

# Doing Business in BELARUS

**A booklet prepared by**

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## Preface

This booklet has been prepared by CHSH Cerha Hempel Spiegelfeld Hlawati 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 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 May 1, 2008. 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.

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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 the 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 Belarus's constitution. The government includes a Council of Ministers, headed by the prime minister. The members of this council need not be members of the legislature and are appointed by the President.

Belarus has approximately 9.7 million inhabitants. The capital and the largest city in Belarus is Minsk, which has a population of 1.74 million. Minsk is the principal economic and political centre, the seat of the President, the Government and the National Assembly. Other cities with major populations include Brest (298,000), Grodno (315,000), Gomel (481,000), Mogilev (365,000) and Vitebsk (342,000). Ethnic Belarusians constitute 81.2% of Belarus's total population. The next largest ethnic groups are Russians (11.4%), Poles (3.9%), and Ukrainians (2.4%).

Belarus's two official languages are Belarusian and Russian, spoken by 36.7% and 62.8% 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 system (the continental system). A substantial amount of Belarusian legislation regarding business activities is codified, i.e. consists of codes of laws (the Civil Code, the Tax Code, the Banking Code, the Land Code, etc.). Other legislation includes laws, Presidential decrees and governmental resolutions. Presidential decrees play a very significant role as in most cases they have a greater legal effect than 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 and the Supreme Economic Court are appointed by the President subject to the approval of the Council of the Republic. The Constitutional Court has 12 judges in all, 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 Economic Court.

### 1.3 Economy

The majority of the Belarusian economy is still controlled by the state, whereby 51.2% of Belarusians are employed by state-controlled companies, 47.4% are employed by private Belarusian companies (of which 5.7% are partially foreign-owned) and 1.4% are employed by foreign companies. The country is reliant on imports such as oil from Russia. The biggest exports of Belarus are heavy machinery, agricultural products, potash fertilizers and energy products. Some of Belarus's natural resources include peat, oil and natural gas, granite, dolomite (limestone), marl, chalk, sand, gravel, and clay.

Belarus's current main trading partner is Russia, which accounts for almost half of Belarus's total trade. Previously the European Union was Belarus's next largest trading partner and nearly a third of Belarus's total trade was conducted with the EU. However, because of its failure to sufficiently protect labour rights, Belarus lost its E.U. Generalized System of Preferences status on June 21, 2007, which raised tariff rates to their prior most-favored nation levels. Belarus has applied to become a member of the World Trade Organization every year since 1993.

The labour force consists of more than four million people with slightly more women employed than men. Nearly a quarter of the population are employed in industrial factories. Employment rates are high in the sectors of agriculture, manufacturing sales, trade and education. The unemployment rate is currently about 1%, which is one of the lowest rates in Europe according to the UNO statistics.

The currency of Belarus is the Belarusian ruble (BYR). The currency was introduced in May 1992, replacing the Soviet ruble. The Belarusian ruble was reintroduced with new values in 2000 and has been in use ever since.

### 1.4 Public Holidays

The following days are official public holidays in Belarus:

New Year's Holiday	January 1
Orthodox Christmas	January 7
Women's Day	March 8
Catholic Easter	Movable
Orthodox Easter	Movable
Radunitsa	first Tuesday after Orthodox Easter
Labour Day	May 1
Victory Day	May 9
Independence Day	July 3
Day of October Revolution	November 7
Catholic Christmas	December 25

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

Although Belarusian legislation 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 and the Law “On Business Entities” 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 Regulating State Registration and Liquidation (Termination of Activities) of Economic Entities”.

#### 2.2.2 Joint-Stock Company

A joint-stock company (analog of a corporation; abbreviation in Russian “AO”) is a company with charter capital divided into a certain number of shares. Shareholders’ liability is limited by the par value of their shares. An AO must have at least three shareholders. There are two forms of AO:

1) An open joint-stock company (analog of 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 EUR 6,250.

2) A closed joint-stock company (analog of 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 ZAOs possess pre-emptive rights with respect to purchasing the shares of the ZAO. The minimum charter capital is the equivalent of EUR 1,500.

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. Shares in an AO must be registered with the Department on Securities of the Ministry of Finance of the Republic of Belarus at the time of issuance.

AOs may have two-tier or three-tier governance structures:

- general meeting of shareholders;
- board of directors (supervisory board);
- sole CEO or collective management board.

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 are determined by the foundation documents. A unit is not considered to be a 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 to certain obligations of an OOO. An owner of a unit is called a “participant” as opposed to a “shareholder” of an AO. The company’s charter capital is formed from participants’ contributions. The minimum number of participants is two and the maximum number of participants must not exceed fifty; otherwise the OOO must be converted into OAO. The minimum charter capital of an OOO is the equivalent of EUR 800.

Dividends and voting rights are proportionate to the size of the units. As a general rule 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.

A participant may exit an OOO as a shareholder at any time. In this case the OOO will have to repay the participant the value of net assets and net profits for the current year up to the exit date in 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 sale 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 two-tier or three-tier governance structures:

- general meeting of shareholders;
- board of directors (supervisory board);
- sole CEO or collective management board.

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). A UP does not have the right of ownership of its assets. All assets of a UP are owned by its founder. A UP utilizes its assets on the basis of a right of economic management. The right of economic management implies 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 wishes 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 the equivalent of EUR 400. 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 who is 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 as a complex of assets. This way is complicated and requires a three-stage registration process, therefore it is rarely used in practice.
- reorganization of the UP into a limited liability company (OOO) with subsequent sale of shares in the OOO.

### 2.2.5 Status of a Company with Foreign Investment

In order to qualify for the status of "a company with foreign investment" the company must have at least one foreign shareholder/participant and the contribution of foreign participant(s) into the charter capital must amount to at least USD 20,000. Thus, if a company is wholly owned by foreign entities or individuals, its charter capital must be equal to or exceed USD 20,000. If a company is a Belarusian-foreign joint venture, its charter capital must be comprised of a contribution by the foreign participant of at least USD 20,000 and a contribution by the Belarusian participant of any amount.

Nothing prevents foreigner investors from having shares/units worth less than USD 20,000 in Belarusian companies. In such a case, the company will have the same status as a regular Belarusian legal entity. It is worth noting that the current legislation does not provide significant benefits for companies with foreign investment. At the moment the main benefits for companies with foreign investment are a less restricted system for establishing prices and the possibility of delaying payment of 50% of the company's initial charter capital for 2 years (this benefit is not applicable to open joint-stock companies with foreign investment which must fully form their charter capital before they can be registered in Belarus).

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

Under the Civil Code, as a general rule, neither the company's founders/shareholders are liable for the company's debts nor is the company 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, according 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 that these persons cause the insolvency (bankruptcy) of the company. The causal connection 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 sale of all the company's assets and on 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 247 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 it is 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. According to Article 249 of the Law “On Bankruptcy”, not filing or missing the date for filing the application on bankruptcy is a ground for the vicarious liability of the company’s founder/shareholder(s) or its director(s) for the company’s debts;
- Resolution of the Council of Ministers No. 406 of April 14, 2004 provides for the personal financial liability of the director of a company and the owner of a UP for not taking proper measures in order to prevent the bankruptcy of the company. The resolution also provides a list of preventive measures that should be followed in order to help prevent the bankruptcy of a company.

### 2.2.7 State Registration of Commercial Legal Entities

In order to obtain the status of a legal entity a company must be registered. 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 respective Free Economic Zones.

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

- Statement of the stipulated company form;
- Foundation documents (e.g. charter, foundation agreement depending on the type of legal entity) in two copies and electronically;
- Documents confirming formation of the charter capital (depends on the type of legal entity). This does not apply to companies with foreign investment since they are permitted to form their charter capital within two years from the date of their incorporation (this is not applicable to open joint-stock companies with foreign investment which must fully form their charter capital before they can be registered in Belarus);
- Excerpt from the trade register (for foreign entities). The excerpt must be apostilled and be translated into the Russian/Belarusian language by a certified Belarusian translator. 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;
- Outlines of the company seal (two copies).

As a rule, state registration takes 15 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.

### 2.2.8 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 according to Belarusian accounting rules. In addition, a company may keep parallel accounts in accordance with any other accounting standards, e.g. GAAP.

### 2.2.9 Audit Requirements

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

- open joint-stock companies (OAO);
- banks and other financial institutions;
- commodity and stock exchanges;
- insurance companies;
- companies resident at the High Technology Park;
- companies with an annual turnover for the preceding reporting year exceeding EUR 600,000.

Only individual auditors or auditing firms possessing a Belarusian license 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 to be a subsidiary of a foreign company that represents the interests of this company in Belarus. Generally, a representative office may only perform business activities in Belarus on behalf of its parent company.

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, including 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; 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 foundation documents of the foreign company (they must be legalized (apostilled));
- a copy of the document confirming state registration of the foreign company in the country of origin, e.g. excerpt from the trade register (it must be legalized (apostilled));

- a power of attorney for the head of the representative office (it must be legalized (apostilled));
- a copy of a special permit from the respective authority of the country of origin (if applicable);
- a power of attorney for a person authorized to act on behalf of a foreign company regarding establishing a representative office (it must be legalized (apostilled));
- regulation on a representative office (a formal document specifying the purposes and rights of the representative office);
- document confirming payment of the state duty for the permit.

All the above-mentioned documents have to be either in Russian or Belarusian as the prevailing language. The translation must be certified by either a Belarusian notary public or a Belarusian diplomatic mission abroad.

The permit for establishing a representative office will be issued for the period requested in the application. Extension of a permit is possible on application to the Ministry of Foreign Affairs no later than one month before the permit is due to expire. The state duty for each year of a permit's validity amounts to USD 1,060. Aside from obtaining a permit, a representative office must be registered with the tax authority and pay taxes as provided for by Belarusian legislation.

## 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 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 merger or annexation according to the Belarusian M&A framework for such transactions. The term "annexation" under Belarusian law means the accession of one legal entity (company A) to another (company B) whereby company A ceases to exist and is excluded from the register and company B acquires all 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 rights and liabilities of both companies which then cease to exist and are excluded from the register. In the course of 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 asset acquisition:

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

Certain M&A transactions are subject to antitrust approval requirements. The Law on Counteraction to Monopolistic Activities and Promotion of Competition 1992 (as amended) contains a list of criteria regulating which M&A transactions require mandatory prior approval by the Pricing Department of the Ministry of Economy of the Republic of Belarus (“Antitrust authority”). The following transactions require mandatory prior approval:

- acquisition by any legal entity or an individual, foreign state, international organization or their bodies, of more than 25% of the shares of a company with a dominant position on the market, or any other transactions whereby the above-mentioned entities have the possibility of influencing the decision-making of a company with a dominant position on the market;
- entering into any transaction, with respect to shares of another legal entity operating on the same type of market, by a legal entity with more than 30% of the market share in such market.

Obtaining antitrust approval for an M&A deal is an obligation of the buyer. Non-compliance with this requirement can result in a penalty of 10% of the annual turnover of the buyer and the invalidation of the deal by a court.

## 2.5 Licensing

The Decree 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 bodies. The list, inter alia, includes business activities in the areas of banking, telecommunications, the gambling industry, publishing, the oil industry, the weapons industry and the construction industry. Certain types of license may only be granted to Belarusian legal entities, for example, licenses for legal services. Therefore, representative offices are not entitled to perform every type of business activity.

Although there are general rules for obtaining a license, the application requirements for each type of the 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, confiscation of all income resulting from the business activity and 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

### 3.1 Real Estate Ownership by Foreign Entities

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 No. 667 of December 27, 2007. The Edict provides that land rights may be acquired by:

- domestic legal entities (including entities set up by foreigners) on the basis of:
  - 1) the right of permanent use (this right can only be granted to legal entities – i.e. residents of Free Economic Zones and to other legal entities for construction projects approved by the President of the Republic of Belarus);
  - 2) the right of temporary use (this right is granted on the same basis as the right of permanent use). There are two types of right of temporary use: short-term – up to 3 years, and long-term – from 3 to 10 years;
    - the right of ownership (in practice it is difficult for a legal entity to acquire ownership of land in Belarus as it is dependent on a decision by the President of the Republic of Belarus);
    - 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).

Land rights may be acquired via auction:

- for the right to rent a land plot (i.e. the right to become tenant of a state-owned land plot is gained via auction. This rule is not applicable to privately owned land);
- for the purchase of a land plot (applicable only to domestic legal entities).

Furthermore, it is possible for a foreign entity to acquire ownership of non-residential premises (excluding land). A Belarusian company (even if established by a foreigner) may own any type of premises and/or land in Belarus.

The purchase of state-owned land and state owned premises is subject to the approval of the President of the Republic of Belarus. Such approval is not required if a Belarusian company which has been set up by a foreigner only rents the land. Approval by the President is not required for rights to the permanent/temporary use of land. The right of permanent/temporary use is not applicable to premises. In respect of premises only the right of ownership and the right to rent are applicable.

Ownership of a building does not automatically follow ownership of the land on which the building is erected. The land may be used on the basis of other available rights, e.g. right of permanent use or rent. It is legally possible to be the owner of a building erected on state-owned land.

As a default rule, the sale of a land plot and a building erected on the same land plot must be performed simultaneously if both the land and the building are owned by the same entity. If the owner of the building and the owner of the land plot are different entities, the purchaser of the

building will acquire the right of permanent/temporary use or the right to rent the land plot simultaneously with the title to the building.

Within six months after obtaining the right to use a land plot (regardless of the type of right) a legal entity must begin construction (or other use of the land if the land plot was acquired for a purpose other than the construction of a building). If the use of a land plot has not begun within a six-month period then the land plot may then be withdrawn upon decision of a court (in the case of the right of ownership) or decision of the local municipal administration (in the case of rights of temporary use, permanent use or rent).

### 3.2 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, inter alia, contain obligations of the parties, however, as a rule they do not deal with the subsequent constitution of ownership.

Belarusian law provides protection for lessees, e.g. (1) limits on maximum rental rates for state-owned real estate, (2) a landlord 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 period of notice (three months as a default rule).

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. Lease agreements concluded for a term equal to or exceeding 12 months must be registered with the Register of Real Estate to become effective. In a large number of cases, legal entities avoid registration procedures by concluding lease agreements for an 11-month period and then by extending them for as long as necessary.

### 3.3 The Register of Real Estate

The relevant governmental body regarding the registration of rights in property in Belarus is the State Register of Real Estate Objects (the "Register"). Under real estate objects one can understand land, buildings, apartments etc. Any rights to real estate are only valid if they are registered in the Register. All rights regarding real estate must be certified with a 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 between one to three months.

### 3.4 Real Estate Transfer Tax, Property Tax

The tax on the sale of real estate objects by a foreign company is 15% and by a Belarusian entity 24%, based on the difference between the purchase price paid (the price for which a company acquired the real estate object) and the price for which it was sold.

The regular property tax for owning real estate objects is 1% of the cost of the object per year. For example, if the market price of the real estate object (valued according to the state real estate register database – which is usually much lower than the actual market price) is EUR 1,000,000, then the annual tax is EUR 10,000. Moreover, the local municipal administration has

the right to establish additional local tax for owning a real estate object of up to 1% of the object's value per year. Therefore, the total tax rate for owning real estate can be as much as 2% p.a.

### 3.5 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 a permission must be obtained for usage. This permission is based on evaluations 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 the 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).

### 3.6 Mortgages

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

The sale or lease of the object of the mortgage is possible only with the consent of the holder of the mortgage (mortgagee). Unless there is a direct prohibition of this 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 with special licenses.

Generally, mortgages can be enforced by a court if the mortgagor fails to fulfil their obligations under the mortgage. The object of the mortgage is then sold at public auction. The mortgagee can reserve the object of the mortgage for themselves, without the consent of the mortgagor, if the object of the mortgage has not been sold after a minimum of two auctions.

## 4 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.

### 4.1 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 worse for employees than those contained in the Labour Code. The Labour Code provides for the mandatory registration of collective agreements with the local executive committee.

### 4.2 Working Hours

According to the Labour Code, the length of the working week should not exceed 40 hours and the working day 8 hours. In certain situations or conditions 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 four hours in two consecutive days or 120 hours per year is permitted. Overtime is compensated by time in lieu or by the payment of the extra hours worked at higher rates.

### 4.3 Wages

According to the official statistics the average monthly wage in Belarus was equivalent to USD 376.2 for January to March 2008. The income tax rate is progressive and varies from 9% at the beginning of the year to 30% at the end of the year depending on yearly income. Payroll costs (e.g. social security payments) incurred by a company may be up to 40% of the company's wage-fund.

### 4.4 Probation period

An employer may stipulate that a probationary 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 occupied position. Some categories of employee are not subject to a probationary period, e.g. employees under 18 years of age, disabled persons and graduates within two years from the date of their graduation. A probationary period may not exceed three months.

### 4.5 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, transition to different positions, dismissal and employee awards.

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.

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, then the employment contract shall 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 written notice.

### 4.6 Termination of an Employment Contract

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

- agreement of the parties to termination of an employment contract;
- expiration of the term of an employment contract;
- termination of an employment contract by an employee;
- termination of an employment contract by an employer;
- refusal of an employee to continue employment because of a change in the company's ownership or due to the restructuring of a company;
- refusal of an employee to continue employment because of a change in the material conditions of their employment contract; and
- refusal of an employee to transfer to a position different from that stipulated in their employment contract or because of the relocation of an 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 mutual consent of parties. Termination of a definite-term employment contract 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 definite-term employment contracts due to expiration of their term, an employer may terminate every employment contract, inter alia, in the following cases:

- liquidation of the company;
- reduction of the number of employees for business reasons;
- repeated non-fulfilment of work functions by an employee without good cause if the employee has already previously been subject to disciplinary measures;
- use of alcohol at the workplace and/or during working hours;
- 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 their employment contract. The amount of the severance pay depends on the legal grounds for termination and usually amounts to between two-weeks to three-months of the employee's average salary.

### 4.7 Employment of Foreigners

The employment of foreigners is possible subject to two conditions:

- a company/employer must obtain a license for the employment of foreigners;
- a foreign employee must obtain a work permit.

Compliance with these conditions is mandatory even if a foreign shareholder of a company would like to become the CEO of the company.

## 5 Price Regulation

Pricing in Belarus is predominantly governed by the Law of the Republic of Belarus “On Pricing” (1999) (the “Law”), the Decree of the President №285 of 19.05.1999 “On some measures for price (tariffs) stabilization in the Republic of Belarus” (“Decree”) and subordinate legislation.

The Law establishes free prices (tariffs) for goods (works, services) in Belarus, however, the Law provides some exceptions to this. State regulation of prices (tariffs) applies to:

- the goods (works, services) of companies occupying a dominant position on the commodity markets, which are included in the State Register of such companies. The State Register of companies with a dominant position on the market is compiled by the Ministry of Statistics and the Department of Price Policy;
- various socially significant goods (works, services), such as public utilities; wood; realtor services; paid medical services; natural and liquefied gas; electrical and heat energy, spirits, vodka; tobacco products, the comprehensive list of which is established by the government.

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);
- the requirement to declare prices (tariffs).

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

According to the Decree the state regulation of prices applies to:

- Public utilities;
- Wood;
- Realtor Services;
- Paid medical services;
- Natural and liquefied gas;
- Electrical and heat energy;
- Spirits, vodka;
- Tobacco products.

The prices of any company in Belarus may only be increased within certain maximum thresholds which are determined by the Council of Ministers (about 6-8% per year). If the company does not comply with the maximum thresholds it must register the new price with the economic department of the competent local city administration and justify the reasons for raising the price in excess of the maximum threshold. This rule is not applicable to companies with foreign investment. Failure to register price increases may lead to fines of up to 30% of the value of the unregistered goods which have been sold.

However, all companies/producers are entitled to set sale prices at certain limits over the prime cost; wholesale and retail trading companies are entitled to set sale prices within certain limits over the purchase price. Such limits may vary from between 8 to 30% depending on the type of goods. Therefore, although free pricing exists in Belarus in theory, in practice pricing is somewhat restricted.

## 6 Intellectual Property

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

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

- Copyright and Related Rights;
- Industrial Property Rights;
- Right to Invention, Useful Model, Industrial Standard;
- Right to Protection of Undisclosed Information from Illegal Use;
- Means of Individualization of Business Participants, Goods, Works or Services;
- Trademarks

### 6.1 Copyright and Related Rights

Belarusian copyright legislation provides legal protection for authorship rights and an author's economic 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). To establish copyright in Belarus a copyright notice is required, which is made up of three elements: the circled Latin letter C, the name of the person/entity intending to establish copyright and the year of the first publication of the work. 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).

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

### 6.2 Industrial Property Rights

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

#### Inventions, Useful Models, Industrial Standards

To secure the legal protection of inventions, useful models and industrial standards a patent must be obtained. 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 standard – ten years.

## 6.3 Right to Protection of Undisclosed Information from Illegal Use

The right to protection of undisclosed information from illegal use is guaranteed regardless of the fulfilment of any formalities concerning this information (registration, obtaining certificates, etc.) The rules on protection of undisclosed information do not apply to information which is not an official or commercial secret, e.g. general information about legal entities; information about rights to property and property transactions which are subject to state registration; information subject to mandatory submission such as for state statistical reporting, etc. A person, lawfully possessing technical, organizational or commercial information, including trade secrets (know-how), not known to the third parties (undisclosed information), has the right to protection of this information from illegal use. A person, who possesses undisclosed information, may transfer all or a part of the data, constituting the contents of this information, to another person under a license.

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

The most practically applicable means of individualization include:

### 6.4.1 Firm-Name

The firm-name of a legal entity is defined during approval of its charter and is subject to registration by inclusion 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 its firm-name in the entire territory of the Republic of Belarus. The right to use the firm-name terminates simultaneously with liquidation of the legal entity or on it changing its name.

### 6.4.2 Trademarks

Trademarks differentiate the goods or services of one entity from similar goods or services of another entity. The legal protection of a trademark in the territory of the Republic of Belarus is effected on the basis of its registration with the competent patent body which is the National Centre of Intellectual Property.

The right to use a trademark is protected by the state and must be proven by a certificate issued by the National Centre of Intellectual Property. The application for protection of a trademark must contain:

- Data about the applicant;
- The list of goods and services for which the trademark is being registered.
- A graphical representation of the trademark and a description of it.
- The registration of a trademark is valid for ten years from the date of filing the application with the patent body.

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