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The New Act on Companies Registered in Offshore Zones

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Main objectives

- The adoption of the Act on the Economic and Financial Relations with Companies Registered in Preferential Tax Regime Jurisdictions, the Persons Related to Them and Their Beneficial Owners is a result of the international initiative for counteractions against tax fraud and tax avoidance
- **The Act entered into force on 1 January 2014**
- The main objectives of the Act are as follows:
  - Prevention of acquisition of public funds and management of financial resources by companies which are registered in preferential tax regime jurisdictions as well as by the parties related to them
  - Prevention of tax avoidance

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Scope of the Act

Companies affected by the Act

- The companies, regardless of their legal form, which are registered in jurisdictions with preferential tax regime ("**offshore zones**")
- Related parties to the above companies – pursuant to the definition of "related parties" under the Commercial Act, related parties are the shareholders, a company and its shareholder holding more than 5% of the shares, etc.
- Companies in which the above companies participate directly or indirectly

Jurisdictions with preferential tax regime

- The definition is in § 1, item 64 of the Supplementary Provisions of the Corporate Income Tax Act and it includes:
  - Exhaustively listed countries/territories – Virgin Islands, Aruba, the Commonwealth of the Bahamas, Gibraltar, Panama, Hong Kong, etc., **or**
  - Countries/territories with which Bulgaria has no effective double tax treaties **and** in which the taxes are lower than 40% of the taxes in Bulgaria

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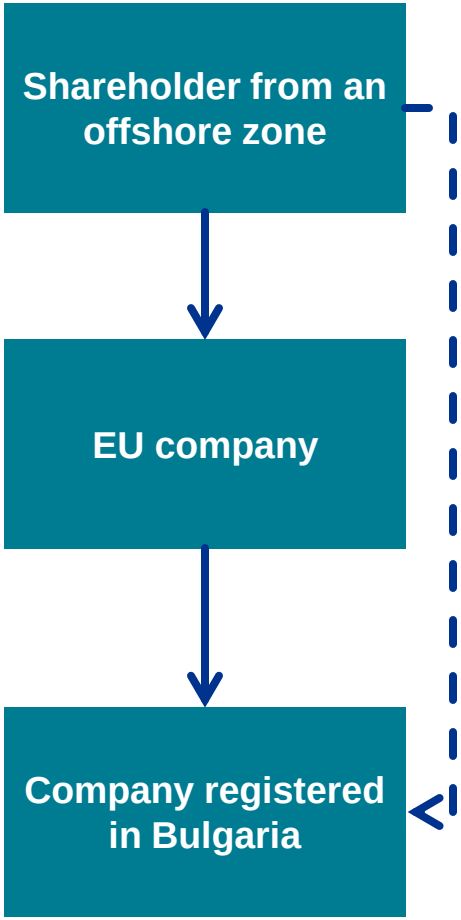
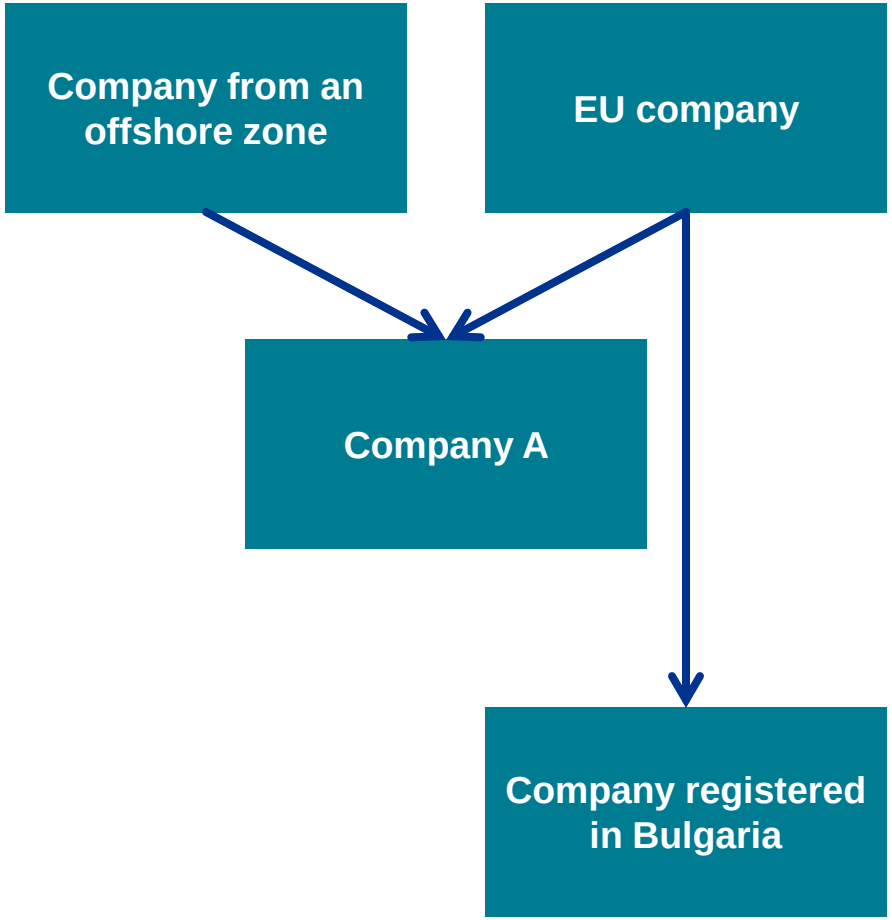
Companies affected by the Act – examples

Direct and indirect participation / acquisition



Participation / acquisition by a related party



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Affected sectors and activities (1)

- Companies registered in offshore zones as well as their related parties **are prohibited from participation (direct or indirect) in procedures for obtaining a license for:**

Credit institution

Payment institution

Insurance company

Tax warehouse

Pension insurance company

Rendering activities under the Energy Act (production, trading)

Investment intermediary

Mobile operator

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Affected sectors and activities (2)

- Companies registered in offshore zones as well as their related parties **are prohibited from directly or indirectly owning shares, regardless of the number of shares, in:**

Credit institution

Insurance company

Insurance broker or agent

Investment intermediary

Investment or management company

Payment institution

Electronic money company

Pension insurance company

Producer of energy from renewable sources

Company with state or municipal ownership

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Affected sectors and activities (3)

- **The Act** also **prohibits participation** of companies registered in offshore zones and their related parties in:
  - Public procurement procedures, including through a partnership (civil partnership or consortium)
  - Procedures for obtaining a concession and permits for prospecting and exploration of underground resources
  - Procedures for obtaining a concession or assignment of agreement for waste collection and disposal activities
  - Procedures for obtaining a concession or assignment of agreement for water supply and take away activities
  - Public-private partnerships
  - Privatization transactions
  - Acquisition of state or municipal property as well as ownership over land and forests from the state forest fund

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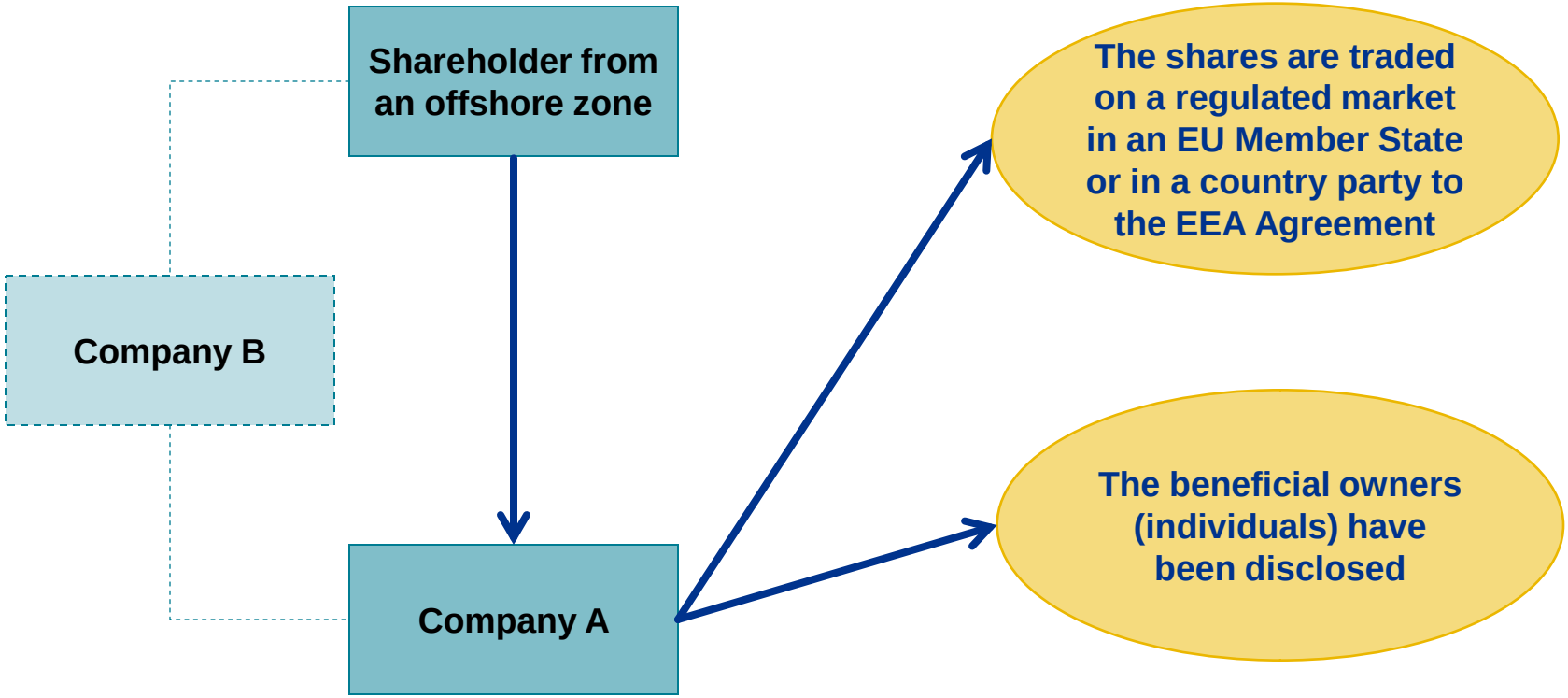
Companies falling into the exceptions of the Act (1)

- **A company,** in which directly or indirectly participates a company registered in an offshore zone **whose shares are traded on a regulated market** in an EU Member State or in a country party to the European Economic Area Agreement, or in other markets, specified in special legislative acts, **and whose beneficial owners (individuals) have been disclosed**



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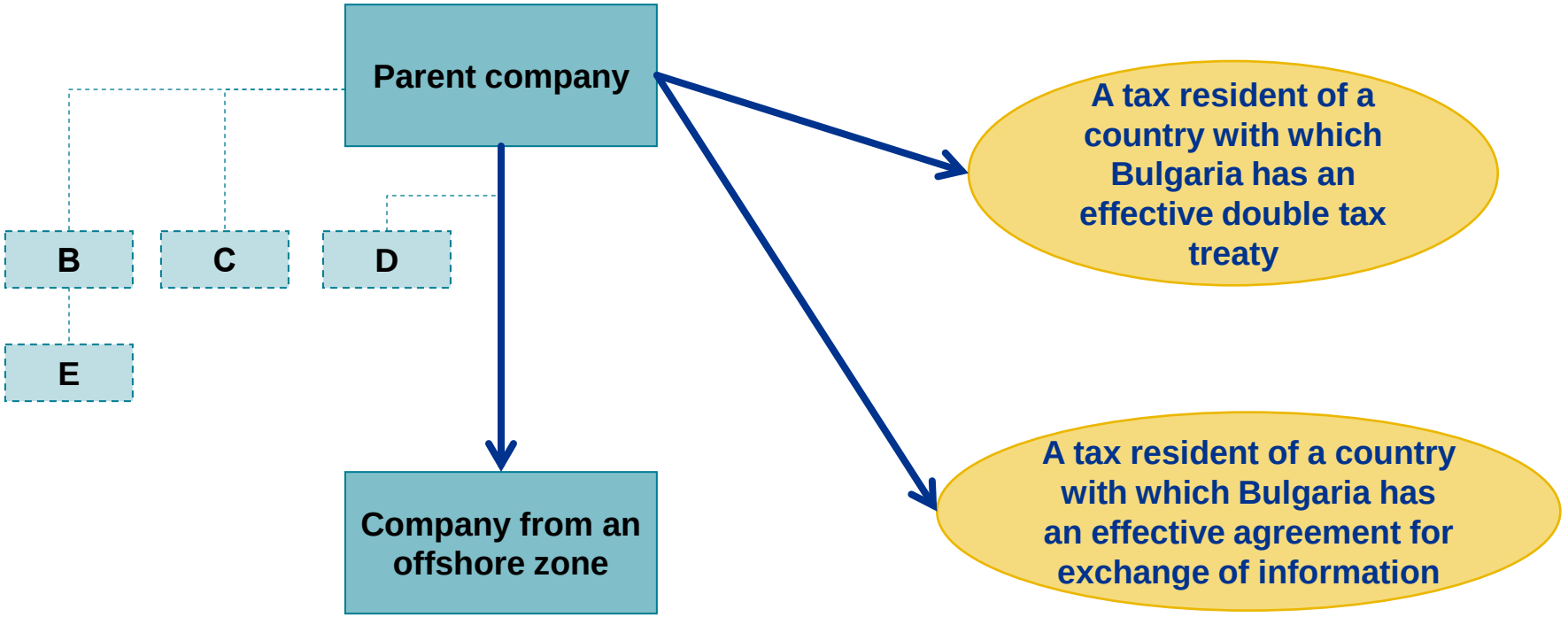
Companies falling into the exceptions of the Act (2)

- **A company** registered in an offshore zone which is a part of an economic group and **whose parent company is a tax resident** of a country with which Bulgaria has an effective double tax treaty or an effective agreement for exchange of information:



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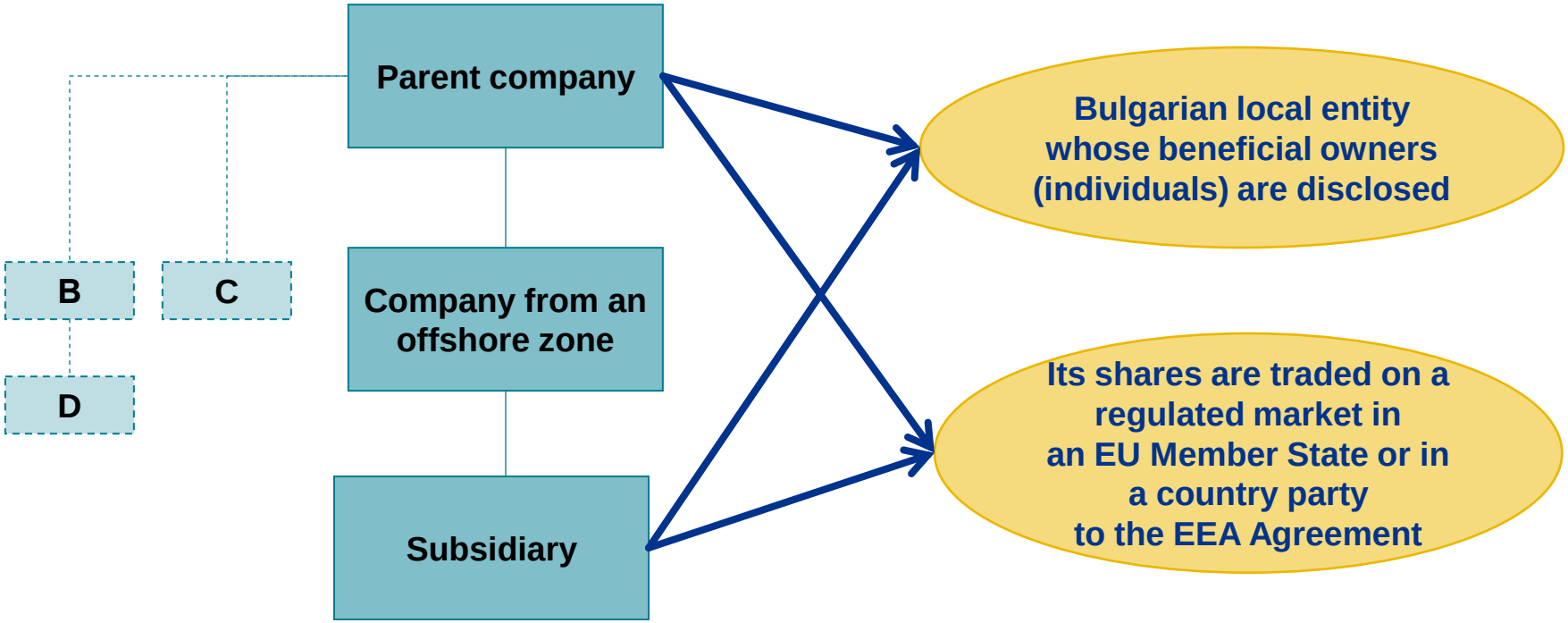
Companies falling into the exceptions of the Act (3)

- **A company** registered in an offshore zone which is a part of an economic group and **whose parent company or subsidiary:**
  - **Is a Bulgarian local entity** whose **beneficial owners (individuals) are disclosed,** or
  - **Is traded on a regulated market** in an EU Member State or in a country party to the European Economic Area Agreement



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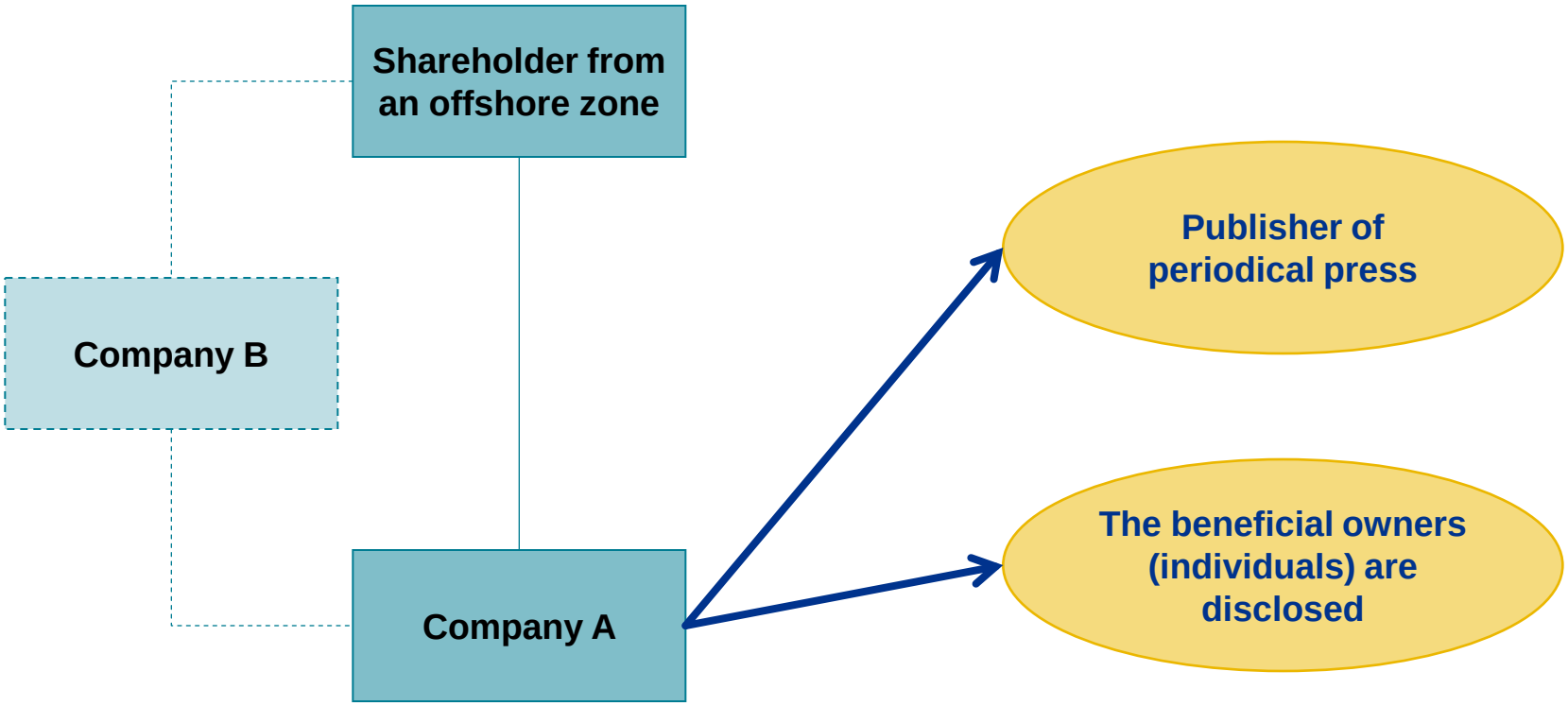
Companies falling into the exceptions of the Act (4)

- **A company,** in which directly or indirectly participates a company registered in an offshore zone, **is a publisher of periodical press** and **whose beneficial owners (individuals) are disclosed**, pursuant to the provision of the Act on Compulsory Deposit of Printed and Other Works



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Registration of certain circumstances in the Commercial Register

- **Obligation to register in the Commercial Register circumstances** related to the companies falling into the exceptions of the Act, including data identifying their beneficial owners (individuals)
- The respective registration should be executed either **under the batch of the respective company registered in an offshore zone** or **under the batch of the respective Bulgarian company**
- The Act does not envisage any amendments to the Commercial Register Act
- The adoption of **additional legislation** to enable the registration of these circumstances in the Commercial Register is critical
- **Checks** are performed by the competent authorities regarding the existence of the circumstances registered in the Commercial Register and sanctions could be provided in case the circumstances are not registered

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Fines and penalties for infringement of the Act

- If documents containing false data are presented in order to verify facts on the grounds of which exceptions of the Act shall be sought, **a fine at the amount between BGN 50,000 and BGN 100,000**
- Companies registered in an offshore zone or parties related to them which establish or acquire shares in a company publisher of periodical press and which do not fall within the exceptions of the Act shall be liable to **a fine at the amount between BGN 100,000 and BGN 500,000**
- The infringements of the Act shall be ascertained by the relevant competent authority – Bulgarian National Bank, Financial Supervision Commission, State Energy and Water Regulatory Commission, etc.

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Other consequences in case of infringements of the Act

- The competent authorities may impose the following measures if the exceptions provided for in the Act are applied on the basis of false data:
  - Refusal for issuance of a license or withdrawal of an issued license or permit for carrying out the relevant activity or an acquisition permit
  - Elimination from a procedure to award a concession, public procurement, procedure for selection of a private partner, privatization procedure
  - Termination of concessions and public procurement agreements, public-private partnerships, sale contracts, etc., whereby no compensation will be due by the respective contracting authority
- Stricter consequences are provided for companies participating in public procurement as a result of implementation of the exceptions of the Act based on false data, namely reimbursement of the payments received under signed or completed contracts
- It is a peculiarity of the Act that it does not provide for any measures in some cases, e.g. establishment or participation in a publisher of periodical press or in a company whose activities are regulated by the Renewable Energy Act

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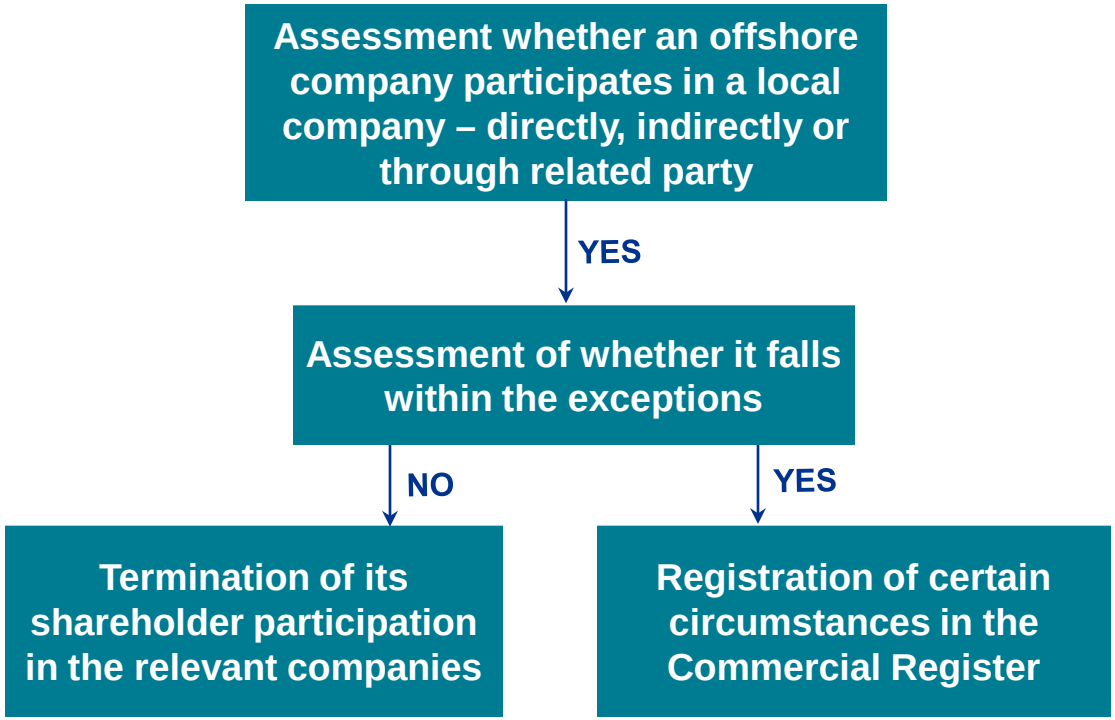
Compliance of companies falling in the scope of the Act with its requirements

- The companies which fall within the scope and prohibitions of the Act should assure their activities are in compliance **not later than 1 July 2014**
- Each company operating in sectors affected by the Act should undertake the following actions:



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Q&A

Thank you

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