21_New Rules for the Acquisition of Farmland by Bulgarian and Foreign Nationals_Oct_14_TE_en

With their promulgation in The State Gazette, No. 38 of 7 May 2014, amendments were introduced to the Farmland Ownership and Use Act, restricting the opportunities for Bulgarian and foreign natural and legal persons to acquire farmland in this country. Notwithstanding the presidential veto, the law reviewed and passed again in the National Assembly, where the Members of Parliament rejected the President's arguments of unconstitutionality of some new provisions. There is lack of clarity with regard to the implementation of the new legislation due to, inter alia, the lack of relevant case law and the lack of clarifications on controversial issues on part of the competent institutions.

The first substantial amendment to the Act is the introduction of a requirement for natural and legal persons willing to acquire farmland to have stayed or been established for five years.

Pursuant to the provisions of the new Article 3quater, paragraph 1, the farmland ownership right may be acquired by natural or legal persons who have stayed or been established in the Republic of Bulgaria for more than five years. Paragraph 2 of the same Article further specifies this requirement, indicating that legal persons with registration under the Bulgarian laws less than five years earlier may acquire farmland ownership rights, where the partners in the corporation, the members of the company, or the founding members of the joint-stock company meet the requirements under paragraph 1.

It should be noted that the five-year requirement introduced with the new provisions does not discern between natural and legal persons in terms of citizenship. In this sense, one could draw the conclusion that any Bulgarian or foreign natural or legal person willing to acquire farmland would have to prove stay or establishment in the Republic of Bulgaria for more than five years.

It is unclear how Bulgarian citizens will prove that they meet the requirement for a five-year stay within the territory of Bulgaria in view of the fact that the address registration is not equivalent to an actual stay in the country. There is no provision to specify whether the five-year stay should be continuous and what "continuous stay" means. There is lack of clarity

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also with regard to the criterion of establishment.

The other substantial amendment to the Act is the introduction of additional restrictions on certain categories of companies, beyond the five-year establishment requirement

In accordance with the provisions of the new paragraph 7 of Article 3, the right to acquire ownership of farmland is not granted to:

1. companies in which the partners or shareholders are, directly or indirectly, registered in jurisdictions with a preferential tax regime;

2. companies in which partners or shareholders are foreign nationals, except for:

- natural persons who are nationals of a Member State of the European Union or a Member State of the European Economic Area;
- foreign legal persons from a Member State of the European Union or a Member State of the European Economic Area,
- natural persons who are nationals of third countries and legal persons from third countries under the terms and conditions of an international agreement ratified under Article 22(2) of the Constitution of the Republic of Bulgaria, promulgated and entered into force;

3. joint-stock companies which have issued bearer shares.

The introduction of subparagraph 2 has discontinued earlier practices of foreigners who are nationals of third countries to acquire farmland through the establishment of a company in Bulgaria, where there is no international agreement ratified under Article 22(2) of the Constitution of the Republic of Bulgaria, promulgated and entered into force.

It is a controversial issue whether this restriction applies only to companies in which partners or shareholder are directly persons outside the categories specified above or it applies also in the cases in which such persons hold indirect interest, i.e. the cases in which a partner or a shareholder of a company acquiring farmland is another company in which a partner or a shareholder is a person outside these categories.

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