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# Bulgaria

## International Estate Planning Guide

Private Client Tax Committee

### Contacts:

Radena Tsvetanova  
Yanitsa Radeva

Wolf Theiss Attorneys-at-Law  
*Sofia*

radena.tsvetanova@wolftheiss.com  
yanitsa.radeva@wolftheiss.com

## I. Wills and disability planning documents

### A. *Will formalities and enforceability of foreign wills*

A will must meet certain requirements regarding its form, which are set out in the Bulgarian Inheritance Act. Bulgarian law distinguishes between two types of wills:

- a handwritten will, which must be handwritten, signed and dated by the testator, and may optionally be deposited with a notary public in a sealed envelope and registered in the notary's register; however, this is not a requirement for the will's validity; and
- a notary will, which must be executed as a notary deed before a notary public assisted by two witnesses, and signed by the testator, the witnesses and the notary.

The governing law of the will is determined in accordance with Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (the 'EU Succession Regulation'), which applies to the succession of assets of both European Union and non-EU citizens.

Under the EU Succession Regulation, the succession of assets located in Bulgaria is governed by the law of the country in which the deceased was habitually resident (as defined in the EU Succession Regulation). However, a person can choose for his or her will to be governed by the laws of a country whose nationality that person possesses at the time of preparing the will or at the time of death.

Under the EU Succession Regulation, a foreign will is valid as regards to form if its form complies with the law:

- of the state in which the disposition was made;
- of the state whose nationality the testator possessed, either at the time when the disposition was made, or at the time of death;
- of the state in which the testator had his or her domicile, either at the time when the disposition was made or at the time of death;
- of the state in which the testator had his or her habitual residence, either at the time when the disposition was made or at the time of death; or
- insofar as immovable property is concerned, of the state in which that property is located.

A foreign will can be recognised in Bulgaria if the following conditions are cumulatively met:

- the will complies with the requirements of the EU Succession Regulation regarding choice of law governing the succession as well as the formal and substantive validity of the will; and
- the will is recognised by a decision of a foreign court, which is to be subsequently recognised in Bulgaria by way of an exequatur procedure before a Bulgarian court.

### B. *Will substitutes (revocable trusts or entities)*

Bulgarian law does not recognise the concept of trusts – please refer to section III, D. below for the Bulgarian law treatment of foreign trusts.

Under Bulgarian law, certain legal entities with a non-commercial purpose, such as foundations, could serve for estate planning purposes. However, such entities are not commonly used in practice and the will is the typical estate planning tool.

### C. *Power of attorney, directives and similar disability documents*

Under Bulgarian law, adults who become unable to take care of their affairs due to a mental disorder could lose their legal capacity fully or have it partially limited. The respective Bulgarian court is competent to rule on the loss or limitation of legal capacity, which appoints:

- a guardian: to perform any legal acts on behalf of a fully incapacitated person; or
- a custodian: people with limited legal capacity can carry out any legal acts with the consent of their custodians. By way of exception, they can enter into ordinary minor transactions to satisfy their day-to-day needs or dispose of their income acquired through labour.

## II. Estate administration

### A. Overview of administration procedures

On a person's death, the estate does not pass automatically to the heirs, but should be accepted in order to vest with them. Acceptance could be manifested explicitly (by application to the court) or tacitly (eg, by way of disposal of certain assets and payment of inheritance tax). A beneficiary could cap his or her liability for the debts of the estate, up to the value of the assets received, by submitting an application to the court with a list of the assets received within three months from the date on which the beneficiary became aware of the testator's death.

Apart from the case of acceptance with limitation of liability, there is no statutory deadline for heirs to indicate whether they accept their shares in the estate. However, the beneficiaries could request a deadline for acceptance to be set by the court. Heirs that do not accept their share by that deadline lose their shares in the estate.

The testator can appoint an executor to administer the estate, pay off the liabilities and distribute the estate to the heirs. The executor could sell immovable properties included in the estate subject to obtaining the court's prior approval. The executor's powers must be exercised in good faith and in accordance with the testamentary instructions of the testator in the will.

Where no executor has been appointed, the beneficiaries are jointly entitled to manage the estate. Where the heirs cannot be found or have not accepted their inheritance, the court appoints an administrator of the estate on the request of any interested party.

Where there are no testamentary directions on how the estate is to be distributed, it may be divided among the beneficiaries by way of a partition agreement or court proceedings. Prior to partitioning, the estate is the joint property of the heirs and each is responsible for the deceased's liabilities proportionally to his or her share in the estate.

### B. Intestate succession and forced heirship

If an individual dies without leaving a will, then the intestacy rules of the Bulgarian Inheritance Act apply.

Pursuant to these provisions, the closest relatives of the deceased are to inherit the estate. Four such groups of heirs exist, and they are applied in the following order:

1. the children of the deceased, including adopted children;
2. the parents of the deceased;
3. the grandparents (or ascendants of a higher degree) and siblings of the deceased; and
4. the relatives on a lateral line up to the sixth degree inclusively (eg, aunts, uncles and cousins), whereas closer relatives, as well as their descendants, exclude more distant relatives.

The spouse of the deceased receives:

1. apart from children: a share of the estate that is equal to the share of each child;
2. apart from either ascendants, siblings or their descendants: half of the estate, if the estate is opened within ten years of the date of marriage, or two-thirds of the estate if that ten-year period has passed;
3. apart from ascendants and siblings, or their descendants: one-third of the estate, if the estate is opened within ten years of the date of marriage, or half of the estate if the ten-year period has passed; or
4. where the deceased has no ascendants, siblings or their descendants: the whole estate.

Where there are no heirs, or where all heirs waive succession or lose their right to accept the estate, the estate passes to the state. Certain assets are passed to the municipality in which the assets are located.

Under the Bulgarian forced heirship regime, the testator must leave his or her descendants, parents and spouse a certain part of the estate. The testator cannot, through a will or donation, infringe the statutory reserved shares of the estate of the descendants, parents or spouse. The remaining share of the estate (ie, other than the statutory reserved shares), may be disposed of freely.

The statutory reserved shares are as follows:

- for descendants (including adoptees), where the deceased has not been survived by a spouse:
  - if there is one child or that child's descendants, they will receive half of the estate; and
  - if there are more children or their descendants, they will receive two-thirds of the estate;
- the statutory reserved share for parents or for a sole surviving parent is one-third of the estate;
- the statutory reserved share for the spouse is:
  - if the spouse is the only heir: half of the estate; and
  - if the deceased is also survived by one or more parents: one-third of the estate; and
- where the deceased has left descendants and a spouse, the reserved share of the spouse is equal to the reserved share of each child; in this case the disposable share is as follows:
  - one-third of the estate, in the case of one child;
  - one-quarter of the estate, in the case of two children; and
  - one-sixth of the estate, in the case of three or more children.

The forced heirship rules are mandatory and cannot be avoided.

An heir whose statutory reserved share is infringed by a will or donation can request from the court a reduction of the will or donation to persons who are not statutory heirs to the extent necessary to supplement their reserved share.

### *C. Marital property*

The statutory matrimonial property regime in Bulgaria is marital community property: property rights acquired during marriage as a result of common contribution are jointly owned by both spouses. A married couple is, however, free to agree on any other matrimonial property regime, such as: (1) separate ownership (the rights acquired by each spouse during marriage remain his or her personal ownership); or (2) contractual regime (a marriage agreement to govern the property relations of the spouses).

A marriage agreement can be entered into before the marriage or during the marriage and must be certified by a notary with respect to both its content and the signatories' signatures.

Cohabitation and civil partnership are not governed by the above ownership regimes. The property rights acquired by cohabitants and civil partners remain each individual's personal property.

### **III. Trusts, foundations and other planning structures**

#### *A. Legal concept*

As mentioned above, Bulgarian law does not have any trust laws, but envisages legal entities with a non-commercial purpose, such as foundations.

A foundation is a legal entity with only a non-commercial purpose under Bulgarian law. Commercial activity can be carried out as ancillary activity only and subject to the conditions that: (1) it is related to the main non-commercial activity of the foundation; and (2) revenue from the commercial activity are used for achieving the non-commercial goals of the foundation. A foundation established under Bulgarian law is not allowed to distribute profit.

A Bulgarian foundation may be registered as an entity performing activities for private benefit (eg, to provide funds for the material support and education of family members), provided it does not itself have commercial purpose and does not distribute profits.

The foundation as a separate legal entity has full legal ownership over its assets; the beneficiaries have no ownership over such assets. The assets are used for serving the non-commercial purpose of the foundation.

The use of Bulgarian registered foundations for estate planning purposes is not a common practice.

#### *B. Establishment and incorporation*

A foundation may be set up during the founder's life or upon death.

A foundation is established by way of a unilateral establishment deed under which the founder provides property gratuitously to the foundation for the achievement of its non-commercial purpose. If the foundation is established during the lifetime of the founder, the unilateral establishment deed must be executed with a notarised signature by the founder.

By law, founders may reserve certain rights in the foundation to themselves or to a designated third party. The reserved rights of founders may not be succeeded in case of their death, in which case they would be transferred to the management body of the foundation.

A foundation is established upon its registration in the register of legal entities with non-commercial purpose maintained by the Bulgarian Registry Agency.

#### *C. Corporate governance*

The corporate governance of the foundation is performed by a managing body (comprising one or more members – Bulgarian, or foreign natural or legal persons), with competences as outlined by the founder(s) in the unilateral establishment deed. If so provided in the establishment deed, the foundation may also have a governance structure similar to that of an association or company (ie, with a general meeting and a management board/supervisory board).

#### *D. Treatment of foreign trusts and foundations*

Bulgarian law recognises trusts governed by the laws of other jurisdictions only for tax purposes and subject to certain conditions. For example, a foreign trust could be recognised as a separate taxpayer in Bulgaria only for withholding tax purposes and in case the beneficial owner of the income cannot be identified.

A foreign foundation can set up a branch in Bulgaria if its goals do not contradict Bulgarian laws and public order.

#### **IV. Taxation**

##### *A. Domicile and residency*

Bulgarian tax law does not recognise the concept of domicile. Individuals would be considered to be tax resident in Bulgaria if any of the following conditions is met:

- they spent more than 183 days in a consecutive 12-month period in Bulgaria;
- they are sent by and reside abroad on the assignment of the Bulgarian state or a Bulgarian resident company;
- their centre of vital interests is in Bulgaria, that is, their personal and economic interests are tightly connected to Bulgaria, which is determined in accordance with multiple circumstances including, among others, the residence of the individuals' family, place of work and location of real estate assets owned; and
- their permanent address is in Bulgaria (only if the centre of vital interests could be considered to be in Bulgaria as well).

Bulgarian tax resident individuals are subject to Bulgarian personal income tax on their worldwide income. Non-Bulgarian tax resident individuals are subject to Bulgarian income tax only on their Bulgarian-sourced income.

##### *B. Gift, estate and inheritance taxes*

Inheritance tax is levied on all property inherited by will or intestacy. Gift tax is levied on any acquisition of property for no consideration, including on the waiver of debt.

The applicable inheritance and gift tax rates are determined on a municipal level, depending on the type of relationship between the beneficiary and the deceased or the donor and within the following ranges:

- 0.4 per cent to 0.8 per cent for siblings and their children; and
- 3.3 per cent to 6.6 per cent for any other beneficiaries.

Spouses and direct line heirs (children, grandchildren, parents, grandparents etc) are exempt from inheritance tax.

Donations between direct line relatives and between spouses are exempt from gift tax. Certain charitable donations are also not subject to gift tax (eg, donations to hospitals, educational institutions, cultural organisations and customary gifts).

For beneficiaries other than spouses and direct line heirs, an inheritance tax free allowance applies to an estate share with a value not exceeding BGN 250,000 (approximately €127,823). There are no such tax-free allowances for gift tax purposes under Bulgarian law.

Bulgaria does not impose exit taxes or other taxes, except for inheritance or gift tax, on the transfer of assets on death or through a gift.

##### *C. Taxes on income and capital*

Bulgarian tax resident individuals are subject to ten per cent Bulgarian personal income tax on their worldwide income (including income from employment or self-employment, from business activity as a

sole trader, rental income, capital gains income from the disposal of property and other sources envisaged by law).

Income from dividends and liquidation proceeds is subject to five per cent withholding tax, to be withheld and paid by the company distributing the dividend or liquidation proceeds. Income from interest on bank accounts is subject to a withholding tax rate of eight per cent, which is deducted and paid by the respective bank.

As Bulgarian tax residents are also subject to Bulgarian income tax on their income derived from abroad, double taxation can be avoided under the applicable double tax treaty or by applying a foreign tax credit that is available for all identical or similar taxes imposed abroad on foreign-sourced income, including dividends, interest, royalties, rent and income from technical services.

Non-Bulgarian tax residents are subject to ten per cent withholding tax on the following Bulgarian-sourced income, provided that the income has not been realised through a fixed base in the country:

- capital gains from the disposal of real estate and financial assets;
- compensation and contractual penalties;
- scholarships;
- rent;
- interest;
- royalties;
- franchise fees;
- factoring fees;
- technical services; and
- directors' fees.

A fixed base in Bulgaria is: (1) a fixed place from which a foreign national independently provides services or exercises a freelance profession (eg, a law office or dental practice); or (2) the provision of freelance services of a permanent nature in Bulgaria, even in the absence of a fixed place.

The existence of a fixed base typically triggers Bulgarian tax residence for an independent practitioner. Therefore, the income derived through a fixed base is subject to ten per cent Bulgarian personal income tax.

Non-Bulgarian tax residents are subject to five per cent withholding tax on their Bulgarian-sourced income from dividends and liquidation proceeds.

The above withholding tax rates could be reduced, or taxation could be eliminated, under an applicable double tax treaty to which Bulgaria is a party. Currently, Bulgaria has double tax treaties in force with over 70 countries.