

**LEGAL DUE DILIGENCE REPORT ON THE
POLICIES AND PRACTICES
OF THE COMMERCIAL REGISTER**

**AND THE CONSISTENCY OF THE LEGAL
FRAMEWORK RELEVANT TO THE
COMMERCIAL REGISTRATION
IN BULGARIA**

Sofia, October 2009

SUMMARY AND RECOMMENDATIONS

This analysis is based on the specific regulations concerning the commercial registration as well as on all other relevant provisions in the actual legislation. It takes into account the positive effect of the introduction of the Commercial Register at the Recordation Agency on the business and the stability of the legal relations in business conduct, through the establishment of a unified register, easier access of the authorities and the business people to the data contained in this register, the transparency of the information concerning the legal status of merchants and the easier procedure for registration and performance of the obligatory entries by the business subjects.

In this respect an attempt was made based on the already existing practice and taking into account the development of the regulations and the practice on the functioning of the Commercial Register so far, as well as having in mind the difficulties already overcome and the problems solved, to mention the still existing inconsistencies and gaps in the relevant legal regulations, as well as certain issues of its application.

The problems so established could qualify into four groups:

1.1 This analysis specifies the relevant acts which contain provisions regarding the commercial registration and in particular regarding the acceptance, processing and

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registration of documents in the CR. The indicated acts have been examined for the purpose of identifying inconsistencies and incompleteness in the regulation.

1.2 The analysis establishes problems both in the legal regulation and in its application by the operation of the CR. These problems can be classified in four groups depending on the reason for the problem and the possible measures for its overcoming.

1.3 The first group of problems is caused by incompleteness of the relevant legal regulation;

1.4 In the second group the relevant regulation exists, however it is either insufficient or inadequate with regards to the particularities of the registration procedure which leads to the necessity of its editing and improvement;

1.2.3 The third group of problems is due to inconsistent or controversial practice despite the existing exhaustive and unambiguous regulation;

1.2.4 The last, fourth group of problems is caused by the necessity of improvement of the technology for announcement and registration in the CR.

In connection with the above the following findings and recommendations can be presented:

2. The current legal prescriptions concerning the trade names of the companies are insufficient, since they do not include a regulation regarding the uniqueness of the trade name, the scope of the check for rights of third parties over trade names and the manner of proceeding in case of coincidence of trade names. The latter can significantly affect the firms' interests. In order to overcome the problem an exhaustive and clear regulation of the relevant procedures and terms is necessary, including by the creation of a reference with the Marks and Geographical Indications Act and the registries kept by the Patent office in order to grant priority to the names registered first.

3. The procedure for appeal against refusals provided in the current regulation of Art.25 CRA which makes reference to the procedure for appeal of court rulings (Chapter Twenty-one of the CPC), cannot adequately respond to the particularities and complexity of the registration procedure and leads therefore to considerable complications and contradictions in the practice. The resolving of the indicated disadvantages requires improvement of the procedure, which can be most effectively achieved through the provision of a separate procedure for appealing the refusals in the CRA, corresponding to the specifics of the commercial registration.

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4. There is no possibility for providing applicants with a timeline for correcting omissions and incompleteness ascertained in the documentation. An explicit regulation is necessary for the purpose of overcoming this gap.

5. There is no procedure prescribing the correction of mistakes made by registration courts before the transfer of the commercial register to the Registry Agency. Also here an explicit regulation is necessary for the purpose of overcoming the drawback.

6. The practice does not accept the representation of the traders before the CR by procurators, which can be overcome through an explicit provision of the procurator's capacity for representation of the company or through measures and instructions inside the administration of the Agency regarding the unification of the interpretation and application of the law in this sense.

7. The announcing of circumstances before the CR through a third person on behalf of the trader is not accepted. The latter contradicts the principle of representation by a proxy in the civil law and can be overcome with an explicit regulation of such representation.

8. There is no established procedure for deletion of documents, entered in the trader's file. This omission can be corrected through explicit regulation.

9. The current manner of applying the obligation for awaiting of a 14-days term before the registration of a company's restructuring leads only to delay of the procedure without ensuring adequate additional protection for the third persons. In order to eliminate this disadvantage a regulation concerning the technical realization of the procedure is necessary. According to this regulation the respective information shall be available under the file of the companies taking part in the restructuring.

10. The provision of compulsory and optional sections in the application forms to the CR causes an unnecessary complication. For the elimination of the latter the optional

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sections shall be completely removed or at least marked accordingly in order to facilitate applicants when filling the application forms.

11. The inadequate regulation of the *ex officio* institution of liquidation proceedings in respect of traders that failed to re-register within the timeline leads to the necessity for improvement of the respective legal provisions. A possible solution would include the regulation of a separate simplified procedure in the CA, for the cases of dissolution, liquidation and deletion of commercial companies under the circumstances of §5 (1) and (2) of the TFP of the CRA.

12. There is a contradictory practice concerning the registration of limitations in connection with the representation of joint-stock companies. It does not result from a gap or incompleteness of the law, but rather from a lack of uniform interpretation. With a view to addressing and correcting this inconsistency, measures need to be undertaken inside the hierarchy of the Agency's administration according to the rights of the separate administrative bodies so that harmonization is attained by the interpretation and implementation of the law.

13. The regulation of the possibility for reduction of the state fees on the basis of the principle of self-funding does not contain provisions regarding the competence of concrete authorities to initiate such reduction and the way of its possible or obligatory conduction. Therefore, it is arguable whether this procedure can actually be applied in practice under the currently existing regulation. In order to overcome these gaps the regulation has to be completed comprehensively.

14. There is no mechanism ensuring the review of simultaneously submitted applications by one and the same official. The latter can be overcome through explicit regulation. Considering the fact that the technology for application and registration is regulated mainly on a secondary statutory level, this solution can be provided either in the Ordinance for the CR or in a relevant internal regulation, regarding the keeping of the CR.

15. Inconsistencies with the CRA can still be found in a number of secondary statutory for example: the Regulations on applying the Foreigners in the Republic of Bulgaria

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Act; Ordinance No. 16 of 19 July 2000 on organizing and holding tenders for sale of agricultural land from the state property fund to holders of registered compensatory bonds; and Ordinance No. 25 of 22 March 2006 on the requirements in respect of the activities of investment companies and private equity funds. These omissions have to be eliminated in order to avoid legislative incorrectnesses, discrepancies and lack of synchronization of the terminology.

16. An illegal practice can be noticed by many administrative bodies, which require proof of circumstances recorded (Certificate of good standing), and submission of acts disclosed in the CR despite the explicit regulation thereof according to the CRA and in contradiction with the principle for facilitating the subjects of law through the unified commercial registration and the maintenance of a freely accessible comprehensive register. This illegality can be overcome by providing effective mechanisms for ensuring the observance of the legal regulations and through persistent application of the sanctions provided for the cases of non-executing of the law.

The taking into account of the identified weaknesses can significantly contribute to the improvement of the legislation in favor of the various traders and the business as a whole, whereas it will also have a positive impact on the investment climate.

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