DECLARATION OF BENEFICIAL OWNERS OF ALL LEGAL PERSONS AND OTHER LEGAL ENTITIES IN THE REPUBLIC OF BULGARIA

Within the time limit from 1 February 2019 to 31 May 2019, all legal persons and other legal entities established in the Republic of Bulgaria have to disclose their beneficial owners and details of their rights to the Companies Register, the Not-for-profit Legal Persons Register, or the BULSTAT Register respectively. Not-for-profit legal persons who had not renewed their registration in the register maintained by the Registry Agency as of 31 January 2019 have to submit the required information for registration purposes within four months of the date of renewal of the registration.

That obligation was introduced with the adoption of the Anti-money Laundering Act (AMLA), whereby the Transitional and Final Provisions amended a number of legislative acts. On those grounds, the AMLA Implementing Rules were adopted and promulgated on 8 January 2019.

The scope of the category of obliged entities includes not only the companies, not-for-profit legal persons and cooperatives established in the country but also consortia, contract funds, national investment funds, natural and legal persons and other legal entities operating within the territory of the country in their capacity of fiduciary owners of trusts, endowments and other similar foreign legal entities that have been established and operating under the laws of the jurisdictions which envisage such forms of fiduciary ownership, and others. The AMLA gives the legal definition of the term “other legal entity” as any unincorporated partnership or another legal arrangement, with or without legal personality, which can engage in legal relationships, and own or control financial resources and other financial assets or economic resources.

A beneficial owner is a natural person who ultimately owns or controls the legal person or other legal entity and/or a natural person on whose behalf and/or on whose account an operation, transaction or activity is being conducted.

In the case of corporate legal persons and other legal entities, the beneficial owner is the person who ultimately owns or controls the legal entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in the legal person or other legal entity, including through bearer shareholdings, or through control via other means, other than a company listed on a regulated market that is subject to disclosure requirements consistent with the European Union law or subject to equivalent international

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standards which ensure adequate transparency of ownership information.

A shareholding of at least 25 % of the shareholding or ownership interest in the legal person or another legal entity by (a) natural person(s) is an indication of direct ownership.

A shareholding of at least 25 % of the shareholding or ownership interest in the legal person or another legal entity, which is under the control of (a) natural person(s), or my multiple corporate entities and/or other legal arrangements, which are ultimately under the control of the same natural person(s) is an indication of indirect ownership.

Special provisions cover the categorization of persons as beneficial owners of fiduciary ownership, including trusts, fiduciary funds, endowments and foundations.

The data of beneficial owners are subject to entry provided that they have not been entered on any other grounds in the files of the legal persons or other legal entities in the relevant registers as natural persons who are sole owners or partners with at least 25 % of the shareholding or ownership interest. Where the beneficial owners are natural persons who are other than those specified in the foregoing sentence and who fall within the scope of the definition of beneficial owner as laid down in the AMLA on grounds other than the direct shareholding or ownership interest, their data are subject to entry into the relevant register. Any natural person(s) acting as a nominal director, secretary, shareholder or owner of the capital of a legal person or another legal entity is not considered to be the beneficial owner provided that another beneficial owner has been identified.

Where all possible means of identification have been exhausted and the beneficial owner is not identifiable in accordance with the AMLA provisions, or where grounds for suspicion exist that the identified person(s) is not the beneficial owner, the senior managing official may be considered to be the beneficial owner.

As well as the obligation to disclose the natural person who is the beneficial owner, there exists the obligation to enter into the relevant register data on the legal persons or other legal entities through which direct or indirect control is exercised on the legal persons and legal entities established within the country, including the identification data of the persons representing them.

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"Control" includes the cases under § 1c of the Additional Provisions of the Commercial Code, as well as any opportunity which, without being an indication of direct or indirect ownership, for exercising dominant influence on a legal person or another legal entity in the decision-making concerning the membership of managing and supervisory bodies, the reorganization of the legal person or entity, the termination of its activity, and any other issues of material importance for its operation. The ultimate exercise of effective control through the exercise of rights through third parties, including but not limited to, those conferred under authorization, contracting or another legal form, providing the opportunity to exercise dominant influence through third parties is an indication of "indirect control".

Where the file of the legal person or legal entity established within Bulgaria does not contain any data on a natural person who is a legitimate representative of the person or entity with permanent residence in the Republic of Bulgaria, it is necessary to specify the identification data of a contact person who is a natural person with permanent residence in Bulgaria and to submit his or her notarized consent therewith.

The details of the beneficial owners and the legal persons or other legal entities through which direct or indirect control is exercised and of the contact person who is a natural person with permanent residence in Bulgaria are entered through the submission of an application to the relevant register, enclosing the documents as prescribed by the law, including the following: the notarized declaration of the representative under Article 63(4) AMLA in accordance with the statutory form (Appendix No 3 to Article 38 of the AMLA Implementing Rules); the notarized consent of the contact person who is a natural person with permanent residence in Bulgaria; the documents certifying the existence of the legal persons or other legal entities through which direct or indirect control is exercised and the persons representing them under the laws of their jurisdiction, where they have not been established under the Bulgarian laws or have not been entered into the relevant register at the Registry Agency; any documents certifying the existence of a company registered in a jurisdiction with a preferential tax regime and the persons representing it under the laws of that jurisdiction, etc. In this connection, it is relevant to recall the definition of "company" under the Act on the Economic and Financial Relationships with Companies Registered in Jurisdictions with a Preferential Tax Regime, the Persons under their Control and their Beneficial Owners. In

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accordance with the definition, a company is any legal person, unincorporated partnership or another legal arrangement deriving its status from the laws of the jurisdiction of its registration, regardless of the form of association, incorporation, registration or another similar criterion. When the documents attached are in a foreign language, they have to be accompanied by a translation in the Bulgarian language, which has been done by a translator who is included on the list of the Ministry of Foreign Affairs and whose signature has been notarized in accordance with Article 21(1) of the Regulation on Legalization, Certification and Translation of Documents and Other Papers.

As stated in the official announcement of the Registry Agency of 28 January 2019, the Agency has already provided conditions for entering the details of beneficial owners into its registers within the statutory time limit, i.e. before 31 January 2019. Although the announcement emphasizes that the submission of these data is declaratory and, in this sense, traders and not-for-profit legal persons should consider the definition of “beneficial owner” set out in the AMLA and decide whether to submit a declaration on their beneficial owners or not, it should be noted that the decision concerns only the judgment whether the data that are already included in the register reveal the beneficial owner or not and there is no such option for discretion in the cases where such data are not available.

A failure to fulfill these obligations is a prerequisite for imposing a fine ranging from BGN 500 to BGN 5,000 on a natural person or a sanction ranging from BGN 1,000 to BGN 10,000 on a legal person or a sole proprietor. If no declaration on the required data is submitted after the penalty is imposed, the fine or sanction continues to be imposed on a monthly basis until the declaration is submitted. The infringement assessments are drawn up by officials who are duly authorized by the Executive Director of the Registry Agency, whereas penalty orders are issued by the Executive Director of the Agency or duly authorized officials.

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