



# Global REIT Survey

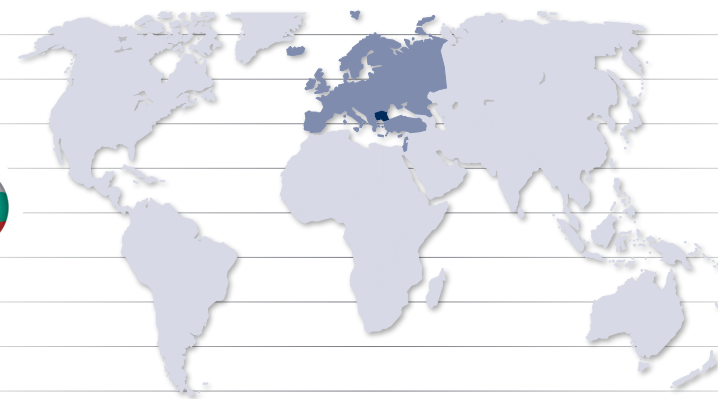
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Europe

## Bulgaria

(SPIC)



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For any questions or feedback related to this survey, please contact:

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# 1 General introduction

	Enacted year	Citation	REIT type
SPIC	2004	Special Purpose Investment Companies Act (SPICA)	Corporate type

The SPIC regime was introduced with the Special Investment Purpose Companies Act (SPIC), which came into force on January 01, 2004.

## Sector summary (end of July 2010)

Listing Country	Number of Companies	Sector Performance-12 Months %	Sector Mkt cap £bn	% of Global REIT MKT
Bulgaria	19	-0.3	0.1	0.0%

## Top five REITs

	Market cap (€m)	Sector type
Advance Terrafund	44	Agricultural, Land
Bulgarian Real Estate Fund Inc	10	Agricultural, Hotel, Industrial, Land, Office, Residential, Retail
Elana Agricultural Land Opportunity	17	Agricultural
Sopharma Properties REIT	18	Commercial, Office, Residential
FairPlay Properties	9	Residential, Hotel, Industrial, Office

# 2 Requirements

## 2.1 Formalities / procedure

### Key requirements

- Licence from the Financial Supervision Commission.
- Listing on Bulgarian Stock Exchange authorization.
- Depository bank mandatory.

In order to qualify as a SPIC, a company is required to obtain a licence from the Bulgarian Financial Supervision Commission (FSC). A SPIC shall be established at a constituent meeting at which its shares are subscribed. The founders may not number more than 50. Within seven days after the SPIC is registered in the Commercial Register, the FSC shall be notified. The SPIC shall file with the FSC an application for licence within six months as from its registration with the Commercial Register.

In addition, upon the incorporation of a SPIC, the constituent meeting is obliged to pass a resolution for initial capital increase up to at least 130% of the initial share capital. This first capital increase can be performed only on the basis of a prospectus authorised by the FSC. Once the formal authorisation (licence) is granted, the SPIC may effectively increase its capital. This increase is to be performed through the issuance of rights entitling their holders to take part in the subscription of shares from the capital increase. Said rights must be listed on a regulated market (the Bulgarian Stock Exchange).

## 2.2 Legal form / minimum share capital

Legal form	Minimum share capital
Joint stock company	BGN 500,000 (EUR 255,646)

**Legal form**

A SPIC can only be established and operate as a public joint stock company (AD). The company name of the special purpose investment company needs to include the denomination 'joint stock special purpose investment company' or the abbreviation 'JSSPIC'.

The registered seat and address of management of a SPIC must be located in Bulgaria. The same requirement applies to its service companies, which are required for certain SPIC activities.

**Minimum share capital**

The minimum share capital requirement for a SPIC (at the time of incorporation) is BGN 500,000 (EUR 255,646). The share capital must be fully paid in as of the date of applying for registration in the Commercial Register. No contributions in kind are permitted. The SPIC can issue only book-entry (dematerialised) shares.

The increase of registered capital via an IPO should amount to not less than 30% of the initially registered capital.

**2.3 Shareholder requirements / listing requirements**

Shareholder requirements	Listing mandatory
<ul style="list-style-type: none"> <li>- At least 30% of the capital shall be owned by an institutional investor.</li> <li>- No more than 50 founders.</li> </ul>	Yes

**Shareholder requirements**

Upon the incorporation of a SPIC, at least 30% of the capital shall be subscribed by an institutional investor. An 'institutional investor' is not legally defined by the SPIC. However, according to FSC guidelines, an institutional investor is described as a bank, insurance company, licensed pension fund or other financial institution, which are subject to the supervision of the FSC. Foreign legal entities may also act as institutional investors if approved by the FSC. An institutional investor may also have a licence granted by the

FSC. As an alternative to FSC supervision, banks are subject to special legal acts. It is not allowed for more than 50 persons or entities to be founders of a SPIC. It has not yet clearly been stated whether a SPIC may be owned by just one shareholder.

**Listing requirements**

Within six months after its registration in the Commercial Register, the SPIC must apply for the approval of its prospectus for IPO by the FSC. The prospectus is submitted to the FSC as a part of the documents accompanying the application for issuance of a licence for carrying on activities as a SPIC.

There is no clear rule regarding which stock exchange the SPIC must be listed on. However, based on the analysis of the current regulations, it seems that the SPIC can only be listed on the Bulgarian Stock Exchange. Before it may do so, the SPIC's IPO prospectus must be approved by the FSC (which only approves IPO prospectuses of the Bulgarian Stock Exchange). However, as of January 01, 2007, the Bulgarian legislation has introduced new amendments related to public offering of securities. These amendments also make reference to the regulated security markets of other EU member states. Therefore, according to the relevant amendments, it is expected that SPICs may be listed on other EU stock markets as well.

**2.4 Asset levels / activity tests****Restrictions on activities / investments**

- No more than 10% of the SPIC's assets may be invested in mortgage bonds.
- No more than 10% of the SPIC's assets may be invested in service companies.
- No investments allowed in real estate subject to legal dispute.
- Real estate investments must be located in Bulgaria.

The business activity of a SPIC investing in real estate is limited to:

- purchasing real estate (which must be located in Bulgaria) and limited property rights to real estate, carrying out real-estate construction and improvements (for property management, renting, leasing, sales), and

- raising funds by issuing securities. The IPO is mandatory for SPICs. However, additional financing is not prohibited. Therefore, the SPIC may engage in equity and debt financing.

SPICs can invest up to 10% of their assets in mortgage bonds. SPICs are entitled to invest up to 10% of their assets in service companies. No other investments in shares are allowed.

A SPIC may not directly perform the maintenance services of the acquired real estate. The SPIC must delegate these services to one or more service companies. These companies can engage in the following activities: servicing and maintaining acquired real estate, constructing and improving real estate, servicing the receivables, keeping and safeguarding the accounting records and other reporting correspondence, and many other necessary activities.

## 2.5 Leverage

### Leverage

Short-term loans cannot exceed 20% of income generating asset.

The only introduced debt financing limitation concerns loans granted for settlement of interest due by the SPIC. In that case, the company may only borrow (from a bank) an amount not greater than 20% of its balance sheet asset value and for a period not exceeding one year.

## 2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of the net income of the year.	Included in net income.	Distribution until the end of the following financial year required.

### Operative income

The SPIC is obliged to distribute at least 90% of the profit as dividends. It must do so within 12 months following the financial year in which the profit was incurred.

### Capital gains

Special rules determining the formation of the profit of a SPIC are set out under the SPICA, and the capital gains/losses are explicitly provided as such items.

## 2.7 Sanctions

### Penalties / loss of status rules

Monetary penalties and a possible loss of SPIC status.

The Finance Supervision Commission will cancel the SPIC's licence if:

- the SPIC does not begin activities within 12 months after receiving the licence;
- the SPIC has provided wrongful information (based on which the licence was granted);
- the SPIC does no longer meet the conditions under which the licence has been granted;
- the SPIC systematically breaches SPIC statutory rules.

Furthermore, SPICs are not allowed to change their legal form. Doing so would result in a loss of status.

If the licence is cancelled by the Financial Supervision Commission, the company will be treated as an ordinary company for tax purposes.

SPICs which breach the profit distribution obligation may be penalised between BGN 5,000 (EUR 2,500) and BGN 10,000 (EUR 5,113).

## 3 Tax treatment at the level of REIT

### 3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt.	Tax-exempt.	N/A

#### Current income

The income of a SPIC is not subject to corporate taxation. In this respect the SPIC is not entitled to a tax credit for foreign income tax paid.

#### Capital gains

Capital gains realised by a SPIC are not subject to taxation, since they are included into the financial result of the SPIC, which is exempt from corporate taxation.

#### Other taxes and fees

Other taxes may be applicable to SPICs such as VAT at a standard rate of 20%, garbage collection fees and annual real estate tax in the range of 0.01%-0.25% (the exact rate is determined by the municipality where the property is located).

#### Accounting rules

Unless provided by the SPIC regime, the rules provided by the IFRS apply.

### 3.2 Transition regulations

#### Conversion into SPIC status

The tax legislation does not envisage any special rules for SPIC.

### 3.3 Registration duties

#### Registration duties

- Transfer tax of 0.1% to 3%.
- Land Registrar Entrance Fee of 0.1%.

A real estate transfer tax the rate of which varies between 0.1% and 3% (the exact rate applicable in the respective year is approved by the Municipal Council as per the location of the real estate property) and a land registrar entrance fee of 0.1% are levied on the purchase price of the real estate. For tax purposes, the purchase price may not be less than the tax value as defined by the municipal authorities (in compliance with the Local Taxes and Fees Act).

## 4 Tax treatment at the shareholder's level

### 4.1 Domestic shareholder

Corporate shareholder	Individual shareholder	Withholding tax
<ul style="list-style-type: none"> <li>- Dividends are subject to corporate income tax.</li> <li>- Capital gains could be tax exempt.</li> </ul>	<ul style="list-style-type: none"> <li>- 5% withholding tax on distributions is the final levy.</li> <li>- Capital gains could be tax exempt.</li> </ul>	To credit withholding tax is not possible.

#### Corporate shareholder

#### Dividends

Dividends distributed by a SPIC to domestic corporate shareholders are not subject to withholding tax except for shareholders which are not considered merchants according to the Bulgarian legislation. However, dividends are taxed with corporate income tax at the recipient level under the general tax rules.



**Capital gains**

Capital gains realised from the sale of SPIC shares could be tax-exempt.

**A return of capital distribution**

Under the Bulgarian tax legislation, capital decrease is subject to the same tax treatment as dividend distribution.

**Individual shareholder**

If dividends are distributed to resident physical persons, a 5% domestic final withholding tax is applied. Capital gains realised on the sale of the SPIC shares could be tax-exempt.

**Withholding tax**

For individual shareholders and corporate shareholders who are not merchants a withholding tax of 5% applies. It is not possible to credit this withholding tax. Dividend distributions to corporate shareholders are exempt from withholding tax.

**Individual shareholder**

Dividends paid to foreign individuals face a 5% withholding tax unless a more favourable rate is provided under an applicable DTT, which is again applicable on the same conditions for corporate shareholders. Capital gains could be exempt from taxation, as long as the SPIC shares are listed on the stock exchange.

**Withholding tax**

A 5% withholding tax will be levied if the recipient is not an EU/EEA entity. Treaty relief may be available.

## 5 Tax treatment of foreign REIT and its domestic shareholder

### Income realised by a foreign REIT from Bulgarian source

**Foreign REIT**

Local rental income is subject to Bulgarian withholding tax of 10%.



### 4.2 Foreign shareholder

Corporate shareholder	Individual shareholder	Withholding tax
<ul style="list-style-type: none"> <li>- Dividends are subject to a 5% withholding tax.</li> <li>- Possibility of dividend tax reduction.</li> <li>- dividends distributed to EU/EEA entities are tax exempt.</li> <li>- Capital gains could be tax-exempt.</li> </ul>	<ul style="list-style-type: none"> <li>- Dividends subject to a 5% withholding tax.</li> <li>- Possibility of dividend tax reduction.</li> <li>- Capital gains could be tax-exempt.</li> </ul>	<ul style="list-style-type: none"> <li>- Treaty relief might apply.</li> </ul>

**Corporate shareholder**

A 5% domestic tax rate, or the lower respective DTT withholding tax rate, applies. DTT protection can be obtained following a successful completion of the advance clearance procedure under the Tax and Social Security Procedure Code. This option would only be selected if the DTT would offer a more favorable withholding tax than the domestic tax law. In addition, dividends distributed to EU/EEA entities are exempt from taxation.

### Income realised by Bulgarian residents from a foreign REIT

Corporate shareholder	Individual shareholder
Dividends distributed by EU/EEA corporations are tax exempt.	No tax privileges.

### Foreign REIT

The Bulgarian rental income of a foreign REIT is subject to a withholding tax of 10%.

### Corporate shareholder

Corporate shareholders are taxed on the income from dividends distributed by a foreign corporation, except for dividends from EU/EEA residents.

### Individual shareholder

Individual shareholders are taxed on the income from dividends distributed by a foreign corporation under the general rules and such are subject to 5% one-off tax. ■

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