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Bulgaria

Acquisition Finance

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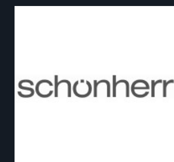

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This country-specific Q&A provides an overview of acquisition finance laws and regulations applicable in Bulgaria.

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Bulgaria: Acquisition Finance

1. What are the trends impacting acquisition finance in your jurisdiction and what have been the effects of those trends? Please consider the impact of recent economic cycles, Covid-19, developments relating to sanctions, and any environmental, social, and governance ("ESG") issues.

The complex geopolitical situation nowadays affects the Bulgarian financial sector. Besides the overlapping economic, energy and health crises internationally, the domestic political environment in Bulgaria has also been quite intense.

Following a short between June 2023 and April 2024 with a broad coalition government supported by a large parliamentary majority, the coalition fell apart, followed by two new snap elections 2024 (in June and October) with low chances for a new coalition to be formed as of the date of the present paper. This has not yet resulted in economic downturn but some important business laws remain in draft form.

Despite the Russia–Ukraine conflict fuelled inflation in that period, we note a substantial rise in the M&A activity including the acquisition finance since the end of 2022.

The businesses that continue to generate interest from investors are in the areas of energy, telecommunications, TV media, IT services and, recently, real estate developments. A notable new trend in acquisition financing with respect to renewable energy projects is the use of green bonds. This is driven by the entry on the market of foreign lenders structured as alternative investment funds that are prohibited from extending classic loans but may invest in bonds issued by corporate borrowers.

2. Please advise of any recent legal, tax, regulatory or other developments (including any reforms) that will impact foreign or domestic lenders (both bank and non-bank lenders) in the acquisition finance market in your jurisdiction.

Regarding existing large-scale loans involving Bulgarian obligors, although Bulgarian authorities were slow in implementing measures to help companies affected by the pandemic and, more recently, by the increase of energy prices where measures, once available, turned out to be insufficient, in the past couple of years there was no visible increase in bankruptcy proceedings against Bulgarian obligors. Because of flaws in the Bulgarian insolvency procedure, creditors usually prefer to find other mechanisms to collect their debts. It is also possible for a surge in insolvencies to appear only several years after the start of the pandemic. For example, the effects of the 2008 financial crisis were mostly felt in the period between 2012 and 2014, when there was a two-to-threefold increase in insolvency proceedings compared with previous years.

Until recently, the temporary bank loans moratorium and the longstanding policy of the ECB and EU central banks (including in Bulgaria) to keep interest rates low was another major difference compared with the financial crisis in 2008. However, the last Bulgarian covid-related moratoriums expired on 31 December 2021 and the change in the EU central banks' policies regarding interest rates was recently reflected in Bulgaria where, on 1 October 2022, the Bulgarian national bank increased the base interest rate to 0.49 per cent per annum thus exceeding zero per cent for the first time since 2016. As of 1 December 2023, the base interest rate has increased to 3.80 per cent per annum. Apart from this instrument with mostly statistical purposes however, the banking sector continues to maintain surprisingly low interest rates (significantly below the above figure), a trend that is somewhat divergent many Western European nations. Further increase in the interest rates may result in loan repayment instalments becoming exceedingly burdensome, although we are still to register such effects. Hence, it is still hard to say whether we will see a worsening in M&A activity and a surge in the restructuring of existing loans, or whether M&A activity will continue its positive development.

3. Please highlight any specific high level issues or concerns in your jurisdiction that should be considered in respect of structuring or documenting a typical acquisition financing.

The type of documentation used in Bulgarian acquisition financings largely depends on the specific circumstances. Short-form documentation is widely used by Bulgarian banks for the purpose of financing

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acquisition of local businesses, where no syndication is envisaged. Syndicated and large-scale financings with an international element (eg, if the lenders are foreign banks) are usually documented by long-form agreements following the forms published by the London Loan Market Association ("**LMA**") and subjected to English law and to the jurisdiction of English courts. In syndicated financings with no international element, however, the parties' freedom to choose a foreign system of law is significantly restricted and, most importantly, the choice of a foreign court in such circumstances would not be enforceable in Bulgaria.

In local syndicated acquisition financings long-form agreements are sometimes used based on LMA models but with a choice of Bulgarian law and Bulgarian courts, and with the Bulgarian language prevailing in case of discrepancies with the English version. In such a contract drafting various English law concepts needs to be adapted to or even substituted by appropriate Bulgarian legal mechanisms serving similar purposes. However, following the LMA models brings many additional benefits to the lenders – for example regulating the powers of the agent in detail and making exhaustive arrangements on changes to the lenders may later facilitate a transfer of the loans.

The typical security package for acquisition financings includes a pledge over the shares, floating charge over all assets of the respective obligor and a fixed charge over certain – more valuable assets.

4. In your jurisdiction, due to current market conditions, are there any emerging documentary features or practices or existing documentary provisions/features which borrowers or lenders are adjusting or innovating their interpretation of, or documentary approach to?

During the COVID lockdowns many jurisdictions adopted remote/online notarisations procedures. Although Bulgarian notary laws are still conservative and do not allow similar procedures, when a foreign entity is acting as a collateral taker/provider in Bulgaria and has made remote/online notarisations under its domestic law allowing these (eg of documents needed for local security interests registrations as powers of attorney, declarations and applications) Bulgarian authorities recognise such remote notarisations as far as they are permitted and valid under the law of the respective party.

Further – also because of the COVID restrictions increasing number of finance documents are being signed with a qualified electronic signature (in the sense of Regulation EC 910/2014) which may fully replace a handwritten signature. In the same respect – when it is relevant to ensure an opposable date of a finance documents (eg vis—vis creditors of the counterparty in insolvency and thus avoid claw back risks in a suspect period) we recommend that the documents be stamped with a qualified electronic time stamp (as per the same Regulation EC 910/2014) to certify the date of the signature. This straightforward procedure may replace a notarisation of the document or only of its date – that is the other classic route to ensure an opposable date of a finance document.

5. Has there been a prevalence of "equity bidding" in acquisition financing (i.e., signing the acquisition agreement prior to securing financing) with the expectation of securing financing shortly thereafter? If in the US, would Xerox language be included in the acquisition agreement?

N/A

6. What are the legal and regulatory requirements for banks and non-banks to be authorised to provide financing to, and to benefit from security provided by, entities established in your jurisdiction?

Under Bulgarian law, lending money on a commercial basis may only be performed by banks licensed by the Bulgarian National Bank (BNB) and financial institutions registered with the BNB. The major difference between the two types of lenders is that banks take deposits while financial institutions extend loans using their own resources.

Banks licensed in another EEA member state may provide lending in Bulgaria under the EU freedom to provide services – following a notification to the BNB by their home member state regulator, or under the freedom of establishment by opening a branch in Bulgaria. Banks from outside the EEA should obtain a licence from the BNB to exercise bank activities via a branch before lending in Bulgaria.

Non-banking financial institutions from another EEA member state may provide loans in Bulgaria following a notification to the BNB by their home member state regulator under Article 34 of Directive 2013/36/EU. Non-banking financial institutions seated outside the EEA may

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not provide loans in Bulgaria. As mentioned, there is also increased activity by entities structured as alternative investment funds under Directive 2011/61/EU to extend financing by investing in privately placed bonds issued by the borrower. Regarding the Bulgarian implications of loans extension by foreign lenders, there is no official guidance from the BNB as to the meaning of 'providing lending activities in Bulgaria', but we believe this occurs when foreign lenders, even if they do not have a physical presence in Bulgaria, target the Bulgarian market in order to offer lending activities repeatedly and on a commercial basis to borrowers in Bulgaria. There is no restriction on the freedom to provide requested services (i.e., the right of persons and entities domiciled in Bulgaria to request the lending services of a foreign entity on their own initiative). As this is a fairly common scenario in cross-border acquisition financings, it may be wise to have in place a suitable reverse-solicitation clause in the finance documents. This is particularly relevant for non-EU lenders (including from the UK) as well as for EU lenders whose volume of Bulgarian operations may raise concerns as to whether they act under the freedom to provide services or should rather be classified as acting under the freedom of establishment (i.e., requiring opening of a local Bulgarian branch). Both types of foreign lenders would benefit from structuring their activities under the unrestricted freedom to provide requested services by Bulgarian lenders via reverse solicitation arrangements.

7. Are there any laws or regulations which govern the advance of loan proceeds into, or the repayment of principal, interest or fees from, your jurisdiction in a foreign currency?

There are statutory requirements (if applicable, as per the thresholds below) for Bulgarian obligors to disclose certain information about their cross-border credit obligations that may be summarized in the following three groups:

i. firstly, Bulgarian obligors must disclose certain information about their cross-border credit claims / obligations that are in excess of BGN 50,000 (ca EUR 25,000) to the Bulgarian National Bank ("**BNB**") for statistical purposes, by submitting a standard declaration to BNB. The filing of the statistical declaration with the BNB has to be made within 15 days of the conclusion of the loan agreement. The information required to be disclosed under such declaration includes: (i) the name and the corporate details of the Bulgarian obligor, (ii) the name(s) and the jurisdiction of the lender(s) and the agent(s) if applicable (other corporate details incl. the relevant address are not envisaged to be disclosed, but see further below); (iii) type of the foreign entity (where various options must be chosen from as to whether it is a connected/non-connected party); (iv) area of business of the foreign entity; (v) the type of credit (loan, revolving credit, leasing etc.); (vi) information about the credit: date of the credit agreement, maturity of the credit, amount, currency, interest rate, type of repayment (i.e. one repayment, or by instalments). The secondary piece of Bulgarian legislation setting out the technical details around this disclosure obligation provides verbatim that: (i) the information thus collected may be used by BNB only for statistical purposes; (ii) BNB may present to other persons or institutions only general data that does not permit identification of the persons who have provided the info. There is mandatory interpretation published by BNB regarding the disclosure where it is stated expressly that "the credit agreements and other documents must not be presented". Please note that cross-border transfers of amounts by Bulgarian obligors in discharge of their credit obligations s shall be made freely upon presentation to the bank executing the transfer order of a copy of the declaration above with the BNB registration number;
ii. secondly, Bulgarian obligors shall file quarterly declarations (i. e. after expiry of each 3 months of the respective calendar year) before the BNB for the purposes of the statistics of the country's payment balance in relation to its financial credit exposures (i. e. credit claims / obligations to foreign entities), in case these exceed BGN 500,000 (about EUR 250,000). These statistical declarations must be filed by the 15-th day of the month following the expiry of the respective three-month period; and
iii. thirdly, Bulgarian obligors shall file an annual declaration before the BNB for the purposes of the statistics of the country's payment balance in relation to its financial credit exposures (i. e. credit claims /obligations to foreign entities), in case these exceed BGN 50,000 (about EUR 25,000). These statistical declarations must be filed by the 31-th of March of the calendar year following the calendar year for which the declaration relates.

8. Are there any laws or regulations which limit the ability of foreign entities to acquire assets in your jurisdiction or for lenders to finance the acquisition of assets in your jurisdiction? Please include any restrictions on the use of proceeds.

No restrictions exist for foreign natural or legal persons

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(abbr. "foreigners") to have interests (i. e. shares) in Bulgarian companies (i. e. limited liability companies or joint stock companies) to own buildings and possess limited ownership rights over land (e. g. the right to construct buildings). Generally Bulgarian law treats foreign investors as Bulgarian investors apart from three restrictions pertaining to the acquisition of full proprietary rights (i. e. ownership) over land. The said three types of restrictions pertain to (i) non-agricultural land; (ii) agricultural land; and (iii) forests. These restrictions may not be construed extensively, so there is no doubt in the practice and case law that foreigners may have ownership rights over buildings (although no ownership over the land where such buildings are constructed) and may also have limited proprietary rights over land (i. e. different from full ownership over land) as for example right to construct buildings, right to use land, right to pass through land etc.

Regarding the first restriction – for non-agricultural land (e. g. construction plots), foreigners from EU and EEA member states may possess ownership over it, while foreigners from third countries are prohibited to own non-agricultural, unless there is a special international treaty providing otherwise or if natural persons have acquired non-agricultural land through inheritance by law. Notably (as opposed to the second restriction below) there is no restriction for Bulgarian legal persons with shareholders from third countries to own non-agricultural land.

Regarding the second restriction – for agricultural land, foreigners from third countries (i. e. non- EU or EEA member states) are similarly prohibited to own it, unless there is a special international treaty providing otherwise or if natural persons have acquired agricultural land through inheritance by law. In the latter case (as opposed to the exception for non-agricultural land where no obligation to transfer the land is in place) the natural person is obliged to transfer the agricultural land within three years following the day when he/she inherited it. The restriction is also more stringent with respect to Bulgarian legal persons with shareholders from third countries since such legal persons are prohibited to own agricultural land (as opposed to non-agricultural land). Notably this is applicable only to Bulgarian legal persons with direct shareholders from third countries which. In other words – indirect ownership is not envisaged so if a chain of shareholders construction with more than one Bulgarian legal persons is employed the restriction may be circumvented. Restriction over ownership of agricultural land is also in place for EU/EEA foreigners. To mitigate that restriction being viewed as an EU law violation, it is worded by the Bulgarian lawmakers as applicable to both Bulgarian and EU/EEA individuals who have not been resident in Bulgaria for the last 5 years and EU/EEA legal persons who have not been established in Bulgaria in the last 5 years (i. e. had no local branch and paid no local taxes for such a timeline). Similarly Bulgarian legal persons with EU/EEA individual shareholders may acquire agricultural land only if the respective EU/EEA individuals have been resident in Bulgaria in the last 5 years.

Regarding the third restriction – for forests, the same restrictions as per the first group of restrictions above (i. e. – for non-agricultural land apply) apply the only difference being that a natural person from third (i. e. non – EU/EEA) country who has acquired forests through inheritance by law is obliged to transfer the forests within three years following the day when he/she inherited it.

9. What does the security package typically consist of in acquisition financing transactions in your jurisdiction and are there any additional security assets available to lenders?

Typically, the security package under acquisition financings contains a pledge over shares, a non-possessory floating charge pledge over the whole enterprise or over a limited pool of assets of the Bulgarian obligor(s), as well as a non-possessory fixed charge pledge over certain valuable assets.

The pledge over shares in different types of corporate entities is governed by different rules imposing formalities depending on the type of entity. The pledge over shares or quotas in a limited liability company must be documented in a notarised agreement and must be registered with the Commercial Register. Materialised shares in a joint stock company are pledged by endorsement and delivery of the paper materialising the shares. The pledge over dematerialised shares in a joint stock company must be documented in a notarised agreement and must be registered with the Central Depository (where dematerialised shares are kept as electronic book entries).

As a market standard, the pledge over shares is combined with a pledge over the dividends and other receivables stemming from the shares where and the respective rules for possessory or non-possessory receivables pledge apply as per the parties' arrangements.

Another typical security in large-scale financings is the pledge over the whole enterprise of the Bulgarian obligor, which is similar to the English floating charge crystallising over the particular assets within the enterprise on the date when commencement of

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enforcement is registered (in the same registry where the pledge is registered initially by way of establishment). This pledge must be documented in a notarised agreement and must be registered with the Commercial Register. As an element of the enterprise pledge, a fixed charge may be agreed in the same agreement – over particular valuable assets such as movables, receivables and real estate properties requiring additional secondary registration in a public register that is different for the different assets. Following such secondary registration, the pledgor may not deal with the fixed charge assets. Notably, as the standalone mortgage over real estate property is expensive in large-scale financings (as the registration fee is a proportion of the secured obligation without a cap) banks normally require their corporate borrowers to establish security interest over real estate property only as an element of the enterprise pledge.

Special pledge over claims is also usually included in the security package in acquisition financing transactions. The material terms of the pledge agreement, including a list of claims, must be registered and made public at the Central Register of Special Pledges. The pledged claims may be secured or non-secured. If they are secured, the special pledge extends also over the security (pledge, mortgage, special pledge, financial collateral, personal guarantee, etc.). This practically means that in case of default of the collateral provider, the collateral taker may enforce the collateral together with any securities attached to it to satisfy its claim under the main obligation.

Financial collateral under Directive 2002/47/EC has been transposed in Bulgaria in a manner where it may be used to secure any obligation that may be performed by payment of money or delivery of securities, thus potentially covering loan arrangements as well. However, the requirement for transfer of possession or control may be inappropriate under loan arrangements where the borrower normally retains possession of the asset to use it and generate income, thus repaying the loan. The only type of asset that seems suitable to be used as financial collateral in large-scale acquisition financings seems to be shares in joint-stock companies. However, Directive 2002/47/EC was transposed in Bulgaria with a specific nationality restriction on the eligible counterparties, which – albeit not very clear, may be construed as requiring that the financial institutions (to be eligible counterparties under financial collateral) should be from EEA member states. Therefore, banks and other financial institutions from states such as the United Kingdom, the United States or Japan may be prejudiced to enjoy the benefits of being eligible counterparties under financial collateral when dealing with Bulgarian borrowers.

10. Does the law of your jurisdiction permit (i) floating charges or any other universal security interest and (ii) security over future assets or for future obligations?

As specified in our feedback to Question 7 above, the pledge over an enterprise as a floating charge covering all assets within it, is possible and is typically employed to secure acquisition financings. Less often lenders would require a non-possessory pledge over a pool of certain of assets (rather than the whole enterprise, involving all assets), usually dictated by the specific business of the pledgor.

Special pledge over future or conditional claims is possible if they are eligible to specification as per the moment of the creation of the special pledge.

11. Do security documents have to (by law) include a cap on liabilities? If so, how is this usually calculated/agreed?

As opposed to some other jurisdictions, Bulgarian law does not restrict the amount of the liabilities that may be specified in the security document (eg up to a certain percentage over the actual liabilities towards the lender).

12. What are the formalities for taking and perfecting security in your jurisdiction and the associated costs and timing? If these requirements are different for different asset classes, please outline the main points to note for each of these briefly.

In order to be established a special pledge must be registered with either the Central Register of Special Pledges or with the Commercial Register depending on the type of assets serving as a collateral (see more details in our feedback to Question 8 above). That is, the security agreement is not sufficient to establish a security interest and a further formality needs to be performed. Thus, the registration in the respective registry is both a requirement for establishment of the special pledge and represents the perfection of the security interest (ie making it opposable towards thirds parties). Another requirement for perfection (only for receivables pledges) is the notification that must be served to the debtor under the pledged receivable.

13. Are there any limitations, restrictions or

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prohibitions on downstream, upstream and cross-stream guarantees in your jurisdiction? Please also provide a brief description of any potential mitigants or solutions to these limitations, restrictions or prohibitions.

Downstream and cross-stream guarantees are permitted. Certain prohibitions are in place with respect to upstream guarantees, that is: the prohibition on financial assistance and the capital preservation rules both reviewed in detail in our feedback to Question 14 below.

Regarding other limitations, it should be noted that Bulgarian obligors are normally required to provide guarantees in accordance with the law chosen to govern the loan agreement so the limitations as per the chosen law must be observed.

On certain occasions, however, non-EEA lenders under non-Bulgarian-governed loans require that a Bulgarian obligor provide a guarantee governed by Bulgarian law and subject to the jurisdiction of Bulgarian courts. This is used primarily to avoid potential problems with the recognition and enforcement of non-EEA court judgments. In such cases, the specific rules in Bulgaria about surety and joint-and-several-liability may require specific structuring of a Bulgarian guarantee to repay a loan under a foreign system of law.

Lastly – to avoid potential over-indebtedness of the guarantor certain limitation language is normally agreed to limit the amount of the guaranteed debt to a sum that would not exceed the guarantor's assets as otherwise the guarantor may be automatically placed in insolvency.

14. Are there any other notable costs, consents or restrictions associated with providing security for, or guaranteeing, acquisition financing in your jurisdiction?

Most importantly – if the security agreement requires notarisation (see more details in our feedback to Question 8 above), a fee proportionate to the secured interest is charged that is however capped to BGN 6,000 or approx. EUR 3,000 (excl. VAT).

If the pledged claim is secured by a mortgage over real estate a fee for registration with the Real Estate Register is due that is equal to 0.1 per cent of the value of the secured obligation. As there is no cap on that fee and in large scale financings it may turned out to be excessive usually special pledge over the whole enterprise is used instead, combined with a fixed charge over the real estate assets within the enterprise, where the registration costs are symbolic.

Regarding special pledges, as of July 2023 the Central Register of Special Pledges maintains an electronic database and allows electronic filing. The fees for registration include a fee for initial registration with the Central Register of Special Pledges which is now fixed in the amount of BGN 140 (approx. EUR 70) and no longer depends on the number of pages of the submitted documents. In case of electronically submitted applications the fees are 50% lower.

As for the required consents, the application for the registration of a special pledge needs to be accompanied by a notarized consent-confirmation signed by or on behalf of the collateral provider.

15. Is it possible for a company to give financial assistance (by entering into a guarantee, providing security in respect of acquisition debt or providing any other form of financial assistance) to another company within the group for the purpose of acquiring shares in (i) itself, (ii) a sister company and/or (iii) a parent company? If there are restrictions on granting financial assistance, please specify the extent to which such restrictions will affect the amount that can be guaranteed and/or secured.

The restrictions under Directive 2012/30/EU, including the prohibition on financial assistance, are applicable in Bulgaria only to joint-stock companies (similar to the German Aktiengesellschaft). Any type of guarantee or provision of security interests by such companies for the acquisition of their own shares is invalid. As the other widely used type of corporate entity in Bulgaria – the limited liability company (similar to the German Gesellschaft mit beschränkter Haftung) is not mentioned – neither in Directive 2012/30/EU, nor in the Bulgarian transposition legislation, the dominant view among practitioners is that the financial assistance rules do not apply to such entities.

However, regarding limited liability companies, there are express capital preservation rules (whereby shareholders are entitled only to dividends and liquidation quotas), certain casuistic avoidance rules for transactions detrimental to the other creditors and for transactions at undervalue (whereby transactions favouring related parties may be caught), as well as tax law requirements for arm's-length arrangements to transactions in favour

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of related parties. Therefore, it may be prudent to insert certain representations and warranties and some specific declaratory provisions to minimise possible risks concerning guarantees or security interests for the acquisition of a limited liability company's own shares.

16. If there are any financial assistance issues in your jurisdiction, is there a procedure available that will have the effect of making the proposed financial assistance possible (and if so, please briefly describe the procedure and how long it will take)?

Procedures making the proposed financial assistance possible, such as the whitewash procedure applicable in some other jurisdictions, are not envisaged under Bulgarian law.

17. If there are financial assistance issues in your jurisdiction, is it possible to give guarantees and/or security for debt that is not pure acquisition debt (e.g. refinancing debt) and if so it is necessary or strongly desirable that the different types of debt be clearly identifiable and/or segregated (e.g. by tranching)?

Pursuant to the Bulgarian Commerce Act a joint-stock company may not provide any loans or security for any acquisition of its own shares by a third party. The restriction does not apply to transactions entered into by banks or financial institutions in the ordinary course of their business if, as a result, the net asset value continues to meet the legislative requirements.

18. Does your jurisdiction recognise the concept of a security trustee or security agent for the purposes of holding security, enforcing the rights of the lenders and applying the proceeds of enforcement? If not, is there any other way in which the lenders can claim and share security without each lender individually enforcing its rights (e.g. the concept of parallel debt)?

In some specific cases Bulgarian law expressly permits a person to take security interests without being a lender at all (which resembles the security trustee concept under English law). This is possible for (1) financial collateral, under the EU Financial Collateral Directive as transposed in Bulgaria; and (2) when security is provided for bonds (in favour of a bonds trustee) under the Public Offering of Securities Act.

Typically, under foreign law-syndicated loans that may not benefit from these express rules permitting one person to hold security for multiple lenders – a parallel debt in favour of a security agent is agreed to ensure that such security agent validly holds a security interest in favour of multiple lenders. As far as such concept is valid under the respective foreign law governing the loan agreement, it should be respected by Bulgarian courts as well. There has been no problem so far with registering a security agent acting under a parallel debt as secured creditor in the registries where security interests are established or with registering out-of-court enforcement in Bulgaria by such agent. Further, to the best of our knowledge there has never been a dispute before a court where Bulgarian courts refused to apply the law governing a parallel debt arrangement as contravening Bulgarian public policy.

On the contrary, in Bulgaria there is a legal concept very similar to the English 'parallel debt' called 'contractual joint creditorship' where each creditor may claim the whole debt although he or she did not provide it or provided only a portion of the consideration for it. The only difference from the English parallel debt is that no new or parallel debt is created but all or some of the lenders agree to be joint creditors for a single debt via contractual arrangement (without creating a new or parallel one). Further, given the specific cases explained in the first paragraph of the feedback to the present Question 17 above (ie including financial collateral security provided for bonds) where Bulgarian law expressly permits a person to take security interests without being a lender at all, arguably the English parallel debt concept should not be regarded as manifestly contrary to Bulgarian public policy.

However, owing to the lack of a benchmark piece of Bulgarian case law (as opposed to France, Poland and, recently, the Czech Republic) expressly upholding the English parallel debt, some banks have been very cautious and as a result it is common for all lenders in a syndicate to take security in their own names in Bulgaria. There is no technical obstacle under Bulgarian law when registering security interests to list more than one person as a secured creditor and to describe the secured obligation as encompassing different claims, thus creating a first-ranking security in relation to multiple claims of lenders. Problems may arise however when it comes to amendments to the pledge agreement, as well as assignment or enforcement of claims secured in this manner, as all foreign lenders registered as secured creditors have to provide formal powers of attorney to Bulgarian lawyers, as well as some declarations and

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corporate certificates on each such occasion to make the respective amendment, assignment or enforcement effective including via registrations in local registries. To overcome such problems, it seems reasonable, in addition to having all members of a bank syndicate registered as holders of security in Bulgaria, to stipulate cumulatively that one of these creditors (a security agent) acts as a foreign law parallel debt creditor under each secured obligation and to register that security agent as a secured creditor not only for his or her claims but for the claims of all remaining creditors as well. Further, a power of attorney should be granted to the security agent to execute or perfect any amendments to the pledge agreement, as well as to assign and enforce claims, avoiding a huge amount of paperwork in each case.

19. Does your jurisdiction have significant restrictions on the role of a security agent (e.g. if the security agent in respect of local security or assets is a foreign entity)?

In the limited scenarios where, Bulgarian law expressly permits a person to take security interests without being a lender at all (security agent) there are no accompanying special restrictions on the role of the security agent.

20. Please provide the main differences and considerations between bank loan financing and high yield bond/note financing for acquisition purposes in your jurisdiction, and how do they affect the structuring and documentation of the transaction?

N/A

21. Describe the loan transfer mechanisms that exist in your jurisdiction and how the benefit of the associated security package can be transferred.

Usually, the assignment mechanism is used to transfer loan receivables, and the law governing the loan receivable is relevant for the respective perfection steps. Under Bulgarian substantive law the assignment of debts exceeding certain amount requires a document for the transfer with a certain date (eg notarisation of the signatures) as well as a notification to the debtor under the transferred receivable (ie the borrower – in loan scenarios).

22. What are the rules governing the priority of competing security interests in your jurisdiction? What methods of subordination are used in your jurisdiction and can the priority be contractually varied? Will contractual subordination provisions survive the insolvency of a borrower incorporated in your jurisdiction?

General statutory rules are in place regulating the priority of claims in a judicial enforcement. As per those rules, the collateral taker may satisfy its claim from the collateral having priority before the remaining creditors of the collateral provider. However, the rights of the secured creditor rank after (i) creditors who incurred costs for imposing protective measures (injunctions) over the respective asset, and costs for the enforcement proceeding, and (ii) Bulgarian state regarding its claims for taxes over certain properties, as well as claims of the Bulgarian state under concession agreements, if relevant.

Regarding contractual subordination we believe that it should be enforceable. As there is not sufficient case law to support this view some lawyers insist that the rules on priorities of claims are mandatory and parties may not deviate from them contractually. We do not share this view as via contractual subordination no other creditors are negatively affected.

23. Is there a concept of "equitable subordination" in your jurisdiction whereby loans provided by a shareholder (as a creditor) to a company incorporated in your jurisdiction are subordinated by law upon insolvency of that company in your jurisdiction?

No concept of "equity law" (similar to the English law of equity) exist in Bulgaria. Nevertheless, loans provided by a shareholder (as a creditor) to a company incorporated in Bulgaria are deeply subordinated as per the statutory rules on priorities of claims in Bulgaria.

24. Does your jurisdiction generally (i) recognise and enforce clauses regarding choice of a foreign law as the governing law of the contract, the submission to a foreign jurisdiction and a waiver of immunity and (ii) enforce foreign judgments?

As a preliminary note, apart from the private international law regulations that Bulgaria applies as a member of the EU, it has the Private International Law Code from 2005 whose rules follow the private international law

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codifications of the major EU continental jurisdictions (mainly Belgium) and the EU choice of law rules existing at the time of the adoption of the code (ie those predating the Brussels Regulation).

The possibility for foreign lenders to have a valid choice of court in arrangements with Bulgarian obligors, as well as the recognition and enforcement of foreign judgments in Bulgaria, depends on where the lender is from – when it concerns the validity of the jurisdictional agreement – and on the nationality of the court that rendered a judgment – when it concerns the recognition and enforcement of foreign judgments in Bulgaria. For counterparties from the EU, exclusive and non-exclusive choice of court as well as recognition and enforcement without exequatur procedure is permitted under the conditions and limitations of Regulation (EU) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Brussels I Regulation Recast).

For counterparties from other EEA countries (Switzerland, Norway and Iceland), the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Lugano Convention) applies. In particular, Bulgaria will apply the Lugano Convention when a court in a Lugano Convention country (that is not an EU member state) is chosen, and when the recognition and enforcement of a judgment originating from a Lugano Convention country (that is not an EU member state) is being sought in Bulgaria. The rules of this convention are substantially similar to the Brussels I Regulation No. 44/2001 (repealed and replaced by the Brussels I Regulation Recast). The most notable differences under the Lugano Convention – as compared with the Brussels I Regulation Recast – are that recognition and enforcement in the former case is subject to an exequatur procedure (albeit a simple one) and choice-of-court agreements in the former case are not immune to 'torpedo' actions.

For non-EEA lenders from countries that are party to the Hague Convention of 30 June 2005 on Choice of Court Agreements (the Hague Convention), most notably UK lenders, the rules in that Convention apply (though they are only relevant to exclusive choice of court). The Hague Convention also contains rules relevant for the recognition and enforcement of judgments rendered by courts that have been chosen in accordance with its rules, subject to an exequatur procedure.

The recognition and enforcement of judgments rendered by other countries (non-EU countries, non-EEA countries and non-Hague Convention countries) is subject to a full exequatur procedure governed by the Bulgarian Private International Law Code. Choice-of-court agreements in favour of the courts of such third countries (non-EU countries, non-EEA countries and non-Hague Convention countries) should be considered valid for the purposes of the recognition and enforcement of foreign court judgments to the extent they do not overstep the exclusive jurisdiction of a Bulgarian courts and do not violate Bulgarian public policy. On the other hand, if the choice of court in favour of the courts of third countries is assessed when a Bulgarian court is determining its own jurisdictional competence to hear a dispute, it is not certain whether a Bulgarian court will uphold such choice if it is competent to hear the case on a jurisdictional ground under the Brussels I Regulation Recast and has been seized on the matter.

Bulgaria is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on 10 June 1958 (the New York Convention) and Bulgarian courts should uphold arbitration agreements under the conditions of the New York Convention to the extent that the underlying dispute involves a proprietary claim or a matter that can be resolved by settlement under Bulgarian law. A foreign arbitral award rendered in a contracting state to the New York Convention should be recognised and enforced in Bulgaria under the conditions of the convention, subject to an exequatur procedure.

25. What are the requirements, procedures, methods and restrictions relating to the enforcement of collateral by secured lenders in your jurisdiction?

With regard to special pledges, should the collateral provider fail to perform the secured obligation; and/or obligation(s) under the pledge agreement, the collateral taker may accelerate all claims against the collateral provider and is entitled to satisfy its claim in priority to other creditors in an out-of-court enforcement procedure pursuant to the Special Pledges Act. This could be done by (a) by selling or collecting the pledged claim; or (b) from the insurance proceeds / substitute in cash or other consideration for the pledged claim; or (c) in case the collateral provider has disposed of the pledged claim in its ordinary course of business, from the price that a third party purchaser has paid for the pledged claim; or (d) in case the pledged claim had become due and the collateral provider has collected it prior to commencement of enforcement, from the whole property of the collateral provider. If there are several special pledges over one claim the creditors must be satisfied in a chronological order depending on when the pledges

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were registered.

With respect to special pledges there is out-of-court enforcement procedure, albeit the parties are not restricted to also take recourse to the court bailiff procedure.

The court bailiff procedure is more cumbersome and costly although in some respects, especially in case with more creditors is more secure and certain.

26. What are the insolvency or other rescue/reorganisation procedures in your jurisdiction?

There was so far a pre-insolvency restructuring regime in Bulgaria for unregulated corporate entities predating the EU Restructuring Directive 2019/1023/EC (the "Directive") that was pretty much dysfunctional. On 1 August 2023 the Directive, was transposed in Bulgaria via amendments/supplements to the said regime by fully introducing its mechanism to the existing Bulgarian pre-insolvency restructuring regime. Alongside this harmonisation, the "likelihood of insolvency" criterion as a prerequisite for the restructuring application was amended. It is now defined as the debtor's expected inability to make payments (as opposed to the former regime when only certain payments were relevant) based on their maturities over the next 12 months (as opposed to six months, previously). The six-month threshold prior to this amendment proved to be too short, as applications were submitted too late, and courts regularly found an actual insolvency as opposed to a "likelihood of insolvency" when deciding on them.

Another novelty is the express obligation of the debtor's management to take steps for restructuring should there be "likelihood of insolvency". Although this is not defined expressly as an obligation to file for restructuring in many cases such filing would be the only possibility to avoid insolvency. So far, the number of actual applications for restructuring was negligible, with almost none of them being upheld and followed by actual restructuring proceedings. As a result of the new obligation above this may change, and management bodies would be well advised to have an action plan in place now to identify in a timely manner the occurrence of "likelihood of insolvency" and to take restructuring steps to comply with the new statutory requirement.

Bulgaria has also a classic insolvency procedure involving restructuring as a first phase of the insolvency which usually does not work and as a second phase – liquidation, that is – turning the insolvent company's assets into cash and distributing them among its creditors.

With respect to banks there is special insolvency procedure, which involves only liquidation. The restructuring of banks and investment firms under Directive 2014/59/EU as transposed in Bulgaria is only at the pre-insolvency stage. For insurance undertakings and other financial institutions there are similar pre-insolvency restructuring procedure set out in the respective laws regarding such entities that are supervised by the respective supervisory authorities.

27. Does entry into any insolvency or other process in your jurisdiction prevent or delay secured lenders from accelerating their loans or enforcing their security in your jurisdiction?

The commencement of insolvency proceedings against a pledgor does not affect the enforcement of a registered pledge upon the pledged assets if the enforcement started before the opening of insolvency proceedings and if the collateral is identifiable within the debtor's estate. In addition, the commencement of insolvency proceedings against a debtor does not affect the enforcement proceedings of public debts if the enforcement started before the decision to open the insolvency proceedings.

28. In what order are creditors paid on an insolvency in your jurisdiction and are there any creditors that will take priority to secured creditors?

In the case of an insolvency proceeding, the following special ranking of claims applies:

a. claims, secured by a pledge or mortgage or attachment – on the amount after realisation of the security asset;
b. claims for which a right of retention is exercised – on the amount or value of the retained property;
c. expenses for the insolvency proceeding;
d. claims under employment relationships existing before the date of the judgment opening the insolvency proceedings;
e. allowances due by the debtor to third parties by operation of law;
f. public law claims of the state or municipality such as taxes, customs duties, fees, mandatory social-security contributions and others existing before the date of the judgment opening the insolvency proceedings;
g. claims existing before the date of the judgment

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opening the insolvency proceedings that have not been paid on their maturity date;

h. any remaining unsecured claims existing before the date of the judgment opening the insolvency proceedings;
i. a legal or contractual interest under unsecured claims, due and payable after the date of the judgment opening the insolvency proceedings;
j. claims under credits extended to the debtor by a shareholder;
k. claims under gratuitous transaction; and
l. creditors' expenses related to their involvement in the insolvency proceedings.

If the proceeds from turning the assets into cash in insolvency are not sufficient to satisfy all creditors within a certain rank, they are distributed on a pro rata basis.

29. Are there any hardening periods or transactions voidable upon insolvency in your jurisdiction?

Some acts and transactions effected by debtors after the initial date of their insolvency (that is a matter to be determined by the court and may precede the date of the opening of insolvency procedures) and cumulatively – within certain time limits set out in the Bulgarian Commerce predating the filing of application for opening of insolvency proceedings may be invalidated with respect to the other insolvency creditors.

30. Are there any other notable risks or concerns for secured lenders in enforcing their rights under a loan or collateral agreement (whether in an insolvency or restructuring context or otherwise)?

See above.

31. Please detail any taxes, duties, charges or related considerations which are relevant for lenders making loans to (or taking security and guarantees from) entities in your jurisdiction in the context of acquisition finance, including if any withholding tax is applicable on payments (interest and fees) to lenders and at what rate.

In general, there is withholding tax paid on interest payments under a loan in Bulgaria. If there is a double tax treaty between Bulgaria and the respective foreign country, the rules in that treaty must be followed so withholding tax on interest payments may or may not be due in accordance with such treaties.

As far as corporate income tax is concerned, interest expenses are deductible for corporate income tax purposes in Bulgaria. Bulgaria has tax treaties with many foreign countries and the specific treaty must be checked to ascertain if interest expenses are deductible for corporate income tax purposes (as a rule, they are deductible). Further, there are rules for thin capitalisation whereby a certain portion of the interest expenses may not be recognised for corporate income tax purposes. Thin capitalisation, in turn, does not apply to interest payments on financial leases and bank loans, except where the parties are related or the lease or loan is guaranteed or secured by, or is extended on the instruction of, a related party. Lastly, since 2019 an interest deduction limitation rule has been applicable, whereby exceeding borrowing costs would not be recognised for corporate tax purposes for the current year. 'Borrowing costs' mean the costs or amounts recognised for tax purposes that lead to a reduction in the financial tax result, which includes all interest expenses on any type of debt, other expenses and amounts, economic equivalent to interest, as well as other costs and amounts incurred in connection with fundraising, expenses and amounts for penalty interest for late payments and contractual penalties that are not related to financing. 'Excess of borrowing costs' is the amount by which the total amount of the costs of loans exceeds the total amount recognised for tax purposes revenues or amounts that lead to an increase in the financial tax result, as well as other income or amounts economically equivalent to interest. This interest deduction limitation rule is not applicable when the excess of borrowing costs for the current year does not exceed €3 million.

In general, there is no stamp duty chargeable in Bulgaria.

32. Are there any other tax issues that foreign lenders should be aware of when lending into your jurisdiction?

As far as tax reporting is concerned, provided that lenders are not subject to Bulgarian corporate income tax (including capital gains) derived from loans to Bulgarian obligors, there are no tax reporting issues for lenders as a result of having Bulgarian obligors located in Bulgaria.

33. What is the regulatory framework by which an acquisition of a public company in your

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jurisdiction is effected?

Generally, mergers (including takeovers) and de-mergers (spin-offs and splits), share transfers and business (going concern) transfers in Bulgaria are regulated by the Bulgarian Commerce Act. However, where the target is a public company, the specific rules set forth in the Bulgarian Public Offering of Securities Act (POSA) must be observed. Further, takeover bids with respect to public companies are extensively regulated under Ordinance No. 13/2003 enacted by the Financial Supervision Commission (FSC) by delegation under the POSA.

34. What are the key milestones in the timetable (e.g. announcement, posting of documentation, meetings, court hearings, effective dates, provision of consideration, withdrawal conditions)?

Under POSA, shares in a public company may be bought up to the threshold triggering a mandatory offer without initiating a bid procedure. Notification requirements only apply to smaller acquisitions. Generally, the FSC must be informed of the acquisition of voting rights in a public company directly or indirectly, provided that following the acquisition the voting rights of the acquirer reach or exceed 5 per cent or a multiple of 5 per cent of the total number of voting rights. There are certain exceptions as well as complex rules for notifications about certain acquisitions with analogous effect.

The thresholds triggering mandatory takeover bids include certain acquisitions of more than one-third of the voting rights, as well as acquisition of more than half of the voting rights and more than two-thirds of the voting rights. Exceeding certain thresholds may also trigger the right to launch a voluntary takeover bid.

Takeover bids in respect of shares in public companies (which may be joint-stock companies only) are supervised by the FSC, provided that the public companies:

a. have a registered seat in Bulgaria and their shares are admitted to trading on a regulated market in Bulgaria or a third country;
b. have shares admitted to trading on a regulated market in Bulgaria, provided that their shares are not admitted to trading on a regulated market in their home EEA member state;
c. have shares admitted, for the first time, to trading on a regulated market in Bulgaria; or
d. have shares admitted simultaneously to trading on a regulated market in Bulgaria and in another EEA member state, but the issuer has chosen the FSC as the competent authority to supervise the takeover bid.

In the case of a bid procedure under POSA, the bid offer must be registered with the FSC and could be made public only if there is no prohibition imposed by the FSC within a period of 20 business days following the registration. In case the FSC does not issue a decision within the specified timeframe, the takeover bid will be tacitly approved. Further, the management body of the target public company must produce a reasoned opinion on the proposed transaction, including the consequences for the company and its employees if the offer is accepted, the strategic plans of the bidder and their impact on the employees, and the location where the company's business is carried out. The bid must stay open for a minimum of 28 days and a maximum of 70 days as of the date of publicising the takeover bid. The takeover bid must be publicised in one national daily newspaper or on the website of a news agency or other media that can ensure the effective dissemination of the regulated information to the public in all EU Member States.

Apart from the rules applicable to the acquisition of public companies, transactions within certain regulated sectors (i.e., banking, insurance, pension assurance, media, telecommunications) may trigger compliance with various special rules in addition to the general rules governing the transaction under the Commerce Act. Typically, before execution of the transaction, approval must be obtained from the relevant supervising body. For example, the acquisition or sale of a shareholding in a Bulgarian bank, whereby the thresholds of 20 per cent, 33 per cent or 50 per cent are reached or exceeded, triggers the requirement to obtain prior approval of the BNB. Once a company has ceased to be 'public' in the meaning of POSA and this is duly registered with the Bulgarian Commercial Register, the M&A transactions in respect of such company will fall under the regime of the Bulgarian Commerce Act.

35. What is the technical minimum acceptance condition required by the regulatory framework? Is there a squeeze out procedure for minority hold outs?

Pursuant to POSA a person who has acquired at least 95% of the voting shares in a public company as a result of a takeover bid is entitled to buy the remaining shares (squeeze-out). The remaining shareholders are obliged to sell their shares to the bidder. There is no squeeze-out

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procedure in respect of a private company.

36. At what level of acceptance can the bidder (i) pass special resolutions, (ii) de-list the target, (iii) effect any squeeze out, and (iv) cause target to grant upstream guarantees and security in respect of the acquisition financing?

To pass special resolutions, that is acquire control over most of the decisions in the general meeting, being the body deciding on the most important matters concerning a company, the investor should acquire at least 50%+1 of the voting shares. Unless the minority shareholders have been given special veto rights, this level of control would allow the bidder to appoint the entire management of the company. A more efficient level of control (which would guarantee the passing of a broader spectrum of resolutions in the general meeting of an AD, including termination of the company, increasing/reducing the capital, and amending its articles of association) may be gained by the acquisition of two-thirds of the shares. Total control (over all decisions to be taken by the general meeting, including decisions on merger/de-merger of a company and decisions on certain high-value transactions involving public companies listed in the statute) may be obtained by holding three-quarters of the voting shares, except in the case of an OOD, where increase/reduction of capital requires unanimity of all voting shares.

37. Is there a requirement for a cash confirmation and how is this provided, by who, and when?

No, share exchange is possible as well. However, in a takeover bid scenario, a share exchange bid must always include, as an alternative, the option for cash consideration.

When the target is a public company, the price in a takeover bid is subject to the restrictions provided by POSA. The price may not be lower than the highest of the following three:

a. the fair price of the shares, supported by detailed reasoning following the application of appraisal methods as set out in regulations enacted by the FSC;
b. the average weighted market price of the shares within the last six months; or
c. the highest price paid for the shares by the bidder during the last six months preceding the bid.

In addition, POSA requires that certain information is provided to the buyers, such as information concerning the target shares that are already possessed directly or indirectly by the bidder, the term of the bid, the amount of compensation that will be paid to the other shareholders in the target if some of their rights are not observed and the plan for the future of the target company's business.

38. What conditions to completion are permitted?

In a non-public-companies-acquisition scenario parties are free to agree on conditions to completion. In a takeover bid situation, however, generally no conditions are permitted as there are strict timelines in the procedure and straightforward formality steps for accepting the tender offer that may be compromised by conditions.

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