

new economic realities in Bulgaria, despite its numerous amendments.

### **Regime under the Currency Valuables Act**

The regime under the revoked Currency Valuables Act was an extremely restrictive one and differed radically from the current legislation, namely the Foreign Exchange Act and the secondary legislation adopted on its coming into force. The Currency Valuables Act contained a definition of currency valuables – foreign banknotes, coins and promissory notes, accepted as legal tender abroad – cheques, bills of exchange, promissory notes, pay orders, letters of credit nominated in foreign currency, foreign securities (shares, bonds, debentures, etc.), receivables from foreign persons, gold, silver, platinum and precious stones when subject to import/export regulations or transactions between local and foreign persons, and Bulgarian banknotes, coins and securities when subject to import/export regulations, etc.

The regulations of the Currency Valuables Act provided that all transactions and acts involving currency valuables concluded or carried out by local or between local and foreign persons be subject to total currency control under the authority of the Ministry of Finance and the Bulgarian National Bank ('BNB'). The control meant that prior permission of the Ministry of Finance was required for all transactions creating, modifying or terminating rights and obligations involving currency valuables and executed by natural persons.

Prior permission was also required in the cases of transferring legal tender or other property and providing services abroad to foreign persons by local persons, extending loans to foreign persons or obtaining loans from such persons. It was forbidden for local persons to accept payments in Bulgarian *leva* on foreign currency receivables without the permission of the Ministry of Finance, or to purchase imported currency valuables from foreign persons. In accordance with art. 18 of the revoked Currency Valuables Act, local persons were under an obligation to sell/purchase foreign exchange against Bulgarian *leva* only through the BNB or the commercial banks and persons duly authorised by it.

### **Scope of the Foreign Exchange Act**

The Foreign Exchange Act replaced the restrictions of the Currency Valuables Act with entirely new legislation based on freedom to conclude and perform all transactions, actions and payments within the scope of the Act, saving any provision within it to the contrary. The scope of the Act provides for regulation of the following:

- (1) transactions and payments between local and foreign persons;

## **BULGARIA**

### **The 2000 Bulgarian Foreign Exchange Act examined**

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The Bulgarian Foreign Exchange Act ('the Act') published in the *State Gazette* Issue No. 83 of 21 September 1999 came into force on 1 January 2000. It abolished the 1966 Transactions with Currency Valuables and Currency Control Act ('the Currency Valuables Act'), which did not meet the needs of the

- (2) trans-border transfers and payments;
- (3) transactions with foreign exchange on a permanent basis;
- (4) transactions in and export, import and processing of precious metals and stones on a permanent basis;
- (5) export and import of Bulgarian currency and foreign exchange in cash;
- (6) gathering and maintaining of statistical information; and
- (7) enforcement of currency and foreign exchange control.

### Definitions under the Act

The Act provides for a number of important definitions. Under para. 1 of the additional provisions of the Act, a 'local person' means a natural person with a permanent residence in the country or granted a temporary residence permit in the country for more than six months, or a legal entity domiciled in the country. Where the legal entity is domiciled abroad it is considered to be a local one for those activities performed through a registered branch within Bulgaria. A foreign person is considered to be any natural person or legal entity that does not meet the criteria for a local person.

### Transactions and payments between local and foreign persons

In accordance with art. 2 of the Act, transactions and payments between local and foreign persons may freely be concluded, unless otherwise specified by the Act. Under the former regime these transactions needed special permission for their issue by the Minister of Finance prior to their conclusion. The current legislation gives a general freedom to conduct the transactions and lays down an exhaustive number of exceptions to this. Thus, transactions between local and foreign persons concerning long-term and short-term securities issued by foreign persons, and share participations in foreign legal entities and derivatives of the above, are subject to registration with the BNB prior to their conclusion. Regardless of this, there is no obligation for registration of the transaction if it results in a direct investment.

### Direct investment

Under para. 1, Item 8 of the Transitional and Final Provisions of the Foreign Exchange Act, direct investment includes the establishment or acquisition of an enterprise or the acquisition of unlimited liability partner rights or share participation, which entitles the investor to more than 20 per cent of the votes at the General Meeting of the Shareholders. Direct investment also includes additional investments made by these investors and the granting of a loan, where

the date of maturity falls after more than five years, where the purposes of the loan are a direct investment or are connected with an agreement for participation in the distribution of profit.

Further, falling under the provisions of the Act and subject to prior registration with the BNB are:

- transactions concerning the granting of financial credits between local and foreign persons;
- the opening of deposit accounts with banks by local persons that are foreign persons; or
- the collateral or security granted by a local person in order to secure liabilities between foreign persons or the liabilities of a local to foreign person.

Regardless of the above, no registration is required when the transaction amounts do not exceed 2,000 *leva* (the equivalent of DM 2,000). It should be noted here that even where registration is required, the BNB does not have any discretionary powers in respect of the registration of the transaction or the payment.

### Transborder transfers and payments

There are no restrictions for transfers and payments to persons abroad provided that the amount of the sum transferred does not exceed 20,000 *leva* (the equivalent of DM 20,000). However, the transfer must be effected through a commercial bank and the grounds of the payment must be duly declared. Where the transferred sum exceeds the above amount of 20,000 *leva*, the person performing the transfer is under an obligation to submit to the commercial bank information and documents, as specified in an ordinance issued by the BNB. Should the transfer be performed as a transaction that is subject to registration with the BNB, the commercial bank makes the transfer or the payment only after documents evidencing the registration have been submitted.

### Transactions with foreign exchange on a permanent basis

There are two ordinances – one issued by the BNB and the other by the Ministry of Finance – regulating the activities of the foreign exchange agencies and the financial houses. Both the agencies and the financial houses have to be registered as traders with the Commercial Registry in accordance with the provisions of the Commerce Act. There are certain requirements in respect of the financial houses, which have to be registered as joint stock companies, limited liability companies or limited partnerships.

According to the Foreign Exchange Act, the main difference regarding their activities is that a foreign exchange agency can handle only cash transactions with foreign currency, while the financial house has the right to perform both cash and non-cash transactions.

Another essential difference in the legislative regime is that the agencies are under an obligation to file a declaration before the Ministry of Finance within 14 days of initiating activities in order to be registered in a special book. At the same time the financial houses have to obtain a prior written licence issued by the BNB. It should be noted here that the issuance of the licence depends only on whether the legislative requirements are observed or not, and there are no discretionary powers granted to the BNB in connection with the issue of the licence.

### **Import and export transactions in and processing of precious metals and stones**

Activities related to extracting, processing and trading with precious metals and stones are regulated by the Foreign Exchange Act and an ordinance issued by the Council of Ministers. In accordance with art. 13 of the Act, persons (excluding commercial banks) who are engaged in these activities on a permanent basis are obliged to register with the Ministry of Finance within 14 days of beginning the activity. In order to be registered, the persons have to file a declaration with copies of certain documents attached.

In contrast to current legislation, the former regime prohibited sale, purchase and any other transaction in gold, platinum articles and precious stones between natural persons, except for customary gifts. Obtaining, processing and making transactions in precious materials and stones was tightly regulated and only organisations and enterprises designated by the Council of Ministers or by the Ministry of Finance could do this. Everything in the field was forbidden unless explicitly permitted.

In accordance with art. 14 of the Act, local and foreign natural persons may import and export precious metals and stones by declaring them to custom authorities. Where importation or exportation is performed for personal or family use and the goods are below a certain weight, they may be moved freely without a declaration.

### **Keeping records**

For the sake of the national balance of payments, certain authorities and legal entities, including the BNB, commercial banks, the Notary Public, the customs authorities and the Central Depository are under an obligation to register each transaction or payment between local and foreign persons, the import/export of foreign exchange in cash and transfers, and payments abroad exceeding 5,000 *leva*. These persons are obliged to submit the information collected to the BNB within ten days.

### **Export and import of Bulgarian currency and foreign exchange in cash**

Who the proper foreign or local natural persons are, whether the transaction is an import or an export, and the amount of the sum imported or exported must be determined in order to know which regulation applies. Under the Act, local and foreign natural persons can import unrestricted amounts of Bulgarian levs and foreign exchange in cash only by declaring the amount and the type of currency to the custom authorities, provided that the imported amount exceeds the equivalent of 5,000 *leva*. There is no obligation to declare the import of sums in Bulgarian levs or foreign exchange in cash that do not exceed the equivalent of 5,000 *leva*. Local and foreign natural persons can export funds up to the equivalent of 5,000 *leva* without being under an obligation to declare them to the customs authorities.

Such an obligation does exist for local and foreign persons where the funds exported are above the equivalent of 5,000 *leva*. The declaration filed before the customs authorities must contain precise information as to the amount of the funds (for local persons) and the amount of the funds and the grounds on which they have been acquired (for foreign persons). Furthermore, sums above 20,000 *leva* or the equivalent in foreign exchange can be exported in cash by local persons only after they have obtained permission from the BNB. The same sum can be exported freely by a foreign person in cash, provided it has been declared to the customs authorities, and provided the exported cash sums of foreign currency or Bulgarian levs do not exceed the amount imported and declared to the customs authorities upon entering the country.

### **Currency and foreign exchange control**

The Minister of Finance (through the tax and the custom authorities), the BNB and the post offices are empowered to exercise control over the regulations of the Foreign Exchange Act and all the ordinances issued on its implementation. The customs authorities control the import and export of Bulgarian currency and foreign exchange in cash, as well as the import and export of precious metals and stones. The tax authorities control those persons performing activities as foreign exchange agencies or the like, engaged in the extracting, processing and trading of precious materials and stones on a permanent basis. The BNB controls the performance of obligations under the Act by the commercial banks and those legal entities licensed to act in the capacity of financial houses. The post offices exercise control over observance of those provisions of the Act that prohibit import and export of Bulgarian currency and foreign exchange, precious materials and stones by post.

In the case of infringements of Foreign Exchange Act regulations, fines of between 5,000 *leva* and 35,000

*leva* can be imposed. Provided that the person who has committed the infringement is a legal entity, property sanctions can be imposed of between 20,000 *leva* and 120,000 *leva*. Under the provisions of the Act, factual and penal assessment acts are issued by officials authorised by the Minister of Finance and the governor of the BNB.

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