



## The Binational Chamber of Commerce Bulgaria Israel

For the past few years the matter of acquiring agricultural land in Bulgaria has been the subject of significant interest and numerous discussions and interpretations. To answer the question, we should clarify the legal framework and the manner of its application. Due to the accession of Bulgaria to the EU and the conclusion of the pre-contractual chapter - "Free movement of capital" in Annex VI, Part 3 to the Act on the conditions of Accession of the Republic of Bulgaria, the country has agreed that within seven years from its accession, it will amend its legislation so that EU citizens could buy agricultural land. This term expired on 01.01.2014. The only possibility for this period to be extended is all EU member states to agree to that.

Bulgaria reformed its legislation by amending the text of Article 22, paragraph 1 of the Constitution, as follows: "Foreigners and foreign legal entities may acquire agricultural land under the terms arising from the accession of the Republic of Bulgaria to the European Union or under an international treaty, ratified, promulgated and enforced for the Republic of Bulgaria, as well as through inheritance by law." This text refers to the Accession Treaty. According to the accession treaty with the EU of 2005 Bulgaria undertook to eliminate by the end of 2014 all restrictions on citizens and companies from the EU and countries under the European Economic Area Agreement (EEAA) (EU Member States and Liechtenstein, Norway and Iceland), who are not residents of Bulgaria, and legal entities established under the laws of another Member State or another EEAA, to buy land.

Bulgaria joined the EU on 1 January 2007, hence, the term expired on 1 January 2014.

In State Gazette 38 of 07.05.2014 amendments to the Agricultural Land Ownership and Use Act were introduced, which limited the possibilities of Bulgarian and foreign natural and legal persons to acquire agricultural land in Bulgaria. Despite the imposed presidential veto, the law was passed again after a review, where the President's claims for unconstitutionality



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of some of the new provisions were not accepted by the MPs. There are also certain uncertainties regarding the practical application of the law.

I. The first essential amendment of the Act is the introduction of a requirement for five-year residence of the natural and legal persons wishing to acquire agricultural land.

According to art.3c, paragraph 1 of the Agricultural Land Ownership and Use Act, agricultural land may be acquired by natural or legal persons who have been residing or established in the Republic of Bulgaria for more than five years. Paragraph 2 of the same provision builds on this regulation by providing that the legal entities registered under the Bulgarian legislation less than five years ago may acquire agricultural land, if the shareholders of the company, the members of the association or the founders of the joint-stock company meet the requirements of paragraph 1.

Upon the introduction of the requirement for 5-year residence in Bulgaria no distinction was made based on the nationality of the natural persons. It may be concluded that an individual, whether a Bulgarian or a foreign citizen, would be able to acquire agricultural land, if they manage to prove that they have resided or were established in the Republic of Bulgaria for more than five years.

It is unclear how the Bulgarian citizens would prove that the requirement for a five-year residence in the Republic of Bulgaria is fulfilled, since the address registration is not equivalent to actual residence. There is no clarity whether the five-year period of residence should be continuous and if so, what does continuity of residence mean. Uncertainty exists also with respect to the criterion of "establishment."

II. The next significant amendment to the Act is the introduction of additional restrictions on certain types of companies, in addition to the requirement of five years of residence.



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Pursuant to Article 3, paragraph 7 of the ALOUA, the following entities cannot acquire and own agricultural lands:

1. Commercial companies, in which partners and shareholders directly or indirectly are companies, registered in jurisdictions with preferential tax regimes;
2. Commercial companies, where partners and shareholders are foreigners, other than:
  - Any natural persons - citizens of EU member states and the states under the European Economic Area Agreement (art. 3, para. 5);
  - Any foreign legal persons established in EU member states and the states under the European Economic Area Agreement (art. 3, para. 6)
  - Natural persons, citizens of third countries, and legal entities from third countries under the conditions of an international treaty, ratified under art. 22, para. 2 of the Constitution of the Republic of Bulgaria, an international treaty which is promulgated and enforced (art. 3, para. 6).

III. The ALOUA does not regulate the ownership of agricultural land acquired under the matrimonial property regime in a mixed marriage between a Bulgarian citizen and a citizen of a country outside the EEAA.

As a result of the amendments of the ALOUA public companies the shares of which are traded on the Bulgarian and European stock exchanges, will have to sell their land, even if a single share is purchased by a foreigner, otherwise they may be subject to a **fine**. Furthermore, public companies have no control over the persons who buy their shares on the stock market. Following the amendments, the prices of securities of many public companies dropped and this had a detrimental impact on the capital market.

According to the EC the above-mentioned provisions contain restrictions, which may allow for discriminatory treatment of investors from other Member-States.



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EC launched an infringement procedure against Bulgaria due to the restrictions it imposes on the purchase of agricultural land.

There were warnings that the amendments limited both EU citizens and expatriate Bulgarians. Once again Bulgaria sent a negative signal to foreign investors.

The law was not corrected by the new Parliament. On the contrary - since it lacked a sanction for failure to comply with the prohibition, the MPs from GERB decided to "fix" this problem by introducing new amendments to the law. So from the first of May 2015 there will be a fine of 100 Leva per decare, which will be imposed on any Bulgarian company with foreign equity, which owns agricultural land. The penalty for repeated violation is 300 Leva per decare. It may be imposed each quarter while the offense lasts, however, the law does not provide which authority will be competent to impose such sanctions.

The law introduces administrative - criminal liability for violating the prohibition under Article 3, paragraph 7 of the ALOUA and covers all three restrictions on ownership of agricultural land by commercial companies.

The amendments of the ALOUA compelled the investors to sell their fields if they wanted to avoid sanctions by 1.May 2015.

Clearly, this restriction does not apply to Bulgarian legal entities that acquire agricultural land, in which indirect partners or shareholders are persons outside the above - mentioned categories, ie the case where a partner or a shareholder is a Bulgarian or foreign entity from a EU Member-State or a state under the EEAA, in which a partner or a shareholder is a person outside those categories.

Foreigners and foreign legal entities cannot acquire agricultural land, except through inheritance by law. In this case, they must transfer their property within three years from the date of acquisition.



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If the deadline is not met the state may buy the agricultural land at prices set by an ordinance of the Council of Ministers.

One of the options for an Israeli citizen, who already owns land through a Bulgarian company A, to continue to own this land after the amendments in the ALOUA, is to establish a new single-owner limited liability company (B) and to transfer the company shares of company A to company B.

Purchase of land by persons who so far do not possess any land may be carried out by means of two companies.

An Israeli citizen may also own agricultural land through a Bulgarian company registered more than five years ago.

Outside of the above cases, there are other legal options for ownership of agricultural land by nationals of countries outside the EEAA.

The above does not constitute legal advice and the author is not responsible for its implementation.

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