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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT ACT

**ON FORFEITURE IN FAVOUR OF THE STATE
OF ILLEGALLY ACQUIRED ASSETS ACT**

OF BULGARIA

DRAFT**FORFEITURE IN FAVOUR OF THE STATE
OF ILLEGALLY ACQUIRED ASSETS ACT****Chapter one****GENERAL PROVISIONS****Article 1.**

(1) This Act shall regulate the terms and procedure of forfeiture in favour of the State of illegally acquired assets.

(2) Any assets which are not subject to restoration or have not been forfeited in favour of the State or confiscated under other laws shall be subject to forfeiture under the procedure established by this Act.

(3) The purpose of this Act shall be to protect the interests of the society by preventing and limiting the possibilities for persons to derive benefits from illegally acquired assets.

Chapter two**IDENTIFICATION OF ILLEGALLY
ACQUIRED ASSETS BODIES****Article 2.**

(1) The Identification of Illegally Acquired Assets Commission, hereinafter referred to as "the Commission" shall be a specialized State body carrying out examination and identification of illegally acquired assets.

(2) The Commission shall be a legal person with a head office in Sofia and a first-level spending unit. The Commission shall be a standing body assisted by administration.

(3) The Commission shall be a collegial body which shall consist of five members, including a Chairperson and a Deputy Chairperson. The Chairperson of the Commission shall be a person who has graduated in Law from a higher educational establishment and shall be appointed by the Prime Minister. The Deputy Chairperson and two of the members shall be elected by the National Assembly, and one of the members shall be appointed by the President of the Republic.

(4) The Commission members shall be appointed or elected, as the case may be, for a period of five years, and shall be limited to two successive terms of office. The State authorities shall appoint, elect respectively, the new members of the Commission up to one month prior to the expiry of the terms of office of its members.

(5) Eligibility for membership of the Commission shall be limited to legally capable Bulgarian citizens, who:

1. have not been convicted of a deliberate publicly actionable criminal offence, regardless of whether they have been exonerated or not;
2. have graduated in Law or Economics from a higher educational establishment, and have at last five years' experience in the relevant field.

3. have not been released from criminal liability for deliberate publicly actionable criminal offence;
4. have not been disqualified from occupying the relevant State position.

(6) The members of the Commission may not:

1. exercise commercial activity or be unlimitedly liable associates, managing directors or members of supervisory, management or control bodies of any commercial companies, cooperatives, State-owned enterprises or not-for-profit legal entities;
2. receive remunerations for pursuit of activities under contract or under a civil-service relationship with any State or public organizations, commercial companies, cooperatives or not-for-profit legal entities, natural persons or sole trader, with the exception of scientific research and teaching or exercise of copyright.

(7) The powers of the Commission members shall be terminated by the respective authority upon:

1. death;
2. resignation;
3. objective inability to perform the duties thereof for a period exceeding six months;
4. entry into effect of a sentence imposing a penal sanction for a deliberate publicly actionable criminal offence;
5. incompatibility under para. (6);
6. serious breach or systematic failure to discharge their obligations
7. entry into effect of a written statement, ascertaining conflict of interests under the Conflict of Interest Prevention and Disclosure Act.

(8) Upon termination of the powers of a Commission member, a new member of the respective quota shall be appointed or elected, as the case may be, to serve the remainder of the term of office until the expiry thereof.

(9) The Commission shall have local units enjoying the status of territorial directorates.

(10) The directors of territorial directorates and the inspectors at the territorial directorates shall be Commission authorities in the process of identification of illegally acquired assets. Eligibility for the office of director of a territorial directorate shall be limited to persons who have graduated in economics or law from a higher educational establishment.

(11) The Commission shall adopt Regulation governing its organization and activities as well as the organization and activities of its administration. The Regulation shall be published in the State Gazette.

(12) The length of service of the persons under para. 5 and 10, as well as of the persons holding a position for which a degree in law and legal capacity is required shall be recognized as length of service in this field.

(13) The length of service of the persons under para. 5 and 10, as well as the persons holding a position for which a degree in economics is required shall be recognized as length of service in this field.

(14) The Commission members and officers, as well as the authorities under paragraph 10, may not be members of a political party or a coalition, organization pursuing political goals as well as to perform political activity.

Article 3.

The Chairperson of the Commission shall:

1. represent the Commission;
2. organize and direct the operation;
3. schedule and preside over the meetings;
4. control and be responsible for implementation of the budget;
5. issue penalty decrees on violations committed under this Act.

Article 4.

(1) The Chairperson of the Commission shall receive a basic monthly remuneration to an amount equivalent to 90 per cent of the basic monthly remuneration of the Chairperson of the National Assembly.

(2) The basic monthly remuneration of the Deputy Chairperson shall be 90 per cent of the remuneration of the Chairperson.

(3) The rest of the Commission members shall receive a basic monthly remuneration to an amount equivalent to 85 per cent of the remuneration of the Chairperson of the Commission.

(4) The basic monthly remuneration shall be recalculated on a quarterly basis, taking into consideration the average monthly salary for the last month of the preceding quarter.

Article 5.

(1) The Commission shall make decisions on:

1. institution of proceedings for identification of illegally acquired assets for a defined period;
2. termination of proceedings for identification of illegally acquired assets;
3. extension of the term under Article 17;
4. submission to the court of a request for imposition of injunctions and forfeiture in favour of the State of illegally acquired assets;
5. conclusion of a settlement;
6. appointment of the directors of territorial directorates;
7. appointment of the inspectors upon proposals of the directors of territorial directorates;
8. exercise of other powers as provided for in this Act.

(2) The decisions of the Commission shall be adopted by a majority of more than one half of the members and shall be reasoned.

(3) The parliamentary supervision on the Commission's activity shall be exercised by a specialized standing commission of the National Assembly.

(4) The Chairperson and the members of the Commission are obliged to appear, upon invitation, before the National Assembly or the Commission under paragraph 3 and to provide the information requested;

(5) The Commission shall annually submit a report on its activity to the National Assembly, the President of the Republic and the Council of Ministers by 31 May which shall be published on the Commission's website. The report shall be approved with a decision of the National Assembly.

Article 6.

The Commission members and officers shall be compulsorily insured against accident on the account of the republican budget.

Article 7.

(1) Bearing of a service weapon is allowed under the terms and procedure of the Control of Explosives, Firearms and Ammunitions Act.

(2) The Chairperson of the Commission shall nominate by an order amongst the officers who have access to information classified as "Top Secret" those who shall be allowed to bear service weapon.

Article 8.

The information of which the authorities for identification of illegally acquired assets have become aware in the course of exercising the powers granted to them under this Act is not subject to divulgation. When coming into office the officials shall sign a declaration that they will not divulge the information mentioned in the first sentence during tenure of office as well as after stepping out of office.

Chapter Three

**PROCEEDINGS BEFORE THE IDENTIFICATION
OF ILLEGALLY ACQUIRED ASSETS COMMISSION**

Section I

Grounds for instituting proceedings

Article 9.

(1) The proceedings under this Act shall be instituted for identification of the sources of acquisition of assets and the correspondence thereof with the income of the person in the cases where it could be reasonably assumed to have been illegally acquired, namely:

1. the person has been convicted with an enforcement sentence or charges for deliberate crimes under the Penal Code have been brought against him: under art. 108a, para 1 and 2; art. 109, para 1 and 2; art. 116, para 1, sub-para. 7 and 10; art. 142 and 142a; art. 155, 156, 159; art. 159a – 159d; art. 195, para 2 and 3 and 196a; art. 199; art. 201 - 203; art. 209 - 211, art. 212, para 3, 4 and 5, art. 212a, 213; art. 213a - 214; art. 215, para 2, sub-para. 1; art. 217; art. 220 and 225c; art. 227c, 227d and 227e; art. 233, 234, 234a, 234b and 235; art. 242 - 242a; art. 243 - 246 and art. 249 - 252; art. 253 and 253a, para 1 and 2; art. 254b, art. 255 – 256, art. 259 and 260; art. 278, 278b and 280; . art. 282, 283 and 283a; art. 301 - 305; art. 308, para 2, 3 and 5 and art. 310; art. 319a, para 2 – 5, art. 319b, para 3 and art. 319d, para 2; art. 321, para 1 - 3 and para 5, art. 321a and art. 327, para 1 - 3; art. 337, art. 339, art. 346, para 2, sub-para. 4 , para 3, para 5 and para 6, art. 349a, para 2; art. 354a, art. 354b, para 4 - 6 and art. 354c, para 1 – 3;

2. the person has a criminal way of living since he/she has been convicted two or more times for deliberate publicly actionable criminal offences within a period of five years or two or more pretrial proceedings for deliberate publicly actionable criminal offences have been instituted against him/her within the same period;

3. administrative proceedings have been conducted under art. 233, paras 1-3 and art.234-235, para 1 of the Customs Act where customs violations have been established with an enacted administrative written statement;

4. conflict of interests with material benefit obtained was established for the person under the procedure of the Prevention and Disclosure of Conflict of Interests Act;

5. in the event of failure to submit a declaration for the persons under art. 2, para 1 of the Publicity of the Property of Persons Occupying High State Positions as well as where there is a conclusion as to the lack of correspondence under art. 7, para 7 of the same Act.

Article 10.

(1) Proceedings under this Act shall be conducted also where there are sufficient data available for illegally acquired assets but the criminal proceedings for any of the crimes listed in art. 9, sub-para 1 was terminated on the grounds of art. 24, para 1, sub-para 2 – 5 of the Criminal Procedure Code or was suspended on the grounds of art. 25 of the Criminal Procedure Code.

(2) Proceedings under this Act shall be conducted against exonerated persons as well.

(3) Proceedings under this Act shall be conducted also in the cases where there are criminal proceedings instituted in another State or a sentence of a foreign court that has entered into force for deliberate offences such as those listed in art. 9, sub-para 1.

(4) Proceedings under this Act shall be conducted as well in the cases where there have been established assets illegally acquired from activity carried out abroad which does not fall under the criminal jurisdiction of the Republic of Bulgaria.

Article 11.

(1) The pre-trial proceedings authorities shall forthwith notify the Commission of each case of criminal proceedings instituted for any crime as provided for art. 9, sub-paragraph 1.

Article 12.

The Ministry of Justice shall notify the Commission for each case of a sentence issued by a foreign court that has entered into force against Bulgarian nationals.

Article 13.

The authorities under the Prevention and Disclosure of Conflict of Interests Act shall notify the Commission for all cases of established conflict of interests where there is a material benefit obtained.

Article 14.

Officials who, within the remit of their official duties, become aware of circumstances regarding the acquisition, directly or indirectly, of assets of illegal origin, shall be obligated to notify the Commission and to provide them with any information at their disposal.

Article 15.

The notification shall comprise data about:

1. the person against whom criminal proceedings or proceedings have been instituted;
2. the period of criminal activity or the committing of the offence;
4. the assets of the person, if there are data about them.

Article 16.

(1) Upon receipt of a signal for illegal acquisition of assets the Commission shall immediately forward communication to the National Security State Agency, the Ministry of Interior and the bodies of the Prosecution for verification of the data concerning a crime committed by the person.

(2) In the event where criminal proceedings have been instituted against the person for any of the offences under art. 9, sub-paragraph 1, the pretrial proceedings authorities shall notify the Commission.

Article 17.

The proceedings under this Act shall commence with examination which cannot last more than 10 months. The Commission is entitled to extend once this term up to 6 months.

Article 18.

(1) The authorities referred to in Article 2, para. 10 herein shall conduct examinations and shall collect evidence for identification of the source and location of assets of the examined person for a definite period as well as for the presence of a possible connection between the acquisition of the assets and the illegal activity carried out by the person.

(2) The said authorities shall have the right to request assistance and to seek information from all State and municipal authorities, traders, banks, credit institutions, other legal entities, notaries and private enforcement agents.

The persons obliged shall submit the requested information within one month.

Article 19.

The Ministry of Interior, the Supreme Cassation Prosecution Office, the National Revenue Agency, the Customs Agency, the Registry Agency, the National Social Security Institute, the Ministry of Regional Development and Public Works, the Central Special Pledges Registry shall provide the Commission with access to their information funds and registers under a procedure established in joint instructions.

Article 20.

(1) The authorities referred to in Article 2, para. 10 herein shall examine:

1. the assets, the legal grounds for the acquisition thereof, and the value of the said assets;
2. the transformation of the assets;
3. the income of the person under examination and his/her family;
4. the obligations at public law to the State and the municipalities, paid by the person under examination;
5. the customary and extraordinary expenditures for maintenance of the person under examination and his/her family on the basis of data provided by the National Statistical Institute;
6. the tax declarations of the person under examination and of the family members;
7. the transactions with assets;
8. any other circumstances relevant to clarification of the source of the assets and the manner of acquisition thereof by the person under examination, the members of his/her family and the third parties to which they were transferred..

(2) When conducting the examination under para. 1, the authorities referred to in Article 2, para. 10 herein shall have the right to:

1. require explanations from the person under examination, from his/her spouse and from third parties;
2. appoint expert witnesses;
3. collect written evidence;
4. require from natural persons information, explanations and documents in view of identification of the source and value of the assets;
5. require the statutorily established documents regarding the source of income and the manner of acquisition and disposition of the assets of the legal person;
6. gather and examine other evidence relevant to clarification of the origin of the assets;
7. request assistance from the bodies of the Ministry of Interior for performing search or seizure under the procedure of the Penal Procedure Code..

(3) In the cases where there is a requirement provided for in the law that the prove should be made with a written document, the Commission may not draw conclusions to the detriment of the person under examination if the document was preserved due to expiry of the term for storing thereof under the existing legislation.

Article 21.

(1) The Commission or the directors of the respective territorial directorate may apply to the court for disclosure of the bank secrecy referred to in Article 62, para. 6, sub-paragraph 4 of the Credit Institutions Act and the secrecy under Article 35 of the Markets in Financial Instruments Act, should this be necessary for the purposes of this Act.

Article 21.

(1) The authorities referred to in Article 2, para. 10 herein shall have the right to require from the natural person under examination to submit within 2 months, 4 months respectively if the said person is abroad, a declaration in writing regarding:

1. the corporeal immovable and motor or land vehicles or vessels, limited real rights to corporeal immovable, cash deposits, securities, works of art, movable archaeological property, participating interests in commercial companies, receivables, patents, trademarks and industrial designs, owned by the said person under examination and by the members of his/her family;
2. a list of the bank accounts held by the person under examination and by the members of his/her family in Bulgaria and abroad;
3. the sources of income and the grounds for acquisition of the assets and for the maintenance of the family;
4. any transactions with corporeal immovable, movable things, shares and interests in commercial companies and other property effected during the period under examination by the person concerned and by the members of his/her family, as well as the sources of income used to effect the said transactions;
5. any debts to third parties.

(2) Should the person referred to in para. 1 be deceased, the declaration shall be required from the legal and testamentary heirs thereof.

(3) A declaration under para. 1 may furthermore be required from the third parties who have acquired assets from the person under examination, as well as from the persons in respect of whom data exist that they have acquired assets in their name with funds belonging to the person under examination, or were aware, or they had to suppose from the circumstances that the property acquired by them is of illegal origin.

(4) In respect of legal entities under examination, a declaration shall be required from the persons who represent, manage or control the said legal person, as well as from all persons who represented, managed or controlled the said legal entity during the period under examination. The declaration shall state accordingly the circumstances covered under para. 1, sub-paragraphs 1 to 5 regarding the legal entity referred to in Article 29 herein.

(5) The authority which requested the submission of a declaration shall fix the period referring thereto.

(6) The standard form of the declaration referred to in para 1 shall be endorsed by the Commission and shall be published in the State Gazette.

(7) The persons who fail to submit the declaration in the terms specified by the law or do not show the assets owned by them shall bear criminal responsibility for withholding the truth as provided for in Article 313 of the Criminal Code.

Article 23.

Upon conclusion of the examination under Article 16 and provided evidence was collected for lack of correspondence between the value of the property and the income of person under examination and his/her family, the Commission shall inform the bodies of the National Revenue Agency about the conduct of an audit of the person under Article 122, para 1, sub-paragraph 2 of the Tax and Social Insurance Procedure Code. Should the audit has established that the lack of correspondence is due to undeclared profits or income, the proceedings before the Commission is subject to termination after the audit instrument ascertaining the public receivable comes into force.

Section II
Subject to forfeiture

Article 24.

(1) The monetary equivalent of any assets whose value exceeds the income of the person and his/her family and no legitimate source has been proven shall be forfeited under the procedure of this Act.

(2) Should the person be deceased the assets shall be forfeited from the legal or testamentary heirs of the person up to the amount received by the said heirs.

(3) Assets that are not subject to confiscation shall not be counterfeited.

(4) Should the value of the illegally acquired assets is not exceeding BGN 20 000 it shall not be forfeited.

Article 25.

Until the reverse is established by evidence, considered to be acquired with the purpose of concealing the illegal origin shall be the assets acquired by the underage children or the spouse of the person under examination regardless of the property regime.

Article 26.

Until the reverse is established by evidence, considered to be acquired with the purpose of concealing the illegal origin shall be the assets transferred by the person under examination to the spouse, a person who is the de facto cohabitee with the examined person, to a former spouse, to lineal relatives up to any degree of consanguinity and to collateral relatives up to the fourth degree of consanguinity and affines up to the second degree inclusive as well as persons of acquaintance, of intimate, friendly, official, financial, economical and any other relation established depending on the circumstances of the case.

Article 27.

Until the reverse is established by evidence, considered to be acquired with the purpose of concealing the illegal origin shall be the assets which the person under examination has gratuitously transferred to third parties.

Article 28.

Subject to forfeiture in favour of the State shall also be the assets onerously transferred by the examined person to third parties on the account of the examined person provided they knew or had to suppose that the assets have illegal origin, or that they are acquired in order to avoid the forfeiture thereof, or to conceal the source or the real rights on them.

Article 29.

Any illegally acquired assets, which are incorporated into the assets or acquired by a legal entity controlled by the person under examination, whether independently or jointly with another natural or legal person, shall likewise be forfeited under the terms and under the procedure established by this Act.

Article 30.

(1) In the cases where assets for which no legal source has been established have been partially or entirely transformed to another property, the transformed property is subject to forfeiture.

(2) Where the assets for which no legal source has been established have been transferred onerously to a bona fide third party or where they are missing, their equivalent value shall be forfeited as at the moment of the transfer transaction.

Article 31.

Transactions with assets for which no legal source has been established, including those under which obligations were taken, or encumbrances created, or abandonment of rights was made, shall have no effect in respect of the State

Article 32.

The value of the property acquired or alienated by the persons examined shall be defined in the following manner:

1. for property acquired from the State or public organizations – at the purchase value;
2. for property acquired from individuals or legal entities, or for buildings constructed – at market prices as at the moment of acquiring or construction.
3. or property alienated – at market prices as at the moment of alienation.

Article 33.

(1) The rights of the State under this Act shall be extinguished upon the lapse of a 20-year period of prescription.

(2) Prescription shall begin to run from the date of acquisition of the assets and shall cease with the institution of proceedings under this Act.

Chapter Four**TERMS AND PROCEDURE FOR IMPOSITION OF INJUNCTIONS
AND FORFEITURE IN FAVOUR OF THE STATE OF ASSETS
FROM ILLEGAL SOURCE****Section I
Injunctions****Article 34.**

(1) Imposition of injunctions on illegally acquired assets shall be made by decision of the Commission on the basis of a report provided by the director of the respective territorial directorate.

(2) The Commission shall make a reasoned motion, supported by evidence under this Act, for imposition of injunctions before the regional court exercising jurisdiction over the permanent address of the individual or over the address of the registered office of the legal entity, as the case may be, and in the cases where corporeal immovable are incorporated into the assets, over the location of the property with the highest assessed value.

(3) The Commission may not require imposition of injunction on assets which are not subject to coercive enforcement under Article 414 of the Civil Procedure Code.

Article 35.

(1) The court shall impose the following injunctions:

1. preventive attachment of a corporeal immovable or overland, air and river and sea transportation means;
2. by means of a garnishment of movable things, receivables of the debtor and participation of the debtor in legal entities;
3. garnishment of the debtor's bank accounts;
4. garnishment of fixed tangible assets at book value of the legal person controlled.
5. other appropriate measures.

(2) The injunction comprises further the interest on and the acquisition of other civil fruits from the assets on which it has been imposed.

(3) The court may admit several kinds of injunctions up to the amount of the claim.

Article 36.

(1) The court shall pronounce within 48 hours of receipt of the request, rendering a ruling whereby it shall grant or shall refuse the imposition of the injunction. Any ruling granting an injunction shall be subject to immediate enforcement.

(2) The court ruling whereby imposition of an injunction is granted or refused shall be appealable with an interlocutory appeal within seven days, which period shall start running for the appellants from the date of serving thereof, and for the person under examination – from the day where a communication for the injunction imposed was served by the enforcement agent, by the registry service or by the court.

Article 37.

(1) After coming into force of the ruling for admitting injunction the court may permit the effecting of a payment or other acts of disposition of the assets, including after coming into force of the ruling admitting injunctions, where this is required for the purpose of:

1. medical treatment or other urgent humanitarian needs of the person on the assets whereof injunctions are imposed, or of a member of the family of the said person;
2. payment of support;
3. payment of obligations at public law to the State;
4. payment of remunerations for work performed;
5. compulsory social and health insurance;
6. payment of expenses needed to preserve and maintain the assets whereon injunctions are imposed;
7. payment of expenses in connection with the proceedings under this Act;
8. payment of the remuneration of the trustee in bankruptcy in bankruptcy proceedings.

(2) The permission shall be granted for each particular case, acting on a reasoned application by the interested party or, where payment of an obligation to the State is involved, on request by the Commission on the basis of a proposal made by the director of the respective territorial directorate.

(3) In the above cases the court shall pronounce within 48 hours after filing of any such application.

(4) Any perishable assets or assets whereof the preservation entails large expenses shall be sold by the authorities of the National Revenue Agency according to the procedure established by the Tax and Social Insurance Procedure Code, and the proceeds shall be credited to a special account.

(5) Should there be a risk of the assets being squandered, destroyed, concealed or disposed of, the court may order the sealing of premises, equipment, means of transport and any other where such assets are stored.

Article 38.

(1) Upon garnishment of a corporeal movable, the enforcement agent shall draw up an inventory, shall value and shall deliver the sub-paragraph of property for safe-keeping to the debtor or to a third party, or shall seize and store the sub-paragraphs of property, and a garnishment mark (sticker) may be placed on the sub-paragraph of property.

(2) In the cases where a motor vehicle is garnished, a notice of the garnishment imposed shall be transmitted to the authorities of the Ministry of Interior. A change of registration shall not be admitted before the lifting of the garnishment.

(3) In the cases where a civil aircraft is garnished, a notice of the garnishment imposed shall be transmitted to the Directorate General of Civil Aviation Administration for entry into the civil aircraft register. The transfer of the right of ownership, the creation and transfer of rights in rem and the creation of encumbrances in respect of the aircraft, effected after receipt of the notice of the garnishment imposed, shall have no effect in respect of the State.

(4) In the cases where the garnishment is imposed on agricultural or forestry machinery subject to registration according to the procedure established by Article 11 of the Agricultural and Forestry Machinery Registration and Control Act, a notice of the garnishment imposed shall be sent to the municipality in whose register the garnished agricultural or forestry machinery is subject to registration. The transfer of the right of ownership, the creation and transfer of rights in rem and the creation of encumbrances of agricultural or forestry machinery, effected after receipt of the communication for a garnishment imposed, shall have no effect in respect of the State.

Article 39.

(1) Garnishment of liquid or exigible receivables which the person under examination has in respect of natural persons or legal entities shall be imposed by means of a garnishment notice.

(2) Garnishment shall be considered imposed as from the moment of service of the garnishment notice. The garnishment notice shall be transmitted to the person under examination, to the garnishee and to the banks wherewith the garnishee holds accounts.

(3) If a garnished receivable is secured by a pledge, the pledgee shall be ordered not to deliver the sub-paragraph of property pledged to the debtor and to surrender the said sub-paragraph to the enforcement agent.

(4) If the garnished receivable is secured by a mortgage, the garnishment shall be noted in the relevant book at the Registry Service.

Article 40.

All types of bank accounts, deposit accounts, as well as sub-paragraphs of property deposited in safe-deposit vaults, including the content of safe-deposit boxes and amounts delivered by the person under examination for trust management, shall be subject to garnishment.

Article 41.

Till otherwise proved, for movable things and cash belonging to the person under examination are considered also those found with him, in his/her home or in other owned or rented by him/her premises, motor vehicles, offices, cases or safes.

Article 42. Receivables under writs of execution shall be garnished by means of drawing up an inventory and seizure of the writs by the enforcement agent, who shall deliver the said writs for safe-keeping at a bank. A record of proceedings shall be drawn up on the seizure and delivery of the writs of execution to a bank.

Article 43.

(1) Available securities shall be garnished in nominal value by means of drawing up an inventory and seizure of the securities by the enforcement agent, who shall deliver the said securities for safe-keeping at a bank. A record of proceedings shall be drawn up on the seizure and delivery of the physical securities at a bank.

(2) Upon garnishment of physical registered shares or bonds, the enforcement agent shall notify the company of this. The garnishment shall have effect in respect of the company as from the moment of receipt of the garnishment notice.

(3) Garnishment of dematerialized securities shall be imposed by means of dispatch of a garnishment notice to the Central Depository, simultaneously notifying the company. As from the moment of receipt of the garnishment notice, the dematerialized securities shall pass to the disposition of the enforcement agent. The Central Depository shall forthwith notify the relevant regulated market of the garnishment imposed.

(4) Garnishment of government securities shall be imposed by means of dispatch of a garnishment notice to the person keeping a register of government securities.

(5) Garnishment of securities shall take effect as from the moment of service of the garnishment notice.

(6) The garnishment of securities shall cover all property rights attaching to the securities.

(7) Within three days after receipt of the garnishment notice, the Central Depository and the person keeping a register of government securities shall be obligated to inform the enforcement agent as to the securities owned by the debtor, whether other garnishments have been imposed, and on what receivables.

(8) Garnishment of an equity interest in a commercial company shall be imposed by means of dispatch of a garnishment notice to the company and shall take effect as from the date of receipt of the garnishment notice. At the request of an enforcement agent, the garnishment shall be recorded according to the procedure applicable to the recording of a registered pledge of interests in commercial companies in the Commercial Register.

Article 44.

Cash held by the debtor in national or foreign currency shall be garnished by means of drawing up an inventory, seizing and depositing the cash on the account of the enforcement agent. The exchange rate of the bank wherethrough the currency deposit transaction is effected shall be applied upon translation of the exchange rate of the foreign currency.

Article 45.

(1) A corporeal immovable or a ship shall be attached by means of recording the court warrant at the order of the respective registry magistrate according to the registry procedure. The registry magistrate shall send a notification to the debtor of the fact of registration. A notice of

the preventive attachment shall be transmitted to the Central Pledge Register. A registered pledge recorded after such preventive attachment shall be inopposable to the public receivable of the State.

(2) A preventive attachment imposed on a ship shall be notified to the Maritime Administration Executive Agency for recording in the relevant ship registers. The transfer of the right of ownership, the creation and transfer of rights in rem and the creation of encumbrances in respect of the ship, effected after receipt of the notice of the garnishment imposed, shall have no effect in respect of the State.

Article 46.

(1) Save insofar as otherwise provided for in this Act, a garnishment and preventive attachment, imposed to secure the receivable, shall have the effect, envisaged in articles 451, 452 and 453, article 459, para. 1, articles 508, 509, 512, 513 and 514 of the Civil Procedure Code. The Commission may bring an action against the third garnishee for the amounts or sub-paragraphs of property which the said garnishee refuses to surrender voluntarily.

(2) As from the date of receipt of the garnishment notice, the third garnishee may not deliver the amounts or sub-paragraphs of property due thereby to the debtor, and shall be under an obligation of a safe-keeper in respect of the said amounts or sub-paragraphs. Execution of payment after receipt of the garnishment notice shall be void in respect of the State. The third garnishee shall incur solidary liability with the debtor for the receivable up to the extent of his/her obligation.

(3) The Registry Agency shall refuse to enter any changes of circumstances resulting from the transfer of participating interests after garnishment. The management bodies of joint-stock companies shall refuse to record transfers of registered shares by the debtor after garnishment.

(4) Any transfer of participating interests and shares, including registered shares, occurring after the garnishment notice shall have no effect in respect of the State.

Article 47.

Upon request of the Commission the court may revoke the injunction imposed where in the course of the proceedings it is established that the assets on which the injunction has been imposed have legitimate source.

Article 48.

In the cases of insolvency proceedings or proceedings for dissolution of a legal entity or of a sole trader, which have commenced after the imposition of injunctions, the assets in respect of which injunctions have been imposed according to the procedure established by this Act shall be excluded from the insolvency estate or from the property subject to liquidation respectively.

Article 49.

For the cases not regulated by this section the provisions of the Civil Procedure Code shall apply.

Article 50.

(1) Injunctions may be imposed according to the procedure established by this Act also on assets illegally acquired on the territory of the Republic of Bulgaria if the competent authorities of another State have so requested.

(2) The injunction shall be imposed where so provided for in an international treaty where to the Republic of Bulgaria is a party.

Section II
Procedure before the court for forfeiture
in favour of the State of assets of illegal origin

Article 51.

(1) Following the imposition of injunctions on the property of the person under examination, based on a reasoned conclusion made by the director of the territorial directorate, the Commission shall decide to claim forfeiture in favour of the State of the monetary equivalent of the illegally acquired property.

(2) The action shall be brought before the regional court at the domicile of the person, respectively of the headquarters of the legal entity, within three months from the imposition of the injunctions.

(3) In the event that the Commission has not brought an action within the term specified in paragraph 2 the injunctions imposed shall be revoked on request of the examined person.

Article 52.

(1) Where the property subject to seizure includes movable and immovable property, the application shall be submitted to the regional court at the location of the corporeal immovable, but where the property includes more than one immovable property – at the location of the property with the highest assessed value.

(2) The regional court shall institute proceedings and shall publish in the Official Gazette a notice containing: the number of the case, data for the received request, an inventory of the property.

(3) Within three months from the publication of the notice third parties claiming rights to separate individual objects of the property concerned, may bring claims under the initiated proceedings.

(4) The person under examination and the persons referred to in Article 24-29 shall be constituted as respondent in the proceedings.

(5) Respondents are required to exhaust all their objections within these proceedings.

Article 53.

(1) The Court shall sit in an open session with the participation of a prosecutor.

(2) The Commission shall be represented by the Chairperson or a legal advisor authorized by him/her.

(3) Any evidence admissible under the Civil Procedure Code shall be admitted in the proceedings.

(4) The Commission shall provide any evidence for the property acquired, for any lack of correspondence between the property and the income of the person and his/her family as well as for the presence of illegal activity, the benefits from which make possible the acquisition of the property.

(5) The burden of proving that the property has a legitimate origin falls on the person who has acquired it.

(6) The Court shall deliver its decision which is subject to appeal by the general procedure.

(7) When rejecting the request for forfeiture of assets in favour of the State, the court shall overrule the injunctions imposed thereon.

(8) Upon request of the Commission the court may suspend the proceedings until conclusion of the criminal proceedings against the person with a sentence that has entered into force.

Article 54.

(1) Until conclusion of the oral arguments in first instance the parties to the proceedings may sign an agreement.

(2) With the agreement 80% of the monetary equivalent of the illegally acquired assets. Agreement may be concluded if the value of the lack of correspondence between the property and his/her income established by the Commission for the relevant period does not exceeds BGN 300 000 and provided the respondent has deposited the amount specified in sentence 1 to the special account of the Commission in within the defined term.

(3) The agreement shall be approved by the court if not contradictory to the law and good morals. The consent of the prosecutor participating in the proceedings is required for the agreement.

(4) The agreement has the power of an enforced judgement. From the moment of the approval thereof the ownership of the property to which it refers shall be transferred to ownership of the State.

(5) The costs for the proceedings shall be borne by the parties as they have been incurred.

**Section III
Liability for damages**

Article 55.

The State shall be liable for any damage inflicted by any illegal acts or omissions committed in connection with this Act under the terms and according to the procedure established by the Liability of the State and the Municipalities for Damages Act.

**Section IV
Enforcement over the assets forfeited by the State**

Article 56.

(1) The receivables of the State under decisions for forfeiture issued by the court and which have entered into force under the procedure of this Act shall be public State receivables.

(2) The court decisions for forfeiture entered into force, the writs of execution issued on the basis thereof, as well as all other documents required for the enforcement of the decision for forfeiture shall be transmitted by the Commission to the Minister of Finance within 3 days from the completion of the file. The Minister shall appoint a public enforcement agent who shall immediately proceed with the turning into cash of the property whereupon injunction has been imposed under the procedure of Section IV of the Tax and Social Insurance Procedure Code.

(3) The public enforcement agent shall offer the movable and immovable property, self-contained parts or indivisible shares of corporeal immovable or rights in rem for public sale. The owners of the owners of the other self-contained parts may file a request for buying them at market prices within 14 days from the receipt of the invitation to this end by the public enforcement agent.

(4) The money forfeited in favour of the State as well as the amount received from the sale of the movable and immovable property constitute fiscal income of the State budget and shall be deposited to account of the National Revenue Agency.

Chapter Five

INTERNATIONAL COOPERATION

Article 57.

The Identification of Illegally Acquired Assets Commission shall exchange, for the purposes of this Act, information with the respective authorities of other States and international organisations based on international instruments and international treaties in force for the Republic of Bulgaria.

Chapter Six

ADMINISTRATIVE PENAL PROVISIONS

Article 58.

(1) For the violation of the obligation under Article 18, para 3 the officials found guilty shall be fined with BGN 1000 up to BGN 5000, if the act does not constitute a criminal offence.

(2) Where a breach of Article 18, para 3 was committed by a company, bank or other credit institution, the property sanction amounting from BGN 2000 to BGN 20000 shall be imposed

(3) For violation of Article 20, para. 2, sub-paragraph 4 the offenders shall be fined with BGN 500 up to BGN 2000.

SUPPLEMENTARY PROVISIONS

§ 1. Under this law:

1. "Assets" shall mean money, assets of any kind, tangible or intangible, movable or immovable, documents or instruments evidencing title to such assets or other rights associated with them.

2. "Controlling of a legal person" shall be present where:

a) a natural person possesses, directly or indirectly, more than 25 percent of the shares and of the capital of the legal entity and controls it, directly or indirectly;

b) a natural person exercises controlling functions in terms of § 1c of the Additional provisions of the Commercial Act;

c) 25 percent or more of the assets of a not-for-profit organization are managed and allocated in favour of a natural person;

d) a not-for-profit organization has been set up and is functioning in favour of a group of natural persons.

3. "Family" shall mean a spouse and the children under age.

4. "Illegally acquired assets" shall mean assets that are not corresponding to the income of the person and his family and no legitimate source has been established for the origin thereof.

5 "Illegal activity" is any activity undertaken on the Republic of Bulgaria or abroad, which constitutes a crime or an administrative offence under the Bulgarian law.

6. "Market value" shall be the value of the property or the corporeal thing without any taxes and fees calculated which would be paid on the same conditions for a similar property or corporeal thing.

7. "Income" shall be remuneration obtained by a person under employment, income from services performed in person, income from practicing of liberal professions, the net income from entrepreneurial activity, dividends and other income from movable and immovable property, income from agricultural activity and retail sale, other income from lottery and sport bettings, interests, licence and commission remunerations and any other income obtained from economic activity.

§ 2. For the cases not regulated under this law the provisions of the Code of Civil Procedure shall apply.

TRANSITIONAL AND FINAL PROVISIONS

§ 3. Proceedings before the Commission instituted under the Forfeiture in Favour of the State of Illegally Acquired Assets Act for which no claim has yet been submitted to the court shall be completed under the procedure of this Act.

§ 4. The Identification of Illegally Acquired Assets Commission shall continue its activity until expiry of the term of office. For incumbent members of the Commission the requirements of art. 12, para of the repealed Forfeiture in favour of the State of Assets acquired from illegal activity shall apply.

§ 5. Provisions of Article 2, para. 12 and 13 shall apply correspondingly to the incumbent officers and members of the Commission considered from the date of their appointment.

§ 6. Within three months from the enactment of this law, the Chairperson of the Commission shall ensure the implementation of Article 3, para. 14.

§ 7. The Commission shall adopt the Regulation under Article 2, para. 11 within two months from the enactment of this Act.

§ 8. Instructions under Article 19 shall be issued within six months from the enactment of this Act.

§ 9. The Forfeiture in Favour of the State of Assets Acquired from Criminal Activity Act (published, SG No 19 of 2005, amend., No. 86 and 105 of 2005, SG 33 and 75 in 2006 , No 52, 59 and 109 of 20.12.2007, SG No 16 of 2008, SG No 12, 32 and 42 of 5.06.2009) shall be repealed.

§ 10. In the Tax and Social Insurance Procedure Code (published in SG 105 of 2005, amend., No. 30, 33, 34, 59, 63, 73, 80, 82, 86, 95 and 105 of 2006 , ea. 46, 52, 53, 57, 59, 108 and 109 in 2007, iss. 36, 69 and 98 in 2008, iss. 12, 32 and 41 in 2009) in Article 74, para .1, sub-paragraph 3 the words " Criminal Assets Identification Commission" shall be replaced by "Identification of Illegally Acquired Assets Commission".

§ 11. In The Credit Institutions Act (published, SG 59 of 2006, amend., No. 105 of 2006, SG 52, 59 and 109 in 2007, iss. 69, 2008, issue. 23, 24 and 44 of 2009) at 62, para 6, sub-paragraph 4 the words "Criminal Assets Identification Commission" shall be replaced by "Identification of Illegally Acquired Assets Commission".

§ 12. In the Measures against Financing of Terrorism Act (published, SG 16 of 2003, amend., No. 31 of 2003 pcs. 19 of 2005, SG 59 of 2006, SG 92 and 109 of 2007, SG 28 and 36 of 2008) in Article 3, para. 2 and article 12 the words "Criminal Assets Identification Commission " shall be replaced by "Identification of Illegally Acquired Assets Commission".

§ 13. In the Notaries and Notarial activity Act (published, SG 104 of 1996, amend., No. 117, 118 and 123, 1997, issue. 24, 1998, issue. 69 3.08. 1999, No.. 18 of 2003, SG 29 and 36 in 2004, iss. 19 and 43 of 2005, SG 30, 39 and 41 of 2006 pcs. 59 and 64 of 2007, SG 50 and 69, 2008, issue. 42, 47 and 82 2009) in Article 25, para. 2, the words "Criminal Assets Forfeiture Act" shall be replaced by the "Forfeiture in Favour of the State of Illegally Acquired Assets Act "

§ 14. In the Markets of Financial Instruments Act (published, SG 52 of 2007, amend., No. 109, 2007, issue. 69, 2008, issue. 24 of 2009) in Article 35, para. 6, sub-paragraph 4 the words "Criminal Assets Identification Commission" shall be replaced by "Identification of Illegally Acquired Assets Commission".

§ 15. In the Public Disclosure of Senior Public Official's Financial Interests Act (published SG No. 38 of 2000 г., amended, No. 28 of 19.03.2002 г., No. 74 of 30.07.2002 г., amended and complemented, No. 8 of 28.01.2003 г., in force from 1.03.2003 г., No. 38 of 11.05.2004 г., amended, No. 105 of 29.12.2005 г., in force from 1.01.2006 г., No. 38 of 9.05.2006 г., amended and complemented, No. 73 of 5.09.2006 г., in force from 1.01.2007 г., complemented, No. 109 of 20.12.2007 г., in force from 1.01.2008 г., amended, No. 33 of 28.03.2008 г., No. 69 of 5.08.2008 г., amended and complemented, No. 94 of 31.10.2008 г., in force from 1.01.2009 г., amended, No. 93 of 24.11.2009 г., in force from 25.12.2009 г.) paragraph 9 shall be added to art. 7:

„(9) In the cases of failure to submit declaration by the persons under art. 2, para 1, as well as where there has been drawn a conclusion for lack of correspondence, the Chairperson of the Audit Office shall notify the Identification of Illegally Acquired Assets Commission to carry out examination of the assets of the persons concerned.”