

**THEMATIC COMPILATION OF RELEVANT INFORMATION SUBMITTED
BY BULGARIA**

ARTICLE 12 UNCAC

PRIVATE SECTOR AND PUBLIC PRIVATE PARTNERSHIPS

BULGARIA (THIRD MEETING)

Paragraph 1 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to **prevent corruption involving the private sector, enhance accounting and auditing standards** in the private sector and, where appropriate, provide **effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply** with such measures.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

The Ministry of Justice has translated and uploaded to its web page (both in English and Bulgarian) all the documents related to different anti-corruption monitoring mechanisms - the phase 1-3 reports for Bulgaria by OECD, the Phase 1 executive summary under UNCAC (chapters 3 and 4), as well as the GRECO reports on Bulgaria.

All the International treaties in this field are also published on the MoJ's web page. Different documents on the Prevention of corruption in the private sector, such as the Good practice Guidance on companies of the OECD, advising companies on the development of ethics programmes, have also been translated and uploaded.

All these materials have been submitted to different NGO's and Business Associations, the Ministry of Economics, Energetic and Tourism (MEET), the Bulgarian Executive Agency for Small and Medium Enterprises and other stakeholders.

The most of the approached Business Associations have also make information on the anticorruption reports and activities on their web pages and have disseminated information through brochures or newsletters to their member companies.

On the 9th March 2011 An Anti-Corruption Seminar has been held in Sofia, co-organised by the Bulgarian – Nordic Chamber of Commerce and the Swedish Trade Council, aiming at making companies familiar with the International anti-corruption standards. Participants were more than 30 companies, 3 business associations and 2 NGO's.

With regard to the sanctions - The Bulgarian legislation provides for a variety of sanctions for accounting and auditing misconduct - civil, administrative and criminal. The civil and administrative sanctions are prescribed under the Law on accounting, Law on Independent Financial Audit, International audit standards, the Law on administrative offences and sanctions.

The Bulgarian legislation has been changed in the recent years in accordance with the European Directives in the following most important directions:

- Obligatory application of the International Financial Reporting Standards by all the entities, effecting activities of public interest as well as entities which answer to certain criteria, specified by law;
- Obligatory application of the International Standards on Auditing by the registered auditors;
- The IFAC Code of Ethics for professional accountants is approved and applied by the Institute of Certified Public Accountants in Bulgaria;
- The Bulgarian legislation which regulates the measures against money-laundering, financing or terrorism and financing of political parties provides additional requirements towards the Bulgarian auditors;
- A Commission of Public Oversight over the Registered Auditors was established;
- A Commercial Register Law was approved, according to which all the entities registered under the Bulgarian commercial legislation have the obligation to publish information about all the important decisions of the owners, annual financial statements, detailed disclosure of material information included in the financial statements - annual report of management activity and auditor's report for those subject to independent financial audit.

The Institute of Certified Public Accountants in Bulgaria has published a book which treats the issues of detecting errors and fraud in the audit of financial statements.

The Bulgarian registered auditors are applying the International Standards on Auditing, including those dealing with the detection of errors and fraud. It is common practice while effecting an audit engagement to include procedures of testing the internal control systems and marking the risk parts of it. In case a fraud is detected the registered auditors are obliged to discuss the case with the management or a representative of the owner. If the fraud is substantial the registered auditors usually discuss the case with their legal advisors and decide how to inform the respective authorities.

a/ these measures are included in the Anti-Money Laundering Law and also the International Standards on Auditing deal with the procedures the auditors have to apply to detect errors and fraud as well as suspicious deals;

b/ these measures include an authorization and an obligation to report to the respective authorities;

c/ in case of insufficient management action upon receipt by management of such report, the registered auditors discuss the problems with monitoring bodies independent of management such as audit committees, supervisory boards etc.;

d/ the Anti-Money Laundering Law requires the registered auditors to pay a special attention to transactions which answer the criteria described in the law as well as to pay a special attention to transactions which seem suspicious. Besides that, following the requirements of the International Standards on Auditing the registered auditors specify a level of materiality for each audit engagement - of the financial statement as a whole and of the separate items of the financial statement;

e/ the Bulgarian legislation pays attention to the anonymity of the reporting registered auditor. We consider the legislation requirements not sufficient in respect of auditor's protection.

f/ the Anti-Money laundering Law requires the management as well as the responsible accountants to report about such information.

A lot of non-government organizations of representatives of Bulgarian business were established in the recent years. The members of these organizations exchange their experience about the elements of internal control, ethics and the types of their internal regulations. For example the Bulgarian Business Leaders Forum , which has more than 200 members - all of them leading Bulgarian companies - made a proposal to the Bulgarian government all the payments over 5000 BGN to be effected only by bank transfers and the companies not to encourage cash payments.

All the Bulgarian companies of public interest are obliged by the regulation authorities as well as by the specific Bulgarian legislation to disclose important information related to the owners' decisions, the annual financial statements, detailed disclosure of the material information in the financial statements - annual report of management activity and audit report for those subject to an independent financial audit. According to the Commercial Register Law such information is published by all the companies in their websites as well as in the Commercial Register which is public;

The relationships between the business organizations and the professional organizations are on high level. For example the Institute of Certified Public Accountants in Bulgaria always invites representatives of business to participate in its conferences, roundtables and other events. The Institute has a body which gives methodological directions and professional opinions to interested parties.

In addition, the Institute of Certified Public Accountants in Bulgaria has a Professional Ethics Committee, a Disciplinary Committee and a Committee for Control over the Quality of Audit Services, which control the observance of professional and ethic norms. In our opinion this is a good example for the steps which have been taken to encourage companies to provide mechanisms for communication by and protection of persons not willing to violate professional standards or ethics and willing to report the breaches of law or professional standards or ethics.

Furthermore, grave instances of such behaviour are criminalized under the following provisions of the Criminal code (“false accounting”) : Art. 209-212, 255, 255a, 256, 258, 260 and 313.

The Criminal Code takes into consideration that the main aim of false accounting is to present the results and affairs of an organisation in a better light than in real and it is geared to the different ways in which the false accounting can be accomplished. False accounting may be accomplished for example through fraud (Art. 209-210) or documentary fraud (Art. 212) when using a document of untrue content or an untrue or falsified document with the aim to obtain without legal grounds movable or immovable property. If a person destroys, conceals or fails to store accounting documents or registries within the statutory timelines, or carries out or allows accounting to be carried out in violation of accounting legislation requirements in order to avoid the assessment or payment of large scale tax obligations, then the provision of Art. 255 shall apply. The CC goes even further and foresees criminal liability for auditor who certifies an untrue annual accounting report (which in substance is an accounting document) of a merchant, being aware of that fact (Art. 260).

The corruption in private sector is also criminalized under art. 225 c of the Criminal Code.

Criminal Code

Article 209

(1) (Amended, SG No. 28/1982, SG No. 10/1993, SG No. 26/2010) A person who for the purpose of acquiring material benefit for himself or for another evokes or maintains in somebody a misleading idea, and thereby causes material damage to that person or to another, shall be punished for deceit by deprivation of liberty from one to six years.

(2) (Amended, SG No. 10/1993, SG No. 26/2010) A person who for the same purpose takes advantage of the misleading ideas, the inexperience or the lack of information of another and causes thereby material damage to that person or to another, shall be punished by deprivation of liberty for up to five years.

(3) In minor cases under the preceding paragraphs, the punishment shall be deprivation of liberty for up to one year, or probation.

Article 210

(1) For deceit the punishment shall be deprivation of liberty for one to eight years:

- 1. if the perpetrator has presented himself as an official, or as a person who acts on orders by the authorities;*
- 2. (amended, SG No. 28/1982) if the deceit has been committed by two or more persons who had conspired in advance for its perpetration;*
- 3. (amended, SG No. 26/2004) if the deceit has been perpetrated by an official or by an attorney within the scope of his office or authorisation or by a person directly dealing in his business with liquid currency;*
- 4. if the deceit has been committed for a second time in cases other than minor;*
- 5. (new, SG No. 28/1982) if the damage inflicted is on a large scale.*

(2) (New, SG No. 28/1982) In the cases of sub-paragraphs 4 and 5, the court may rule confiscation of up to one half of the culprit's property.

Article 211

(Supplemented, SG No. 28/1982, SG No. 10/1993, SG 92/2002, effective 1.01.2005 with respect to the punishment of probation - amended, SG No. 26/2004, effective 1.01.2004, SG No. 103/2004)

Where the deceit under Article 209, paragraphs (1) and (2), and under Article 210 has been on particularly large scale, constituting particularly grave case or constituting a case of dangerous recidivism, the punishment shall be deprivation of liberty for three to ten years. The court may rule confiscation of up to one half of the culprit's property

Article 212

(Supplemented, SG No. 95/1975, amended, SG No. 28/1982)

(1) (Amended, SG No. 10/1993, amended and supplemented, SG No. 26/2010) A person who, by using a document of untrue content or an untrue or falsified document, obtains without legal grounds movable or immovable property of another person with the intention to appropriate it, shall be punished by deprivation of liberty from two to eight years.

(2) (Amended and supplemented, SG, No. 27/2009) The punishment under paragraph (1) shall also be imposed on a person who, by drawing up a document of untrue contents or an untrue or falsified document, consciously provides opportunity for another natural person or legal entity to obtain such property without legal grounds.

(3) (New, SG No. 92/2002) Where the property comes from funds, which are owned by the European Union or (3) (New, SG No. 92/2002) Where the property comes from funds, which are owned by the European Union or that has been granted to the Bulgarian State by such funds, punishment shall be deprivation of liberty from three to ten years.

(4) (Renumbered from Paragraph 3, SG No. 92/2002) If the property under the preceding paragraphs is of large scale or the act constitutes dangerous recidivism, the punishment shall be deprivation of liberty for three to fifteen years.

(5) (Renumbered from Paragraph 4, SG No. 92/2002) For documentary deceit of particularly large scale, constituting a particularly grave case, the punishment shall be deprivation of liberty for ten to twenty years.

(6) (Renumbered from Paragraph 5, SG No. 92/2002) In minor cases under paragraphs (1) and (2) the punishment shall be deprivation of liberty for up to two years or probation.

(7) (Renumbered from Paragraph 6, SG No. 92/2002, amended, No. 27/2009) In the cases of paragraph (1), the court may rule confiscation of up to one half of the culprit's property and may deprive him of rights under Article 37 (1), sub-paragraphs 6 and 7, and in the cases under paragraphs (3), (4) and (5), the court shall rule confiscation of part or of the whole property of the culprit and shall deprive him of rights under Article 37 (1), sub-paragraphs 6 and 7.

Article 225c

(New, SG No. 92/2002)

(1) The individual performing a job for a legal entity or a sole trader under the Commercial Act, who requests or accepts a gift or any benefit, that appears undue, or accepts an offer or a promise for a gift or benefit in order to perform an act, or fail so to do, in breach of his/her obligations with regard to commercial activities, shall be punished by imprisonment of up to five years or by a fine from up to BGN 20,000.

(2) The individual performing commercial activities, who offers, promises or provides a gift or any benefit to a person performing a job with a legal entity or a sole trader, in order to perform an act, or fail so to do, in breach of his/her obligations, shall be punished by imprisonment of up to three years or by a fine from up to BGN fifteen thousand.

(3) Punishments under the preceding paragraphs shall also be imposed, where the gift or benefit have been offered, promised or given to another upon consent of the individual under Paragraph 1.

(4) (Amended, SG No. 26/2004) The individual who acts as intermediary with regard to some acts under the preceding paragraphs, where his conduct does not qualify under

more serious crimes, shall be punished by deprivation of liberty up to one year or a fine from up to BGN 15,000.

(5) The object of crime shall be expropriated to the benefit of the State, and where it may not be found or has been disposed of, the money equivalent thereof shall be awarded.

Article 255

(Amended, SG No. 28/1982, SG No. 89/1986, repealed, SG No. 10/1993, new, SG No. 62/1997, effective 5.11.1997, amended, SG No. 75/2006)

(1) A person who avoids the assessment or payment of large-scale tax obligations by:

- 1. failing to file a tax return;*
- 2. confirming a lie or withholding the truth in a statement filed by him/her;*
- 3. failing to issue an invoice or another accounting document;*
- 4. destroying, concealing or failing to store accounting documents or registries within the statutory timelines;*
- 5. carrying out or allowing accounting to be carried out in violation of accounting legislation requirements;*
- 6. compiling or making use of a document with untrue content, a false or counterfeited document in economic operations, in accounting or in providing information to revenue authorities or public enforcement agents;*
- 7. obtaining undue input tax, (amended, SG No. 26/2010) shall be punished by deprivation of liberty from one to six years and a fine of up to BGN 2,0000.*

(2) (Amended, SG No 67/2008, SG No. 12/2009, effective 1.05.2009) Where the act under para 1 has been committed with the participation of a border police, customs administration, National Revenue Agency official or a registered auditor, the punishment shall be deprivation of liberty from two to six years and a fine of up to BGN 5,000, as well as by deprivation of rights under Art. 37, para 1, subparas 6 and 7.

(3) Where particularly large-scale tax obligations are at stake, the punishment shall be deprivation of liberty from three to eight years and confiscation of a part or the whole property of the guilty person.

(4) If the undeclared and unpaid tax obligation together with the interest due is paid to the budget prior to completion of the judicial inquiry at the court of first instance, the punishment under paras 1 and 2 shall be deprivation of liberty of up to two years and a

fine of up to BGN 500, and under para 3 - deprivation of liberty of up to three years and a fine of up to BGN 1,000.

Article 255a

(New, SG No. 75/2006)

(1) Anyone avoiding the assessment or payment of large-scale tax obligations through the transformation of a commercial company or another legal entity, through a transaction involving a business, or related parties, within the meaning of the Tax and Social Insurance Procedure Code, shall be punished by deprivation of liberty from one to six years and a fine of up to BGN 10,000.

(2) Where particularly large-scale tax obligations are at stake, the punishment shall be deprivation of liberty from three to eight years and confiscation of a part or the whole property of the guilty person.

(3) Where, until completion of judicial inquiry at the first-instance court, undeclared or unpaid tax obligations are paid into the budget together with the interest due, the punishment shall be deprivation of liberty of up to three years and a fine of up to BGN 1,000.

Article 256

(Repealed, SG No. 10/1993, new, SG No. 62/1997, amended, SG No. 75/2006)

(1) Anyone, making use of a document with untrue content, a false or counterfeited document, who obtains from the state budget undue large-scale moneys or allows another to obtain such moneys, shall be punished by deprivation of liberty from two to eight years and a fine from BGN 1,000 to BGN 5,000.

(2) Where the act under para 1 has been committed with the participation of a person under Article 255, para 2 or by a person acting on the orders or in execution of a decision of an organised criminal group or where the sum obtained is of a particularly large-scale value, the punishment shall be deprivation of liberty from three to ten years and confiscation of a part or the whole property of the guilty person, as well as deprivation of the rights under Article 37, para 1, subpara 6 and 7.

(3) Where, until completion of judicial inquiry before the first-instance court the sum obtained is repaid into the budget together with the interests due, the punishment under para 1 shall be deprivation of liberty of up to three years and a fine of up to BGN 1,000, and under para 2 - deprivation of liberty of up to five years and a fine of up to BGN 3,000.

Article 258

(Amended, SG No. 28/1982, repealed, SG No. 10/1993, new, SG No. 62/1997)

(1) A person who unlawfully creates obstructions to the tax authorities in implementation of their lawful duties, shall be punished by deprivation of liberty for up to three years and a fine of BGN one thousand to two thousand.

(2) Should the deed under paragraph (1) be committed by force or threat, the punishment shall be deprivation of liberty from one to six years and a fine of BGN two thousand to five thousand.

Article 260

(Amended, SG No. 95/1975, SG No. 28/1982, repealed, SG No. 10/1993, new, SG No. 62/1997)

(1) A certified appraiser who makes untrue appraisal or conclusion about the value of property under appraisal, causing in such way damages in cases of material importance, shall be punished by deprivation of liberty for up to three years and deprivation of rights under Article 37, paragraph (1), subparagraphs 6 and 7.

(2) (Amended, SG No. 67/2008) A registered auditor who certifies an untrue annual financial report of a trader, being aware of that fact, shall be punished by deprivation of liberty for up to one year and deprivation of rights under Article 37, paragraph (1), subparagraphs 6 and 7.

Article 313

(Amended, SG No. 28/1982)

(1) (Amended, SG No. 10/1993, amended and supplemented, SG No. 92/2002) A person who asserts an untruth or holds back a truth in a written declaration or an electronic message which by virtue of a law, decree or regulation of the Council of Ministers are submitted to a state authority for certifying the truth about certain facts, shall be punished by deprivation of liberty for up to three years or by a fine of BGN one hundred to thirty hundred.

(2) (New, SG No. 10/1993, amended, SG No. 50/1995, SG No. 26/2010) Where the act under paragraph (1) has been committed for the purpose to avoid payment of due taxes, the punishment shall be deprivation of liberty for up to three years or a fine of up to BGN one thousand.

(3) (Renumbered from Paragraph 2, amended, SG No. 10/1993, amended and supplemented, SG No. 92/2002) The punishment under paragraph (1) shall also be imposed on a person who asserts an untruth or holds back a truth in a private document or an electronic message in which under an express provision of a law, decree or

regulation of the Council of Ministers he is especially obliged to certify the truth, and uses these documents as proof of the untrue certified facts or statements.

(4) (New, SG No. 62/1997) A person who, with reference to public offering of securities in a prospectus or review of the economic position uses untrue beneficial data, or holds back unfavourable data, which is of material importance in making decisions on acquisition of securities, shall be punished by deprivation of liberty for up to three years and a fine of up to BGN five hundred.

Subparagraph 2 (a) of article 12

2. Measures to achieve these ends may include, inter alia:

*(a) Promoting **cooperation between law enforcement agencies and relevant private entities;***

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

The Bulgarian registered auditors are applying the International Standards on Auditing, including these dealing with the detection of errors and fraud (ISA 240). It is common practice while effecting an audit engagement to include procedures of testing the internal control systems and marking the risk parts of it. In case a fraud is detected the registered auditors are obliged to discuss the case with the management or a representative of the owner. If the fraud is substantial the registered auditors usually discuss the case with their legal advisors and decide how to inform the respective authorities. In case of insufficient management action upon receipt by management of such report, the registered auditors discuss the problems with monitoring bodies independent of management such as audit committees, supervisory boards etc.

Furthermore, similare measures are included in the Law on the Measures against Money Laundering (LMML), which deal with the procedures the auditors have to apply to detect errors and fraud as well as suspicious deals. The LMML requires the registered auditors to pay a special attention to transactions which answer the criteria described in the law as well as to pay a special attention to transactions which seem suspicious. Besides that, following the requirements of the International Standards on Auditing the registered auditors specify a level of materiality for each audit engagement - of the financial statement as a whole and of the separate items of the financial statement.

With regard to the Tax authorities the following rules apply:

Ethical standards providing concrete explanations of the acts of revenue authorities in the counteraction and fight against corruption apply in the National Revenue Agency (NRA) in accordance with the Code of Ethics of public officials. Under Art. 34, para.2 of the Tax

Insurance Procedure Code (TIPC) where in the course of the tax proceedings a criminal offence relevant to the outcome of the proceedings is found, the proceedings shall be suspended and the case records shall be transmitted to the competent prosecutor. After termination of the criminal proceedings, the case records thereon shall be transmitted to the revenue authorities for a resumption of the suspended proceeding. At the same time if in the course of a criminal proceedings further information is needed, it may be requested and the tax authorities are obliged to cooperate. (Art. 215 LJ)

Under Article 26 of the National Revenue Agency Act (NRAA) the NRA, Ministry of Interior bodies and the Public Prosecution Office, Ministry of Finance control bodies, as well as other state and municipal bodies, shall take joint actions in relation to the discharge of their given functions. The procedure and modalities of cooperation shall be specified in a joint instruction of the Heads of the respective bodies.

LAW ON JUDICIARY

Art. 215. When exercising their functions, the judges, prosecutors and investigators may request assistance from all state authorities, officials, legal persons and citizens, which shall be obliged to render such assistance.

TAX-INSURANCE PROCEDURE CODE

Stay of the proceedings

Art. 34. (1) The proceedings shall be stayed at:

- 1. illness of a person which participation shall be imperative - after certification by an appropriate medical document;*
- 2. opened administrative, penal or other judicial proceedings, which is significant for the decision – after presenting a certificate issued by the body before which have been opened the proceedings;*
- 3. death of a legal representative of the person - to the establishing of guardianship or trusteeship;*
- 4. filed petition of the subject - one-time, for a definite period, but not more than three months;*
- 5. other circumstances provided by the law.*

(2) When in the course of the proceedings are established data for a committed crime which is significant for the decision of the proceedings, they shall be stayed, and the materials shall be sent to the respective prosecutor.

After finishing the penal proceedings the materials from them shall be sent to the bodies of receivables for continuing the stopped proceedings.

Subparagraph 2 (b) of article 12

2. Measures to achieve these ends may include, inter alia:

...

(b) Promoting the **development of standards and procedures designed to safeguard the integrity of relevant private entities**, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

Has your country adopted and implemented the measures described above?

(Y) Yes

See the answer under point 39, regarding art.12, para.1

Subparagraph 2 (c) of article 12

2. Measures to achieve these ends may include, inter alia:

...

(c) Promoting **transparency among private entities**, including, where appropriate, measures regarding the **identity of legal and natural persons involved in the establishment and management of corporate**

Has your country adopted and implemented the measures described above?

(Y) Yes

In accordance with the Law on Commercial Register, the information contained in the Commercial register is public and anyone has the right to request a check-up as regards the existence or lack of an entered circumstance or disclosed act in the Commercial Register (Article 32). According to the Commercial Law amongst the circumstances, subject to entry are also natural and/or legal persons - partners in the company, founders, as well as data on the management and manner of representation.

Law on the Commercial Register

Circumstances Subject to Entry

Article 4. *Traders, branches of foreign traders and circumstances related thereto, for which there are provisions of a law that they are subject to entry, shall be entered in the Commercial Register.*

Publicity

Article 11. (Amended, SG No. 50/2008, SG No. 34/2011, effective 1.01.2013 - amended No. 105/2011, effective 31.12.2011) (1) *The Commercial Register shall be public. Any person shall have the right to access the data base constituting the Commercial Register without restrictions and free of charge.*

(2) *The Agency shall ensure registered access to any trader's file.*

(3) *The access referred to in Paragraph (2) may be provided at the Agency's territorial units after an application and an identity document are produced. A person requesting access electronically shall prove his/her identity through an electronic signature or a digital certificate issued by the Agency, or, in the cases of ex officio access, in accordance with the procedure provided for by the ordinance referred to in Article 12, Paragraph (4).*

Check-ups

Article 32. (1) *Anyone shall be entitled to request a check-up as regards the existence or lack of an entered circumstance or disclosed act in the Commercial Register.*

(2) *Check-ups in the Commercial Register may be made by:*

1. (amended, SG No. 50/2008) *the business name, or SIC of the trader or branch of a foreign trader;*
2. (supplemented, SG No. 50/2008) *the name or the Personal Identification Number (PIN), respectively business name, or SIC of the partner or sole owner of capital;*
3. (supplemented, SG No. 50/2008) *the name or PIN, respectively business name, or SIC of a member of the organs of the legal person - trader.*

(3) *Check-ups on any circumstance entered or disclosed act may be made in the file of the separate trader, respectively branch of foreign trader, and of the authorizing parties and legal successors thereof.*

Commercial Law

Article 115

The Articles of Association shall state:

1. (amended and supplemented, SG No. 124/1997) *the company's trade name, seat, and head-office address;*

2. *the purposes and the time period for which the company is being set up;*
3. *(supplemented, SG No. 38/2006, effective 1.07.2007 - amended, in relation to becoming effective, SG No. 80/2006) the name or, respectively, the trade name, the seat and standard identification code, as well as the address of each partner;*
4. *(supplemented, SG No. 84/2000, amended, SG No. 82/2009, supplemented, SG No. 34/2011, effective 3.05.2011) the amount of the capital; in the event that the whole amount of the capital has not been paid in at the time of incorporation, the Memorandum shall determine the deadlines and conditions for paying it in; the the time of incorporation, the Memorandum shall determine the deadlines and conditions for paying it in; the deadline for additional paying in of the whole amount of the capital may not be longer than two years of the registration of the company, respectively the capital increase.*
5. *the interests of the partners;*
6. *the management and manner of representation;*
7. *the privileges of the partners, where agreed upon;*
8. *other rights and obligations of the partners, etc.*

Subparagraph 2 (d) of article 12

2. Measures to achieve these ends may include, inter alia:

...

(d) **Preventing the misuse of procedures regulating private entities**, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

Has your country adopted and implemented the measures described above?

(Y) Yes

In order to ensure stricter reporting and easier planning of public expenditure, the Public Procurement Law (PPL) obliges the contracting authorities to adopt their internal rules on the award of public contracts, which should contain the step-by-step rules and order for planning and organizing procurement procedures and controlling the implementation of the awarded contracts (Article 8 (7) PPL). The internal rules could foresee the existence of internal controls, ethics and compliances systems or measures as an additional condition for granting public procurement.

Subparagraph 2 (e) of article 12

2. Measures to achieve these ends may include, inter alia:

...

(e) **Preventing conflicts of interest by imposing restrictions**, as appropriate and for a reasonable period of time, **on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement**, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Chapter V of LPACI provides different limitations for public office holders after vacationing of public office.

A former public office holder, who has been released from office on the basis of an effective act whereby a conflict of interest has been ascertained, shall not have the right to occupy public office within one year after the release. This prohibition shall not apply to any office occupied on the basis of the exercise of direct suffrage.

Within one year after vacating office, any public office holder, with the exception of a person referred to in Items 1, 2, 3, 6, 11, 12 and 12 of Article 3 herein, shall not have the right to conclude employment contracts or other contracts for the fulfilment of management or control functions with any commercial corporations or co-operatives in respect of which the said office holder has performed any actions involving disposition, regulation or control or has concluded any contracts there with during the last year of execution of the official powers or duties thereof, nor to be a partner, to hold interests or shares, to be a managing director or member of a management or supervisory body of any such commercial corporations or co-operatives. The above limitations shall further more apply to any commercial corporations having close links with the corporations referred to above.

Public office holder who, in the last year of execution of the official powers or duties thereof, has participated in the conduct of any public procurement procedures or in any procedure related to the provision of resources from any funds belonging to the European Union or made available by the European Union to the Bulgarian State, shall not have the right to participate or to represent any natural or legal person in any such procedures before the institution wherein the said office holder held office within one year after vacating office. The prohibition of participation in public procurement procedures or in procedures related to the provision of resources from any funds belonging to the European Union or made available by the European Union to the Bulgarian State shall further more apply to any legal person wherein the person referred to above has become a partner, holds interests, or is a managing director or member of a management or supervisory body after vacating office.

Subparagraph 2 (f) of article 12

2. Measures to achieve these ends may include, inter alia:

...

(f) Ensuring that private enterprises, taking into account their structure and size, have **sufficient internal auditing controls** to assist in preventing and directing acts of corruption and that the accounts and required financial statements of such private enterprises are subject to **appropriate auditing and certification procedures**.

Has your country adopted and implemented the measures described above?

(Y) Yes

See the information under art.9, para. 2, letters "b", "c" and "e", as well as the information under art.9, para.3 UNCAC.

Subparagraph 3 (a) of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the **maintenance of books and records, financial statement disclosures and accounting and auditing standards**, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(a) The establishment of **off-the-books accounts**;

Has your country adopted and implemented the measures described above?

(Y) Yes

See the information under art.9, para. 2, letters "c" and "e", as well as the information under art.9, para.3 UNCAC.

Subparagraph 3 (b) of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the **maintenance of books and records, financial statement disclosures and accounting and auditing standards**, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

...

(b) The making of **off-the-books or inadequately identified transactions**;

Has your country adopted and implemented the measures described above? (Check one

(Y) Yes

See the information under art.9, para. 2, letters "c" and "e", as well as the information under art.9, para.3 UNCAC.

Subparagraph 3 (c) of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the **maintenance of books and records, financial statement disclosures and accounting and auditing standards**, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

...

(c) The recording of **non-existent expenditure**;

Has your country adopted and implemented the measures described above? (Check one answer

(Y) Yes

See the information under art.9, para. 2, letters “c” and “e”, as well as the information under art.9, para.3 UNCAC.

Subparagraph 3 (d) of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the **maintenance of books and records, financial statement disclosures and accounting and auditing standards**, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

(d) The entry of **liabilities with incorrect identification of their objects**;

Has your country adopted and implemented the measures described above?

(Y) Yes

See the information under art.9, para. 2, letters “c” and “e”, as well as the information under art.9, para.3 UNCAC.

Subparagraph 3 (e) of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the **maintenance of books and records, financial statement disclosures and accounting and auditing standards**, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

...

(e) The **use of false documents**;

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

See the information under art.9, para. 2, letters “c” and “e”, as well as the information under art.9, para.3 UNCAC.

Subparagraph 3 (f) of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the **maintenance of books and records, financial statement disclosures and accounting and auditing standards**, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

...

(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

See the information under art.9, para. 2, letters “c” and “e”, as well as the information under art.9, para.3 UNCAC.

Paragraph 4 of article 12

4. Each State Party shall **disallow the tax deductibility of expenses that constitute bribes**, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Has your country adopted and implemented the measures described above? (Check one answer)

(Y) Yes

Bribes are not recognized for tax purposes in Bulgaria, they are not tax deductible. Under the existing legislation there is no possibility whatsoever for those to be tax deductible.

The disallowance of tax deductability of bribes originates from the provisions of art.10 and art. 26 of the Law on corporate income taxation (LCIT), which introduce a general prohibition for definite types of expences to be recognised for tax purposes by the tax authorities. Expences, which could not be interconnected with the activity of the tax obliged persons, can not be recognized for tax purposes.

Furthermore, art. 16, para.3 of the law is regulating another hypothesis, whereby a fictitious agreement is masking the actual one and in such cases, according to the law, the rules should apply to the covered agreement.

The law is also regulating the situations where a bribe or other corruption related crime could be masked as a donation. In this regard art.31, para.6 prescribes that: *:"the entire expense on a donation shall not be recognized for tax purposes where the donation benefits, whether directly or indirectly, the managers who make it or those who dispose of the said donation, or where there is evidence that the gift has not been received"*. The non tax deductibility of bribes is further regulated by the provision of art. 16, para.2, point 4, according to which a tax evasion is considered when there is charging of any remunerations or compensations for any services which have not been actually performed. It is important to mention also that a new tax law legislation is planned for the year 2012, according to which there will be an express denial for tax purposes of bribe/corruption expenses.

LAW ON CORPORATE INCOME TAXATION effective since 01.01.2007

Documentary grounds

Article 10. (1) The accounting expenses shall be recognized for tax purposes where they are grounded on a primary accounting document within the meaning of the Accounting Law, this document presenting fairly the business operation.

(2) The accounting expenses shall also be recognized for tax purposes where a part of the primary document's information required under the Accounting Law is missing, provided that there are documents available which certify the missing information.

(3) Apart from the cases under para. 2, the accounting expenses shall also be recognized where the primary document is issued by a person that is not an establishment within the meaning of Art. 1, para. 2 of the Accounting Law and a part of the primary document's information required under the Accounting Law is missing, provided that the document presents fairly the business operation documented.

(4) The taxable persons shall be obligated to get registered and to report the sales they have made, as well as the services they have provided, by way of issuing a fiscal cash-register slip from a fiscal device in accordance with the procedure set forth in an Ordinance of the Minister of Finance, except where the payment is made through the bank or by way of a set-off. Where the issue of a fiscal cash-register slip from a fiscal device is obligatory, the absence thereof forms grounds for the non-recognition of the accounting expenses for tax purposes.

(5) As for the international air transport, the accounting expense shall be documentarily grounded where it is documented by way of a primary accounting document and the boarding pass for the respective flight. Where the primary accounting document (record)

is issued by a person who has performed the sale on behalf of and at the account of the carrier, the said person is assumed to be the issuer of the document.

(6) (new - SG 110/07, in force from 01.01.2008) Documentary proof for the expenses under Art. 204, Items 1 and 3, which have been levied an expenses tax, shall be deemed available also where they have been documented only in a fiscal receipt from a fiscal device. The expenses under Art. 204, Item 3, levied an expenses tax, shall be recognized for taxation purposes also in case of lack of a travel list.

Article 16. *(1) (Amended, SG No. 95/2009, effective 1.01.2010) Where one or more transactions, inter alia between unrelated parties, has been concluded under terms whereof the fulfilment leads to tax evasion, the taxable amount shall be determined ignoring the said transactions, certain terms thereof or the legal form thereof and taking into consideration the taxable amount that would be obtained upon the effecting of a customary transaction of the relevant type at market prices and intended to achieve the same economic result but which does not lead to tax evasion.*

(2) The following shall furthermore be treated as tax evasion:

1. any substantial excess of the quantities of raw and prime materials used as production inputs and other production costs over the customary quantities and costs for the activity carried out by the person, where any such excess is not due to reasons beyond the control of the person;

2. any contracts of loan for use or other gratuitous provision for use of tangible and intangible benefits;

3. any borrowing or lending at interest diverging from the market rate of interest as applicable at the time of conclusion of the transaction, including in the cases of interest-free loans or other temporary gratuitous financial assistance, as well as the write-off of debts or repayment of non-business debts for own account;

4. (amended, SG No. 94/2010, effective 1.01.2011) the charging of any remunerations or compensations for any services which have not been actually performed.

(3) Where a transaction is concealed by another, colourable transaction, the tax liability shall be assessed under the terms of the concealed transaction.

Chapter seven.

TAX PERMANENT DIFFERENCES

Expenses unrecognized for tax purposes

Article 26. *The following accounting expenses shall not be recognized for tax purposes:*

1. *expenses that are not connected with the activity;*
2. *expenses that are not documentarily grounded within the meaning of this Law;*
3. *expenses of the tax charged or the tax input used in accordance with the Law on Value Added Tax in those cases where the expenses of the business operation relating to the value added tax have not been recognized for tax purposes;*
4. *(amend. - SG 110/07, in force from 01.01.2008) expenses accounted by a supplier under the Law on Value Added Tax in respect of a value added tax levied by him or by the revenue authority for a completed delivery, except the tax levied in case of gratuitous deliveries and deliveries in connection with deregistration under the Law on Value Added Tax; this Item shall not apply to expenses accounted in result of a taxation credit correction under the Law on Value Added Tax;*
5. *(amend. - SG 110/07, in force from 01.01.2008) subsequent expenses accounted for in connection with a receivable that has occurred as a result of the tax charged or the tax input used under items 3, 4, 8 and 10;*
6. *expenses of fines, confiscations and other sanctions imposed in connection with violation of statutory instruments, and interest on delayed payments for public liabilities or municipal ones;*
7. *expenses of donations except for those specified in Art. 31;*
8. *expenses of a tax which is subject to being withheld at the source and is at the account of the payer of the income;*
9. *those expenses of salary in the commercial companies having over 50 percent of State or municipal participation which exceed the expenses fixed in the statutory instruments;*
10. *(new - SG 110/07, in force from 01.01.2008) expenses accounted during realization of responsibility for due and not deposited value added tax in the cases of Art. 177 of the Law on Value Added Tax;*
11. *(new - SG 110/07, in force from 01.01.2008) expenses, representing hidden distribution of revenue.*

Article 31. (1) *The accounting expenses on donations to a total amount of up to 10 per cent of the positive accounting financial result (accounting profit) shall be recognized for tax purposes where the expenses on donations are incurred in favour of:*

...

(6) *The entire expense on a donation shall not be recognized for tax purposes where the donation benefits, whether directly or indirectly, the managers who make it or those who dispose of the said donation, or where there is evidence that the gift has not been received.*

Please provide examples of the successful implementation of domestic measures adopted to comply with the provision under review:

On the ground of the Instruction for cooperation between the Prosecution office and the National Revenue Agency in the year 2009 921 notifications have been filled by the revenue officials when they have established in the course of the administrative proceedings the existence of doubts for a crime committed under the Criminal code. For the period 01.01.2010 until 30.11.2010 144 meetings of the regional coordination centers have been held, where 245 concrete cases of committed offences have been discussed. On those meetings the basic kinds and mechanisms for committing tax fraud have been discussed.

Have you ever assessed the effectiveness of the measures that disallow the tax deductibility of expenses that constitute bribes, or other expenses incurred in furtherance of corrupt conduct?

(Y) Yes

Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized:

The effectiveness of existing tax legislation is being analyzed on an annual basis, tax evasion provisions inclusive.

Where the analysis of the administrative and legal practices shows tax evasion, the results of the analysis are made available to all persons that participate in the audit proceedings in order to ensure uniform implementation of the tax legislation. Where necessary, changes to the tax legislation are initiated.

The National Revenue Agency (NRA) has prepared and every year updates manuals on the implementation of material tax laws - VAT Act, LCIT and Personal Income Taxes Act. These manuals are published on the NRA Internet and the Intranet sites and are used both by the NRA employees and all taxpayers.

The manuals draw attention to the expenses not recognized for tax purposes, including bribes to public officials. In the event of reported expenses that are not justified by documents, the tax authority investigates in depth the nature of the economic operation, including whether it might constitute bribery, money laundering or other crime.