the Personal Data Act – without illegal access
- Unified Civil Code (EGN) does not represent protected personal data
- Disallowing illegal access
- Suspend publicity of protected personal and other data
- Publicity of acts of incorporation of Ltd., joint-stock company and limited partnerships
- Without restricting the publicity of the Register



Proposals for legislative amendments

- Amendments of the Commercial Act, related to the register
- Ltd. with capital above the minimum
 - 70% upon registration
 - Term for complete payment – up to 2 years
- Joint-stock company – restrictions on representation authority
 - Not opposable to third parties
 - Are not subject to registration



Conclusion

- The register is a very successful project for the development of e-government
- Still many inconsistencies with the good European practices
- For the first time attention is drawn to the protection of intellectual property
- Improving the work of the register
- Increasing security for entrepreneurship
- Competitive advantages for the investment climate in Bulgaria