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# **Doing Business in BELARUS 2017**

**a booklet prepared by**

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**CHSH**

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## Preface

This booklet has been prepared by CHSH Cerha Hempel Spiegelfeld Hlawati FLLC (Belarus). It is designed to provide some general information to those contemplating doing business in Belarus and is not intended to be a comprehensive or exhaustive guide to the Belarusian legal system. The information presented in this booklet should not be construed as a formal legal advice. The Belarusian regulatory environment is constantly evolving and specific professional advice should always be sought before taking further action. This booklet reflects information current as of 28 April 2017. CHSH Cerha Hempel Spiegelfeld Hlawati cannot be held liable for any action or business decision taken on the basis of the information provided in this booklet.

CHSH Cerha Hempel Spiegelfeld Hlawati is one of the largest and most well-known law firms in Austria and Central and Eastern Europe. Currently, CHSH has offices in eight countries: Austria, Belarus, Bulgaria, the Czech Republic, Hungary, Moldova, Romania, and Slovakia. For more than nine decades, Cerha Hempel Spiegelfeld Hlawati has provided its clients with first class service and creative, commercially-oriented solutions. Our expertise covers mergers and acquisitions, corporate and commercial law, banking and finance law, capital markets, international tax law, real estate and project development, and litigation and arbitration.

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## 1 General Information

### 1.1 Location, Constitution, Population and Language

Belarus is a landlocked country located in Eastern Europe bordered by Latvia, Lithuania, Poland, Russia, and Ukraine.

Belarus is a presidential republic, governed by the President and the National Assembly. The National Assembly has two chambers, the 110-member House of Representatives (the lower house) and the Council of the Republic (the upper house) consisting of 64 senators. The House of Representatives has the power to make constitutional amendments, appoint the Prime Minister, call for a vote of confidence regarding the Prime Minister, and make suggestions on foreign and domestic policy. The Council of the Republic has the power to select various government officials, impeach the President and accept or reject the bills passed by the House of Representatives. Each chamber has the ability to veto any law passed by local officials if it is contrary to the constitution. The government includes a Council of Ministers, headed by the Prime Minister. The members of this council may not be members of the legislature and are appointed by the President.

Belarus has approximately 9.5 million inhabitants. The capital and the largest city in Belarus is Minsk, which has a population of over 1.9 million. Minsk is the principal economic and political center, the seat of the President, the Government and the National Assembly. Other cities with major populations include Brest (340,100), Grodno (365,600), Gomel (535,200), Mogilev (380,400), and Vitebsk (377,500). Ethnic Belarusians constitute 83.7% of Belarus' total population. The next largest ethnic groups are Russians (8.3%), Poles (3.1%), and Ukrainians (1.7%).

Belarus' two official languages are Belarusian and Russian, spoken by 26.06% and 73.94% of Belarusians, respectively. More than 99% of the country's population is literate.

### 1.2 Legal System

The Belarusian legal system is based on the civil law (continental) system. A substantial amount of Belarusian legislation regarding business activities is codified, i.e. consists of codes of law (the Civil Code, the Tax Code, the Banking Code, the Land Code, etc.). Other legislation includes laws, Presidential decrees and edicts, and governmental resolutions. Presidential decrees and edicts play a significant role as in most cases they are superior and may derogate from ordinary laws.

The judiciary consists of courts with general trial jurisdiction and specialized courts such as the Constitutional Court (which deals with specific issues related to constitutional law) and economic courts, which deal with issues related to business law. The judges of the Supreme Court are appointed by the President subject to the approval of the Council of the Republic. The Constitutional Court has twelve judges, six appointed by the President and six elected by the Council of the Republic. Judges at all other courts in Belarus are appointed by the President. For cases related to business activities, the highest court of appeal is the Supreme Court.

### 1.3 Economy

The majority of the Belarusian economy is still controlled by the state; 40.1% of Belarusians are employed by state-controlled companies, 56.4% are employed by private Belarusian companies (of which 6.4% are partially foreign-owned) and 3.5% are employed by foreign companies. The country is reliant on imports such as oil and natural gas from Russia. Belarus' biggest exports are software, heavy machinery, agricultural products, potash fertilizers, and energy products. Some of Belarus' natural resources include potassium, peat, granite, dolomite (limestone), marl, chalk, sand, gravel, and clay.

Currently Russia is Belarus' main trading partner accounting for almost half of Belarus' total trade. Nearly a third of Belarus' total trade was conducted with the European Union, making it the next largest trading partner until Belarus lost its EU Generalized System of Preferences status on 21 June 2007, as a result of which tariff rates increased to the levels of most-favoured nation status.

Belarus has applied to become a member of the World Trade Organization every year since 1993 but has not yet succeeded. However, on 19 May 2011, Belarus, Russia, and Kazakhstan agreed on the main principles for the Custom Union of Belarus, Russia, and Kazakhstan within the framework of the multilateral trading system. In line with these agreements, Belarus has to consider the obligations of the Russian Federation and Kazakhstan to the World Trade Organization. In addition, Belarus is a member to the Eurasian Economic Union (EAEU) together with Russia, Kazakhstan, Armenia and Kyrgyzstan and is a part of 182-million market of these five EAEU countries.

The labour force consists of more than 4.45 million people with slightly more men employed than women. Nearly quarter of the population is employed in industrial factories. Employment rates are high in the sectors of IT, agriculture, construction, manufacturing sales, trade, and education. The official unemployment rate is currently about 0.8%. However, independent sources report that in fact the unemployment rate is much higher.

The currency of Belarus is the Belarusian ruble (BYN). Since its introduction in May 1992, it was reintroduced with new values twice in 2000 and 2016 and has been in use ever since.

### 1.4 Public Holidays

The following days are official public holidays in Belarus:

New Year's Day	1 January
Orthodox Christmas	7 January
Women's Day	8 March
Catholic Easter	Movable
Orthodox Easter	Movable
Radunitsa	The second Tuesday after Orthodox Easter
Labor Day	1 May
Victory Day	9 May
Independence Day	3 July

Day of October Revolution	7 November
Catholic Christmas	25 December

In addition, if any of the above holidays falls on a Tuesday or Thursday, the preceding Monday or following Friday (respectively) is usually declared an official public holiday by the Government and the preceding or following Saturday (respectively) is usually declared a working day.

## 2 Corporate Law

### 2.1 Forms of Business Presence

Generally, a foreign company can conduct its business in Belarus through two legal forms:

- a separate Belarusian legal entity;
- a representative office.

### 2.2 Belarusian Legal Entities

#### 2.2.1 Types of Belarusian Legal Entity

Although Belarusian law provides for a range of legal forms for legal entities, in practice the most used are joint-stock companies, limited liability companies, and unitary companies. The Civil Code of the Republic of Belarus (“Civil Code”) and the Law “On Business Entities” (“Company Law”) predominantly govern the issues relating to the creation and operation of these forms of legal entity. Other relevant laws include the Decree of the President of the Republic of Belarus “On State Registration and Liquidation (Termination of Activities) of Business Entities”.

#### 2.2.2 Joint-Stock Company

A joint-stock company (analogous to a corporation; abbreviation in Russian “AO”) is a company with charter capital divided into a certain number of shares. The liability of shareholders is limited by the par value of their shares. There are two forms of AO:

1) *An open joint-stock company* (analogous to a publicly held corporation; abbreviation in Russian “OAO”) is a legal entity whose shares may be publicly traded without the permission of other shareholders. An OAO may distribute its shares to an unlimited number of shareholders who can transfer them without limitation. The minimum charter capital is the equivalent of approximately EUR 4,600.

2) *A closed joint-stock company* (analogous to a privately held corporation; abbreviation in Russian “ZAO”) is a legal entity whose shares are distributed between a limited number of shareholders not exceeding fifty. If the number of shareholders exceeds this threshold, the company must “go public”, i.e. be reorganized into an OAO. Shareholders of ZAO have pre-emptive rights with respect to purchasing the shares of the ZAO. The minimum charter capital is the equivalent of approximately EUR 1,150.

Both types of company may issue common and preferred shares. Different classes of preferred shares are permitted; however, the maximum number of preferred shares in an AO must not exceed 25% of the total shares in the company. All shares of the same

class have equal dividend and voting rights. At the time of issuance, shares in an AO must be registered with the Department of Securities of the Ministry of Finance of the Republic of Belarus.

AOs may have a two-tier or three-tier governance structure:

- general shareholders' meeting;
- board of directors (supervisory board);
- sole Chief Executive Officer (CEO) or collective management board (CMB).

As a default rule, the creation of the board of directors (supervisory board) is optional; it is only mandatory for an OAO when the number of shareholders exceeds fifty.

### 2.2.3 Limited Liability Company

A limited liability company (abbreviation in Russian “OOO”) is a legal entity with charter capital divided into “units”, the size of which is determined by the charter. A unit is not considered security under Belarusian securities legislation and it may not be treated as an asset in a strict legal sense. Rather, units are treated as rights against the OOO. The owner of a unit is called a “participant” as opposed to a “shareholder” of an AO. The company’s charter capital consists of the participants’ contributions. The number of OOO’s participants may vary from one to fifty; in case the number of participants exceeds fifty the OOO must be reorganized into an OAO. The minimum charter capital of an OOO is not prescribed by law. It may be freely determined by its participants.

Dividends and voting rights are proportionate to the size of the units unless otherwise determined by a charter.

Theoretically, participants in an OOO are not liable for the company’s debts; their liability is limited by the value of their contributions to the charter capital. In practice, however, a corporate veil could be easily pierced by a court in case of an OOO’s bankruptcy.

A participant may exit an OOO at any time unless such participant is a sole participant of an OOO. In case of an exit, the OOO will have to repay the participant the book value of net assets and net profits for the period from the date of exit to the date of such repayment proportion to the size of the unit of the leaving participant. A unit in an OOO may also be sold; however, the particular company’s charter may prohibit sales to third parties. As a default rule, the other participants in an OOO have pre-emptive rights with respect to the purchase of the unit to be disposed of.

OOOs may have a two-tier or three-tier governance structure:

- general shareholder’ meeting;
- board of directors (supervisory board);
- sole CEO or CMB.

The creation of the board of directors (supervisory board) is optional and in most cases OOOs have a two-tier governance structure comprised of the general meeting and the sole CEO.

### 2.2.4 Unitary Company

A unitary company (abbreviation in Russian “UP”) is a commercial legal entity that is owned by a sole founder (owner) only. It may not have several shareholders or



participants compared to an AO or an OOO. A UP does not have the right of ownership of its assets. All assets of a UP are owned by its founder. However, a UP does have the right of economic management of its assets. This means that UPs may hold and use their assets for business purposes but may not dispose of (sell, lease, etc.) real estate without the consent of the owner. UPs may dispose of their movable property independently subject to applicable law or the decisions of the owner of the assets of the UP. The charter capital of a UP cannot be divided into shares.

The minimum charter capital is not prescribed by law. It may be freely determined by its founder. The assets of a UP cannot be owned by more than one person/entity.

A UP may only have a two-tier governance structure:

- Founder (the owner of the company's assets and its highest governing body);
- Sole director/CEO (sole executive body of the company authorized to manage the company's day-to-day activities to the extent that the relevant powers do not fall within the competence of the company's founder).

Belarusian law does not provide any other forms of governing body for a UP (e.g. supervisory board, management board).

A UP can be sold in two ways:

- sale of a complex of assets as a going concern. This is complicated and requires a three-stage registration process; therefore, it is rarely used in practice.
- transformation of the UP into a limited liability company (OOO) with subsequent sale of units in the OOO.

## 2.2.5 Companies with Foreign Investment

Foreign investors may incorporate any type of company in Belarus. However, certain restrictions are placed on investments in the mass media, health and life insurance, and banking sectors.

In general, companies with foreign investment do not enjoy any substantial benefits compared to companies with domestic investment except for the possibility to pay in the contributions to the charter capital of a company in foreign currency.

## 2.2.6 Shareholders' Meetings

General shareholders' meeting ("SHM") is a supreme body of a company (except for the unitary enterprises). It is entitled to make decisions on the most important matters of the company's activities. The SHM may delegate some of its powers either to the CEO or to the board of directors (save for those powers, which are the exclusive competence of the SHM). Company law provides for the following list of exclusive competences of the SHM, which cannot be delegated to other bodies:

- Charter amendment;
- Charter capital increase/decrease;
- Election/dismissal of members of the board of directors and the internal audit committee;
- Annual reports, balance sheets, and profit and loss distribution;
- Restructuring;
- Liquidation;

- Compensation of members of the board of directors and the internal audit committee;
- Adoption of local normative acts (e.g. internal guidelines, staff schedule, etc.);
- Transfer of voting rights on specific issues to company's other governing bodies (except for issues which fall within the exclusive competence of the SHM);
- Establishing a procedure for conducting a SHM with regard to the issues not governed by applicable law.

The charter of a company and applicable law can provide for other powers, which are deemed the exclusive competence of the SHM. Most of the decisions of the SHM are made by a simple majority of the votes cast. However, there is a list of matters, which, under company law, requires a qualified majority or a unanimous vote of all shareholders.

In case an AO or an OOO has a sole shareholder or participant (respectively), SHM shall not be established. Such a sole shareholder or participant shall be entitled to resolve on any of the aforementioned issues.

### 2.2.7 Shareholders' Agreements

Shareholders in an AO and participants in an OOO may enter into a shareholders' agreement. A shareholders' agreement may regulate the way in which certain parties are required to vote at a shareholders' meeting and envisage other rights and obligations for shareholders, for example, call options or put options, drag-along rights, etc. However, conditions of a shareholders' agreement may not contradict the mandatory rules of the corporate law. A shareholders' agreement is binding solely upon its parties. In case of breach, the liable shareholder/participant might face civil liability as envisaged under the shareholders' agreement (penalties, payment of damages, etc.).

However, there are some restrictions on the right to enter into a shareholders' agreement. At least one shareholder/participant of a company must not be a party to such an agreement. This restriction makes it impossible to have a shareholders' agreement in companies with one or two shareholders/participants.

### 2.2.8 Board of Directors (Supervisory Board)

The board of directors ("BD") is a supervisory body of a company whose competence usually covers matters relating to the general management of a company, namely:

- development of a company's strategy;
- approval of an annual business plan and supervision of its realization;
- convocation of SHM;
- resolving on issuance and repurchase of securities (except for shares);
- approval the value of company's assets if required by law;
- resolving on usage of reserve funds and other funds of a company;
- resolving on entering into material transactions;
- election and approval of an audit firm;
- approval of the material terms of a contract with a management company (manager); and
- approval of a company's internal regulations if required by law.

The BD's competence may be restricted or expanded by a company's charter. Only individuals (both shareholders and non-shareholders of a company) may be members of

the BD. Members of the CMB may also be members of the BD, except for the chairman of the CMB and the CEO who cannot be members of the BD. Members of the CMB may not comprise more than one fourth of the total number of the BD members. The chairman of the CMB and the CEO may attend the meetings of the BD and propose draft resolutions on the issues reviewed at these meetings, but they may not vote.

### 2.2.9 Potential liability of founders/shareholders of a legal entity

As a general rule, the Civil Code states that the company's founders/shareholders are not liable for the company's debts and by the same token the company is not liable for the debts of the company's founders/shareholders.

The exception to this general rule is set out in Article 52 (3) of the Civil Code, pursuant to which the company's founders/shareholders, or other persons who may issue mandatory instructions to it (i.e. the director/CEO), may be held vicariously liable for the debts of such company in the event these persons cause the insolvency (bankruptcy) of the company. The causal nexus between the decisions of the company's founders/shareholders and the bankruptcy of the company must be established by a court, otherwise the company's founders/shareholders will not be liable for the debts of the company. Thus, if the bankruptcy of the company is not proven to have been caused by the company's founders/shareholders, the company will go through the standard bankruptcy procedure. Outstanding company debts are discharged upon the sale of all the company's assets and its liquidation.

Belarusian law or the charter of the legal entity may provide other grounds for the vicarious liability of the founders/shareholders of the legal entity. Such "other grounds" provided for under Belarusian legislation include the following:

- Article 233 of the Law "On Economic Insolvency (Bankruptcy)" provides that if during the liquidation of a company it appears that the company's assets are insufficient to settle the claims of the creditors, the liquidation commission must file an application on bankruptcy to the competent court within one month of the day on which it has determined that the company's assets are insufficient to settle the creditors' claims. If the liquidation commission has not yet been created, the founder/shareholder(s) of the company or its director(s) must file the application. As stated by Article 235 of the Law "On Bankruptcy", failure to file the application for bankruptcy or missing the date for filing such an application are grounds for the vicarious liability of the company's founder/shareholder(s) or its director(s) for the company's debts;
- Decree No. 1 of the President of the Republic of Belarus dated 16 January 2009 "On State Registration and Liquidation (Termination of Activities) of Business Entities" provides that exclusion of an insolvent company from the trade register of the Republic of Belarus without bankruptcy proceedings having been started shall be a basis for the vicarious liability of the company's founder/shareholder(s) or its director(s) for the company's debts.

### 2.2.10 State Registration of Commercial Legal Entities

A company must be registered in order to obtain the status of a legal entity. As a rule, local executive committees carry out the state registration of commercial legal entities. The registration of banks is performed by the National Bank of the Republic of Belarus; the Ministry of Finance of the Republic of Belarus performs the registration of insurance companies; and the registration of companies located in Free Economic Zones (excluding

banks and insurance companies) is performed by the administrations of the respective Free Economic Zones; the registration of companies located in the Belarusian-Chinese Industrial Park (excluding banks and insurance companies) is performed by its administration.

The application package for registration of a company must contain the following documents:

- Application statement;
- Charter (articles of association for companies acting in compliance with articles of association alone) in two hard copies and one soft copy;
- Excerpt from the trade register (for foreign entities). The excerpt must be certified and apostilled and translated into Russian/Belarusian by a certified Belarusian translator and issued not earlier than one year before the application for state registration is made. The signature of the translator must be certified by a Belarusian notary public or by a Belarusian diplomatic mission abroad;
- A passport copy (for foreign individuals). The copy must be translated into Russian/Belarusian by a certified Belarusian translator. The signature of the translator must be certified by a Belarusian notary public or diplomatic mission abroad;
- A document confirming payment of the registration fee.

In practice, state registration takes six business days from the day of filing the application. During this period, the registration body performs the registration of the legal entity and registers the legal entity with the Social Security Fund, the tax authorities, the state insurance company and the statistics body. Joint-stock companies are required to register the issue of their shares with the Department of Securities of the Ministry of Finance of the Republic of Belarus and this increases the time required for registration.

### 2.2.11 Accounting Requirements

All companies in Belarus are required to keep accounting records. Some small companies (subject to criteria regarding the number of employees and annual turnover) may use simplified accounting records and present simplified accounts. Accounts must be kept in Belarusian rubles and in compliance with Belarusian accounting rules. In addition, a company may keep parallel accounts consistent with any other accounting standards, e.g. GAAP.

### 2.2.12 Audit Requirements

Pursuant to Belarusian legislation, some companies are obliged to have their annual financial statements audited. Audits are mandatory for the following types of commercial company:

- companies that are obliged by law to maintain their accounts in keeping with IFRS;
- open joint-stock companies (OAO);
- the National Bank of the Republic of Belarus, banks and other financial institutions;
- commodity and stock exchanges;
- insurance companies;

- companies resident at the High Technology Park;
- companies which guarantee that money deposited by individuals into the bank saving accounts will be refunded;
- companies acting in a professional capacity on the securities market; and
- companies with an annual turnover for the preceding reporting year exceeding EUR 5,000,000.

Only individual auditors or audit firms may perform audits in Belarus.

## 2.3 Representative Office

As an alternative to founding or participating in a Belarusian legal entity, a foreign company can also establish a representative office. A representative office is not a separate legal entity; instead, it is considered an office of the foreign company that represents the interests of this company in Belarus. Generally, a representative office may only perform activities that are considered auxiliary to the main business of its parent company (i.e. market research, exploring investment opportunities, incorporating a legal entity, etc.).

In order to establish a representative office, a foreign company must obtain a special permit from the Ministry of Foreign Affairs of the Republic of Belarus. The application package for such a permit includes the following documents:

- application for the registration, indicating the reason for opening the representative office; the complete name of the company; the date of establishment of the company; the location of the registered office of the company; a description of the business activities of the company and information about the persons authorized to run the business on behalf of the company in the Republic of Belarus;
- a copy of the document confirming state registration of the foreign company in the country of origin, e.g. excerpt from the trade register (this must be legalized (apostilled));
- regulations governing representative offices (a formal document specifying the purposes and rights of the representative office, its structure, address, the power bestowed upon its managing director and the procedure to be followed for terminating its activity);
- a program of activity (for organizations planning to carry out socially useful activity);
- power of attorney for the head of the representative office (this must be legalized (apostilled));
- power of attorney for a person authorized to act on behalf of a foreign company regarding the establishment of a representative office (this must be legalized (apostilled)); and
- a document confirming payment of the state duty for the permit.

All of the abovementioned documents have to be prepared either in Russian or Belarusian. The translation must be certified by either a Belarusian notary public or a Belarusian diplomatic mission abroad.

The permit for establishing a representative office is issued for three years. It is possible to extend a permit by applying to the Ministry of Foreign Affairs no later than ten days before the permit is due to expire. The state duty for each year of a permit's validity amounts to approximately EUR 730. Aside from obtaining a permit, a representative

office must be registered with the tax authority and pay taxes as provided for by Belarusian law.

## 2.4 Mergers & Acquisitions

Generally, a Belarusian company can be acquired via a share deal or an asset deal.

### 1. Share deal

Share deals can be performed in one of two ways:

- a takeover resulting in the acquisition of shares or a participatory interest in the target company. Under a takeover offer, any bidder intending to acquire more than 50% of the voting shares in a public company must launch a general offer to all shareholders of the target company to purchase all of their shares. This requirement, however, is not applicable to private equity transactions. As a default rule, only cash may be used as consideration for this form of acquisition.
- reorganization in the form of a merger or annexation within the Belarusian M&A framework for such transactions. The term “annexation” under Belarusian law means that one legal entity (company A) accedes another (company B), with company A ceasing to exist and being excluded from the register and with company B acquiring all of the rights and liabilities of company A. The term “merger” means the amalgamation of one legal entity (company A) with another (company B), thereby creating a third legal entity (company C) which acquires all of the rights and liabilities of both companies which then cease to exist and are excluded from the register. In the course of a reorganization, the acquirer is obliged to pay the acquisition price through the issuance of shares. Therefore, reorganization can be qualified as a type of securities exchange transaction.

### 2. Asset deal

Under Belarusian law, there are two main methods of acquiring assets:

- the purchase of particular assets;
- the purchase of an “enterprise as a complex of assets as a going concern”. Generally, this method of acquisition is only used in the case of the acquisition of unitary companies.

The sale of assets as a complex of property is a legal concept under Belarusian law. In keeping with this concept, all assets of the company that are used for the operation of the business may be registered with the State Republican Research and Production Unitary Enterprise “National Cadastral Agency” (the “Register”) as a sole complex of property (enterprise) and then be sold in a bulk sale transaction. A company might have several enterprises (e.g. factories). Each of them can be registered as a separate complex of assets (including relevant rights and obligations) if it can operate as an independent business. In most cases, legal entities are founded for the operation of only one enterprise. Therefore, as a rule “a complex of assets” means 100% of the company assets; however, theoretically it can constitute less than 100%. The sale contract must be registered with the Register and only becomes valid after such registration. The transfer of the company from the seller to the buyer is implemented on the basis of the deed of assignment, which contains the data on the composition of the company and notification of all creditors regarding the sale of the company. The deed of assignment shall also contain information about defects identified in the property being transferred and the list of the property lost in the period between registration of the company as a complex

of assets and its transfer to the buyer. The transfer of the title to the buyer can be registered and, therefore, be valid only on the basis of both the sale contract and the deed of assignment. Finally, the Register issues the respective certificate that proves the buyer's title to the company.

As a default rule, the right to a firm name (in case of a UP) and IP rights (in all cases), including those based on the license, automatically pass to the buyer unless otherwise provided by the sale contract.

### 3. Acquisition of Foreign Depository Receipts

There is another possibility for acquisition of control over certain Belarusian open joint companies by means of foreign depository receipts ("FDR"). In particular, a listed Belarusian open joint stock company may transfer up to 25% of all its shares to a foreign depository bank - an issuer of FDR, which would then distribute the FDR corresponding to the respective shares among foreign investors. Such foreign investors are considered as indirect shareholders of a Belarusian company entitled to control a company via a foreign depository bank acting as their proxy.

Any transactions with FDR including but not limited to acquisition of shares in exchange for FDR are explicitly excluded from the requirement of obtaining approval from the Belarusian antimonopoly authority. In addition, FDR holders enjoy certain tax benefits. In particular, until 1 January 2020 the following types of income are not taxable in Belarus:

- dividends;
- income deriving from transactions with shares, which were distributed by means of FDR;
- income deriving from exchange of FDR for the underlying shares.

The above-mentioned tax benefits apply as long as the respective FDR is not paid off.

## 2.5 Licensing

The Edict of the President of the Republic of Belarus "On the Licensing of Certain Kinds of Activities" contains a list of business activities which are subject to licensing by state authorities. The list includes, *inter alia*, business activities in the areas of banking, telecommunications, the gambling industry, the oil industry, and the weapons industry. Certain types of license may only be granted to Belarusian legal entities, for example, the manufacturing of alcoholic drinks (except for beer).

Although there are general rules for obtaining a license, the application requirements for each type of license vary. In some cases, it can be very demanding and time-consuming to comply with all licensing requirements. Performing business activities without an appropriate license can result in sanctions such as financial penalties, the confiscation of all income resulting from the business activity and the liquidation of the legal entity. Moreover, depending on the amount of income received, unlicensed activities may lead to sanctions under Belarusian criminal law.

## 3 Real Estate Ownership

The Land Code of the Republic of Belarus ("Land Code") is the principal law governing the use of land in Belarus. It defines a system of land rights and basic rules for their acquisition. In addition to the Land Code, the main regulation governing the acquisition

of land rights is the Edict of the President of the Republic of Belarus “On the Procedure of Withdrawal and Allocation of Land Plots”. It establishes the detailed procedure for the allocation of state-owned land.

Under Belarusian law, real estate includes the following:

- land plots;
- buildings;
- structures (e.g. a bridge, overhead road);
- objects of incomplete construction (e.g. non-completed buildings); and
- other objects closely connected with the land (i.e. any objects that cannot be moved without causing disproportionate damage).

There are two forms of ownership in Belarus:

- private ownership; and
- state ownership.

Subsoil, water, forests, agricultural land, public land (streets, squares, parks, etc.), land for military purposes and other land as provided for in the Land Code are exclusively owned by the state.

### 3.1 Structure of Land Rights

Belarusian legislation provides that land rights may be acquired by:

- domestic legal entities (including entities set up by foreigners) on the basis of:
  - *the right of permanent use* (this right can only be granted to particular legal entities, including, *inter alia*, agricultural organizations, legal entities constructing and operating blocks of flats and other legal entities for construction of transport and engineering infrastructure facilities as well as roadside service facilities (except for construction in suburban areas of the city of Minsk and cities - regional centers), etc.);
  - *the right of temporary use* (this right is granted on the same basis as the right of permanent use). As a general rule, the right of temporary use can be granted for a period not exceeding 10 years;
  - *the right of ownership* (although in theory private companies have a right to acquire state-owned land, it is quite difficult to realize this in practice. The acquisition of privately-owned land on the basis of a commercial transaction is also possible);
  - *the right to rent* (which is possible for up to a maximum period of 99 years). As a default rule, state-owned land plots (which constitute about 95% of all land in Belarus) for construction purposes can only be rented;
- foreign legal entities only on the basis of the right to rent (for up to a maximum period of 99 years);
- both domestic and foreign legal entities on the basis of the right of temporary use for the purpose of realization of a concession agreement (up to 99 years).

Foreign diplomatic or consular representations may lease the land or acquire ownership of land plots provided that the same right to acquire ownership of the land plots is granted to Belarusian diplomatic representation in the relevant foreign country. Belarusian companies founded by foreign companies or individuals have equal rights to regular domestic companies.



## 3.2 Acquisition of Land Rights

More than 90% of the land in Belarus is owned by the state. Generally, the rights to state-owned land in Belarus may be acquired:

- through a public auction; or
- at the discretion of local executive committees or the President, without an auction being held.

However, the acquisition of state-owned land is not the only way of acquiring land plots. Another option is the acquisition of privately-owned land. The rights to privately-owned land can be acquired under a relevant commercial contract concluded between the private parties.

### 3.2.1 Acquisition of Land Rights through Public Auction

The following rights to state-owned land may be acquired through public auctions:

- the right to lease land plots by foreign and domestic companies;
- the right to lease land plots for the purpose of designing and constructing a building by foreign and domestic companies;
- the right of ownership by domestic companies.

Public auctions are held at the discretion of the local authorities. The initial price for the right to lease the land and to own the land is determined as the cadastral value of the land plot adjusted by relevant coefficients depending on the designated purpose of use for the land plot in question. The cadastral value of the land plot is determined by the Register and depends on the designated purpose of use for the land plot. Information about auctions is publicly accessible and may be found on the website of the local authorities (e.g. [www.minsk-region.gov.by](http://www.minsk-region.gov.by) – information about auctions in the Minsk region).

### 3.2.2 Acquisition of Land Rights without an Auction Being Held

Companies may also acquire the rights to land without an auction being held. However, in these cases the respective authorities may determine unilaterally the title under which the land plot is granted (e.g. ownership/lease/use). Without needing to hold an auction, land rights can be granted to:

- domestic companies for the purpose of mining explorations;
- winners (domestic or foreign companies) of auctions organized by local authorities for designing and constructing specific buildings;
- domestic companies intending to use land plots for the building of blocks of flats;
- domestic companies for the construction of buildings or other objects of real estate provided that such an object of real estate and its developer are approved by the President or comply with the governmental program;
- residents of and companies domiciled in FEZ for the construction and maintenance of real estate in FEZ; and
- domestic companies under a special decision of the President.

The land may also be acquired indirectly through the acquisition of a building or a company as a complex of assets. Under Belarusian legislation, the sale of a state-owned building and/or a company as a complex of assets simultaneously involves the transfer of

the right to lease the land necessary for maintenance of the building and/or operation of a company.

### 3.3 Use of Land Plot

A company must start using a land plot (e.g. construction or other use of the land if the land plot has been acquired for a purpose other than the construction of a building) within six months of obtaining the right to use the relevant land plot (regardless of the type of right).

If the company which acquired the right to use the land plot does not start using the land plot within a six-month period, the land plot may be withdrawn upon:

- the decision of a court (with respect to the right of ownership);
- the decision of the local authorities (with respect to the rights of temporary use, permanent use, and rent).

### 3.4 Lease Agreements

As a rule, lease agreements are concluded for a limited term, although lease agreements for an indefinite term are also possible. Lease agreements contain, *inter alia*, the obligations of the parties which are not influenced by any assignment of the ownership of leased property to another entity or individual within the term of the lease agreement.

Belarusian law provides protection for lessees, e.g. (1) limits on maximum rental rates for state-owned real estate, and (2) a lessor generally cannot terminate a lease agreement until expiration of its term. Lease agreements which are concluded for an indefinite period can be terminated with a relatively short notice period (usually three months).

Lease agreements which include an option to purchase are unusual in Belarus; however, the inclusion of an option to purchase in a lease agreement is possible under Belarusian law.

### 3.5 Rights on Premises

Belarus has no codified legal act regulating the status of buildings and structures, and construction activity. However, it is possible to distinguish between two categories of buildings with a different legal status – (i) residential and (ii) non-residential buildings.

Foreign companies and individuals have the following rights with respect to premises:

- to own non-residential premises;
- to own residential premises if those premises are purchased by them from individuals or private companies;
- to lease non-residential premises;
- to lease residential premises.

Belarusian companies (even if established by a foreigner) and Belarusian individuals may own and rent any type of premises in Belarus. In respect of premises, only (i) the right of ownership and (ii) the right of rent are applicable. The right of permanent/temporary use is not applicable to premises.

### 3.5.1 Ownership of Building and Right to Land on Which Building is Erected

As stated in Article 267 of the Civil Code, the ownership of a building does not automatically mean that the land on which the building is erected is also owned. The land may be used on the basis of other available rights, e.g. right of permanent use or rent. It is legally possible (and it is usual) to be an owner of a building erected on state-owned land. As a rule, the sale of a land plot and a building erected on this land plot must be performed simultaneously if both the land and the building are owned by the same owner. If the owner of the building and the owner of the land plot are different entities/persons, the buyer of the building will obtain the same rights to the land plot as the rights to which the seller is entitled, e.g. the right of permanent/temporary use or the right of lease. In such an event, the relevant rights to the land plot shall be obtained by the buyer simultaneously upon registration of the title to the building.

### 3.6 Registration of Real Estate Rights

The state registration of real estate is mandatory. Objects of real estate are considered to be created only following state registration. The establishment, transfer, and termination of rights and encumbrances with respect to real estate are also subject to state registration. Some transactions with respect to real estate should be registered. For example:

- the sale and purchase of real estate;
- the mortgaging of real estate.

Transactions with respect to real estate which are subject to state registration come into force only upon state registration. Failure to register the relevant transaction results in the invalidity of the respective contract. State registration is performed by the Register and all rights with respect to the real estate must be certified with a relevant certificate issued by the Register.

The duration of the registration process is dependent on the complexity of the real estate object. In the case of a regular apartment, it usually takes up to one week. In the case of a complex industrial building, it can take from one to three months.

### 3.7 Construction Permits, Usage Permits

Construction is allowed on the basis of construction permits which are issued by various competent authorities. The issuing authority (e.g. the Department of Monitoring and Supervision of Construction or a local executive committee) can revoke construction permits for a variety of reasons, including non-compliance with the technical specifications set out in the permit or mistakes in the permit documentation.

Once construction of a building has been completed, permission must be obtained for usage. This permission is based on evaluations conducted by different authorities (e.g. the city architects' office, the fire protection authority, the city electricity supply authority, etc.). If all of the relevant authorities approve the relevant construction documents, then permission for usage is granted. Once a building is permitted for use, the permit is irrevocable (provided that there are no material unauthorized changes to the building).

### 3.8 Mortgages

The creation of mortgages is possible under Belarusian law and fairly widespread. A written contract is the legal basis for establishing a mortgage. The law requires notarization only in some specific instances, e.g. the mortgaging of a land plot owned by an individual. In order to become effective, the mortgage must be registered with the Register. Only banks with a relevant license can hold mortgages over land plots; however, these restrictions do not apply to other types of real estate object including buildings.

The sale of the object of the mortgage is possible only with the consent of the holder of the mortgage (mortgagee). Generally, it is possible to lease the object of the mortgage without the consent of the mortgagee. Unless specifically prohibited in the mortgage contract, the object of the mortgage can be subsequently remortgaged to several mortgagees. The rights of the mortgagee under the mortgage can be assigned to third parties without the consent of the borrower (mortgagor). The assignment agreement must be in the same legal form as the mortgage contract. Moreover, registration of the assignment agreement with the Register is necessary. Assignment of a mortgage at a discount (factoring) may be executed exclusively by banks or other financial institutions holding special licenses.

Generally, mortgages can be enforced by a court if the mortgagor fails to fulfill its obligations under the mortgage. The object of the mortgage is then sold at public auction. If the object of the mortgage has not been sold after two auctions, the mortgagee can purchase the object of the mortgage at a 10% discount to the initial price at the recurring auction.

## 4 Currency Regulation. Capital and Profit Transfer

### 4.1 Currency Regulation

Under Belarusian law, both resident and non-resident companies can freely hold foreign currency and ruble accounts with Belarusian banks. However, a company incorporated in Belarus may enter into currency transactions subject to certain restrictions under the Law of the Republic of Belarus “On Currency Regulation and Currency Control” (“Currency Act”). Within the meaning of the Currency Act, currency transactions include:

- agreements expressed in foreign currency or involving foreign counterparts;
- the import and export of currency values to or from Belarus;
- international bank transfers and transactions by non-residents on bank accounts in Belarus.

Currency transactions carried out between Belarusian residents and non-residents can be qualified as either:

- day-to-day currency transactions, or
- currency transactions connected with the movement of capital.

#### 4.1.1 Day-to-day Currency Transactions

Day-to-day currency transactions are currency transactions carried out between Belarusian residents and non-residents for the purposes of short term imports and exports, payments and collection of dividend and other revenue, and various

transactions of a non-commercial nature. Day-to-day currency transactions must be carried out between residents and non-residents in compliance with the procedures set forth by the Currency Act without limitations and do not require a permit issued by the National Bank.

The list of day-to-day currency transactions is determined by Article 5 of the Currency Act and includes, *inter alia*, the following:

- the settlement of deals relating to the export and/or import of goods (excluding money, securities, and real estate), works and services, protected information and intellectual property;
- the settlement of deals relating to rent or the leasing of property;
- the payment and collection of dividends and other revenues from investments; and
- transactions of a non-commercial nature (e.g. the payment of salaries, payments for the maintenance of diplomatic and other official representations, etc.).

#### 4.1.2 Currency Transactions Connected with the Movement of Capital

Currency transactions connected with the movement of capital are defined as currency transactions which do not qualify as day-to-day currency transactions. They may be performed by residents on the basis of a permit issued by the National Bank unless otherwise set forth by the Currency Act or the President of the Republic of Belarus. In particular, the following transactions require the issuance of a permit by the National Bank:

- the initial acquisition or subscription of shares in a non-resident issuing company by its founders, paying in additional contributions to the charter capital of a non-resident company in case of its increase;
- the purchase of securities issued by non-residents other than the initial acquisition or subscription of shares by the issuing company's founders;
- the acquisition of real property located outside the territory of Belarus;
- the placement of funds with non-resident banks;
- the granting of loans;
- payments made from a resident to a non-resident arising from obligations under a surety or guarantee agreement;
- the receipt of loans from a foreign lender if one of the following criteria is met:
  - the interest rate exceeds a certain level set by the National Bank (for loans denominated in US dollars and euros – 14%; for loans denominated in other foreign currencies or BYN – the refinancing rate of the relevant Central Bank plus 5% (the refinancing rate of the National Bank is currently 18%, i.e. the allowed interest rate in BYN is 23% in total);
  - default interest and contractual penalties exceed a certain level established by the National Bank (0.01% for each day of default);
  - the contract between the Belarusian resident (except for a Belarusian bank) and a non-resident (except for the non-resident bank) stipulates payment obligations in addition to interest, default interest, and contractual penalties;
  - the credit/loan is not repaid using the borrower's account;
  - the credit/loan granted to the Belarusian resident is disbursed to a third party;
  - the lender is registered in a state or territory with a privileged taxation regime or submits or discloses no financial information (off-shore zones).

- payments made from a resident to a non-resident arising from obligations under an agreement on debt assignment or cession.

However, certain transactions connected with the movement of capital may be performed without a permit issued by or notification made to the National Bank. The list of such transactions is set forth in the Currency Act.

#### 4.1.3 Mandatory Conversion of Foreign Currency

Belarusian legal entities are subject to the mandatory conversion of proceeds in a foreign currency received from the export of goods, works, and services into Belarusian rubles. The mandatory conversion obligation applies to 20% of all proceeds in a foreign currency. The conversion must be performed via a service bank within seven business days of receipt of a foreign currency. Belarusian banks, insurance companies, residents of FEZ and some other categories of beneficiaries are exempt from this obligation.

#### 4.1.4 Enforcement of Currency Regulation

A breach of the currency regulation could result in a fine for both the entity which carried out the currency transaction and a Belarusian bank involved in the transaction. In addition, the banking license of the Belarusian bank can be revoked.

### 4.2 Capital and Profit Transfer

Pursuant to the Law of the Republic of Belarus “On Investments” (“Investment Law”), foreign investors have the same rights as those enjoyed by local businesses and may at their sole discretion dispose of income or revenue generated by their investment and repatriate profits without any restrictions upon payment of the relevant taxes in Belarus.

## 5 Competition Law

Belarusian competition law is mainly regulated by the Law of the Republic of Belarus “On Countering Monopolist Activities and Promotion of Competition” (“Antimonopoly Law”). The Antimonopoly Law lays down the antimonopoly policy in Belarus and regulates the activities of legal entities, state authorities and officials in case their activities prevent or otherwise impede competition on Belarusian markets. The Antimonopoly Law also applies to the activities of legal entities, state authorities and other officials outside of Belarus in case their activities lead to the restriction of competition or any other adverse consequences for Belarusian markets.

State control of antimonopoly legislation is carried out by the Ministry of Antimonopoly Regulation and Trade of the Republic of Belarus (“Antimonopoly Authority”). The Antimonopoly Law determines the following activities that may prevent, restrict or eliminate competition:

- monopolistic activities;
- mergers and acquisitions;
- unfair competition; and
- unlawful acts of state authorities and other officials.

## 5.1 Monopolistic Activities

### 5.1.1 Abuse of a Dominant Position

Belarusian legislation prohibits the activities of companies with a dominant position on the market in those cases where such activities result or may result in a restriction of competition or damage the rights, liberties or legitimate interests of other legal entities or consumers. Generally, a company is deemed to have a dominant position on a particular market if it can influence trade in a particular commodity or restrict other companies from entering the market. A company or a group of companies is deemed to have a dominant position in the following cases:

- The market share of a company or a group of companies exceeds the following limits:

Number of major suppliers to the market	Minimum market share threshold (%)
One	35
Two	54
Three	78
Four	95

With respect to two or more companies according to the table above, a company is deemed to have a dominant position if the following conditions are simultaneously met: (i) its market share is 15% or more and (ii) the market shares of this company and other dominant undertakings on the relevant market are invariable or subject to insufficient changes within a year (if the market has existed for less than one year, then within the period within which the market has existed).

- The Antimonopoly Authority finds the company to be dominant based on (i) its ability to unilaterally define price levels and influence the conditions for the sale of goods, (ii) the time periods during which the company has the ability to unilaterally influence the conditions for the sale of goods, and (iii) commercial, technical, administrative and other limitations preventing other companies from accessing the market.

As defined in Belarusian antimonopoly legislation, dominance is not unlawful in and of itself; however, it is forbidden for a company to abuse a dominant position. The following types of activity are regarded as an abuse of a dominant position in Belarus:

- the restriction of access to the market (or exit from the market) by other entities;
- an increase (decrease) in prices without justification;
- the reservation of commodities with the intention of causing an artificial increase in prices;
- the placing of unjustified limits on the manufacturing of products, irrespective of market demands;
- a refusal to enter into a contract with certain consumers, irrespective of the ability to supply the required quantity of products;
- establishing (or maintaining) different prices for one type of good without justification;
- the conclusion and/or the execution of a contract on condition that the counterparty undertakes to fulfil obligations unrelated to the subject of the

contract and/or if such obligations are disadvantageous to the counterparty, including conditions obliging the counterparty to purchase other additional goods;

- the conclusion of agreements that restrict the freedom of the parties to independently determine prices or conditions regarding the supply of goods to third parties;
- the conclusion of agreements that result in the restriction or establishment of control regarding manufacturing or the commodities market; and
- treating business partners unequally (for example, including discriminating provisions in contracts) and creating unequal competitive conditions.

### 5.1.2 Agreements and Actions Restricting Competition

Belarusian antimonopoly legislation forbids the conclusion of agreements or coordinated actions of companies if such agreements or actions might result in a restriction of competition. In particular, it is prohibited for companies to enter into agreements or to coordinate activity if it leads to the following:

- market sharing by territory, by type and amount of transactions, by type and volume of commodities and their prices, by consumers;
- exclusion or limitation of access to the market for competitors and other companies;
- artificial raising, reduction or maintenance of prices (including different prices for one type of good);
- artificial raising, reduction or maintenance of prices at auctions;
- artificial restriction of production of commodities;
- refusal to conclude agreements with certain customers or suppliers (exclusivity provisions);
- other arrangements which eliminate or may restrict competition.

However, to be considered illegal the aforementioned activities must simultaneously meet the following criteria:

- parties involved in such activity are aware of it;
- parties involved in such activity have an interest in its result;
- one party acts in concert with other parties and their actions do not result from independent circumstances influencing any undertaking on the market.

At the same time, in some cases agreements resulting in the elimination or restriction of competition may be considered legitimate by the Antimonopoly Authority provided the positive effect of such agreement outweighs the negative consequences for the Belarusian market as a whole. Companies intending to conclude agreements which potentially fall under the abovementioned restrictions are entitled to apply to the Antimonopoly Authority requesting that such draft agreements be examined to ensure they comply with antimonopoly legislation.

Moreover, Antimonopoly Law also permits parties to enter into certain vertical agreements, which are defined as an agreement between a supplier and a buyer of goods that do not compete with each other. In particular, a vertical agreement could be lawful and permitted if:

- the restrictions on the price of goods relate to the maximum resale price only; or



- the restrictions on the selling of goods of competitors is provided for under a franchise agreement or another contract for organization of sale under a certain trademark; or
- the market share of each party to a vertical agreement does not exceed 15%.

## 5.2 Merger Control

Under the Belarusian merger control regime, the Antimonopoly Authority must be notified about (i) the establishment, restructuring and liquidation/reorganization of companies and (ii) certain share transactions. The prior consent of the Antimonopoly Authority is required for the following share transactions.

Precondition	Type of transaction
<p>If:</p> <p>(i) the book value of the target's assets exceeds 100,000 basic units<sup>1</sup> (approx. EUR 1,150,000) or</p> <p>(ii) the target's annual turnover exceeds 200,000 basic units (approx. EUR 2,300,000)</p>	<ul style="list-style-type: none"> <li>• The acquisition of a target active in the relevant market by a dominant undertaking; or</li> <li>• The acquisition of more than 25% of the shares in, or the ability to exercise influence over, a dominant undertaking; or</li> <li>• The acquisition of shares in a target if this makes it possible for the acquirer to control more than 25% of the shares in a target; or</li> <li>• The acquisition of shares in a target if this makes it possible for the acquirer, which possessed between 25% and 50% of its shares, to control more than 50% of shares; or</li> <li>• Simultaneous participation of one individual or entity in executive bodies, management boards, boards of directors of two or more companies active on the same market if such an individual or entity can control the activity of such companies.</li> </ul>
<p>If:</p> <p>(i) the book value of the assets of the reorganized company or the shareholder of a newly incorporated company exceeds 100,000 basic units (approx. EUR 1,150,000); or</p> <p>(ii) their annual</p>	<ul style="list-style-type: none"> <li>• The establishment or reorganization of a holding company or an association of companies; or</li> <li>• The establishment of a new company if the charter capital of the new company is to be paid in the form of a contribution of (i) shares or (ii) any other assets of another company; or</li> <li>• The establishment of a new company as a result of split-off if the charter capital of the new company consists of shares of a parent company which are subject to merger control; or</li> <li>• Reorganization of companies in the form of merger or annexation.</li> </ul>

<sup>1</sup> A **basic unit** is the specific amount in Belarusian rubles determined by the Belarusian Government, which is used for calculating the amount of duties, fines, rent payments, etc. As of 28 November 2016, one basic unit is equivalent to BYN 23 (approx. EUR 11).

Precondition	Type of transaction
turnover exceeds 200,000 basic units (approx. EUR 2,300,000)	
If a party to a transaction is registered as (i) a dominant undertaking or (ii) a natural monopoly	<ul style="list-style-type: none"> <li>• The reorganization of a company in the form of a merger or annexation; or</li> <li>• The reorganization of a dominant undertaking into a joint stock company; or</li> <li>• The establishment or reorganization of a holding company or an association of companies; or</li> <li>• The establishment of a new company if the charter capital of the new company is to be paid in the form of a contribution of (i) shares or (ii) any other assets of another company; or</li> <li>• The establishment of a new company as a result of a split-off if the charter capital of the new company consists of shares of a parent company which are subject to merger control.</li> </ul>

### 5.3 Restriction on Activities of State Authorities

Belarusian law prohibits state authorities from adopting acts and performing other actions which result or may result in a restriction of competition or which damage or may damage the rights and interests of other legal entities or individuals. In addition, state authorities are prohibited from concluding agreements with other state authorities or companies if such agreements are aimed at dividing up the market, excluding or limiting access to the market for other companies or increasing, lowering or maintaining prices illegally (including different prices for one type of good).

### 5.4 Unfair Competition

The Antimonopoly Law prohibits the distribution and dissemination of false or inaccurate information that may damage the reputation of other companies or cause customers to be misled. The following conduct is unlawful under Belarusian legislation:

- the unauthorized use of the intellectual property (i.e. company name, trademark) of another entity;
- the unauthorized copying of the design of goods of another entity;
- announcing false, inaccurate or defamatory information that may discredit or damage the business reputation of another entity.

Any legal entity whose rights have been infringed by unfair competition can file an application to the Antimonopoly Authority or the Committee of State Control of the Republic of Belarus for an investigation into unfair competitive practices. If the investigation reveals unfair competition practices, the case shall be resolved by a court (or other competent body).

## 5.5 Liability for Breach of Antimonopoly Legislation

If a company's officials are found guilty of breaching antimonopoly legislation or legislation on unfair competition, ignoring orders issued by the Antimonopoly Authority, abusing their dominant position or submitting incomplete or patently false information, they may be fined personally, regardless of whether the company itself is also held liable. The amount of the fine can range from 20 to 50 basic units, i.e. approximately from EUR 230 to EUR 575. Repeat offenders within the same year may face criminal prosecution (fine, imprisonment, or being barred from holding certain executive positions). In addition, parties which breach their notification obligation when establishing or reorganizing the holding company or a group of companies may be fined. Moreover, the relevant authorities may refuse to register a new holding entity or, if it has already been registered, a court may revoke its registration. A share purchase transaction executed without the approval of the Antimonopoly Authority can, if the transaction was subject to notification, be voided by the court. A claim to invalidate such a transaction can be filed by the Antimonopoly Authority.

## 6 Banking Law

The Banking Code of the Republic of Belarus ("Banking Code") is the key piece of legislation governing banking activity in Belarus. The Belarusian financial services market is dominated by banks. Belarus has a two-tier banking system consisting of:

- the National Bank; and
- banks and non-banking financial institutions (collectively "banks").

The National Bank is the central bank of Belarus and, at the same time, a public authority. It acts as the banking supervision agency and as the main regulator of banks. Under the Banking Code, the National Bank's remit includes the following main tasks:

- the state registration of banks;
- the licensing of banking activity;
- the regulation of banking activity with respect to its security and the supervision thereof;
- the protection of the Belarusian ruble and maintaining its stability;
- the development and consolidation of the banking system of Belarus; and
- the refinancing of banks.

The National Bank is subordinated to the President, who has exclusive competence to:

- approve the charter of the National Bank as well as amendments thereto;
- appoint the chairman and members of the Board of the National Bank and to discharge them subject to the consent of the Council of the Republic of the National Assembly of the Republic of Belarus; and
- approve annual reports and the distribution of profits of the National Bank.

Banking activities in Belarus may only be performed by banks which are subject to state registration with the National Bank. The Banking Code provides for capitalization rules, pursuant to which the registered charter capital of a bank must amount to at least BYN 45,000,000 (approx. EUR 22,170,000). The minimum amount of a bank's charter capital must consist of cash contributions from its founders and be fully paid up prior to the bank's state registration. Cash contributions made to the charter capital of the bank

must be transferred to a temporary account opened by the bank founders with the National Bank or with any other bank as agreed with the National Bank.

Moreover, banks may perform their operations only after having obtained a license issued by the National Bank. The banking license enumerates the banking operations that a bank is authorized to perform. Banking licenses in Belarus may cover the following operations:

- the acceptance of monetary deposits from individuals and/or legal entities;
- the investment of funds accepted as deposits;
- the opening and operation of accounts for individuals and/or legal entities;
- the opening and operation of bullion accounts;
- the provision of payment and cash services to individuals and legal entities, including correspondent banks; and
- the execution of foreign exchange transactions.

However, the license to perform deposit-taking activities from individuals and to open and maintain bank accounts for individuals may be issued to a bank no earlier than two years from the date of its state registration provided that its financial position has been stable during the past two years and its capitalization satisfies the minimum requirements established by the National Bank. Where a bank has been operating for less than two years, its charter capital must be twice that of the minimum amount of charter capital (i.e. EUR 22,170,000 x 2 = EUR 44,340,000) in order to obtain a license for the above-mentioned activities.

Performing banking activity without obtaining the relevant license is subject to sanctions, including financial penalties, the confiscation of all gains resulting from such unlicensed banking activity, and the liquidation of the bank. Moreover, depending on the amount of income received, unlicensed banking activity might even have criminal repercussions.

## 6.1 Specific Requirements for Banks with Foreign Investments

There are certain restrictions with regard to the presence of foreign capital in the Belarus banking system. In particular, the National Bank has established a 50% quota (limit) for foreign participation in Belarusian banks. This quota is determined as a ratio of total foreign capital in charter funds of banks with foreign investment and the total amount of charter funds of all banks registered in Belarus. The National Bank would deny registration of banks with foreign investment once the quota for foreign participation in the banking system of Belarus is reached.

## 6.2 Anti-Money Laundering Measures

Under the Law of the Republic of Belarus “On Measures Designed to Prevent Legitimization of Illegal Income”, Belarusian banks are required to take action against money laundering, such as conducting know-your-customer checks, monitoring suspicious transactions, blocking and tying up monetary funds. The banks' compliance with these provisions is supervised by the National Bank. In addition, under the National Bank's Instruction on Internal Control in Banks, the executive bodies of the bank and its employees at all levels are required to exercise internal control over the financial procedures. These measures are aimed at preventing and suppressing criminal acts relating to money laundering and the financing of terrorism and, in turn, at ensuring that the bank is not involved in illegal financial transactions.

## 7 Taxation

The Tax Code of the Republic of Belarus (“Tax Code”) is the legal basis for the single taxation system in Belarus. It comprises two parts, namely the General and Special Parts.

The General Part of the Tax Code establishes the system of taxes and duties, basic principles of taxation in Belarus, types of taxes and duties, general rules for their calculation, rights and duties of payers, tax bodies and other authorities. The Special Part of the Tax Code, which came into force on 1 January 2010, sets forth the detailed rules on each state-wide and local tax, duties as well as special tax regimes. The taxpayers, objects of taxation, taxable base, rates, list of reliefs, as well as tax calculation procedures, due dates for the payment of tax and the filing of tax returns are defined in the Special Part in relation to every tax payment.

The Ministry of Taxation of the Republic of Belarus (“Ministry of Taxation”) and its territorial branches (inspections) are the main supervisory authorities. They exercise control over the observance of tax legislation and supervise the calculation and payment of taxes and duties as well. Moreover, the Ministry of Taxation is authorized to adopt legislation in the sphere of taxation, establish specific measures aimed at the simplification of Belarusian tax legislation, including measures aimed at improving the calculation and payment of taxes, tax accounting and tax control. The Tax Code additionally regulates several special tax regimes, for example, a simplified system of taxation, taxation in FEZs, the taxation of gaming/gambling and lottery activities, and the taxation of the residents of the High Technology Park.

### 7.1 General Structure of Taxation

Belarus has a two-tier taxation system which includes state-wide and local taxes and duties. State-wide taxes are levied throughout the territory of Belarus, while regional and local taxes are levied on the taxpayers registered, operating or holding property within the territory of the particular region.

The main taxes with respect to the business activities of legal entities in Belarus include the following:

#### 7.1.1 Profit Tax

Profit tax is one of the most important state-wide taxes for companies and applies to:

- legal entities of the Republic of Belarus;
- foreign and international organizations, including those that are not legal entities;
- simple partnerships;
- branches, representative offices and other separate sub-divisions of Belarusian legal entities, which have separate balance sheets and bank accounts.

The profit tax rate is 18%. However, the following tax payers, *inter alia*, are subject to profit tax at other tax rate:

- banks and insurance companies – 25%;
- residents of FEZ (if certain specific requirements are met) – from 9% to 12%;
- science and technology parks, technology transfer centers – 10%;

- members of the scientific and technological associations established by the Belarusian State University, with regard to part of the proceeds from the sale technologies and services for their development – 5%.

Profit tax is levied on gross profits received from the sale of goods (works, services), income from dividends, securities and realization of property rights as well as income from non-sale operations less expenses related to such operations. The tax base is determined as the total income, reduced by deducting the following amounts from the tax base:

- Deductible expenses;
- VAT and excise tax;
- Turnover taxes; and
- Real estate tax.

The fiscal period for profit tax is one calendar year.

### 7.1.2 Value Added Tax

The Tax Code states that the following are liable to pay value added tax (VAT):

- legal entities of the Republic of Belarus;
- foreign and international organizations, including those that are not legal entities;
- simple partnerships;
- individual entrepreneurs, whose aggregate turnover for the three preceding consecutive months exceeds EUR 40,000;
- trustees for the turnover of goods (works, services) and for property rights arising under the trust management of property received in trust; and
- individuals who import goods into Belarus and are regarded as taxpayers under Belarusian law.

VAT is charged on turnover generated on the sale of goods (work, services), proprietary rights and goods imported to the customs territory of Belarus.

VAT is charged at the following tax rates:

- the basic VAT rate is 20%;
- 0% VAT is charged on the export of goods; works (or services) on tracking, shipment, overloading and other similar works (or services) related to the sale of exported goods; exported transportation services, including transit, as well as exported works on the production of goods made on commission; works (or services) on the repair (modernization, retrofitting) of aircraft and their engines, railway vehicle units performed for foreign organizations or individuals; domestic manufactured goods sold to the owners of duty-free shops; goods sold at the retail stores to individuals not residing in the member states of the Eurasian Economic Union if those goods are exported from Belarus within three months of purchase; bunker fuel for international transportation airplanes sold to foreign airlines; services (including air navigation services) connected with the maintenance of international transportation airplanes provided at airports and in the airspace of Belarus; works and services of authorized service centers on repair and maintenance of vehicles registered in foreign states for foreign companies and foreign citizens; works (or services) rendered by the State Association “Belarusian Railways” for foreign railway companies (namely, lease

- of railway wagons, adjustment of railway wagons for another type of tracks, services of locomotive and locomotive crews);
- 10% VAT rate applies to plant cultivation products (excluding flowers and decorative plants), wild plant products, cattle breeding (excluding animals used in the production of fur), fishery and apicultural products; import and (or) sale in the customs territory of Belarus of food and goods for children within the list of products established by the President;
  - reduced VAT rate of 9.09% (for VAT at the rate of 10%) and 16.67% (for VAT at the rate of 20%) with respect to the goods that are subject to regulated prices (tariffs);
  - 25% VAT rate applies to telecommunication services.

The fiscal period for VAT is one calendar year. The reporting period for VAT may be either one quarter or one month at the discretion of the taxpayer. However, for telecommunication companies the reporting period for VAT is one month.

### 7.1.3 Real Estate Tax

As a general rule, real estate tax is levied on real estate objects as well as constructions in progress and incomplete constructions owned or possessed by a company or individuals. The real estate tax base is determined based on the residual costs of buildings owned or possessed by tax payers. The annual tax rate for legal entities is established at the rate of 1% and for individuals – at rate 0.1% or 0.2% depending on the type of real estate owned by them. Thus, if the market price of the real estate object (valued consistent with the state real estate register database – which is usually much lower than the actual market price) owned by a company is EUR 1,000,000, then the annual tax for a legal entity would be EUR 10,000. The local municipal administration has the right to increase the tax rate to two and a half times. Furthermore, if a real estate object is not used or used inefficiently, the regional municipal administration may increase the tax rate to ten times. Therefore, the total tax rate for owning real estate could be as much as 2.5% p.a. or even 10% p.a.

In addition, companies with constructions in progress that are overdue according to the project documentation are subject to real estate tax at the rate of 2%. At the same time, organizations financed from the budget of Belarus are exempt from real estate tax unless they lease the relevant buildings.

The fiscal period for real estate tax is one calendar year.

### 7.1.4 Offshore Duty

Belarusian residents are subject to offshore duty with respect to the following transactions:

- the transfer of funds to (i) a non-resident of Belarus registered in an offshore zone; (ii) another entity in respect of the obligations to a non-resident registered in an offshore zone, or (iii) a bank account opened in an offshore zone;
- non-cash settlement with a non-resident registered in an offshore zone; and
- the transfer of property rights and/or obligations due to the replacement of parties in commitments where one party is resident in Belarus and another – non-resident registered in an offshore zone.

The offshore duty rate is 15% of the transferred amount and should be paid by a Belarusian resident (i) before the transfer of funds to a non-resident or (ii) no later than the day after the obligation to a non-resident is due with respect to the non-cash

settlement or transfer of property rights and/or obligations due to the replacement of parties in a contract. The list of offshore zones is determined by the President of Belarus.

The fiscal period for offshore duty is one month.

## 7.1.5 Withholding Tax

Income of foreign companies not engaged in a commercial activity in Belarus through a permanent representative office is subject to taxation at the following rates:

- 15% – royalties, income derived from the sale or redemption of securities (other than shares) and other types of income as provided for in the Tax Code (i.e. income derived from training, legal, and consulting services);
- 12% – dividends, income derived from the sale of shares (units) in Belarusian companies;
- 10% – interests derived from debt commitments (obligations) of any type;
- 6% – freight, chartering fees (including demurrages and other payments arising in transit) for cross-border transportation.

The withholding tax is calculated and withheld by companies or individual entrepreneurs that accrue and pay out the income to foreign legal entities, based on the full amount of such income. In case of non-cash income, the tax is calculated on the basis of its cash equivalent.

The fiscal period for withholding tax is one month.

## 8 Investment Benefits

Belarusian law envisages several special regimes for investors (both national and foreign). These regimes provide for certain benefits in different areas, for example: decreased tax rates, simplified procedures for employment of foreigners, customs preferences, etc.

### 8.1 China–Belarus Industrial Park “Great Stone”

China–Belarus Industrial Park “Great Stone” (“Industrial Park”) is an economic zone located near the City of Minsk with a special legal regime for investors of any origin (not only from Belarus or China) that will be in force until 15 June 2062. Belarusian companies incorporated by investors may enjoy the following benefits:

- profit tax with respect to profits arising in the course of sale of goods (works, services) of own production:
  - is not paid for first 10 years upon company’s registration;
  - the tax rate is reduced by 50% for another 10 years upon expiration of first 10 year-term upon company’s registration;
- land tax with respect to land plots located in the Industrial Park:
  - is not paid for first 10 years upon company’s registration;
  - the tax rate is reduced by 50% for another 10 years upon expiration of first 10 year-term upon company’s registration;
- real estate tax with respect to immovable property (except for land plots) located in the Industrial Park:
  - is not paid for first 10 years upon company’s registration;



- the tax rate is reduced by 50% for another 10 years upon expiration of first 10 year-term upon company's registration;
- full VAT refund with respect to goods, work, services, property rights used for construction in the Industrial Park;
- exemption from VAT and customs duties with respect to goods imported for realization of an investment project;
- withholding tax and profit tax with respect to dividends paid by a company is paid under the 0% tax rate within 5 years upon the date of first profits declaration;
- withholding tax with respect to royalties paid by a company to foreign companies is paid under the 5% tax rate until 1 January 2027;
- personal income tax is paid by employees under the 9% tax rate until 1 January 2027;
- social security payments are paid by a company for its employees at the lower rates:
  - for income of foreign employees – 0%;
  - for part of income of Belarusian employees exceeding average monthly salary (i.e. EUR 380) – 0%.
- no additional taxes in case of adoption of new laws;
- no mandatory conversation of foreign currency until 1 January 2027;
- land plot can be received without holding an auction;
- contractors for construction of buildings in the Industrial Park may be chosen by a company without holding tenders;
- other benefits.

In order to enjoy the above-mentioned benefits a Belarusian company incorporated by an investor must satisfy the following requirements:

- a company conducts scientific research and/or experimental-design activity and the amount of investments exceeds USD 1,000,000;
- a company conducts activities in the areas of electronics, pharmaceuticals, fine chemistry, biotechnology, machinery construction, development of new materials activity and the amount of investments exceeds USD 5,000,000.

## 8.2 Free Economic Zones

There are six FEZ in Belarus located in Minsk and all regional centers (Brest, Gomel, Grodno, Mogilev, Vitebsk). Belarusian companies registered as FEZ residents enjoy certain benefits, namely:

- profit tax with respect to profits arising in the course of sale of goods (works, services) of own production:
  - is not paid within 5 years upon the date of declaring the first profit;
  - the tax rate is reduced by 50% upon expiration of first 5 year-term;
- exemption from real estate tax with respect to immovable property (except for land plots) located in FEZ;
- exemption from land tax with respect to land plots allocated in FEZ for construction of buildings throughout the period of construction but no longer than 5 years;

- a company may import goods under customs procedure of free customs zone that provides for possibility not paying customs duties and VAT with respect to imported goods if they are used within FEZ territory;
- exemption from VAT with respect to goods manufactured from foreign materials placed under customs procedure of free customs zone and then sold in Belarus under customs procedure of internal consumption;
- other benefits.

In order to enjoy these benefits a Belarusian company incorporated by an investor must implement in FEZ an investment project amounting to at least EUR 1,000,000.

### 8.3 High-Technology Park

Any Belarusian company (including those with foreign investments) may enjoy the status of a resident of the High-Technology Park (the “HTP”) irrespectively of its current actual location in Belarus. The resident of HTP enjoys the following privileges until 25 December 2020:

- exemption from profit tax with respect to profits arising in case of sale of goods (works, services) of own production;
- exemption from VAT with respect to goods (works, services) of own production;
- exemption from VAT in case of import of equipment required for resident’s activity (PC’s, laptops, etc.);
- exemption from real estate tax with respect to buildings located within the territory of HTP;
- exemption from land tax with respect to land plots located within the territory of HTP for construction of buildings throughout the period of construction but no longer than 3 years;
- the rate of withholding tax with respect of royalties, dividends, interests is 5%;
- the rate of personal income tax to be paid by HTP resident’s employees is 9%;
- social security payments to be paid by a HTP resident for its employees at the lower rates - for part of income of employees exceeding average monthly salary (i.e. EUR 380) – 0%;
- no mandatory conversation of proceeds in foreign currency into Belarusian rubles.

In order to enjoy these benefits a company must be registered as a resident of the HTP. However, only companies satisfying the following conditions may be registered:

- conduct following types of activity: software development, data processing, scientific research, data protection, IT consulting, etc.;
- to pay to the Administration of the HTP on a quarterly basis 1% of its gross revenue.

### 8.4 Small Towns and Rural Areas

Belarusian government is interested in improvement of the standard of living not only in big cities but also in small towns and rural areas. Thus, there have been introduced certain benefits to attract business to such areas. In particular, the following benefits have been granted for companies located in small towns and rural areas (except for banks, insurance companies, security brokers, residents of Industrial Park, residents of

HTP) as well as for branches of other companies located there within 7 years upon their registration:

- exemption from profit tax with respect to profits arising in case of sale of goods (works, services) of own production;
- exemption from real estate tax with respect to buildings located in small towns and rural areas;
- no mandatory conversion of proceeds in foreign currency into Belarusian rubles;
- other benefits.

## 8.5 Investment Agreements

An investor (both Belarusian and foreign) may enter into an investment agreement with the Republic of Belarus in order to obtain certain guarantees and benefits. As a rule, investment agreement is concluded by a relevant governmental body and investor and provides for the following incentives:

- possibility for construction of objects envisaged by the investment project simultaneously with preparation, project appraisal, and approval of design documentation;
- allocation of a land plot for construction of objects envisaged by the investment project without holding an auction;
- exemption from land tax (if the land plot was granted in ownership or in permanent or temporary usage) or from payment of rental fee (if the land plot was leased from the state) for the whole period of construction of objects envisaged by the investment project;
- construction of objects envisaged by the investment project without payment of compensation for removal of flora on the land plot and without payment of compensation for allocation of agricultural land (if such land is acquired);
- contractors for construction of objects envisaged by the investment project may be chosen by an investor without holding tenders;
- exemption from VAT and customs duties in case of import of equipment required for realization of investment project;
- full VAT refund with respect to goods, work, services, property rights used for constructing of objects envisaged by the investment project.

An investment agreement may provide for other benefits, even those that are not directly envisaged by Belarusian law, as well as certain obligations of the Republic of Belarus (for example, obligation to ensure the supply of raw materials). In this case, it shall be concluded upon resolution of the Government of the Republic of Belarus based on approval granted by the President of the country.

## 8.6 Concession Agreements

As a rule, certain types of property can be owned exclusively by the state, i.e. water objects (rivers, lakes, etc.), forests, subsoil assets, public roads, etc. However, the Republic of Belarus may transfer them to an investor for compensation or free of charge based on a concession agreement with the Republic of Belarus.

In order to enter into a concession agreement, as a rule, an investor must take part and win a tender or an auction held by a relevant governmental authority. The concession agreement may provide for all benefits stipulated in a regular investment agreement (as

described in Section 8.5 above) and is concluded up to 99 years. A concession agreement should also provide for the rules on distribution of goods produced by an investor. The following options are available:

- all goods produced by an investor shall belong to an investor;
- goods produced by an investor shall be divided between an investor and the state;
- all goods produced by an investor shall be transferred to the state, an investor receives the remuneration for such goods.

## 9 Employment Regulation

The Labour Code of the Republic of Belarus and subordinate legislation principally govern labour relations in Belarus. Trade unions and the state labour inspectorate perform controlling functions with respect to employers' compliance with labour legislation and collective and individual employment agreements.

### 9.1 Collective Bargaining Agreements

A collective bargaining agreement is concluded between employees and their employer. It governs labour, social, and economic relationships between an employer and their employees within a single company. The parties are free to define the conditions of the collective agreement; however, it may not contain conditions that are less advantageous to employees than those set forth in the Labour Code. The Labour Code provides for the mandatory registration of collective agreements with the local executive committee.

### 9.2 Working Hours

As a general rule, the length of the working week should not exceed 40 hours and the working day 8 hours. In certain situations, the law provides for shorter working hours, e.g. shift work, night work, etc. Overtime may be performed at the request of the employer; however, no more than 10 hours per week and 180 hours per year is permitted. In case of overtime, the working day should not exceed 12 hours. Overtime is compensated by time off in lieu or by the payment of the extra hours worked at higher rates.

### 9.3 Wages

Consistent with official statistics, the average monthly wage in Belarus was equivalent to EUR 380 as of March 2017. Personal income is levied at a rate of 13%. Payroll costs (e.g. social security payments) incurred by a company may be up to 34% of the company's wage fund. In addition, an employee also pays 1% of his/her salary as social security contribution.

### 9.4 Probation period

An employer may stipulate that a probation period is necessary in a labour agreement in order to test the skills and abilities of a potential employee or to determine whether the employee is a good fit in the position he or she occupies. Some categories of employee are not subject to a probation period, e.g. employees under 18 years old, disabled persons and graduates whose employment commenced within two years of the date of their graduation. A probation period may not exceed three months.

## 9.5 Labour Books and Employment Contracts

A labour book of a standard type is the main document intended for recording the labour activities and seniority of an employee. An employer keeps labour books for all employees who have worked in a company for more than five days in total if the company is the primary workplace of such an employee.

The labour book contains all relevant information about the working activities of a particular employee such as his/her work duties, transfer to different positions, dismissal and employee's rewards.

Labour relationships between an employer and an individual employee are based on employment contracts. As a rule, an employment contract must be in writing and must stipulate the rights and obligations of the parties. As a material condition, an employment contract must include information about the employee and the employer, the place of work (structure of the company), the position, qualifications, profession and rights and obligations of the employee and the employer, information on working hours and salary.

Employment contracts may be concluded for:

- an indefinite term;
- a definite term (from one to five years).

If an employee continues to work, despite the expiration of an employment contract concluded for a fixed term and neither party requests termination of the employment contract, the employment contract will be deemed to have been concluded for an indefinite term. The drawback of an employment contract concluded for an indefinite term from an employer's perspective is that termination of such a contract is difficult as the employer must have a valid reason for terminating the contract. On the other hand, it is relatively easy for an employee to terminate an employment contract with an indefinite term by giving 30 days' notice in writing.

## 9.6 Termination of an Employment Contract

The main grounds for terminating an employment contract under the Labour Code are, *inter alia*, as follows:

- an agreement of the parties to terminate an employment contract;
- the expiration of the term of an employment contract;
- the termination of an employment contract by an employee;
- the termination of an employment contract by an employer;
- the refusal of an employee to continue employment because of a change in the company's ownership or due to restructuring of the company;
- the refusal of an employee to continue employment because of a change in the material conditions of the employment contract; and
- the refusal of an employee to transfer to a position different from that stipulated in his/her employment contract or because of the relocation of the employer.

An employee has the right to terminate a contract concluded for an indefinite term by giving one month's prior written notice (30 days). An employment contract can be terminated before expiration of the notice period upon the mutual consent of the parties. Termination of an employment contract with a definite term by an employee is possible if:

- the employee becomes disabled;
- the employer materially violates labour legislation, the conditions of the collective bargaining agreement or the employment contract.

Aside from termination of employment contracts with definite terms due to expiration of the term, an employer may terminate every employment contract, *inter alia*, in the following cases:

- the liquidation of the company;
- a reduction of the number of employees for business reasons;
- the repeated non-fulfillment of work functions by an employee without good cause if the employee has already previously been subject to disciplinary measures;
- the consumption of alcohol at the workplace and/or during working hours;
- the non-conclusion of a non-disclosure agreement by an employee who has access to the employer's commercial secrets, disclosure of commercial secrets; and
- a violation of labour protection requirements by an employee which resulted in significant damage to the company.

As a rule, an employee is entitled to severance pay if an employer terminates his/her employment contract. The amount of severance pay due depends on the legal grounds for termination and usually amounts to between two weeks' to three months' salary.

## 9.7 Employment of Foreigners

The employment of foreign nationals is, as a rule, subject to the issuance of a work permit by the Department of Citizenship and Migration.

The following persons do not require a work permit to be employed in Belarus:

- a) permanent residents of Belarus;
- b) refugees (including those applying for refugee status);
- c) persons working in diplomatic and consular institutions, representative offices of international organizations;
- d) heads of representative offices of foreign companies;
- e) priests performing religious activities in religious organizations officially registered in Belarus;
- f) interns;
- g) employees of foreign media organizations accredited in the Republic of Belarus;
- h) persons invited for a period not exceeding 90 days to lecture and/or perform other educational work in institutions providing higher education, training and retraining;
- i) persons obliged to compensate governmental expenses on support and bringing up of their children;
- j) persons graduated from Belarusian universities and hired to take the positions in accordance with education received;
- k) persons in other cases which fall under international treaties of the Republic of Belarus (e.g. Russian citizens).

As a general rule, foreigners arriving in Belarus must register with the Department of Citizenship and Migration within five days.

## 10 Price Regulation

Pricing in Belarus is predominantly governed by the Law of the Republic of Belarus “On Pricing” (1999) (“Pricing Law”), Edict No. 72 of the President dated 25 February 2011 “On some issues for regulating prices (tariffs) in the Republic of Belarus” (“Pricing Edict”) and secondary legislation.

The Pricing Law and Pricing Edict establish free prices (tariffs) for goods (works and services) in Belarus; however, they provide some exceptions to this. State regulation of prices (tariffs) applies to:

- the goods (works and services) of companies occupying a dominant position on the commodity markets which are included in the State Register of Dominant Undertakings which is compiled by the Antimonopoly Authority;
- various socially significant goods (works and services), such as public utilities, realtor services, certain paid medical services, natural and liquefied gas, electrical and heat energy, spirits and some other goods and services, the comprehensive list of which is specified in the Pricing Edict.

The direct regulation of prices (tariffs) is carried out by the state by means of:

- fixed prices (tariffs);
- limits on prices (tariffs);
- limits on raising (discounts) sale prices;
- limits on rates of profitability;
- the procedure for determining and applying prices (tariffs);
- prices (tariffs) indexation; and
- the requirement to declare prices (tariffs).

A legal entity has the right to establish the price (tariff) for goods (work and services) independently or in coordination with the buyer if state regulation on pricing does not apply to the goods in question.

## 11 Intellectual Property

Currently regulation of intellectual property rights in Belarus is predominantly governed by the Civil Code, the Law on Copyright and Related Rights, the Law on Trademarks and Service Marks and the Law on Industrial Patents, Utility Models and Designs.

The Civil Code provides for several different forms of intellectual property. These are divided into two groups:

- Copyright and Related Rights;
- Industrial Property Rights.

### 11.1 Copyright and Related Rights

Belarusian copyright legislation provides legal protection for authorship rights and an author’s pecuniary rights with respect to scientific, literary and artistic works (copyright subject matters) as well as legal protection for the rights of performers, record producers and broadcasting/cable providers with respect to performances, recordings and transmissions (related rights subject matters). No copyright notice is required to establish copyright in Belarus. A person indicated as the author on the original or on a

copy of the work is deemed to be its author in the absence of proof to the contrary (copyright holder presumption).

The related rights arise by virtue of the performance of a work, production of a phonogram (videogram), broadcasting and cable transmission. For announcement of its related rights, the right holder might use a related right notice consisting of three elements: the circled Roman letter P, the name of the person/entity holding related rights with respect to these phonograms (videograms) and the year of the first publication of a phonogram (videogram). Belarusian legislation vests an author as well as performers, record producers and broadcasting/cable providers with pecuniary and non-pecuniary rights which should be observed in connection with any use of a protected work. The non-pecuniary rights (i.e. right of authorship, rights to be mentioned as an author) belong to the author of a work and may not be assigned or transferred to other persons. Pecuniary rights (i.e. commercial rights to use the object of intellectual property) can be assigned or transferred in full or in part on the basis of a relevant assignment/license agreement.

Authorship rights, the right to name attribution and the right to protection of an author's reputation are protected in perpetuity. Pecuniary rights are generally effective for the entire lifetime of an author and for 50 years after his/her death.

## 11.2 Industrial Property Rights

Industrial property rights refer to the legal relations, arising in connection with (i) the creation and use of inventions, useful models, industrial designs and selection achievements, (ii) the protection of manufacturing secrets (know-how), and (iii) the means of individualization of business participants, goods, works and services (firms' names and trademarks).

### 11.2.1 Inventions, Useful Models, Industrial Standards

A patent must be obtained to secure legal protection for inventions, useful models and industrial designs. Legal protection may be granted for an invention, technical decision or artistic design solution provided that:

- it is related to the product or the method;
- it is new;
- it has the required level of invention;
- it is industrially applicable;
- it is original.

A patent is valid for the following periods of time:

- for an invention – twenty years;
- for a useful model – five years;
- for an industrial design – ten years.

### 11.2.2 Right to Protection of Manufacturing Secrets (Know-How) from Illegal Use

The right to protection of manufacturing secrets (know-how) arises by virtue of establishing a security regime with respect to such secrets by their owner (including determination of the composition of information, which is to be treated as a commercial



secret and introduction of specific measures targeted at protection of such information). Apart from that, no other formalities (e.g. registration with authorities, obtaining certificates, etc.) need to be satisfied to protect the manufacturing secrets (know-how).

A person lawfully possessing manufacturing secrets (know-how) is entitled to request a person illegally using them to cease such actions immediately and use other protective measures provided by law. A person who possesses manufacturing secrets (know-how) may transfer all or a part of the data, constituting their contents, to another person under a contract.

### 11.2.3 Means of Individualization of Business Participants, Goods, Works or Services

The most practically applicable means of individualization include:

- *Firm Name*. A firm name is subject to registration in the Unified State Register of Legal Entities and Individual Entrepreneurs. The legal entity that registered the firm name possesses the exclusive right to use such firm name in the entire territory of the Republic of Belarus. The right to use the firm name terminates simultaneously upon liquidation of the legal entity or upon a change of its name.
- *Trademarks*. Legal protection is afforded to a trademark in the territory of the Republic of Belarus upon its registration with the competent patent body, which is the National Center of Intellectual Property, or by virtue of international treaties to which the Republic of Belarus is party.
- *Geographical Indication*. Geographical indications of goods is an indication registered with the State Register of Indications of Places of Origin of Goods confirming that the goods are originating from certain region and their quality is strongly dependent on the place of their origin (i.e. Champaign, Cognacs, etc.).

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