

# Doing Business in Belarus

## - Overview -

**Investigate business – do business**



## To our readers

International law firm “Arzinger & Partners” is pleased to offer the overview “Doing Business in Belarus”.

Extensive experience of our companies enabled us to prepare a publication which offers unbiased and comprehensive overview of Belarus, covering a great number of aspects and key features of the Belarusian corporate, currency, customs and tax legislation.

## About us

### The Republican Centre for Technology Transfer

The Republican Centre for Technology Transfer (RCCT) was founded in May 2003, under the aegis of the State Committee on Science and Technologies of the Republic of Belarus (SCST), the National Academy of Sciences of Belarus, the United Nations Development Programme (UNDP) and the United Nations Industrial Development Organization (UNIDO). RCCT is a consortium including headquarters in Minsk, 2 overseas field offices in China, 5 regional offices, 26 branch offices at research organizations, institutes, universities, enterprises and 63 foreign partners in 21 countries.

RCCT promotes co-operation between developers, users of high technologies and investors with the aim that existing knowledge, facilities, or capabilities developed under a government or a private research and development (R&D) funding are utilized to fulfill public and private needs.

Main tasks set for RCCT are the following: creating and maintaining information databases meant for serving clients in the technology transfer sector; assisting innovation activity agents in development and promotion of their innovation and investment projects; instructing and training specialists in research- and innovation-related entrepreneurship; establishing RCTT's field offices all over the world,



with the aim to assist and promote the international scientific and technical collaboration, and exchange of specialists.

### **“Arzinger & Partners”**

“Arzinger & Partners” was the first international law firm to open an office in Belarus in 2006, what renders possible speaking about a unique work experience.

At present “Arzinger & Partners” is an independent law firm which has standing partners in Germany, Czech Republic, Slovakia, Ukraine, Russia, Turkey, Lithuania, Latvia, Estonia and Poland. We also carry on a close cooperation with best law companies from other countries including the USA and the UK.

“Arzinger & Partners” provides an all-inclusive legal support and assistance in company’s business activity. Foreign investments, energy projects and M&A transactions are principal guidelines of our practice. Associates of our company have a wide experience in pleading on behalf of clients before commercial courts and arbitrations.

Such only who understands and feels the market is able to help you to work thereon profitably.



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## 1. Establishing of legal entities in the Republic of Belarus

### 1.1. Corporate forms

The legislation of Belarus provides for a variety of forms of carrying out business activity. It is possible to carry out business activity in such forms as a joint-stock company, limited liability company, additional liability company, unitary enterprise and partnership. A joint-stock company can be incorporated either as an open or close joint-stock company. Among the most widely-spread legal forms are the limited liability company and joint-stock company.

But from the viewpoint of taxation neither of the corporate forms gives any advantages.

#### 1.1.1. Private Unitary Enterprises

A private unitary enterprise is a special corporate form which exists only in Belarus as far as the CIS legal environment is concerned. The legislation of Russia and the Ukraine provides for a possibility to incorporate companies close to private unitary enterprises, but they can be only in municipal and state ownership. The authorized fund of a unitary enterprise is determined by its founder and shall be formed in full up to the state registration. The whole property of a unitary enterprise belongs to its owner on the right of ownership, but the unitary enterprise owns, uses and disposes of this property to the extend provided by law (operating control).



A unitary enterprise shall be headed by a manager appointed by the founder of the unitary enterprise. The head of a unitary enterprise can also be its founder.

### 1.1.2. Partnership

In the Republic of Belarus a partnership can be founded either in form of a general or special partnership. In a general partnership general partners are jointly and severally liable for obligations of the partnership with their property; a partnership shall have at least two participants and shall be engaged in business activity.

Along with general partners, in a special partnership limited partners take part bearing risks related to activity of a partnership only to the extend of their shares. Limited partners do not participate in carrying out of business activity of a partnership.

### 1.1.3. Business Companies

In accordance with the legislation of Belarus a limited liability company, additional liability company and joint-stock company are in whole referred to as business companies. It is provided by law, that for incorporation of a company no less than two shareholders are obligatory required and that total number of LLC or CGSC members shall not exceed 50, otherwise the corporate form shall be changed.

As a general rule a business company is responsible for its obligations solely, and its participants bear risks limited by shares in the authorized fund. At the same time if a bankruptcy of a company is caused by its shareholder or other persons, who have a right to give instructions obligatory for this company (to determine its actions in other way), including a person performing functions of a sole executive body or heading a collective executive body of the company, and provided the company does not have enough assets to settle accounts with creditors, it can be imposed on such a person a subsidiary liability for obligations of a company.



### 1.1.3.1. Joint-Stock Company

In Belarus, as well as in Russia and the Ukraine, a joint-stock companies can be founded in two forms: as an open joint-stock company (OJS) or as a closed joint-stock company (CJS).

These two forms differ from each other in the way that stockholders of a OJS can alienate their stocks to a non-limited set of persons, while shareholders of a CJS can alienate their stocks only upon approbation of other stockholders and to the limited set of persons. Moreover, a CJS has a right to carry out only closed (among limited number of persons) placing of additionally issued stocks.

In order to register a joint-stock company it's authorized fund shall amount to at least 100 basic units (about 900 Euro) in case of a CJS, and 400 basic units (about 3 600 Euro) in case of a OJS.

Both forms of joint-stock companies can be incorporated only if there are no less than two stockholders.

A joint-stock company is decreed to make a contract with a depository for accounting of stocks' movement and register stocks in case of their placement with the State Committee of Stocks.

### 1.1.3.2. Limited Liability Company and Additional Liability Company.

Besides joint-stock companies the legislation provides for two other corporate forms of business companies, that is limited liability companies (LLC) and additional liability companies (ALC).

Limited liability company is a company founded by two or three persons, which statutory fund is divided into shares of amounts determined by its constituent documents.

The participants of a LLC are not liable for its obligations and bear risk of losses resulting from the company's activity within limited to capital originally invested.



Unlike those of a LLC, shareholders of an ALC bear subsidiary liability jointly and severally for its obligations with their property within the limits, defined by the constituent documents of the company, but not less than within the amount, established by the statutory acts. Additional liability of an ALC shall be not less than 50 basic values (about 450 Euro).

The shareholders of a LLC and SLC independently determine the amounts of the statutory fund, which shall be formed in full up to the date of the state registration.

## **1.2. Company with foreign investments**

According to the Investment Code foreign investors shall be entitled to incorporate on the territory of Belarus legal entities with any amount of foreign investments and in any corporate form.

Companies with shares of foreign investments equivalent to no less than 20 000 USD enjoy a status of companies with foreign investments.

The statutory fund declared in statutory documents of such companies shall be formed by no less than 50% within the first year from the day of their state registration through paying up by each founder of no less than 50 % of their shares, and in full within two years from the day of the registration.

## **1.3. Order of incorporation of business companies**



There is a particular procedure of incorporation of business companies prescribed by the legislation.

First of all it is necessary to define which body has authority to register a business company.

### 1.3.1. Registering bodies

Public registration of business companies may be carried out by the following bodies:

- banks – by the National Bank;
- insurance companies – by the Ministry of Finance;
- business companies, including business companies with foreign investments, in free economic zones – by administrations of free economic zones;
- business companies with foreign investments – by regional and the Minsk City executive committees;
- other business companies – by local and Brest, Vitebsk, Gomel, Grodno, Minsk and Mogilev city executive committees subject to a company's location.

In order to register a company, other than a company with foreign investments, required documents are usually submitted to a district (city) administration at the place where a company is to be incorporated.

### 1.3.2. Business companies' incorporation procedure

A company is usually incorporated in line with the following procedure:

- Making a decision by shareholders on incorporation.
- Applying for a company's name in a registering body (is to be drawn through issuance of certificate).

- Defining of a location (legal address) of a company (as a rule a prospective lessor issues a letter of guarantee enclosing thereto copies of a technical certificate plan of a premise) and premise title documents.
- Drawing up and signing of articles of associations or other constituent documents determined by the legislation, and minutes of meetings. Articles of associations may be signed with or without notarization (at shareholders' discretion).
- Opening of a temporary account at one of belarusian banks and paying up of contributions into statutory fund.
- Filling out a registration application and submitting it along with other required documents to a registering authority.

**NB:**

If the number of shareholders do not exceed three persons, all of them either in person or by proxy shall be present at a registering body. If the number of founders is more than three, one of them may be authorized (in accordance with either a power of attorney or minutes of meeting) to act on behalf of the others.

The registering body decides on registration within one working day and gives a newly incorporated entity a copy of articles of associations under its seal and a certificate about on state registration. Within the following five working days the registered company is to be automatically registered in the Social Security Fund, the Belarusian Republican Insurance Company "Belgosstrakh" and in tax and statistic authorities.

Thereafter the company shall:

- Order a seal (each company shall have a round seal with its designation).
- Provide the Social Security Fund,, "Belgosstrakh" and tax authority with information on the director of the company and its chief accountant.



- Open a bank account.

#### **1.4. Location of a legal entity**

Location of a company (legal address) is defined as a place where its permanent executive body is located (administrative and territorial unit, locality, building, apartment or other premise, in case of their presence).

Living quarters (apartment, dwelling house) of a natural person, who owns a property of a private unitary enterprise, can constitute a location of this private unitary enterprise in one of the following cases:

- if the living quarters belongs to him or her on the right of ownership, upon consent of all other owners, and all major members of his or her family (and family members of all other owners), who reside in this premise;
- if resides permanently in the living quarters (except for living quarters of state housing stock).

#### **1.5. General Manager or Board of Directors**

The executive body of a company is usually its director or general manager acting without power of attorney by virtue of the companies' articles.

A company can be managed by a collective executive body (board of directors or directorate) and (or) by a single executive body (director or general manager) in accordance with the legislation and the articles of association.

#### **1.6. Bookkeeping**

The head of a company is responsible for organization of accounting and creation of favorable conditions for correct bookkeeping.

Books of the company can be kept by:

- a bookkeeping service (department), heading by a chief accountant,
- an accountant,
- a company specialized in bookkeeping and accounting or an expert accountant on contractual basis,
- by the head of the company personally in cases provided for by the legislation (head of a private unitary enterprise possesses the right to keep the books if it is provided for in the articles of associations).

A person with higher special education, and in exceptional cases a person, without higher special education, but having a professional education and work experience as accountant of no less than five years can be appointed to the position of a chief accountant.

Companies applying a simplified taxation system (except for companies paying value-added tax), are exempted from duty of bookkeeping and keep records in companies' and individual entrepreneur's profit and loss books. The mentioned companies instead of keeping books of records have a right to keep books in accordance with usual procedure.

## **2. Establishing of a Representative Office of a foreign company in the territory of Belarus.**

In accordance with the Belarusian law a foreign company intending to carry out business activity on the territory of Belarus shall establish its representative office. Requirements of carrying out of business activity are disputable and are subject to legal evaluation in each particular case.

Foreign companies interested in opening of a representative office can achieve this goal by obtaining a permission of the Ministry of foreign affairs of the Republic of Belarus.



Aims of a representative office depend on whether it carries out business activity or not. A representative office of a commercial organization, for example, can be established for the purpose of Belarus market and investment opportunities research.

## 2.1. Legal status

A representative office is not a legal entity and can act only on behalf of a foreign company and for its benefit. The scope of representative office's authorities is not limited by law and shall be determined by a foreign company which intends to establish a representative office.

Business activities requiring obtainment of a license (special permission) can be carried out by a representative office only after obtainment of the appropriate license (special permission).

A representative office is managed by its head who acts within the limits set in the power of attorney.

A representative office has a right to hire both Belarusian and foreign employees. The number of employees to be hired is usually limited. The limit is contained in the permit of the representative office and does not exceed 5 persons.

## 2.2. Process of establishment

A foreign company files an application to the Ministry of Foreign Affairs pointing out purposes of representative office establishing and information on business activity of the foreign company. As a rule, the following documents are to be attached to the application:

- copies of statutory documents of the foreign company;



- a copy of a document confirming public registration of the foreign company with the authorized body of the applicant country (extract from the trade register, certificate of company's registration and etc.);
- a power of attorney to a head of the representative office;
- a copy of a special permission issued by a public institutions of the company' country if it is required by the legislation thereof;
- a representative office's statute;
- a power of attorney to a person authorized to exercise actions, connected with the representative office's establishment;
- an original document confirming payment of a public duty for issuing of a permission on establishing of a representative office.

The duty payable for obtainment of permission on establishing of a representative office makes up:  
for profit organizations – 65 basic units per year.  
for non-profit organizations – 20 basic units per year.  
1 basic unit ≈ 9 Euro.

After the permission is issued the representative office is considered to be opened and can carry out its activity in the territory of Belarus.

Within ten days after a representative office is established, it must be registered in the appropriate tax authority, Social Security Fund and OJSC "Belgosstrakh".

A representative office shall open an account in one of Belarusian banks.



### 2.3. Business activity through representative office

As a general rule the objective of establishing and activities of a representative office are not connected with direct execution of business activity in Belarus, but are aimed at carry out supporting activity.

A representative office has the right to carry out business activity in the territory of Belarus only on behalf and by order of the company represented by it. Before starting to carry out business activity a representative office must file an application to the tax authority, where it is registered to inform it on launching of business activity by the foreign company through its representative office. After the abovementioned application is filed, the representative office shall monthly submit to the tax authority reports on business activity of the foreign company. It shall also pay taxes collected from income drawn by the foreign company.

Business activities requiring obtainment of a license (special permission) can be carried out by a representative office only after obtainment by the foreign company of the appropriate license (special permission) in accordance with the legal procedure prescribed by the law.

## 3. Taxation of legal entities

### 3.1. Categories of taxes, charges (duties)

In the Republic of Belarus the following taxes, charges (duties) shall be levied:

- Value - added tax (VAT);
- Excise duty;
- Profit tax;
- Profit tax of foreign companies, not exercising activity in the Republic of Belarus through permanent establishment;

- Income tax on individuals;
- Real-estate tax;
- Land tax;
- Ecological tax;
- Tax on extraction (withdrawal) of natural resources;
- Charge for import of ozone – depleting substances on the territory of the Republic of Belarus;
- Charge for passage of foreign vehicles along public roads of the Republic of Belarus;
- Charge for issue of permit on passage of belarusian vehicles trough the territory of foreign countries;
- Offshore charge;
- Stamp duty;
- Consular fee;
- State duty;
- Patent fee;
- Customs duties and charges;

Additionally, the following local taxes and charges shall be keviend:

- Service tax;
- Dogs holding tax;
- Charge for development of territories;
- Resort charge;
- Charge from purveyors.

### 3.2. Special taxation regimes

Special regimes of taxation appliet to taxpayers of:

- tax under simplified taxation system;
- single tax paid by individual entrepreneurs and other natural persons;
- single tax paid by producers of agricultural goods;
- tax on gambling industry;



- profit tax on lottery activity;
- profit tax on holding of electronic interactive games;
- charge for exercising of handicraft activity;
- charge for rendering of service in the sphere of agro- and ecotourism.

### 3.3. Profit tax

The majority of legal entities in Belarus pay the profit tax. Only companies which enjoy a special regime of taxation as well as individual entrepreneurs are exempted from paying of this tax. The standard profit tax rate is 24%. Reduced tax rates are applied to deals with particular types of goods: 12%, 10%, 5%. Tax rate 12% is imposed on dividends.

### 3.4. Value added tax

Since the 1<sup>st</sup> of January, 2010 a standard VAT rate accounts to 20%. Reduced tax rates are applied to turnover of particular types of goods: 0%; 0,5%; 9,09%; 10%; 16,67%. When carrying out trade operations with the Russian Federation one shall take into consideration a treaty on levying indirect taxes.



### **3.5. Profit tax of foreign companies, not exercising activity in the Republic of Belarus through a permanent establishment**

The notion of a permanent establishment for taxation purposes is defined under the legislation of the Republic of Belarus in line with concluded treaties. The following profit tax rates are prescribed by law:

- 6% - payment for transportation, freight when carrying out international transportations, as well as for forwarding services;
- 10% - interest (coupon) yields from any kind of debentures;
- 12% - dividends and profits equated to them from alienation of shares of statutory fund (shares, stocks) of companies situated on the territory of the Republic of Belarus.
- 15% - other profits.

### **3.6. Profit tax paid by individuals**

As a general rule, individuals who have actually stayed on the territory of the Republic of Belarus for more than 183 days within a calendar year are considered to be tax residents of the Republic of Belarus. The item of taxation is profits drawn by the taxpayers:

- from sources in the Republic of Belarus or sources outside the Republic of Belarus for individuals who are tax residents of the Republic of Belarus;
- from sources in the Republic of Belarus for individuals, who are not considered to be tax residents of the Republic of Belarus.

Generally profit tax is levied at the rate of 12% regardless of the profit amount but the profits drawn from carrying out entrepreneurial activity is taxed at the of 15%.

### **3.7. Social and retirement insurance of citizens**

Under the legislation in force an employer is a withholding agent of social security payments, i.e. it makes payments to the Social



Security Fund from its own account and on behalf of employees. The rate of allocations for retirement insurance accounts to 29% of payments of all kinds (28% of them are paid by the employer), allocations for social insurance amount to 6%. The rate of payments for accidents and work injuries depends on character of executed works.

### **3.8. Offshore charge**

When a resident of the Republic of Belarus is transferring money to a non-resident registered in an offshore zone in accordance with the list affirmed by the President of Belarus, the resident of Belarus shall pay an offshore charge at its own expense at the rate of 15% from the sum to be paid.

### **3.9. Simplified taxation system**

Payment of taxes under simplified taxation system replaces payment of taxes, charges (duties) to the budget or state non-budgetary funds, including profit tax. On the other hand the common order of computation and payment of some taxes remains the same, including taxes levied when importing (exporting) goods on the customs territory, state duty, tax on dividends, offshore charge.

Simplified tax shall be paid at the following rates:

eight (8) % - for companies and entrepreneurs, which do not pay VAT:

six (6) % - for companies and entrepreneurs, which pay VAT.

three (3) % - for companies and entrepreneurs with regard to earnings gained from sales of goods outside the territory of the Republic of Belarus, unless otherwise is provided for by the President of the Republic of Belarus;

fifteen (15) % - for companies and entrepreneurs, which apply gross income as a taxable base.



For companies and entrepreneurs residing in certain places, when carrying out production of goods (performance of works, rendering of services) in these places tax rates under the simplified taxation system are set as follows:

five (5)% - for companies and entrepreneurs, which do not pay VAT:

three (3)% - for companies and entrepreneurs, which pay VAT.

Application of the simplified taxation system is limited by the volume of profits and types of activity.

### **3.10. Benefits for commercial organizations in the rural area**

Since the 1<sup>st</sup> of April, 2008 commercial organizations located in rural areas (as well as in places with population up to 50 thousand) in accordance with the list, endorsed by the Council of Ministers of the Republic of Belarus, have been afforded certain tax benefits.

Granting of such benefits is regulated by Decree of the President of the Republic of Belarus No. 1 of January 28, 2008.

Commercial organizations with foreign investment marketing the production of domestic manufacture fall under the scope of this Decree.

One of the main advantages, granted by the Decree, is the exemption from the duty to pay:

- profit tax (within 7 years from the date of incorporation) as regards realization of in-house produced goods;
- other taxes and duties (except VAT, excise duties, stamp and offshore duties, state duty, customs duties and charges, land tax, rental fee for state-owned land plots, environmental tax, tax on extraction (withdrawal) of natural resources and other taxes estimated and deducted when performing obligations of a withdrawal agent), allocations to innovation funds established in accordance



with statutory acts (within 5 years from the date of their incorporation).

Commercial organizations within 5 years from the date of their incorporation shall be exempted from obligatory sale of foreign currency received under contracts with foreign persons.

The obligation to pay other taxes and duties (particularly VAT, land tax, real estate tax) remains, though in a different way.



The benefits granted by the Decree stay in force for 5 years in spite of possible changes in the legislation in future. In order to prevent tax evasion this privilege shall be enjoyed only by commercial organizations that actually carry out activity in the mentioned territories.

### 3.11. Free economic zones (FEZ)

A special taxation regime is granted to residents of free economic zones.

There are six free economic zones in Belarus (in every region and in Minsk City). A decision to grant a status of a FEZ resident is made by the administration of the respective FEZ. As a rule, a commercial organization, the business-plan of which provides for investments over 1 million USD, can claim FEZ residence. Besides, commercial organizations claiming the status of a FEZ resident, as a rule, must produce goods for export.

Residents of FEZ obtain a number of tax benefits:

- within first 5 years of business profits of a FEZ resident are exempted from taxation, and afterwards is taxed at the rate of 12% instead of common rate of 24%;
- customs charges and duties for imported goods are not levied, if the goods in question will be processed on the FEZ territory and afterwards exported:
- exemption from real-estate tax with regard to buildings and premises of FEZ residents, located on the territory of this very FEZ;
- in certain cases determined by the law the VAT rate is reduced by a half.

Following the accession of Belarus to the customs union with Russia and Kazakhstan, some alterations to the FEZ residency status can be made.



### 3.12. High Technologies Park

A special taxation regime is granted to residents of the High-Tech Park.

High-Tech Park, an analogue of the Silicone Valley, was created in accordance with the Decree of President of the Republic of Belarus as of 22.09.2005 to develop the market of information and computer services.

As High-Tech Park residents may be registered legal entities and individual entrepreneurs of the Republic of Belarus, carrying out or planning to carry out one or several of the following types of activity:

- analysis, designing and software supporting of information systems;
- data processing with use of consumer's or one's own software;
- fundamental and applied research, experimental design in the sphere of natural and engineering sciences (execution of research engineering, development or experimental-technological works, connected with dimensions of High-Tech Park activities) and implementation of results of such research and design;
- other types of activity defined by the Council of Ministers of the Republic of Belarus with the concurrence of the President of the Republic of Belarus.

High-Tech Park residents are exempted from:

1. Charge to the republican fund for support of producers of agricultural products, food and agrarian science;
2. Profit tax;
3. VAT on circulation from marketing of goods (works, services, proprietary intellectual property rights). High-Tech Park



residents have the right to refuse from using the tax benefit in question for the term not less than one calendar year.

4. Land tax. Land lots within the boundaries of the High-Tech Park are exempted from land tax for the period of constructions by residents of this Park for the purposes of carrying out their activity, but for no longer than for 3 years.
5. Real-estate tax. High-Tech Park residents' fixed assets and objects of construction in progress located on the Park's territory are exempted from real-estate tax.
6. Offshore charge when paying (transferring) dividends by High-Tech Park residents to their shareholders

Tax rate on profits gained by foreign organizations, which do not exercise their activity through permanent establishment on the territory of the Republic of Belarus, on dividends, debentures, royalty, licenses, if these payments are made by a High-Tech Park resident, amounts to 5%. This rate is only applied if a more favorable regime is not establish by treaties concluded by and entered into force for the Republic of Belarus.

The rate of profit tax collected from individuals amounts to 9% with regard to profits drawn by them (except for employees maintaining and guarding buildings, premises, land plots) from High-Tech Park residents under labour contracts; by entrepreneurs – High-Tech Park residents; by individuals taking part in the implementation of a business project registered as proper in the sphere of new and high technologies under labour contracts from non-residents of High Technologies Park.

High Technologies Park residents are obliged to pay 1% of their gross turnover to the High-Tech Park Administration.

Legal entities, which are not High-Tech Park residents, and which implement (or plan to implement) business-projects in the sphere of



new and high technologies, and which have registered such projects, also have the right to enjoy a number of tax benefits.

High-Tech Park residence has gained a great popularity among foreign and Belarusian IT companies.

### 3.13. Innovations

Belarusian legislation provides the following benefits for parties to innovation infrastructure (scientific and technical parks, technology transfer centers, venture organizations):

- the profit tax rate for scientific and technical parks, technology transfer centers and residents of scientific and technical parks is fixed at the amount of 10 per cent;
- availability of means of the republican budget is provided for organization of activity and development of material and technical basis of the venture organization;
- no obligation to fulfill compulsory sale of foreign currency received by the venture organization from realization of goods and property rights to intellectual property objects.

Moreover, goods meant for supply of scientific, research and innovation activity are exempt from entrance duty and value added tax.

It is additionally stipulated for venture organizations that:

- sums of profit obtained in the form of interest for providing monetary funds on financing venture projects are exempt from profit tax and are not included into non-operational income;
- dividends are exempt from profit tax.



## 4. Investment agreement with the Republic of Belarus

Under the Investment Code of the Republic of Belarus an investment agreement can be concluded with investor for the purpose of providing support in the implementation of a particular investment project of significant importance for the economy of the Republic of Belarus.

The Parties to the investment agreement are the Republic of Belarus on the one part and national or foreign investors on the other part.

On the 6<sup>th</sup> of August the President of the Republic of Belarus signed Decree № 10 “On creation of additional conditions for carrying out investment activity in the Republic of Belarus” to improve conditions of implementation of investment projects by investors (foreign and national) pursue to investment agreements with the Republic of Belarus.

### 4.1. Privileges to investors

Those who have concluded investment agreements with the Republic of Belarus are exempted from making of some obligatory contributions to the state budget. Thus, it may not be made payments for the right to conclude a contract for lease of land; recovery of losses caused by seizure of land within the framework of implementation of the investment project, as well as reimbursements connected with transfer or cutting-over of plantings on the lands of settlements. Within the framework of implementation of the investment project the investor is exempted from paying import custom duty and VAT when importing equipment to the customs territory of the Republic of Belarus. Besides, in the event of employing of foreign citizens for implementation of the investment project, the investor is exempted from paying of a state duty for issuance of permissions to carry out labour activity in the Republic of Belarus, and foreign employees engaged are exempted from paying



a state duty for issuance of permission for temporary residence in the Republic of Belarus.

An investment agreement may also include the following:

- mutual obligations of the Parties with regard to the development of industrial and social infrastructure of the region;
- the investor's right to export from the Republic of Belarus goods that belong to him and were produced as a result of performing a contract, as well as of the obtained profit;
- state's refusal from judicial immunity, immunity from interim measures or execution of judicial and (or) arbitral award;
- other preferences as may be agreed upon by the Parties.

#### **4.2. Mandatory provisions of the investment agreement**

Among the mandatory provisions in the investment agreements the object, volume and terms of investment shall be pointed out.

It is also obligatory to determine the order of indemnification of damage caused to the investor as a result of unlawful actions (omissions) of state officials or executive committees, as well as the right of the Republic of Belarus to unilateral refusal to perform its obligations under the investment agreement if the investor fails to perform or to perform properly its obligations.

#### **4.3. Making a decision on conclusion of the investment agreement**

The right to decide on conclusion of the investment agreement is given to the Council of Ministers, state authorities, as well as executive committees within their competence in the event of implementation of the project in a certain branch or within a certain administrative-territorial entity. If the provisions of the investment



agreement provide for granting to the investor only benefits and preferences already provided for or endorsed by the legislation in force, the investment agreement could be concluded without the President's approval.

## 5. Licensing

Belarus is still in process of transition to free market relations. That is why some types of activities are subject to licensing and carrying out of such activity without obtaining a license is not permitted.

In order to obtain a license, a number of certain requirements on applicant's personnel qualification may be placed, as well as special equipment and premises may be required.

As on 1<sup>st</sup> of January, 2010 53 types of business activity are subject to licensing. Nevertheless, Edict of the President of the Republic of Belarus No. 450 dated September 1, 2010 reduces the list of licensed activities down to 37. These changes come into force beginning from January 1, 2011.

## 6. Price formation

One example of the above mentioned transition period is the existence of a state-controlled mechanism of price formation. At the same time the state makes successful steps towards liberalization of price formation system.

Thus, in September 2009 restriction on the amount of wholesale premium at the rate of 30% was abolished and it was allowed to form prices freely on the basis of market conditions, except for a narrow list of goods (as a rule, socially significant one).



## 7. Real estate market

Commercial real estate can be freely sold to residents, as well as to non-residents of Belarus.

There are a number of restrictions on the acquirement of residential real estate by non-residents of Belarus. Such restrictions do not cover citizens and legal entities of the Russian Federation.

Land lots, as a rule, belong to commercial legal entities, including foreign ones, on the right of lease.

The possibility of acquirement of a land lot on the right of ownership by Belarusian legal entities is foreseen in the legislation, but in practice it is realized rather seldom.

The first case of transfer of a land plot to private ownership of a legal person took place in 2010 in accordance with President Decree No. 93 dated March 1, 2010 for the purpose of realization of the investment project with participation of Sultan Oman State general reserve fund.

## 8. Protection of intellectual property rights

The Republic of Belarus signed and ratified most of international conventions in the sphere of protection of certain objects of intellectual property.

The legislation considers know-how and trade secrets as certain objects of intellectual property subject to special protection, though in practice it is very difficult to distinguish between them.

Legal protection of trade marks in the Republic of Belarus is granted on ground of its registration with state institution "National centre of



intellectual property” in the order determined by trade mark law or by international agreements of the Republic of Belarus.

A trade mark can be registered by an organization or a citizen.

Registration of the agreements on alienation of rights to a trade mark is exercised by sending a notification to the registering authority.

Protection of computer programs is granted without their registration.

## 9. Labour law

Labour relations in the Republic of Belarus are generally formed by labour contracts. A labour contract is to be concluded for the term from 1 up to 5 years. It is possible to specify in the contract the existence of probation employment up to 3 months.

In Belarus there exists a relatively sophisticated system of salary formation (a single tariff scale is applied). But the Government has been making steps towards its simplification recently.

It is forbidden for the head of the organization to fulfill paid work on conditions of dual jobholding, except for teaching, scientific or other creative work, as well as medical practice.

Labour relations of foreign employees in organizations with foreign investment and relations related thereto can be regulated by treaties concluded by and entered into force for the Republic, by constituent documents, by-laws, and contracts, and on issues not regulated by them - by the Labor Code and other statutory acts.



## 10. Antimonopoly regulation

In comparison with other countries, antimonopoly regulation is underdeveloped in the Republic of Belarus. Issues of antimonopoly activity are considered in a corresponding act that provides for the order of control by certain ministries and departments over mergers of big companies. There is no single anti-monopoly authority in the Republic of Belarus. The existence of such an order can be explained by the fact that a bit more than 80% of industrial companies are in state ownership.

Functions of antimonopoly organ in the Republic of Belarus are performed by the Ministry of Economy on republican trade markets, departments of regional (Minsk City) executive committees on the local level.

The legislation specifies cases when obligatory consent of the monopoly organ is required. For instance, the consent is required for the acquirement by the subject of rights, which let it to determine objectively conditions of carrying out entrepreneurial activity by the economic entity or to perform functions of its charter (managing) body. In accordance with the latest alterations to the legislation, the anti-monopoly authority, when applying this provision, has the right to endorse only the acquirement of right to use or to dispose of 20% and more of shares of a legal entity on the basis of purchase-sale agreement (trust management contract; joint venture agreement; agency agreement), if the book cost of legal entity's assets, calculated on the basis of accounting reports (closing balance sheet) exceeds 100 thousand basic values, or if the amount of profit from marketing of goods (works, services) according to the results of the financial year prior to the year of requirement, exceeds 200 thousand basic values.



## 11. Equity

The equity market in Belarus is rather weak. The absolute majority of belarusian company's shares are placed on international stock exchanges.

Attempts of some companies to place their shares on European stock exchanges may be considered as a first step to the development of equity market. Also, in July and August 2010 Belarus has twice placed Eurobonds in the amount of 600 and 400 millions USD.

## 12. Privatization

The market of the Republic of Belarus is gradually opening. Besides taking measures in the sphere of liberalization of relations of taxation, price formation and, in general, carrying out commercial activity, converting of state enterprises into joint stock companies is actively conducted, and sale of shares of state-owned companies begins.

Foreign companies may participate directly in the process of privatization and denationalization of state companies by acquiring shareholding in established joint stock companies. For this purpose, a privatization program for the years 2008-2010 is adopted, which provides for a list of such state-owned companies.

In 2010 a number of enterprises were palced for privatization. In particular, "Belaruskaliy" went public. Yet, 100% of the open joint stock company shares are in state ownership.



## Conclusion

In 2009-2010 the conditions of investment activities have improved so much that the Republic of Belarus has indeed become an interesting market. Very large projects are being implemented in Belarus, such as construction of a nuclear power station, development of the High-Tech Park, building of the administrative, cultural and residential centre “Minsk city”, construction of new first-class hotels and retail sales centers.

The volume of foreign investments to the economy of the Republic of Belarus within the first six month of 2010 has been increased by 4,4% in comparison with the same period in 2010 and makes up 4,4 billion US dollars. Investments to fix assets and construction have rose in comparison with the previous year by 5%.

The majority of direct foreign investments were directed to the development of transport branch (75,8%), trade and catering (15,4%), as well as industry (4,7%).

The alleged figures prove confidence of the investors.

**We wish you luck in your doing business in Belarus!**



## Our Partners:



**Sergey Mashonsky**  
Managing partner  
(Belarus)

Practice areas: banking, financial law, investments, power engineering. He heads the investments and banking practice of the firm.

Languages: Russian, English, Slovak, Czech, Ukrainian.



**Dmitry Viltovsky**  
Partner (Belarus)

Practice areas: corporate law / M&A, real estate and construction.

He heads the real estate and construction practice of the firm.

Languages: Russian, German



**Alexander Korsak**  
Partner (Belarus)

Practice areas: arbitration/litigation, antimonopoly regulation and competition, intellectual property, corporate law/M&A, taxation.

He heads judicial and arbitral practice of the firm.

Languages: Russian, English



**Thomas Knoll-Biermann**  
Partner (Germany)

Practice areas: corporate law / M&A, trade law, litigation in German courts and international commercial arbitration.

Languages: German, English, Russian



## Our contacts:

LLC “Arzinger and partners”  
Business Centre XXI Vek  
Nezavisimosti Avenue, 169  
off. 303C, 304C  
220114, Minsk, Belarus  
Tel./Fax +375 17 218 10 54  
Tel. +375 17 218 10  
Cell phones: +375 29 304 34 11 (Velcom)  
+ 375 29 851 10 54 (MTS)

<mailto:mail@arzinger.by>

[www.arzinger.by](http://www.arzinger.by)

## The Republican Centre for Technology Transfer

66-100, Nezavisimosti Ave., Minsk 220072,  
Belarus

Tel.: +375 17 2841499

Fax: +375 17 2840749

Mob.: +375 29 611 44 89

mailto: uspenskiy@mail.ru

<http://icct.by>

**Director:** Dr. Alexander A. Uspenskiy

