

**To the attn. of Her Excellency**

**Marcie B. Ries**

**Ambassador of the United States of America**

**to the Republic of Bulgaria**

**Your Excellency,**

Several business associations, among them the Bulgarian Industrial Capital Association (BICA), the Bulgarian Association of Supplementary Pension Security Companies (BASPSC), the Bulgarian Association of Special Investment Purpose Companies (BASIPC), the Bulgarian Association of Licensed Investment Firms (BALIF), the Bulgarian Association of Asset Management Companies (BAAMC), the Bulgarian Industrial Association (BIA), the Confederation of Employers and Industrialists in Bulgaria (CEIBG) as well as the Bulgarian Stock Exchange- Sofia JSC (BSE), had to apply with a letter to the President, the Chairman of the National Assembly, the Prime Minister, party whips, chairpersons of committees of Parliament, ministers, the Ombudsman of the Republic of Bulgaria and the representative of the European Commission in Sofia in relation to the recent amendments to the Law on the Ownership and Use of Agricultural Land (LOUAL), voted by Parliament on February 11<sup>th</sup>, 2015.

The amendments in question establish a new art. 40a in LOUAL and they create an insurmountable problem for many of the public companies, especially for the Bulgarian version of REITs – the so called Special Investment Purpose Companies or SIPC (hereinafter REITs) which securitize real property by making IPOs, issuing shares and/or bonds to the public and whose financial instruments are traded on the stock exchange. Certain restrictions were previously established in Art. 3, paragraph 7, items 1 and 2 of LOUAL which prohibit commercial companies investing in agricultural land to have directly or indirectly shareholders from jurisdictions with preferential tax treatment or from countries that are not members of the EU and EEA. After the last amendments to the law, in case such companies own agricultural land, they are subject to severe punishment amounting to BGN 100 (approximately \$58) per 0.2471 acres of land, the financial sanction thus levied on all plots owned tripling after three months. Public companies and REITs currently own approximately 123 553 acres of agricultural land and thus they might be subject to fines totaling \$ 29 million. This amount triples to become \$ 87 million after another three months.

The inherent problem for public companies and REITs in relation to the relevant amendments to LOUAL lies in the unrestricted and free transferability of their shares which is effected in the course of trade on the stock exchange. The trade in shares of such companies takes place on the stock exchange, the investment firms (securities brokers/dealers) execute transactions in such shares being unable to control the identity of the acquirers since the identities of the buyer and seller remain anonymous during the trades, only the price and quantity and the other parameters of the orders being taken into account in relation to the settlement of the

deals. The trade on regulated or organized securities markets is impossible without the free transferability of the traded instruments. Public companies in general and REITs in particular cannot control their shareholding structure, they cannot purchase back the shares of individual shareholders, using their discretion. Nobody can be held responsible for obligations that are impossible to perform (*ad impossibilia nemo tenetur*), however the recent amendments to the LOUAL make public companies and REITs liable for violations of the law they cannot control and which arise due to no fault of theirs.

The problems of the public companies and REITs investing in agricultural land due to the amendments in the law herein discussed create great problems for shareholders from countries that are not members of the EU or EEA, including shareholders (natural persons and legal entities) from the United States of America. Such investors face a *de facto* expropriation of their investment or reduction of its value since the affected companies should sell their real property or wind up their activity in order to conform with the law. Such effect of the amendments is contrary to the Constitution of the Republic of Bulgaria which in its Art. 19, paragraph 3 proclaims the principle of protection of local and foreign investments. The amendments surely are contrary to Section II, paragraphs 1-2 of the Agreement between the USA and the Republic of Bulgaria for the Mutual Protection and Encouragement of Investments (the Agreement). The investments of US citizens and companies might lose their most favored nation status due to the amendments in the law, such amendments retroactively affecting investments already made and being enacted without taking account of existing obligations of Bulgaria under international treaties that should have priority over domestic regulations.

Our associations are actively involved in the process of drafting legislation for the application of the intergovernmental agreement between the USA and the Republic of Bulgaria for the application of FATCA since we are genuinely concerned with the protection of the investments of our members' clients regardless whether they are US citizens and companies or local or any other investors. Our members do not wish to lose their US clients or force them to opt out or be faced with hurdles or sanctions in the case where such clients have acquired or intend to acquire shares in public companies or REITs. We must note that even though the Agreement might contain provisos reserving the right of governments to introduce certain exemptions and limitations related to the acquisition of real property, **such exemptions from the general regime do not cover portfolio investments (v. item 3 of the Addendum in connection with Section I (a)(ii) of the Agreement) and certainly they do not cover cases of securitization and the acquisition not of real estate but of securities of companies owning such property.**

We further are against legislation that might lead to the US government undertaking reciprocal measures and restricting investment of our members in the US economy and US property. We are deeply concerned that the amendments in question to the LOUAL might hurt the business relations between the USA and Bulgaria and create a precedent with far-going consequences affecting adversely companies and businesses, both in the USA and Bulgaria.

Our genuine belief is that Art. Art. 3 and 40a of LOUAL should be further amended with a view of exempting public companies and REITs from their scope or, if certain compromise is to be sought, allowing the law to treat only majority holdings of foreign investors, domiciled outside of the EU and EEA, in such companies.

This surely is a situation that requires measures to be undertaken both by the US government and the government of the Republic of Bulgaria and we will greatly appreciate **if you could contact our competent authorities and render before them your opinion on the**

**application of the Agreement for the Mutual Protection and Encouragement of Investments** in connection with the relevant amendments to the LOUAL and the possible ways of means of protecting US investments in Bulgaria and Bulgarian investments in the USA in this relation.

We are ready to provide to you further clarifications and feedback or participate in discussions on the issues raised herein.

In the meantime, please allow us to express our best wishes and we are looking forward to hearing from you!

For and on behalf of BAAMC: .....

For and on behalf of BALIF: .....

For and on behalf of BASIPC: .....

For and on behalf of BASPSC: .....

For and on behalf of BIA: .....

For and on behalf of BICA: .....

For and on behalf of BSE: .....

For and on behalf of CEIBG: .....