CERHA HEMPEL

Doing Business in Belarus 2021

A BOOKLET PREPARED BY CERHA HEMPEL

AUSTRIA
BELARUS
BULGARIA
CZECH REPUBLIC
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PREFACE

This booklet has been prepared by CERHA HEMPEL LLC (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. The information provided in this booklet is current as of 1 October 2021. CERHA HEMPEL cannot be held liable for any action or business decision taken based on the information provided in this booklet.

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Sergei Makarchuk, LL.M.
Advocate, Chairman of the Board
sergei.makarchuk@cerhahempel.com

CERHA HEMPEL LLC

Surganova Str. 29
220012 Minsk, Belarus
Telephone: +375 17 266 34 17
Fax: +375 17 266 34 21
E-mail: minsk@cerhahempel.com
Website: www.cerhahempel.com

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GENERAL INFORMATION

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 in 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 the Council of Ministers, headed by the Prime Minister. The members of this council may not be members of the Council of the Republic and they are appointed by the President (the Prime Minister's appointment is also subject to approval by the House of Representatives).

Belarus has approximately 9.5 million inhabitants. The capital and largest city in Belarus is Minsk, which has a population of approximately 2 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 (339,000), Grodno (355,900), Gomel (510,500), Mogilev (356,800), and Vitebsk (364,700).

Ethnic Belarusians constitute 84.9% of Belarus' total population. The next largest ethnic groups are Russians (7.5%), 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.

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 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.

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 5.12 million people with slightly more men employed than women. Nearly one quarter of the population is

employed in industrial factories. Employment rates are high in the IT, agriculture, construction, manufacturing sales, trade, and education sectors. The official unemployment rate is currently about 4%. However, independent sources report that in fact the unemployment rate is much higher.

The currency of Belarus is the Belarusian rouble (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.

PUBLIC HOLIDAYS

The following days are official public holidays in Belarus:

• New Year's Holidays	1 and 2 January
• Orthodox Christmas	7 January
• Women's Day	8 March
• Catholic Easter	Movable
• Orthodox Easter	Movable
• Radunitsa	The second Tuesday after Orthodox Easter
• Labour Day	1 May
• Victory Day	9 May
• Independence Day	3 July
• October Revolution	7 November
• Catholic Christmas	25 December

CORPORATE LAW

FORMS OF BUSINESS PRESENCE

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

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

BELARUSIAN LEGAL ENTITIES

Types of Belarusian Legal Entity

Although Belarusian law provides for a range of legal forms for legal entities, in practice the most common are joint-stock companies, limited liability companies, and unitary companies. The Civil Code of the Republic of Belarus No. 218-Z dated 7 December 1998 (as amended) ("**Civil Code**") and Law No. 2020-XII dated 9 December 1992 "On Business Entities" (as amended) ("**Company Law**") predominantly govern the issues relating to the creation and operation of these forms of legal entity. Other relevant laws include Decree of the President of the Republic of Belarus No. 1 dated 16 January 2009 "On State Registration and Liquidation (Termination of Activities) of Business Entities" (as amended) ("**Decree No. 1**").

Joint-Stock Company

A joint-stock company (analogous to a corporation; abbreviated in Russian to "**AO**") is a company whose charter capital specified in its statutes is 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. ***Open joint-stock company*** (analogous to a publicly held corporation; abbreviated in Russian to "**OAO**"). This 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 3,800.

2. ***Closed joint-stock company*** (analogous to a privately held corporation; abbreviated in Russian to "**ZAO**"). Similar to an OAO, shares in a ZAO may be distributed between an unlimited number of shareholders. However, the number of shareholders may be limited by the charter of the particular ZAO. In such a case, if the number of shareholders exceeds the relevant threshold, the company must "go public", i.e. be reorganized into an OAO. Shareholders of a ZAO do not have pre-emptive rights with respect to purchasing the shares of the ZAO. The minimum charter capital is the equivalent of approximately EUR 950.

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 AO if the number of shareholders exceeds fifty.

Limited Liability Company

A limited liability company (abbreviated in Russian to "**OOO**") is a legal entity whose charter capital specified in its statutes is divided into "units", the size of which is determined by the charter. A unit is not considered security under Belarusian securities legislation and may not be treated as an asset in a strict legal sense. Rather, units are treated as rights exercisable 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 participants of an OOO may vary from one to fifty; if the number of participants exceeds fifty the OOO must be reorganized into an AO. The minimum charter capital of an OOO is not prescribed by law. It may be freely determined by its participants; however, in any event it should have positive value.

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 pierced by a court if an OOO's bankruptcy has been caused by misconduct or intentional acts taken by participants, founders or the CEO.

A participant may exit an OOO at any time unless such participant is the 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, in proportion to the size of the unit held by 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 divested.

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.

Unitary Company

A unitary company (abbreviated in Russian to "**UP**") is a commercial legal entity solely owned by a sole founder (owner). 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 the 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. 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 the subsequent sale of units in the OOO.

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 capital contributions in a foreign currency (but nonetheless, the capital of the company should be declared and registered in Belarusian roubles only).

Shareholders' Meetings

The general shareholders' meeting ("**SHM**") is the supreme body of a company (except for unitary companies). 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 exclusively reserved for the SHM).

Company law provides for the following competences exclusively reserved for the SHM that cannot be delegated to other bodies:

- charter amendment;
- charter capital increase/decrease;
- formation of the bodies of a company;
- 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 are exclusively reserved for the SHM);
- establishing a procedure for conducting a SHM with regard to the issues not governed by applicable law;
- approval of the quantitative and personal composition of the counting commission and early termination of the powers of its members.

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 that, 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), a SHM is not to be established. Such a sole shareholder or participant is entitled to resolve on any of the aforementioned issues.

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, the conditions of a shareholders' agreement may not contradict the mandatory rules of corporate law. A shareholders' agreement is binding solely upon its parties. In case of breach, the shareholder/participant in breach may be liable under civil law as envisaged under the shareholders' agreement (penalties, payment of damages, etc.).

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 the SHM;
- resolving on the issuance and repurchase of securities (except for shares);
- approval of the value of the 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. One member of the CMB may also be a member of the BD, except for the chairman of the CMB and the CEO who cannot be members of the BD. 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.

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 by Decree of the President of the Republic of Belarus No. 7 dated 23 November 2017 "On Entrepreneurship Development" (as amended) ("**Decree No. 7**") and Article 52 (3) of the Civil Code.

Pursuant to the above-mentioned legal acts, the company's founders/shareholders, or other persons who may issue mandatory instructions to the company (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 by deliberate wrongful acts.

The causal nexus between the decisions of the company's founders/shareholders and the bankruptcy of the company, as well as intentional guilt of the company's founders/shareholders (or other persons who may issue mandatory instructions to 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 Law No. 415-Z dated 13 July 2012 "On Economic Insolvency (Bankruptcy)" (as amended) ("**Bankruptcy Law**") 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 for 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 Bankruptcy Law, 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 provides that exclusion of an insolvent company from the trade register of the Republic of Belarus without bankruptcy proceedings having been started forms the basis of the vicarious liability of the company's founder/shareholder(s) or its director(s) for the company's debts.

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.

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 then 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.

The procedure for registering the company with the state authorities may also be performed in electronic form by a notary public regardless of the location of the registration body. The application package for registration remains the same, excluding the document confirming payment of the registration fee – electronic registration is free of charge and the applicant has to pay the notary fees only.

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 roubles and in compliance with Belarusian accounting rules. In addition, a company may keep parallel accounts consistent with any other accounting standards, e.g. GAAP.

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 savings accounts will be refunded;
- companies acting in a professional capacity on the securities market;
- joint stock investment funds;
- managing organizations of investment funds;
- special financial organizations, and
- companies with an annual turnover for the preceding reporting year exceeding 500,000 basic units (ca. EUR 4,750,000).

Only individual auditors or audit firms included in the State Registry of Auditors may perform audits in Belarus.

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 as 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.).

To establish a representative office, a foreign company must first obtain a special permit from the relevant executive committee (either from the Minsk City Executive Committee or the executive committee

of a particular region).

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 are 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 executive committee where the representative office was initially registered.

The state duty amounting to approximately EUR 615 is payable for each year of a permit's validity. Aside from obtaining a permit, a representative office must be registered with the tax authority and pay taxes as provided for by Belarusian law.

MERGERS & ACQUISITIONS

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

Share deal

Share deals can be performed in one of two ways:

- 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, obligations 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, obligations 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.

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". 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" ("**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 also contains 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 can therefore only be valid 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.

In those cases envisaged by law, mergers and acquisitions are subject to approval of the Belarusian antimonopoly authority.

Acquisition of Foreign Depositary Receipts

There is another possibility for acquisition of control over certain Belarusian open joint stock 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 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 the acquisition of shares in exchange for FDR are explicitly excluded from the requirement to obtain approval from the Belarusian antimonopoly authority. In addition, FDR holders enjoy certain tax benefits. In particular, the following types of income are not taxable in Belarus:

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

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

LICENSING

Edict of the President of the Republic of Belarus No. 450 dated 1 September 2010 "On the Licensing of Certain Kinds of Activities" (as amended) ("**Edict on Licensing**") contains a list of business activities that 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.

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 may 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 result in the imposition of criminal sanctions.

REAL ESTATE OWNERSHIP

REGULATION AND FORMS OF OWNERSHIP

The Land Code of the Republic of Belarus No. 425-Z dated 23 July 2008 (as amended) ("**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 Edict of the President of the Republic of Belarus No. 667 dated 27 December 2007 "On the Procedure of Withdrawal and Allocation of Land Plots" (as amended). 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. incomplete 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.

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 the 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 land rights to regular domestic companies.

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
- without an auction at the discretion of local executive committees in those cases stated by law or by the decision of the President in the other cases.

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.

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 – information about auctions in the Minsk region).

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, for example, to:

- domestic companies for the purpose of mining exploration;
- 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 sale or transfer of the right to lease the land plot necessary for maintenance of the building and/or operation of a company.

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).

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 (unless the right for unilateral repudiation is provided by the lease agreement). Lease agreements 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.

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 to rent are applicable. The right of permanent/temporary use is not applicable to premises.

OWNERSHIP OF A BUILDING AND RIGHT TO LAND ON WHICH A 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 based on 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 the same owner owns both the land

and the building.

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 must be obtained by the buyer simultaneously upon registration of the title to the building.

REGISTRATION OF REAL ESTATE RIGHTS

The state registration of real estate is mandatory. Objects of real estate are only considered to have been created 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 must be registered. For example:

- sale and purchase of real estate;
- 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.

CONSTRUCTION PERMITS, USAGE PERMITS

Construction is allowed based on 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 municipal architects' office, the fire protection authority, the municipal 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 (if there are no material unauthorized changes to the building).

MORTGAGES

The creation of mortgages is possible under Belarusian law and 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 is to be notarized or certified by the relevant officer of the Register at the owner's option.

In order to become effective, the mortgage must be registered with the Register. Only banks with a relevant license may 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 written 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 subsequently be 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. Exclusively banks or other financial institutions holding special licenses may execute the assignment of a mortgage at a discount (factoring).

Generally, mortgages can be enforced by a court if the mortgagor fails to fulfil 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.

CURRENCY REGULATION

REGULATION

Under Belarusian law, both resident and non-resident companies may freely hold foreign currency and rouble accounts with Belarusian and foreign banks. However, a company incorporated in Belarus as well as a foreign company working on the Belarusian market may enter into currency transactions subject to certain restrictions as envisaged by the Law of the Republic of Belarus No. 226-Z dated 22 July 2003 "On Currency Regulation and Currency Control" (as amended) ("**Currency Act**").

Within the meaning of the Currency Act, currency transactions *inter alia* include:

- transactions between the residents of Belarus, between the residents and non-residents of Belarus, as well as between non-residents of Belarus involving the currency values as an instrument of payment;
- transactions by residents with currency values on accounts opened in Belarusian banks and/or foreign banks, which do not entail the transfer of ownership of these currency values;
- transactions by non-residents of Belarus with currency values on accounts opened in Belarusian banks, which do not entail the transfer of ownership of these currency values;
- transfer of currency values from an account with a foreign bank to an account with a Belarusian bank and vice versa;
- some other transactions with currency values.

Non-residents have the right to transfer currency values from their accounts with Belarusian banks to their accounts with other Belarusian banks and/or foreign banks without any restrictions.

Repatriation of Funds

Companies-residents are obliged to ensure that the relevant proceeds under export and import contracts within the terms determined by the National Bank of the Republic of Belarus are credited to their accounts held with Belarusian banks.

Registration of Currency Agreements

A currency agreement is an agreement (contract) on the basis of which a currency transaction is carried out.

A currency agreement is subject to mandatory registration with the National Bank if it jointly meets the following criteria.

A. *Parties*. The currency agreement is concluded between a resident and non-resident.

B. *Subject matter*. The currency agreement relates to any of the following:

- settlements for export and/or import;
- contribution to the charter capital of a foreign company by a resident;
- contribution to the charter capital of a Belarusian company by a non-resident;
- acquisition of foreign securities by a resident from a non-resident;
- sale of Belarusian securities by a resident to a non-resident;
- acquisition of shares in a foreign company by a resident;
- sale of shares in a Belarusian company by a resident to a non-resident;
- transfer of the monetary funds or securities by a resident to a non-resident for the trust management;
- transfer of funds by a resident or a non-resident in order to initiate transactions for the purchase of securities, including during the IPO, derivative financial instruments using the services of a broker, as well as transactions related to investing in the equity capital of established companies (venture funding), purchase of digital signs (tokens);
- acquisition by a resident of the real estate located abroad from a non-resident;
- acquisition by a non-resident of the real estate located in Belarus from a resident;
- providing credit or a loan to a resident by a non-resident and vice versa;
- deposit of funds with a foreign bank by a resident;
- fulfilment by a resident of monetary obligations to a non-resident on the basis of a surety and/or guarantee agreement;
- donation by a resident of monetary funds to a non-resident;
- transfer of funds by a resident to a non-resident to initiate transactions with non-deliverable OTC financial instruments;
- fulfilment by a resident of obligations to a non-resident, non-resident to a resident on the basis of a debt transfer agreement or cession agreement;
- fulfilment by a resident-successor of obligations to a non-resident, by a non-resident to a resident-successor as a result of the resident's corporate reorganization (subject to a change in the payer's tax ID).

C. *Value*. The currency agreement satisfies one of the following conditions:

- the currency agreement does not envisage the exact amount of contractual obligations;
- the amount of contractual obligations under the currency agreement exceeds 2,000 basic units (ca. EUR 19,000) with respect to the agreement concluded by a natural person (e.g. a resident of Belarus);
- the amount of contractual obligations under the currency agreement exceeds 4,000 basic units (ca. EUR 38,000) with respect to the agreement concluded by a company domiciled in Belarus.

Registration should be conducted electronically via the relevant web portal of the National Bank.

After the currency agreement is registered, the resident will have to report certain information about fulfilment of the currency agreement on a monthly basis via the web portal of the National Bank. The resident will also have to report to the National Bank once all obligations under the currency agreement are completed.

Enforcement of Currency Regulation

A breach of the currency regulations could result in the imposition of 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.

CAPITAL AND PROFIT TRANSFER

Foreign investors in Belarus 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.

COMPETITION LAW

REGULATION

Belarusian competition law is mainly regulated by the Law of the Republic of Belarus No. 94-Z dated 12 December 2013 "On Countering Monopolist Activities and Promotion of Competition" (as amended) ("**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 states that the following activities may result in the prevention, restriction or elimination of competition:

- monopolistic activities;
- economic concentration;
- unfair competition; and
- unlawful acts of state authorities and other officials.

MONOPOLISTIC ACTIVITIES

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
Three	50
Five	75

- 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:

- restriction of access to the market (or exit from the market) by other entities;
- establishing and/or keeping the monopolistic high or low price;
- withdrawal of goods from the market, which resulted in an artificial increase in prices;
- placing of unjustified limits on the manufacturing of goods, irrespective of market demands;
- refusal to enter into a contract with certain consumers, irrespective of the ability to produce and/or supply the required quantity of goods;
- establishing (or maintaining) different prices for one type of goods without economic or technical justification;
- 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;
- conclusion of agreements that restrict the freedom of the parties to independently determine prices or conditions regarding the supply of goods to third parties;
- 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.

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:

- artificial raising, reduction or maintenance of prices;
- market sharing by territory, by type and amount of transactions, by type and volume of commodities and their prices, by consumers;
- artificial restriction of production of goods;
- refusal to conclude agreements with certain customers or suppliers (exclusivity provisions);
- imposing contractual provisions, which are unrelated to the subject matter of the contract and/or are disadvantageous to the counterparty;
- exclusion or limitation of access to the market for competitors and other companies;
- establishing (or maintaining) different prices for one type of good without economic or technical justification;
- other arrangements, which eliminate or may restrict competition.

However, to be considered illegal, the afore-mentioned 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 are 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 20%.

ECONOMIC CONCENTRATION

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

No.	ECONOMIC CONCENTRATION TYPES	THRESHOLDS
1	Reorganization of a company in the form of a merger or annexation	(i) the book value of any party's assets exceeds 200,000 basic units (ca. EUR 1,900,000); or (ii) any party's annual turnover exceeds 400,000 basic units (ca. EUR 3,800,000); or (iii) a party to a transaction is registered as a dominant undertaking or a natural monopoly.
2	Setting up a new company if a charter capital for such company has to be paid in with (a) the shares or (b) any other tangible or intangible assets of another company PROVIDED THAT: (i) actions with shares simultaneously fall under Types 4-6 of Economic Concentration (see below); or (ii) book value of contributed assets exceeds 20% of book value of all assets of another company.	(i) the aggregate book value of assets of (a) founders of a new company and (b) company, whose assets or shares are transferred, exceeds 200,000 basic units (ca. EUR 1,900,000); or (ii) the aggregate annual turnover of (a) the founders of a new company and (b) the company whose assets or shares are 400,000 basic units (ca. EUR 3,800,000); or (iii) (a) any founder of a new company or (b) a company whose assets or shares are transferred is registered as a dominant undertaking or a natural monopoly.

3	Establishment or reorganization of a holding company or an association of companies or where a company joins together with the holding company	(i) the aggregate book value of all parties' assets exceeds 200,000 basic units (ca. EUR 1,900,000); or (ii) the aggregate annual turnover of all parties exceeds 400,000 basic units (ca. EUR 3,800,000); or (iii) any participant is registered as a dominant undertaking or a natural monopoly.
4	Acquisition of 25% of the shares in a target active in the relevant market by a dominant undertaking or its group	(i) the book value of the target's or buyer's assets exceeds 200,000 basic units (ca. EUR 1,900,000); or (ii) the target's or buyer's annual turnover exceeds 400,000 basic units (ca. EUR 3,800,000); or (iii) the target or buyer is registered as a dominant undertaking or a natural monopoly.
5	Acquisition of more than 25% of the shares in, or the ability to exercise influence over, a dominant undertaking	
6	Acquisition of shares in a target if this leads to the possibility of the acquirer controlling more than 25% or 50% of the shares in a target	
7	Acquisition of rights enabling the acquirer to exercise control over the company or perform functions of the executive body including – but not limited to – on the basis of a cooperation agreement, trust management agreement, or commission agreement	
8	Entering into a cooperation agreement between competitors	(i) the aggregate book value of all parties' assets exceeds 200,000 basic units (ca. EUR 1,900,000); or (ii) the aggregate annual turnover of all parties exceeds 400,000 basic units (ca. EUR 3,800,000); or (iii) any participant is registered as a dominant undertaking or a natural monopoly.
9	Acquisition of the fixed assets or intangible assets of the target if the combined value of acquired assets is more than 20% of the entire assets of the target	(i) the book value of the target's or buyer's assets exceeds 200,000 basic units (ca. EUR 1,900,000); or (ii) the target's or buyer's annual turnover exceeds 400,000 basic units (ca. EUR 3,800,000); or (iii) the target or buyer is registered as a dominant undertaking or a natural monopoly.
10	Acquisition of rights enabling simultaneous participation of one individual or entity in executive bodies, management boards, boards of directors of two or more companies active in the same market if such an individual or entity can control the activity of such companies	

RESTRICTION ON ACTIVITIES OF STATE AUTHORITIES

Belarusian law prohibits state authorities from adopting legal 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:

- market sharing by territory, by type and amount of transactions, by type and volume of commodities and their prices, by consumers; or
- 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).

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:

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

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 is resolved by a court (or other competent body).

LIABILITY FOR BREACH OF ANTIMONOPOLY LEGISLATION

A company found guilty of (i) unfair competition or (ii) entering into agreements or performing actions restricting competition or (iii) abusing a dominant position may be subject to a fine in the amount of 10% of its annual turnover.

In addition, if a company's officers are found guilty of breaching antimonopoly legislation or legislation on unfair competition, ignoring orders issued by the Antimonopoly Authority, abusing a 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 100 basic units (approximately from EUR 190 to EUR 950).

The coordination of the economic activity of several companies performed in breach of the antimonopoly legislation may result in a fine ranging from 100 to 1,000 basic units (approximately from EUR 950 to EUR 9,500) for the company and from 20 to 100 basic units (approximately from EUR 190 to EUR 950) for a company's officers who are found guilty.

Besides, parties in breach of 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 or asset 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.

BANKING LAW

REGULATION OF BANKING ACTIVITY

The Banking Code of the Republic of Belarus No. 441-Z dated 25 October 2000 (as amended) ("**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 rouble 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 14,700,000). 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 capitalization must be twice that of the minimum amount of charter capital (i.e. EUR 14,700,000 x 2 = EUR 29,400,000) 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 implications.

SPECIFIC REQUIREMENTS FOR BANKS WITH FOREIGN INVESTMENTS

There are certain restrictions with regard to the presence of foreign capital in the Belarusian 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 capital of banks with foreign investment and the total amount of charter capital of all banks registered in Belarus. The National Bank would deny the registration of banks with foreign investment once the quota for foreign participation in the banking system of Belarus is reached.

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 freezing 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.

TAXATION

GENERAL INFORMATION

The Tax Code of the Republic of Belarus No. 166-Z dated 19 December 2002 and No. 71-Z dated 29 December 2009 (as amended) ("**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 sets forth the detailed rules on each statewide 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.

The special tax regime of the residents of the High Technology Park is predominantly regulated by Decree of the President of the Republic of Belarus No. 8 dated 21 December 2017 "On The Development of The Digital Economy" ("**Digital Decree**") and Decree of the President of the Republic of Belarus No. 12 dated 22 September 2005 "On High Technology Park" (as amended).

STRUCTURE OF TAXATION

Belarus has a two-tier taxation system, which includes statewide and local taxes and duties. Statewide 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:

Profit Tax

Profit tax is one of the most important statewide 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, some taxpayers, *inter alia*, are subject to the profit tax at other tax rates, for example:

- mobile operators, microfinance organizations – 30%;
- banks, insurance companies, forex companies – 25%;
- science and technology parks, technology transfer centers, and their residents – 10%.

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.

As a general rule, a foreign company that acts through a permanent establishment in Belarus should pay profit tax.

A foreign company may be deemed as acting through a permanent establishment in Belarus if it acts through:

- a permanent place of business through which such foreign company wholly or partly carries out its entrepreneurial activity in Belarus;
- a person (i.e. a company or an individual) acting on behalf of or in the interests of the foreign company who has, and habitually exercises, the powers of such foreign company to conclude contracts and agree on the material terms of such contracts in Belarus.

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 current year exceeds ca. EUR 152,000;

- 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:

- 20% is the basic VAT rate;
- 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;
  - the goods sold at 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 the 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 other types of track, 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 territory of Belarus of some kinds of food and goods for children within the scope of the list of products established by the President, as well as medicines and medical devices;
- 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. The reporting period is one quarter for transportation services performed by the public association "Belarusian Rail Road".

Real Estate Tax

As a 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 taxpayers.

The general annual tax rate for legal entities is established at the rate of 1% and for individuals at the rate of 0.1% or 0.2%, depending on the type of real estate owned by them. The discounted tax rates apply to legal entities with respect to newly erected buildings during the initial five years of their operation. Thus, if the market price of the real estate object (valued in line with the state real estate register database – which is usually much lower than the actual market price) owned by a company is EUR 1 million, 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 times. Therefore, the total tax rate for owning real estate could be as much as 2% p.a.

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

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 contractual obligations where one party is resident in Belarus and another – a non-resident – is registered in an offshore zone.

The offshore duty rate is 15% of the transferred amount.

As a rule, subject to a few exemptions, it must be paid by a Belarusian resident before the transfer of funds to a non-resident can take place. The list of offshore zones is determined by the President of Belarus.

The fiscal period for offshore duty is one month.

Withholding Tax

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

- 15% – royalties and other types of income as provided for in the Tax Code except for those mentioned below;
- 12% – dividends, income derived from the sale of shares (units) in Belarusian companies;
- 10% – interest derived from debt commitments (obligations) of any type except for those mentioned under the 0% rate set out below;
- 6% – freight, chartering fees (including demurrages and other payments arising in transit) for cross-border transportation;
- 0% – interest derived from loans to the Republic of Belarus, Belarusian government, Belarusian companies secured by the guarantee of the Belarusian government; interest derived from bonds issued by the Republic of Belarus, the National Bank of the Republic of Belarus, and Belarusian local authorities; representation of the Republic of Belarus in international arbitration and litigation proceedings; some other types of income.

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 based on its cash equivalent.

The fiscal period for withholding tax is one quarter.

INVESTMENT BENEFITS

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

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 (from not only 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 the sale of goods (works, services) of their own production:
  - is not paid for the first 10 years from the year of the first reported profit of the company;
  - the tax rate is reduced by 50% from expiration of first 10-year term from the year of the first reported profit of the company.
- land tax with respect to land plots located in the Industrial Park is not paid until the relevant legal regime expires;
- real estate tax with respect to immovable property (including the land plots) located in the Industrial Park is not paid until the relevant legal regime expires;
- 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 the first profits declaration (10 years with respect to major projects exceeding USD 50 million);
- 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 for non-labour income of Belarusian employees not exceeding 500 basic units annually (ca. EUR 4,750) – 0%;
- social security payments are paid by a company for its employees at the lower rates:
  - for the income of foreign employees – 0%;
  - for part of the income of Belarusian employees exceeding the average monthly salary (ca. EUR 450) – 0%.
- no additional taxes in case of the adoption of new laws;
- 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;
- residents of the Industrial Park may freely enter into contracts, such as convertible loans and option agreements;
- shareholders and managers of a resident of the Industrial Park are not subject to vicarious liability in the case of an Industrial Park resident's insolvency unless such insolvency was caused by criminal actions (i.e. full "corporate veil").

As a default rule, 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 500,000;
- 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 million.

At the same time, also other types of investor qualify for the above-mentioned benefits.

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:

- exemption from profit tax with respect to profits arising in the course of the sale of goods (works, services) of its own production;
- exemption from real estate tax with respect to immovable property (except for land plots) located in FEZ for the first 3 years upon obtaining the status of FEZ resident;
- 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;
  - regardless of their predestination during the periods when the FEZ resident has a turnover from the sale of goods (works, services) of its own production;
- a company may import goods under the customs procedure of a free customs zone that provides for the possibility of 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 the customs procedure of a free customs zone and then sold in Belarus under the customs procedure of internal consumption;
- other benefits.

As a rule, 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 million. This threshold may be decreased to at least EUR 500,000 if the contemplated investment is made within 3 years.

HIGH-TECHNOLOGY PARK

Any Belarusian company (including those with foreign investments) meeting the Digital Decree criteria may enjoy the status of a resident of the High-Technology Park ("**HTP**") irrespective of its current actual location in Belarus.

The resident of HTP enjoys the following privileges until 1 January 2049:

- exemption from profit tax with respect to profits generated by the sale of goods (works, services);
- exemption from VAT with respect to the sale of goods (works, services);
- exemption from VAT in case of the import of equipment required for the resident's activity (servers, 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 the construction of buildings throughout the period of construction but no longer than 3 years;
- the rate of withholding tax with respect to dividends is 5%;
- the rate of withholding tax with respect to the sale of shares in residents of HTP (if shares were held for more than 365 days), royalties, interests, and a number of other taxable objects is 0%;
- social security payments to be paid by an HTP resident for its employees at the lower rates – for part of the income of employees exceeding the average monthly salary (ca. EUR 450) – 0%;
- shareholders and managers of a resident of HTP are not subject to vicarious liability in the case of an HTP resident's insolvency unless such insolvency was caused by criminal actions (i.e. full "corporate veil");
- residents of HTP are not inspected by controlling authorities without prior approval of such inspection granted by the Administration of HTP;
- residents of HTP may freely enter into transactions with foreign counterparts without processing bilateral primary accounting documents;
- shareholders' agreements with respect to a resident of HTP may be governed by a foreign law and disputes related to such agreements may be resolved by foreign courts or arbitral bodies (compared to the general rule under which disputes related to shareholders' agreements fall within the exclusive jurisdiction of the Belarusian state courts);
- residents of HTP may freely enter into such contracts as convertible loans, option agreements, indemnification agreements, non-compete and non-solicitation agreements with employees. They may also issue irrevocable powers of attorney and enter into transactions by means of blockchain smart-contracts;
- foreign employees and shareholders of the residents of HTP may freely enter and stay in Belarus for 180 days per year without a visa;
- transactions with shares in an HTP resident are not subject to merger control in Belarus.

In order to enjoy these benefits, a company must be registered as a resident of HTP.

However, only companies satisfying the following conditions may be registered:

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

CRYPTOCURRENCIES

The Digital Decree introduced regulations for cryptocurrencies in Belarus.

Now any company may lawfully own tokens as well as create, transfer, and offer them for sale to the public in Belarus and abroad via a resident of HTP.

Moreover, tokens may also be owned and transferred by individuals; however, individuals may not offer them for sale to the public. All these provisions in fact legalize ICOs and other similar ways of fundraising by residents of HTP both in Belarus and abroad.

Besides, the Digital Decree has introduced a number of tax benefits regarding transactions with tokens, namely:

- any sale of tokens by any company is exempt from VAT;
- profits deriving from the exchange of tokens into other tokens are exempt from profit tax;
- any transactions in tokens (including their creation, mining, public offering, selling and buying) by residents of HTP are also exempt from profit tax;
- the mining, selling and buying of tokens by individuals is exempt from personal income tax.

SMALL TOWNS AND RURAL AREAS

The Belarusian government is interested in improving the standard of living not only in big cities but also in small towns and rural areas. Thus, certain benefits have been introduced 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 an Industrial Park, residents of HTP) as well as for branches of other companies located there within

seven years of their registration:

- exemption from profit tax with respect to profits generated by the sale of goods (works, services) of their own production;
- exemption from real estate tax with respect to buildings located in small towns and rural areas;
- other benefits.

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, an investment agreement is concluded by a relevant governmental body and investor and provides for the following incentives:

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

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 in 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 above) and is concluded for 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 belong to an investor (full concession agreement);
- goods produced by an investor are divided between an investor and the state (concession agreement on sharing goods);
- all goods produced by an investor are transferred to the state, with the investor receiving remuneration for such goods (concession agreement on rendering services or performance of work).

EMPLOYMENT REGULATION

GENERAL INFORMATION

The Labour Code of the Republic of Belarus No. 296-Z dated 26 July 1999 (as amended) ("**Labour Code**") 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 law and collective and individual employment agreements.

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.

WORKING HOURS

As a 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 a higher rate.

WAGES

Pursuant to the official statistics, the average monthly wage in Belarus was equivalent to approximately EUR 405 as of January 2021. Personal income is levied at a flat 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 a social security contribution.

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/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 their graduation. A probation period may not exceed three months.

LABOUR BOOKS

A labour book of a standard type is the main document intended for recording the labour activities and seniority of 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.

EMPLOYMENT CONTRACTS

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 fixed 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 one-month prior notice in writing.

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 prior written notice. 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 fixed term by an employee is possible if:

- an employee becomes disabled;
- an 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:

- liquidation of a company or lay-off of employees, termination of activities of a branch or representative office;
- termination of activity of an individual entrepreneur, attorney, notary;
- disparity of an employee to the position or work due to insufficient qualifications or poor health conditions, which impedes the carrying out of the work;
- absence from work for more than four consecutive months due to temporary illness (not including maternity leave);
- absence of an employee from work due to the administrative arrest of the employee;
- repeated failure of an employee to perform the job functions properly without good cause if the employee has already been subject to disciplinary measures in the past;
- attempt of an employee to coerce or persuade the other employees to take part in a strike or to abandon their work;
- participation in an illegal strike;
- violation by an employee of the personal data protection regulation;
- single gross violation by an employee of his/her work duties including (i) absence from work without a good reason for more than three hours during one business day; (ii) appearance at the workplace in a state of alcoholic, narcotic, or other form of intoxication and/or using alcohol, drugs or other intoxicating substances during business hours at the workplace; (iii) theft of employer's property; (iv) violation of manufacturing, performance or labour discipline by an employee which resulted in damage to a company exceeding three months' average salary in Belarus; (v) violation of labour safety rules that subsequently caused the death of or injury to another employee;
- causing damage to the state, companies or individuals by the employee in connection with his/her work;
- repeated violations (two or more times within six months) of the procedure established by law for processing appeals of individuals and legal entities, as well as unlawful prosecution of natural persons and legal entities;
- repeated submission (two or more times within a six-month period) of incomplete or incorrect information to the relevant state authorities.

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-week to three-month salary.

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:

- permanent residents of Belarus;
- refugees;
- persons working in diplomatic and consular institutions, representative offices of international organizations;
- heads of representative offices of foreign companies;
- priests performing religious activities in religious organizations officially registered in Belarus;
- interns;
- employees of foreign media organizations accredited in Belarus;
- employees of HTP residents;
- managers and qualified experts hired by residents and investors of the Industrial Park;
- 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;
- persons obliged to compensate governmental expenses on support and bringing up their children;
- persons who have graduated from Belarusian universities and who have been hired to take on positions in keeping with the education they have received;
- persons in other cases, which are envisaged by the international treaties of Belarus (e.g. Russian citizens).

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

PRICE REGULATION

Pricing in Belarus is predominantly governed by Law No. 255-Z dated 10 May 1999 "On Pricing" (as amended) ("**Pricing Law**"), Edict of the President of the Republic of Belarus No. 72 dated 25 February 2011 "On Some Issues for Regulating Prices (Tariffs) in the Republic of Belarus" (as amended) ("**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. The state regulation of prices (tariffs) applies to:

- the goods (works and services) of companies with a dominant position on the commodity markets, which are included in the State Register of Dominant Undertakings 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 through:

- 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.

INTELLECTUAL PROPERTY

REGULATION AND FORMS OF IP

Currently, the regulation of intellectual property rights in Belarus is predominantly governed by the Civil Code, Law No. 262-Z dated 17 May 2011 "On Copyright and Related Rights" (as amended), Law No. 2181-XII dated 5 February 1993 "On Trademarks and Service Marks" (as amended), and Law No. 160-Z dated 16 December 2002 "On Industrial Patents, Utility Models and Designs" (as amended).

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

- copyright and related rights;
- industrial property rights.

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 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.

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).

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 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:

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

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.

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 Belarus. The right to use the firm name terminates simultaneously upon liquidation of the legal entity or upon a change of its name.

- **Trademarks**. In Belarus, legal protection of a trademark is provided based on its registration with the competent patent body, which is the National Center of Intellectual Property, or by virtue of international treaties to which Belarus is a 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 a certain region and their quality is strongly dependent on the place of their origin (i.e. Champagne, Cognacs, etc.).

OUR OFFICES

1 — AUSTRIA
Parkring 2
1010 Vienna
+ 43 1 514 35 0
office@cerhahempel.com

2 — BELARUS
Surganova Str. 29
220012 Minsk
+ 375 17 266 34 17
minsk@cerhahempel.com

3 — BULGARIA
25, Peter Parchevich Str.
BG-1000 Sofia
+ 359 2 401 09 99
sofia@cerhahempel.com

4 — CZECH REPUBLIC
Týn 639/1
110 00 Prague 1
+ 420 221 111 711
office@cerhahempel.cz

5 — HUNGARY
Fő utca 14 – 18
H-1011 Budapest
+ 36 1 457 80 40
office@cerhahempel.hu

6 — ROMANIA
35-37 Academiei Str., Entr. C
RO-010013 Bucharest
+40 371 517 187
office@cerhahempel.com

7 — SLOVAK REPUBLIK
Zochova 6-8
SK-811 03 Bratislava
+ 421 2 2064 8580
office@cerhahempel.sk

CERHA HEMPEL LLC

Surganova Str. 29
220012 Minsk, Belarus
T + 375 17 266 34 17
F + 375 17 266 34 21
minsk@cerhahempel.com

www.cerhahempel.com